

any coarse count adjustment) for the region in which the mill requesting a payment is located; and

(ii) With respect to spinnable textile waste that has been reprocessed through lint cleaning equipment, if reprocessing is necessary to make it spinnable, including Card Waste, Card Strips, and Soft, Reworkable Waste (for example, pneumafil, laps, roving, sliver):

(A) If such waste contains 100 percent upland cotton, 25 percent of the basic rate (exclusive of any coarse count adjustment) for the region in which the mill is located; or

(B) If such waste contains at least 85 but less than 100 percent upland cotton, 20 percent of the basic rate (exclusive of any coarse count adjustment) for the region in which the mill is located.

§ 1427.78 Commodity certificates.

Payments in accordance with provisions of this subpart shall be made available in the form of commodity certificates in accordance with Part 770 of this title.

§ 1427.79 Application for payment.

(a) All requests for an inventory protection payment must be submitted to Kansas City Management Office (KCMO), Fiscal Division, P.O. Box 205, Kansas City, Missouri 64141 no later than August 31, 1986, and must contain all information requested by CCC. Individual producers may submit their requests for payment to their local Agricultural Stabilization and Conservation Service office which will forward such requests to KCMO.

(b) *Request for early payment.* (1) As announced by CCC, if a person submits a request for final payment by August 31, 1986, such person may submit a request for early payment no later than September 5, 1986, based upon the person's estimate of the amount of eligible upland cotton such person had in inventory as of August 1, 1986. Such a request must be accompanied by a cash deposit, bond, letter of credit, or other security acceptable to CCC in an amount equal in value to the estimated quantity of eligible upland cotton multiplied by 40 cents per pound.

(2) If such request is supported by documentation acceptable to CCC, CCC shall make payments available, in accordance with the provisions of this subpart, to the person at a rate of 80 percent of the payment rate estimated by CCC to be in effect on August 1, 1986, as determined in accordance with § 1427.77.

(3) All persons who submit a request for early payment must submit a final request for payment not later than August 31, 1986. Such final request for

payment shall set forth the actual quantity of eligible raw upland cotton such person had in inventory on August 1, 1986. CCC shall determine the total payment to be made available to such person based upon the final request for payment less any payment previously made available to such persons in accordance with the provisions of this subpart. Any excess payment made available by CCC to such person must be refunded to CCC. CCC shall assess liquidated damages equal to 25 percent of the excess estimated quantity of cotton claimed for payment multiplied by the early payment rate. CCC may look either to the person, or to the security furnished by such person, or both, for payment of such liquidated damages.

(c) Any excess payment made available by CCC under the provisions of this subpart must be refunded to CCC.

Signed at Washington, this 26th day of August 1986.

Earle J. Bedenbaugh,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86-20489 Filed 9-10-86; 8:45 am]

BILLING CODE 3410-05-M

Food Safety and Inspection Service

9 CFR Parts 307, 318 and 381

[Docket No. 83-020F]

Meat and Poultry Inspection; Expansion of Operating Schedules for Total Quality Control Establishments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Federal meat and poultry products inspection regulations to permit meat and poultry establishments under a USDA approved Total Quality Control (TQC) system to expand their approved operating schedule to up to 12 hours. TQC establishments are currently approved for an 8-hour operating schedule which prohibits the shipping of product that is produced after that 8-hour period. Establishments must either retain product produced after the 8-hour schedule in storage until the following shift when the inspector is on duty or request that overtime inspection services be provided and reimburse the Department for those additional services. This rule allows establishments that have satisfactorily operated under an approved TQC system for 1 year to expand their approved operating schedule, under certain terms and conditions and in

accordance with appropriate monitoring by inspectors as deemed necessary.

EFFECTIVE DATE: October 14, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Bill F. Dennis, Director, Processed Products Inspection Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has made a determination that this rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices to 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.

This rule allows, under certain conditions, TQC establishments to expand their operating schedules to up to 12 hours. At this time, there are approximately 500 USDA approved TQC establishments. This rule is applicable to establishments that have satisfactorily operated under a TQC system for 1 year.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601).

At present, there are approximately 500 USDA approved TQC establishments. These establishments range from one-person operations to those operated by some of the Nation's largest processors.

TQC establishments are presently prohibited from shipping product produced after their approved 8-hour operating schedules. They must either retain such product in storage until the following day or request overtime services.

The rule allows TQC establishments, under certain conditions, to expand their operating schedules to up to 12 hours a day. This is particularly beneficial for small TQC establishments that may not have the space available to store the product produced after the 8-hour operating schedule and, therefore, have

no option but to pay for overtime services.

The rule does not have a significant impact on TQC establishments, whether large or small. It offers an alternative schedule for all TQC establishments on a voluntary basis. Although TQC establishments are required to submit a plan to the Department for implementing certain provisions required of TQC establishments operating under expanded schedules, this paperwork burden would be a one-time exercise. Otherwise, the rule provides a positive impact upon TQC establishments qualifying for the expanded operating schedule.

Background

On August 15, 1980, the Department published a final rule in the *Federal Register* (45 FR 54310) that, in part, permits an official establishment to be eligible for a program of inspection that places more responsibility on the establishment to control its own production through a quality control program. Under that rule, an establishment can submit a proposed Total Quality Control (TQC) System to the Administrator for approval. If the Administrator finds the proposed system adequate to assure the preparation of meat and poultry products in accordance with the Federal Meat Inspection Act (FMIA) and/or the Poultry Products Inspection Act (PPIA), the establishment can participate in TQC inspection. At this time, there are approximately 500 establishments approved to operate under a TQC system.

A TQC system identifies the critical control points in an establishment's production process where compliance with Food Safety and Inspection Service (FSIS) regulations could be affected. This system specifies how the critical control points will be checked by establishment management and what actions will be taken by the establishment to verify compliance. The establishment is required to keep records showing the results of checking the critical points. An approved TQC system is an agreement between the processor and the Department which identifies how that establishment will control its production process to insure that all products are produced in accordance with the applicable regulations.

The Department verifies that the TQC system is operating in accordance with the approved plan through the review and evaluation of the records kept by the establishment. In addition, verification samples are taken to insure products are in compliance. If an

establishment fails to comply with the provisions outlined in the approved TQC plan or if its products are found to be adulterated or misbranded, the TQC plan will be terminated and the establishment will be inspected under traditional methods.

Establishments under an approved TQC system can produce and ship product any time during their approved 8-hour operating schedule. The Department provides inspection services, without charge, up to 8 consecutive hours per shift during their approved operating schedule. A TQC establishment may continue to produce product beyond its operating schedule but may not ship that product until the start of the establishment's next production shift, at which time the product is subject to inspection. Although an establishment can hold such product produced until the inspector resumes duty and has an opportunity to inspect the product, some establishments do not have adequate storage facilities to hold product. Overtime inspection is authorized when the TQC establishment requests to ship product after 8 hours of inspection service without holding it for the next regular scheduled shift of the inspector.

The Proposal

The Department determined a need exists to address the manner of inspection for a TQC establishment desiring to produce and ship product after its approved operating schedule. The basic philosophy underlying the TQC system at federally inspected establishments is that the Department is responsible for monitoring the TQC system and determining that the products prepared at the establishment are not adulterated and are otherwise in compliance with the FMIA and PPIA before they are passed and distributed from the establishment. This activity does not require the continued presence of the inspector at the establishments in all instances. Those establishments with an approved TQC system continue to operate under their TQC system and under Federal inspection regardless of the inspector's presence or absence. Thus, it appears to be unjustifiably burdensome to have separate requirements in all instances for shipping product after the establishment's 8-hour operating schedule. After evaluating this matter, the Department published a proposal on August 19, 1985 (50 FR 33348), to allow eligible TQC establishments to expand their approved operating schedule to up to 12 consecutive hours per shift, under certain conditions.

Under the proposal, the Department would inspect TQC establishments approved for a 12-hour operating schedule by a variety of methods. If an establishment were to request to change its operating schedule to up to 12 hours, the Department would verify that the establishment was operating according to its TQC plan after 8 hours of inspection service. Overtime inspection would be authorized for this purpose. The amount of overtime an establishment incurs would be determined by the circuit supervisor and by the nature of the operation and the volume of product being shipped during its expanded hours.

Another provision of the proposal was that establishments would be required to provide a plan for random sampling products that are shipped after 8 hours of operation and a plan for holding the samples until the inspector's next scheduled tour of duty. These verification samples would be required to further assure the establishment was operating according to its TQC plan and preparing products in compliance with the FMIA and PPIA.

Furthermore, immediate containers of products would be required to be coded to indicate when products were produced during the production shift. This would allow the Department to ascertain when any noncompliant product was produced.

In addition to these provisions, the Department would determine the level and intensity of inspection coverage for those establishments approved for expanding their operating schedules.

Establishments operating to up to 12 hours would be required to comply with all provisions of the rule. Those found not to be in compliance would be subject to, at the minimum, the termination provisions found in 9 CFR 318.4(g) and 381.145(g).

Comments Received on Proposal

The comment period on the proposal was scheduled to close on November 14, 1985. However, in response to several requests, FSIS extended the comment period an additional 60 days (50 FR 47060) until January 13, 1986.

The Department received 143 comments in response to the proposal—130 from consumers, 5 from official establishments, 4 from FSIS inspectors, 3 from trade associations, and 1 from an inspectors' union. Of the comments received, 137 opposed the proposal, 5 supported the proposal, and 1 did not voice an opinion.

Of the 130 comments from consumers, 129 were form letters from the same geographic area expressing general

opposition to the proposal because, in their judgment, TQC programs do not offer sufficient inspection of food products. They did not present any evidence or data to support their views or offer any alternative proposal. The other consumer expressed opposition on the grounds that meat and poultry products would not be inspected after the regular 8-hour period.

The comments from FSIS inspectors and the inspectors' union opposed the proposal. Their grounds for opposition were that the proposal: (1) Is unfair to allow TQC establishments to operate without inspection and not afford the same opportunity to non-TQC establishments; (2) encourages establishments to operate up to 12 hours rather than start a new shift; and (3) encourages quality control through reduced overtime charges instead of through the merits of TQC. One inspector suggested that establishments be required to identify the products being produced every 4 hours.

FSIS disagrees with the inspectors' comments. A TQC establishment which has expanded its hours of operation will be inspected. This is analogous to establishments under a patrol assignment where the inspector inspects each of the establishments some time during his/her tour of duty. These establishments continue to operate whether or not the inspector is present. FSIS published this proposal to establish consistent inspection policy for TQC establishments desiring to produce and ship product after their approved operating schedule. An approved TQC system is an agreement between the processor and the Agency which specifies how the production process will be controlled to insure all products are produced in accordance with the regulations. Non-TQC establishments do not enter into such agreement. Therefore, FSIS inspects them under traditional methods which require an inspector's presence when products are produced after 8 hours of inspection.

Several issues were raised by those in support of the proposal as well as those in opposition. The following is a summary of the issues and FSIS's response to each.

1. Overtime Charges

Comment: Three trade associations and one establishment opposed establishments' bearing the cost of overtime for monitoring operations after the inspector's tour of duty. Several proposed that the savings generated by this proposal be used to cover overtime costs. Another suggested that the inspector vary starting times to monitor all phases of the operation or

supplement compliance activities for overtime inspection. It was also suggested that the costs and criteria for overtime charges should be made known.

Response: Since an establishment may be approved to operate up to 12 hours, FSIS believes it is necessary to verify how well an establishment is adhering to its QC program at any point during its hours of operation, including the expanded schedule of operations. Therefore, establishments approved to expand their operating schedule may be subject to some overtime charges.

The rule will establish a consistent policy of inspection for establishments under an approved QC program. This will not reduce the Agency's inspection costs. FSIS alternates the inspectors' starting times so that all phases of the operation can be monitored on a random basis. This will be used more frequently. However, FSIS believes the overtime requirement is a necessary regulatory tool that must be available to the Agency and reserves the right to visit an establishment outside normal duty hours.

FSIS initially considered specifying the amount of overtime charges that an establishment could incur. However, by doing so or by establishing overtime criteria, circuit supervisors would be limited in exercising inspection responsibilities since the circuit supervisor determines the need for overtime inspection. Therefore, the rule does not include these types of provisions.

2. Production of Products

Comment: Two trade associations opposed the provision that products produced after 8 hours of inspection must be a continuation of the processing during the last hour of inspection. They contended that such a requirement would be burdensome and would restrict flexibility of small firms.

Response: FSIS is required by law to assure that products produced are wholesome and not adulterated. During an inspector's tour of duty, FSIS has the opportunity to inspect raw ingredients and monitor the production process. If a new process were allowed to be initiated after the inspector's tour of duty, FSIS could not legally assure the safety and wholesomeness of the products produced and shipped. Therefore, the Agency would not meet its legal requirements. FSIS realizes this may restrict the operations of official establishments. However, the establishment could alleviate this through appropriate planning of its production schedules. For these reasons, the requirement remains as a condition

for an establishment to expand its operating schedule.

3. Sampling Plan

Comment: Two trade associations and one establishment opposed a separate sampling plan for products shipped after 8 hours of inspection. They stated that since TQC programs require finished product sampling, additional sampling should not be needed, and that this should be the inspectors' responsibility rather than that of the establishment.

Response: FSIS agrees with the comments. Where appropriate, sampling plans are an integral part of a QC program. A sampling plan will include finished product sampling. Therefore, an establishment under TQC with an expanded operating schedule will sample products produced after the inspectors' tour of duty. FSIS does not believe it is necessary for an establishment to hold for subsequent examination samples of products produced after 8 hours of inspection. However, the inspector may take verification samples as he/she deems necessary.

FSIS has other methods in place to sample and inspect products produced after the hours of inspection. The Compliance Program, Meat and Poultry Inspection Operations, routinely takes retail market samples to insure product is in compliance. Also, the TQC program requires finished product sampling as well as verification sampling by the inspector. In addition, this rule makes provisions for the inspector to revisit an establishment on an overtime basis.

FSIS believes the sampling requirements would be burdensome to establishments and does not provide assurances that the TQC program is functioning properly. Thus, FSIS is deleting this requirement from the final rule.

4. One Year Requirement Prior to Expanding Schedule

Comment: Two trade associations voiced opposition to the requirement that only those establishments operating under an approved QC program for at least 1 year may be eligible for extended hours of operation. They contend that, since an establishment must comply with the QC program immediately, there should not be a waiting period. One commenter suggested that the timeframe be reduced to 3 months.

Response: FSIS believes that the establishment, as well as the Agency, needs time to ensure the QC program is operating satisfactorily. Since FSIS cannot prescreen applicants for TQC, except in cases where there are

convictions or perhaps pending indictments, the Agency must have an opportunity to evaluate the establishment's commitment to TQC and the actual operation of the system. Therefore, FSIS will require an establishment to successfully operate under an approved QC program for at least 1 year prior to becoming eligible to expand its operating schedule.

5. Coding of Products

Comment: Two trade associations and one establishment were opposed to the requirement that products produced during expanded hours of operation bear a special code. One commenter suggested that the coding of products should identify products produced every 4 hours rather than after 8 hours of inspection.

Response: The final rule will not require the sampling and holding of samples for examination by the inspector. Since this requirement is being deleted, FSIS needs a mechanism to verify the compliance of products produced and shipped after 8 hours of inspection.

The coding of products allows FSIS to sample, on occasion, products at the retail market and compare those products being produced during 8 hours of inspection with those produced during the expanded hours of operation. The Agency does not plan for this to be a routine monitoring method. Therefore, the coding requirement remains as proposed in the final rule.

Miscellaneous Amendments

FSIS has made several minor amendments in the final rule for clarity purposes.

Final Rule

After careful consideration of the comments received on the proposal, FSIS is adopting the proposed rule, except for the changes previously discussed herein.

List of Subjects

9 CFR Part 307

Meat inspection, Quality control, Facilities, Overtime.

9 CFR Part 318

Meat inspection, Quality control, Reporting requirements, Preparation of products.

9 CFR Part 381

Poultry products inspection, Quality control, Reporting requirements.

The Federal meat and poultry products inspection regulations are amended as follows:

PART 307—[AMENDED]

1. The authority citation for Part 307 continues to read as follows:

Authority: 41 Stat. 241, 7 U.S.C. 394; 34 Stat. 1264, as amended; 21 U.S.C. 621; 62 Stat. 334; 21 U.S.C. 695, 7 CFR 215(a), 2.92.

2. Section 307.4(c) of the Federal meat inspection regulations (9 CFR 307.4(c)) is amended by adding a new sentence at the end thereof to read as follows:

§ 307.4 Schedule of operations.

* * * * *

(c) * * *. These provisions are applicable to all official establishments except in certain cases as provided in § 318.4(h) of this subchapter.

* * * * *

PART 318—[AMENDED]

3. The authority citation for Part 318 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

4. Section 318.4 of the Federal meat inspection regulations (9 CFR 318.4) is amended by adding a new paragraph (h) to read as follows:

§ 318.4 Preparation of products to be officially supervised; responsibilities of official establishment; plant operated quality control.

* * * * *

(h)(1) *Operating Schedule Under Total Plant Quality Control.* An official establishment with an approved total plant quality control system may request approval for an operating schedule of up to 12 consecutive hours per shift. Permission will be granted provided that:

(i) The official establishment has satisfactorily operated under a total plant quality control system for at least 1 year.

(ii) All products prepared and packaged, or processed after the end of 8 hours of inspection shall only be a continuation of the processing monitored by the inspector and being conducted during the last hour of inspection.

(iii) All immediate containers of products prepared and packaged shall bear code marks that are unique to any period of production beyond the 8 hours of inspection. The form of such code marks will remain constant from day to day, and a facsimile of the code marks and their meaning shall be provided to the inspector.

(2) *Application.* Applications shall be submitted to the Regional Director and

shall specify how the conditions in § 318.4(h)(1) have been or will be met.

(3) *Monitoring by Inspectors.* In order to verify that an establishment is preparing and shipping product in accordance with the approved total plant quality control system and the Act and regulations after the 8 hours of inspection, the official establishment may be provided overtime inspection services at the discretion of the circuit supervisor and charged for such services.

(Reporting requirements set forth in this section were approved by the Office of Management and Budget under control number 0583-0015.)

PART 381—[AMENDED]

5. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

6. Section 381.37(c) of the poultry products inspection regulations (9 CFR 381.37(c)) is amended by adding a new sentence at the end thereof to read as follows:

§ 381.37 Schedule of operations.

* * * * *

(c) * * *. These provisions are applicable to all official establishments except in certain cases as provided in § 381.145(h) of this subchapter.

* * * * *

7. Section 381.145 of the Federal poultry products inspection regulations (9 CFR 381.145) is amended by redesignating the present paragraph (h) as (i) and adding a new paragraph (h) to read as follows:

§ 381.145 Poultry products and other articles entering or at official establishment; examination and other requirements.

* * * * *

(h)(1) *Operating Schedule Under Total Plant Quality Control.* An official establishment with an approved total plant quality control system may request approval for an operating schedule of up to 12 consecutive hours per shift. Permissions will be granted provided that:

(i) The official establishment has satisfactorily operated under a total plant quality control system for at least 1 year.

(ii) All products prepared and packaged, or processed after the end of 8 hours of inspection shall only be a continuation of the processing monitored by the inspector and being

conducted during the last hour of inspection.

(iii) All immediate containers of products prepared and packaged shall bear code marks that are unique to any period of production beyond the 8 hours of inspection. The form of such code marks will remain constant from day to day, and a facsimile of the code marks and their meaning shall be provided to the inspector.

(2) *Application.* Applications shall be submitted to the Regional Director and shall specify how the conditions in § 381.145(h)(1) have been or will be met.

(3) *Monitoring by Inspectors.* In order to verify that an establishment is preparing and shipping product in accordance with the approved total plant quality control system and the Act and regulations after the 8 hours of inspection, the official establishment may be provided overtime inspection services at the discretion of the circuit supervisor and charged for such services.

(Reporting requirements set forth in this section were approved by the Office of Management and Budget under control number 0583-0015).

Done at Washington, DC., on: August 26, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-20493 Filed 9-10-86; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 18-86]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, Executive Office for Immigration Review, hereby exempts a new system of records entitled "Records and Management Information System, JUSTICE/EOIR-001," from the access and amendment provisions of the Privacy Act, 5 U.S.C. 552a(d). This exemption is needed to preclude access to any information in the system which has been properly classified under an Executive Order for national security reasons. It is also needed to preclude unauthorized access to certain confidential investigatory materials compiled for the purposes of enforcing immigration laws. In addition, the exemption is needed to preclude the amendment of the record of proceeding

which constitutes the official record of quasi-judicial administrative proceedings. The records may include transcripts of the proceedings, charging documents, investigatory reports, decisional memoranda, and evidentiary materials such as exhibits and other case-related papers concerning aliens brought into the administrative adjudication process. These records are compiled during the course of proper hearings, established due process procedures, and any relevant investigations. If the individual who is the subject of the record could make ex parte "correction" of the material, administrative due process could not be achieved.

EFFECTIVE DATE: This rule will be effective September 11, 1986.

ADDRESS: J. Michael Clark, Assistant Director, General Services Staff, Justice Management Division, Room 9002, Department of Justice, 601 D Street NW., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202-272-6474).

SUPPLEMENTARY INFORMATION: This rule was first published as a proposed rule at 51 FR 16724, May 6, 1986. At that time, comments were invited until June 5, 1986. One comment was received and considered. A commentator objected to the rule on the grounds that the rule would unduly bar disclosures of most materials contained in the system of records and contended that the regulation to exempt the system was unnecessary because of current Privacy Act limitations on disclosure of confidential information. As stated in the May 6 proposed rule, the exemption applies only to the extent that information in the system is subject to exemption. That is, any information in the system which cannot be defined as (k)(1) or (k)(2) information will not be withheld pursuant thereto simply because "the system" has been exempted. For practical reasons, non-exempt information in the system cannot be segregated and maintained apart from that information which is exempt. Therefore, the exemption is promulgated to protect the (k)(1) and (k)(2) information within the system of records. The exemption is promulgated in accordance with 5 U.S.C. 553(b) (1), (2), and (3), (c), and (e), as required by the Privacy Act, 5 U.S.C. 552a (j) and (k). The exemption will not prevent proper access to the vast majority of information contained in the system.

A description of the "Records and Management Information System" has been published in the Notice section of the *Federal Register* of May 6, 1986 (51 FR 16753).

This order relates to individuals, rather than to small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative Practice and Procedure, Courts, Freedom of Information, Privacy, and Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General No. 793-78, 28 CFR Part 16 is amended to add § 16.83 as set forth below.

Dated: August 6, 1986.

Robert N. Ford,

Acting Assistant Attorney General for Administration.

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. 28 CFR Part 16 is amended by adding § 16.83 to read as follows:

§ 16.83 Exemption of the Executive Office for Immigration Review System—Limited Access.

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) The Executive Office for Immigration Review's Records and Management Information System (JUSTICE/EOIR-001). This exemption applies only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k) (1) and (2).

(b) Exemption from the particular subsections are justified for the following reasons:

(1) From subsection (d) because access to information which has been properly classified pursuant to an Executive Order could have an adverse effect on the national security. In addition, from subsection (d) because unauthorized access to certain investigatory material could compromise ongoing or potential investigations; reveal the identity of confidential informants; or constitute unwarranted invasions of the personal privacy of third parties.

(2) From subsection (d) (2), (3), and (4) because the record of proceeding constitutes an official record which includes transcripts of quasi-judicial administrative proceedings, investigatory materials, evidentiary materials such as exhibits, decisional memoranda, and other case-related

papers. Administrative due process could not be achieved by the ex parte "correction" of such materials by the individual who is the subject thereof. [FR Doc. 86-20422 Filed 9-10-86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Bureau of Labor-Management Relations and Cooperative Programs

29 CFR Part 220

Airline Employee Protection Program; Justification Under Court Order

AGENCY: Bureau of Labor-Management Relations and Cooperative Programs, Labor.

ACTION: Secretary of Labor's justification of final rule, pursuant to court order.

SUMMARY: On January 22, 1986, the United States District Court for the District of Columbia issued a favorable decision in the case of *Alaska Airlines Inc., et al. v. Brock, et al.*, 632 F.Supp. 178 (D.D.C. 1986), concerning the validity of the regulations promulgated pursuant to the employee protection provisions of the Airline Deregulation Act (ADA or the Act), 49 U.S.C. 1552. The decision upholds the Department's regulations, 29 CFR Part 220 *et seq.*, in all respects, with the single exception of 29 CFR Part 220.21(a)(1), dealing with initial hiring age. With respect to that part of the rule, the court has invalidated it as to pilots and flight officers alone, and has remanded the issue to the Secretary of Labor (the Secretary) for further explanation.

After reviewing the comments in light of the Act, the legislative history and legal precedents, the Secretary concludes that 29 CFR Part 220.21(a)(1) as published on December 27, 1985 (50 FR 53103) is consistent with Congressional intent and does not conflict with any other statutes or court decisions.

EFFECTIVE DATE: October 14, 1986.

FOR FURTHER INFORMATION CONTACT: Jeffrey Salzman, Airline Employee Protection Program, Division of Employee Protections, Room N5416, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Phone: (202) 357-0473.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1985, the Department of Labor, through the Bureau of Labor-Management Relations and Cooperative Programs, published a

final rule under section 43 of the Act (the employee protection provisions). 50 FR 53094. With the exception of § 220.21(a)(1), which the district court invalidated as to pilots and flight officers only, the remainder of the final rule became effective on January 27, 1986.

Section 220.21 permits a covered air carrier to apply any qualifications in its hiring process, except limitations based on initial hiring age or the existence of any seniority, recall rights or previous experience with another airline. The court stated that the initial hiring age of pilots and flight officers, that is, the age at which applicants are considered for employment by the covered air carrier, may affect the amount and adequacy of the training and experience they receive. The court then reasoned that this qualification may have an impact on airline safety. Finding safety to be a substantial concern, the court directed the Secretary to address the issue of whether initial hiring age could properly be excluded as a factor in hiring decisions, which issue was raised by comment during the rulemaking process. Accordingly, § 220.21(a)(1) was invalidated by the district court and did not go into effect, but only insofar as it applies to pilots and flight officers; § 220.21(a)(1) went into effect and continues to remain in effect as to all other occupational specialties. Furthermore, pursuant to the order of the district court, this section was remanded to the Secretary for further consideration, with respect to the safety aspects of initial hiring age disqualifications for pilots and flight officers. Since a number of comments were received on this issue when the regulations were first published, it was unnecessary to reopen the rulemaking record.

Comments on the issue of initial hiring age were received from three general sources: trade associations, labor organizations and individuals. The trade associations (industry groups) commented that § 220.21(a)(1) conflicts with their members' policies on initial hiring age for pilots. They state that failure to allow a bona fide occupational qualification (BFOQ) for initial hiring age of pilots will diminish the airlines' ability to deliver the safest possible airline service to their passengers. In support of their position, these commenters rely heavily on *Murnane v. American Airlines*, 482 F.Supp. 135 (D. C. 1979), *aff'd*, 667 F.2d 98 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 915 (1982). In *Murnane*, the U.S. Court of Appeals for the District of Columbia Circuit held, *inter alia*, that American Airlines' refusal to hire applicants over age 40 as

flight officers was justified as a BFOQ under the Age Discrimination in Employment Act of 1967 (ADEA), in the interests of safety.

Comments arguing against permitting the airlines to implement an initial hiring age disqualification were submitted by several labor organizations and individuals. These comments recognized that age discrimination was prevalent in the airline industry and therefore, that the section of the regulations prohibiting use of an initial hiring age disqualification was necessary, in order to effectuate the purpose of the Act. Specifically, one of these commenters asserted that discrimination in hiring pilots over 35 years of age is well known in the commercial aviation industry and should be prohibited.

The Secretary has re-examined the comments, the Act, the legislative history and related case law and has concluded that § 220.21(a)(1) of the regulations accurately reflects the intent of Congress to assist airline industry employees who have made this industry their careers.

Beginning with the Act itself, section 43(d) of the Act states that any person who is a protected employee of an air carrier who is furloughed or otherwise terminated, other than for cause, "shall have first right of hire, regardless of age, in his occupation specialty. . . ." (emphasis added). This language is clear and unambiguous, susceptible to no other interpretation than its plain, literal meaning. A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning. Ascribing any other meaning of the phrase "regardless of age" would be to ignore the breadth of the statutory language and the underlying Congressional intent which must be identified and effectuated.

With statutory language so clear and unambiguous as this, it is not necessary to refer to the legislative history to discern Congressional intent. However, a review of the legislative history also supports this interpretation. The Senate was concerned with the possible decrease in the number of airline positions as a result of deregulation. In addition, the Senate wanted to protect employees who have demonstrated their dedication to the airline industry:

Many airline employees have given most of their working lives to the air transportation industry and have too much invested to leave it now. In many cases, a job shift even within the industry would be costly because of lost seniority. Older employees looking for a new