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Contents

Federal Register
Vol. 55, No. 60
Wednesday, March 28, 1990

Agency for Toxic Substances and Disease Registry
NOTICES
Superfund program:
Hazardous substances priority list (toxicological profiles), 11566

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
North Carolina and South Carolina, 11506

Agricultural Stabilization and Conservation Service
PROPOSED RULES
Conservation and environmental programs:
Emergency conservation program, maximum cost-share percentages calculation clarification, etc., 11384

Agriculture Department
See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation

Animal and Plant Health Inspection Service
PROPOSED RULES
Animal welfare:
Horse protection—
Designated qualified persons (DQP); pre-show inspection guidelines for soring horses, 11385

Centers for Disease Control
NOTICES
Synthetic and natural mineral fibers, occupational exposure; NIOSH request for comments and secondary data, 11437

Coast Guard
RULES
Anchorage regulations:
Texas, 11368

Commerce Department
See also Export Administration Bureau; International Trade Administration; National Institute of Standards and Technology; National Oceanic and Atmospheric Administration
RULES
Regional action planning commissions; CFR Chapter removed, 11360

Commodity Credit Corporation
NOTICES
Loan and purchase programs:
Price support levels—
Honey, 11415

Copyright Royalty Tribunal
NOTICES
Negotiated jukebox licenses; determination, 11428

Defense Department
See also Navy Department
RULES
Public affairs activities; information principles, 11368
NOTICES
Meetings:
Women in Services Advisory Committee, 11429

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Adult education for homeless program, 11430
Meetings:
National Commission on Drug-Free Schools, 11431

Employment Standards Administration
See Wage and Hour Division

Energy Department
See Energy Information Administration; Federal Energy Regulatory Commission

Energy Information Administration
NOTICES
Agency information collection activities under OMB review, 11431

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Ohio, 11370
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Definitions and interpretations, etc.—
Tomatoes, 11372
PROPOSED RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Chlorpyrifos, 11395
Paraquat, 11396
Toxic substances:
Testing requirements—
N-Methylpyrrolidone, 11398
NOTICES
Meetings:
Science Advisory Board, 11432
Water pollution control:
Clean Water Act—
State water quality standards; approval and disapproval lists and individual control strategies; availability, 11432

Export Administration Bureau
RULES
Export licensing:
Commodity control list—
Genetically modified organisms, 11361
NOTICES
Meetings:
Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee et al., 11416
Semiconductor Technical Advisory Committee, 11416

Transportation and Related Equipment Technical Advisory Committee, 11416

Federal Communications Commission
RULES
Radio stations; table of assignments:
California, 11373
Kentucky, 11374
Minnesota, 11374
Mississippi, 11374
Missouri, 11375
Wisconsin, 11375
PROPOSED RULES
Radio services, special:
Maritime services—
High frequency bands (4000-27500 kHz), 11407
Radio stations; table of assignments:
Georgia, 11411
Illinois, 11411
South Dakota, 11412
Wisconsin et al., 11412
NOTICES
Agency information collection activities under OMB review, 11433
Meetings:
ITU World Administrative Radio Conference Advisory Committee, 11433
Applications, hearings, determinations, etc.:
Melchaisedec Broadcasting Co. et al., 11433

Federal Energy Regulatory Commission
NOTICES
Natural Gas Policy Act:
Well category determinations, etc., 11432

Federal Maritime Commission
NOTICES
Agreements filed, etc., 11435
Freight forwarder licenses:
Greenshields, Cowie & Co. Ltd., et al., 11435
Overseas Project Transport, Inc., et al., 11435

Federal Reserve System
RULES
Availability of funds and collection of checks (Regulation CC):
Preemption determinations—
California, 11357
Foreign gifts and decorations for Federal employees; minimum value increase, 11436
NOTICES
Applications, hearings, determinations, etc.:
Bank Shares Inc., 11436
First Seven Day Financial, Inc., 11436
Shafer, Walter, 11437
Sturm Investments, Inc., 11437

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc., 11413
NOTICES
Endangered and threatened species permit applications, 11442

Food and Drug Administration
NOTICES
Human drugs:
Orphan drug and biological products—
Designations; cumulative listing, 11438
Meetings:
Consumer information exchange, 11438, 11439 (3 documents)
Orphan medical foods, development; incentives evaluation; report availability, 11439

General Services Administration
NOTICES
Meetings:
Federal, Academic, and Industry Logistics Experts Consortium, 11437

Geological Survey
NOTICES
Agency information collection activities under OMB review, 11442

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry; Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration; National Institutes of Health; Public Health Service

Health Care Financing Administration
RULES
Medicare:
Physical therapy and speech pathology services, physician involvement; participation conditions, 11372

Health Resources and Services Administration
See also Public Health Service
NOTICES
Meetings; advisory committees:
April, 11439

Housing and Urban Development Department
PROPOSED RULES
Community development block grants:
Miscellaneous amendments, 11556

Indian Affairs Bureau
NOTICES
Agency information collection activities under OMB review, 11442

Interior Department
See Fish and Wildlife Service; Geological Survey; Indian Affairs Bureau; Land Management Bureau; National Park Service

Internal Revenue Service
RULES
Procedure and administration:
Disclosure of return information to Census Bureau, 11367

International Trade Administration
NOTICES
Antidumping:
Fresh and chilled Atlantic salmon from Norway, 11418
Industrial nitrocellulose from Brazil, 11417

Sweaters wholly or in chief weight of man-made fiber from Hong Kong, Korea, and Taiwan, 11419
Television receivers, monchrome and color, from Japan, 11420
Antidumping and countervailing duties:
Administrative review requests, 11417
Countervailing duties:
Fresh and chilled Atlantic salmon from Norway, 11423

International Trade Commission
NOTICES
Import investigations:
Generalized System of Preferences—
Eligible articles list, etc., 11449
Phototypesetting and imagesetting machines and subassemblies from West Germany, 11448
Pressure transmitters, 11451
(2 documents)

Interstate Commerce Commission
NOTICES
Rail carriers:
Cost of capital; railroad industry's annual rate proceeding, 11451
Railroad operation, acquisition, construction, etc.:
Burlington Northern Railroad Co., 11451

Justice Department
NOTICES
Pollution control; consent judgments:
CR Industries, Inc., 11452
Hitco, Inc., 11452
Monterey Investment et al., 11452

Labor Department
See Mine Safety and Health Administration; Wage and Hour Division

Land Management Bureau
RULES
Public land orders:
Washington, 11373
NOTICES
Closure of public lands:
Idaho, 11443
Meetings:
Burns District Advisory Council, 11442
Roseburg District Advisory Council, 11444
Motor vehicles; off-road vehicle designations:
Wyoming, 11443
Realty actions; sales, leases, etc.:
Nevada, 11444
(2 documents)
Recreation management restrictions, etc.:
Butte District, MT, 11442
Resource management plans, etc.:
Stateline Resource Area, NV, 11445
Survey plat filings:
Idaho, 11444

Mine Safety and Health Administration
PROPOSED RULES
Coal mine safety and health:
Underground coal mining—
Belt conveyor entry ventilation; hearing, 11394
NOTICES
Safety standard petitions:
Mettiki Coal Corp., 11453
R.S. Coal Co., 11453

National Aeronautics and Space Administration
NOTICES
Meetings:
Aeronautics Advisory Committee, 11454

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Nonconforming vehicles—
Safety, bumper, and theft prevention standards, 11375
NOTICES
Fuel economy program, automotive; annual report to Congress, 11484
Motor vehicle safety standards; exemption petitions, etc.:
Cadillac Plastic & Chemical Co., 11497

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Institute of Standards and Technology
NOTICES
Information processing standards, Federal:
POSIX; portable operating system interface for computer environments, 11424

National Institutes of Health
NOTICES
Meetings:
National Institute of Diabetes and Digestive and Kidney Diseases, 11440
Patent license, exclusive:
Recombinant toxic fusion protein (Protein Design Labs, Inc.), 11440

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Foreign fishing—
Fee schedule, 11382
PROPOSED RULES
Fishery conservation and management:
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 11414
NOTICES
Coastal zone management programs and estuarine sanctuaries:
Consistency appeals—
Anton, Shickrey, 11427
Permits:
Experimental fishing, 11428

National Park Service
NOTICES
Meetings:
National Capital Memorial Commission, 11447
National Park System Advisory Board, 11447
National Register of Historic Places:
Pending nominations, 11448

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 11455
Committees; establishment, renewal, termination, etc.:
Animal Learning and Behavior Advisory Panel et al., 11455

Engineering and Technology Management Advisory Panel, 11455

Navy Department
NOTICES
Meetings:
Naval Research Advisory Committee, 11430

Nuclear Regulatory Commission
NOTICES
Agency information collection activities under OMB review, 11456
Illinois; agreement on byproduct materials (uranium or thorium mill tailings) regulation; amendment, 11459
Low-level radioactive waste policy amendments; 1990 milestone guidance on governors' certifications, 11457

Public Health Service
See also Agency for Toxic Substances and Disease Registry; Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health
NOTICES
Meetings:
National Toxicology Program; Scientific Counselors Board, 11440

Securities and Exchange Commission
RULES
Public utility holding companies:
Public-utility subsidiary companies; issue and sale of registered public-utility holding companies' securities, and securities acquisitions by registered holding companies; exemptions, 11362
PROPOSED RULES
Public utility holding companies:
Public-utility subsidiary companies; issue and sale of registered public-utility holding companies' securities, and securities acquisitions by registered holding companies; exemptions, 11390
Securities:
Securities underlying market baskets; registration exemption, 11387
NOTICES
Agency information collection activities under OMB review, 11470
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 11472
Cincinnati Stock Exchange, Inc., 11473
National Securities Clearing Corp., 11470
New York Stock Exchange, Inc., 11471
Applications, hearings, determinations, etc.:
American General Life Insurance Co. of Delaware et al., 11474
John Hancock Mutual Life Insurance Co. et al., 11476
KILICO Equity Separate Account, 11477
KILICO Income Separate Account, 11478
KILICO Total Return Separate Account, 11480
United Financial Group, Inc., 11478

Thrift Supervision Office
NOTICES
Conservator appointments:
First Federal Savings Association, 11497
Great American Savings & Loan Association, F.A., 11497
Lakeland Savings Bank, F.S.B., 11498
Sun Federal Savings Association, 11498
Whitestone Federal Savings & Loan Association, 11498
Receiver appointments:
First Federal Savings & Loan Association, 11498
Great American Federal Savings & Loan Association, 11498
Lakeland Federal Savings Bank, 11498
Sun Savings Bank, 11498
Whitestone Savings, F.A., 11498

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See also Coast Guard; National Highway Traffic Safety Administration
NOTICES
Agency information collection activities under OMB review, 11481

Treasury Department
See Internal Revenue Service; Thrift Supervision Office

United States Information Agency
NOTICES
Art objects; importation for exhibition:
Drawings of Jasper Johns, 11499
Grants and cooperative agreements; availability, etc.:
American studies; winter institute, 11499

Veterans Affairs Department
RULES
Medical benefits:
Health care outside U.S. for veterans with service-connected disabilities, 11369
NOTICES
Agency information collection activities under OMB review, 11501–11503
(5 documents)
Committees; establishment, renewal, termination, etc.:
Future Structure of Veterans Health Care Advisory Commission, 11503
Meetings:
Cooperative Studies Evaluation Committee, 11504

Wage and Hour Division
NOTICES
Committees; establishment, renewal, termination, etc.:
Special Industry Committee for All Industry in American Samoa, 11454

Separate Parts In This Issue

Part II
Department of Agriculture, Agricultural Marketing Service, 11506

Part III
Department of Housing and Urban Development, 11556

Part IV
Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, 11566

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR

Proposed Rules:

701 11384
1005 11506

9 CFR

Proposed Rules:

11 11385

12 CFR

229 11357
264b 11360

13 CFR

Ch. V 11360

15 CFR

799 11361

17 CFR

250 11362

Proposed Rules:

240 11387
250 11390

24 CFR

Proposed Rules:

570 11556

26 CFR

301 11367

30 CFR

Proposed Rules:

75 11394

32 CFR

375 11368

33 CFR

110 11368

38 CFR

17 11369

40 CFR

52 11370
180 11372

Proposed Rules:

180 (2 documents) 11395, 11396
799 11398

42 CFR

405 11372
424 11372

43 CFR

Public Land Orders:

6771 11373

47 CFR

73 (6 documents) 11373–11375

Proposed Rules:

2 11407
73 (4 documents) 11411, 11412
80 11407

49 CFR

591 11375

50 CFR

611 11382

Proposed Rules:

17 11413
642 11414

Rules and Regulations

Federal Register
Vol. 55, No. 60
Wednesday, March 28, 1990

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.

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R-0644]

RIN 7100-AB01

Availability of Funds and Collection of Checks; Final Preemption Determination

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final interpretation.

SUMMARY: The Board has adopted a final preemption determination under its Regulation CC, Availability of Funds and Collection of Checks, concerning the laws of California relating to commercial banks, branches of foreign banks, savings and loan associations, and savings banks. The Expedited Funds Availability Act provides standards for determining whether state laws governing funds availability supersede or are preempted by federal law. Under Regulation CC, the Board may issue preemption determinations with respect to state law upon request.

EFFECTIVE DATE: March 22, 1990.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874) or Gayle Thompson, Manager (202/452-2934), Division of Federal Reserve Bank Operations; Oliver Ireland, Associate General Counsel (202/452-3625), or Stephanie Martin, Attorney (202/452-3198), Legal Division; for the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

The Board's Regulation CC, which carries out the provisions of the Expedited Funds Availability Act ("Act") (12 U.S.C. 4001-4010), requires banks to make funds available to their customers within specified time frames and to disclose their funds availability policies to their customers. A number of states have also enacted rules governing funds availability. The Act (section 608) and Regulation CC (§ 229.20) provide that any provision of state law in effect on or before September 1, 1989, that requires a shorter hold for a category of checks than is required under federal law will supersede the federal provision.

Provisions of state law governing funds availability that permit a bank to make funds available for withdrawal in a longer period than permitted under Regulation CC are considered inconsistent with and are preempted by Regulation CC. In addition, state disclosure and notice requirements concerning funds availability related to accounts covered by Regulation CC are preempted by the federal disclosure scheme.

Regulation CC provides for Board determinations of whether state law related to the availability of funds is preempted by federal law upon request of a state, bank, or other interested party.

On August 18, 1988, the Board issued for public comment a proposed preemption determination for California (53 FR 32359, August 24, 1988). California has different funds availability regulations governing (1) commercial banks and branches of foreign banks, (2) savings and loan associations and savings banks, (3) credit unions, and (4) industrial loan companies. The California State Banking Department and the State of California Department of Savings and Loan requested, in their comments, that the Board defer adoption of preemption determinations with regard to commercial banks, branches of foreign banks, savings and loan associations, and savings banks until the emergency regulations promulgated by those departments in October 1988 were adopted in final form. In November 1988, the Board published a summary of the comments received and a final preemption determination for the California funds availability law with respect to credit unions and industrial loan companies (54 FR 44325, November 2, 1988).

The California Superintendent of Banks adopted final funds availability regulations regarding commercial banks and branches of foreign banks effective April 12, 1989, and the California Savings and Loan Commissioner adopted final funds availability regulations regarding savings and loan associations and savings banks effective March 8, 1989. Generally, both sets of California regulations adopt the provisions of Regulation CC, but expand coverage to include certain non-transaction accounts. In addition, the State Banking Department regulations provide for shorter availability than Regulation CC in some cases and therefore supersede the federal law in those cases. The Board requested comment on proposed preemption determinations with respect to those state regulations in December 1989 (54 FR 51203, December 13, 1989).

Discussion

The Board received four comments on the preemption determination with regard to the state regulations for commercial banks and branches of foreign banks. Commenters included the State Banking Department, the California Bankers Association, and two depository institutions.

All of the commenters objected to the Board's proposed determination that the federal exception holds would not apply to those deposits for which state schedules supersede the federal schedules. The commenters stated that the Board's interpretation was in conflict with the state's intent to incorporate the federal exceptions in its rules and would cause severe operational problems. The California regulations do not explicitly provide for specific exceptions to the availability schedules, nor do they explicitly indicate that federal exceptions apply to those deposits for which the state schedules supersede the federal schedules (i.e., for certain in-state nonlocal checks). Under the state preemption standards of Regulation CC (see § 229.20(c) and accompanying Commentary), for deposits covered by the state availability schedules, a state exception may be used to extend the state availability schedule up to the federal availability schedule. Once the deposit is held up to the federal availability schedule limit under a state exception, the depositary bank may further extend the hold under any federal exception that can be applied to the deposit. Therefore, the Board proposed that, in those cases where the

California schedules supersede Regulation CC, no exception holds may be applied because there are no state provisions for lengthening the state hold periods.

The commenters argued that the intent of the state regulations was to incorporate the provisions of Regulation CC in their entirety, including exception holds, except if otherwise provided. The State Banking Department noted that the administrative history and the Department's own interpretation of the regulation supports the inclusion of Regulation CC exception holds even when the state schedules supersede the federal schedules. The State Banking Department joined the other commenters in requesting that the Board amend its proposed preemption determination accordingly.

The Board believes that the comments of the State Banking Department, which issued and administers the state funds availability regulation, raise significant questions as to the proper interpretation of California law regarding the inclusion of federal exception holds. The Board believes that rulings on the meaning of state laws and regulations should be left to state authorities and courts. Accordingly, the Board has amended its final preemption determination to provide that exception holds apply to deposits of in-state nonlocal checks to the extent allowed by state law.

The State Banking Department also requested that the Board delete the provision of the proposed preemption determination regarding availability of funds at the start of the business day. The California regulations do not specify when during the day funds must be made available for withdrawal. Section 229.19(b) of Regulation CC provides that funds must be made available at the start of the business day. The Board's proposed preemption determination provided that in those cases where federal and state law provide for holds for the same number of days, to the extent that the California regulations allow funds to be made available later in the day than does Regulation CC, the federal law would preempt state law. Because this provision of the preemption determination already defers interpretation of the state regulation to state authorities, the Board has retained this provision in the final preemption determination.

Two commenters commented on the provision of the proposed preemption determination regarding second-day availability for cashier's and teller's checks. Because cashier's and teller's checks are defined differently in Regulation CC and section 867 of the California Financial Code, the proposed preemption determination provided that the state second-day availability requirement supersedes the federal local and nonlocal schedules to the extent that the state second-day availability requirement applies to cashier's and teller's checks issued to a non-customer of the bank for other than remittance purposes. A commercial bank requested that the Board reconsider and clarify this provision. The California Bankers Association commented that when state law is silent (as in this case as well as when deposits to nonproprietary ATMs must be made available), the intent of the state law is to incorporate the federal provisions. The Board believes that both the second-day availability and the nonproprietary ATM provisions, as proposed, leave room for state authorities to interpret state law and need not be amended.

The Board received no comments on the proposed preemption determination regarding the regulations for savings and loan associations and savings banks, and thus has adopted that preemption determination as proposed.

List of Subjects in 12 CFR Part 229

Banks, Banking; Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 229 is amended as follows:

PART 229—[AMENDED]

1. The authority citation for part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100–86, 101 Stat. 552, 635, 12 U.S.C. 4001 et seq.

2. In appendix F, the California preemption determination is amended by revising the second and third sentences of the second paragraph, and by adding, within the reserved sections, preemption determinations for Commercial Banks and Branches of Foreign Banks and for Savings Institutions.

Appendix F—Official Board Interpretations; Preemption Determinations

* * * * *

California

* * * * *

* * * The regulations applicable to commercial banks and branches of foreign banks located in Califorina (Cal. Admin. Code tit. 10, §§ 10.190401–10.190402) were promulgated by the Superintendent of Banks. The regulations applicable to savings banks and savings and loan associations (Cal. Admin. Code tit. 10, §§ 106.200–106.202) were adopted by the Savings and Loan Commissioner. * * *

* * * * *

Commercial Banks and Branches of Foreign Banks Coverage

The Califorina State Banking Department regulations, which apply to California state commercial banks, California national banks, and California branch offices of foreign banks, provide that a depositary bank shall make funds deposited into a deposit account available for withdrawal as provided in Regulation CC with certain exceptions. The funds availability schedules in Regulation CC apply only to "accounts" as defined in Regulation CC, which generally consist of transaction accounts. The California funds availability law and regulations apply to accounts as defined by Regulation CC as well as savings accounts (other than time accounts), as defined in the Board's Regulation D (12 CFR 204.2(d)). (Note, however, that under § 229.19(e) of Regulation CC, *Holds on other funds*, the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC in certain circumstances.)

Availability Schedules

Temporary schedule. Regulation CC provides that, until September 1, 1990, nonlocal checks must be made available for withdrawal by the seventh business day after the banking day of deposit, except for certain nonlocal checks listed in appendix B–1, which must be made available within a shorter time (by the fifth business day following deposit for those California checks listed). Under the temporary schedule in the California regulations, a depositary bank with a four-digit routing symbol of 1210 ("1210 bank") or of 1220 ("1220 bank") that receives for deposit a check drawn on a nonlocal, in-state commercial bank or foreign bank branch [1] must make the funds available for withdrawal by the fourth business day after the day of deposit. The California regulations provide that 1210 and 1220 banks must make deposited checks drawn on nonlocal in-state thrifts (defined as savings and loan associations, savings banks, and credit unions) available by the fifth business day after deposit. In addition, California law provides that all other depositary banks must make deposited checks drawn on a nonlocal in-state commercial bank or foreign bank branch available by the fifth business day after deposit and checks drawn on nonlocal in-state thrifts available by the sixth business day after deposit. To the extent that these

[1] The California regulation uses the term "paying bank" when describing the institution on which these checks are drawn, but does not define "paying bank" or "bank." Regulation CC's definitions of "paying bank" and "bank" include savings institutions and credit unions as well as commercial banks and branches of foreign banks. However, because the California regulation makes separate provisions for checks drawn on savings institutions and credit unions, the Board concludes that the term "paying bank," as used in the California regulation, includes only commercial banks and foreign bank branches.

schedules provide for shorter holds than Regulation CC and its appendix B–1, the state schedules supersede the federal schedules.[2] For example, the California four-day schedule that applies to checks drawn on in-state nonlocal commercial banks or foreign bank branches and deposited in a 1210 or 1220 bank would be shorter than and would supersede the federal schedules.

The California regulations do not specify whether the state schedules apply to deposits of checks at nonproprietary ATMs. Under the temporary schedules in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal by the seventh business day following deposit. To the extent that the California schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the temporary schedule in Regulation CC for deposits at nonproprietary ATMs specified in § 229.11(d).

Permanent schedule. Regulation CC provides that, as of September 1, 1990, nonlocal checks must be made available for withdrawal by the fifth business day after the banking day of deposit. Under the permanent schedule in the California regulations, a depositary bank with a four-digit routing symbol of 1210 or of 1220 that receives for deposit a check drawn on a nonlocal, in-state commercial bank or foreign bank branch must make the funds available for withdrawal by the fourth business day after the day of deposit. These state schedules provide for shorter hold periods than and thus supersede the federal schedules.

Second-day availability. Section 867 of the California Financial Code requires depository institutions to make funds deposited by cashier's check, teller's check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. The Regulation CC next-day availability requirement for cashier's checks and teller's checks applies only to those checks issued to a customer of the bank or acquired from the bank for remittance purposes. To the extent that the state second-day availability requirement applies to cashier's and teller's checks issued to a non-customer of the bank for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

Availability at start of day. The California regulations do not specify when during the day funds must be made available for withdrawal. Section 229.19(b) of Regulation CC provides that funds must be made available at the start of the business day. In those cases where federal and state law provide for holds for the same number of days, to the extent that the California regulations allow funds to be made available later in the day than does Regulation CC, the federal law would preempt state law.

Exceptions to the availability schedules. Under the state preemption standards of Regulation CC (see § 229.20(c) and accompanying Commentary), for deposits subject to the state availability schedules, a state exception may be used to extend the state availability schedule up to the federal availability schedule. Once the deposit is held up to the federal availability schedule limit under a state exception, the depositary bank may further extend the hold under any federal exception that can be applied to the deposit. If no state exceptions exist, then no exceptions holds may be placed on deposits covered by state schedules. Thus, to the extent that California law provides for exceptions to the California schedules that supersede Regulation CC, those exceptions may be applied in order to extend the state availability schedules up to the federal availability schedules or such later time as is permitted by a federal exception.

Disclosures

California law (Cal. Fin. Code § 866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires depository institutions to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal.

Section 229.20(c)(2) of Regulation CC provides that inconsistency may exist when a state law provides for disclosures or notices concerning funds availability relating to accounts. California Financial Code § 866.2 requires disclosures that differ from those required by Regulation CC and, therefore, is preempted to the extent that it applies to "accounts" as defined in Regulation CC. The state law continues to apply to savings accounts and other accounts not governed by Regulation CC disclosure requirements.

Savings Institutions

Coverage

The California Department of Savings and Loan regulations, which apply to California savings and loan associations and California savings banks, provide that a depositary bank shall make funds deposited into a transaction or non-transaction account available for withdrawal as provided in Regulation CC. The funds availability schedules in Regulation CC apply only to "accounts" as defined in Regulation CC, which generally consist of transaction accounts. The California funds availability law and regulations apply to accounts as defined by Regulation CC as well as savings accounts as defined in the Board's Regulation D (12 CFR 204.2(d)). (Note, however, that under § 229.19(e) of Regulation CC, *Holds on other funds,* the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC in certain circumstances.)

Availability Schedules

Second-day availability. Section 867 of the California Financial Code requires depository institutions to make funds deposited by cashier's check, teller's check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. The Regulation CC next-day availability requirement for cashier's checks and teller's checks applies only to those checks issued to a customer of the bank or acquired from the bank for remittance purposes. To the extent that the state second-day availability requirement applies to cashier's and teller's checks issued to a non-customer of the bank for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

Temporary and permanent schedules. Other than the provisions of Section 867 discussed above, California law incorporates the Regulation CC availability requirements with respect to deposits to accounts covered by Regulation CC. Because the state requirements are consistent with the federal requirements, the California regulation is not preempted by, nor does it supersede, the federal law.

Disclosures

California law (Cal. Fin. Code § 866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires depository institutions to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal. Section 229.20(c)(2) of Regulation CC provides that inconsistency may exist when a state law provides for disclosures or notices concerning funds availability relating to accounts. To the extent that California Financial Code § 866.2 requires disclosures that differ from those required by Regulation CC and apply to "accounts" as defined in Regulation CC (generally, transaction accounts), the California law is preempted by Regulation CC.

The Department of Savings and Loan regulations provide that for those non-transaction accounts covered by state law but not by federal law, disclosures in accordance with Regulation CC will be deemed to comply with the state law disclosure requirements. To the extent that the Department of Savings and Loan regulations permit reliance on Regulation CC disclosures for transaction accounts and to the extent the state regulations survive the preemption of California Financial Code § 866.2, they are not preempted by, nor do they supersede, the federal law. The state law continues to apply to savings accounts and other non-transaction accounts not governed by Regulation CC disclosure requirements.

[2] Appendix B–1 of Regulation CC provides that the federal schedules will be the same as the California schedules (5 days) in the following cases: A depositary bank bearing a 1210 routing number receiving for deposit checks bearing a 3220 or a 3223 routing number, and a depositary bank bearing a 1220 routing number receiving for deposit checks bearing a 3210 routing number. In the cases where federal and state law are the same, the state law is not preempted by, nor does it supersede, the federal law.

By order of the Board of Governors of the Federal Reserve System, March 22, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-7044 Filed 3-27-90; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 264b

[Docket No. R-0684]

Regulations Regarding Foreign Gifts and Decorations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: Congress has permitted federal government employees to accept gifts from foreign governments in amounts up to a "minimal value" that is to be established by the General Services Administration ("GSA") in consultation with the Secretary of State. While the Board's Rules Regarding Foreign Gifts and Regulations set "minimal value" at $180 or such higher amount as might be established by the GSA (55 FR 3576, February 2, 1990), the GSA has since redefined minimal value, effective January 1, 1990, to be $200 (55 FR 3953, February 6, 1990). Accordingly, this technical amendment will change the Board's definition of "minimal value" to be $200 or such higher amount as might be established by the GSA, and will be effective the same date as that of the GSA amendment, January 1, 1990.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: MaryEllen Brown, Assistant to the General Counsel (202/452-3608), Legal Division, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202) 452-3544.

SUPPLEMENTARY INFORMATION: Receipt of gifts from a foreign government without the consent of Congress is prohibited by Article I, Section 9, Clause 8 of the U.S. Constitution. Congress has passed a statute that allows an employee of the U.S. government to accept and retain a gift of "minimal value," 5 U.S.C. 7342. The statute authorizes the General Services Administration to determine "minimal value" every three years, in consultation with the Secretary of State, to reflect changes in the consumer price index during the previous three-year period.

Effective January 1, 1990, the GSA set minimal value to be $200 (41 CFR 101-49.001-5), while the Board's rules (12 CFR 264b.3(a)) currently state minimal value to be $180. The technical amendment would raise the minimal value to $200 or such higher amount established by the GSA.

Regulatory Flexibility Act

This rule relates solely to the internal management, operations and personnel of the Board of Governors of the Federal Reserve Board, and no notice of proposed rulemaking is required by 5 U.S.C. 553. Accordingly, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply and a regulatory flexibility analysis is not required.

List of Subjects in 12 CFR Part 264b

Awards, Conflict of interest, Decorations, Federal Reserve System, Foreign relations, Government employees, Government property, Medals.

For the reasons set out in the preamble, and pursuant to the Board's authority under section 11(i) of the Federal Reserve Act (12 U.S.C. 248(i)), 12 CFR part 264b is amended as follows:

PART 264b—RULES REGARDING FOREIGN GIFTS AND DECORATIONS

1. The authority citation for part 264b continues to read as follows:

Authority: 5 U.S.C. 7342, as amended; and sec. 11(i) of the Federal Reserve Act (12 U.S.C. 248(i)); 5 U.S.C. 552.

§ 264b.3 [Amended]

2. Section 264b.3(a) is amended by changing "$180" to read "$200".

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 22, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-7045 Filed 3-27-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

13 CFR Chapter V

[Docket No. 91294-9294]

Regional Action Planning Commissions

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule removes the regulations on regional action planning commissions which appear in chapter V of title 13 of the Code of Federal Regulations. The authority for regional action planning commissions (Title V of the Public Works and Economic Development Act of 1965, as amended) was repealed by the Omnibus Budget Reconciliation Act of 1981, Public Law No. 97-35, Sec. 1821(a)(8), 95 Stat. 357, 766 (1981).

EFFECTIVE DATE: March 28, 1990.

FOR FURTHER INFORMATION CONTACT: Barbara L. Spithas, telephone (202) 377-5817.

SUPPLEMENTARY INFORMATION: Chapter V of title 13 of the Code of Federal Regulations set forth the policies and procedures for the Economic Development Regions as formally authorized by 42 U.S.C. 3181 et seq. The Secretary of Commerce was to designate multi-state economic development regions, with the concurrence of the States in which such regions were wholly or partially located, if the Secretary found that the areas within such regions were related geographically, culturally, historically, and economically, and that the regions had lagged behind the whole nation in economic development. Economic development regions were designated in order to give the participating States, through the formulation of a common economic development program, the advantages of joint and coordinated action on economic problems extending beyond the boundaries of a single State. Designated regions also provided for more effective utilization of the various existing State and Federal programs to implement the regional overall economic development program.

The authority for regional action planning commissions was repealed by the Omnibus Budget Reconciliation Act of 1981, Public Law No. 97-35, Sec. 1821(a)(8), 95 Stat. 357, 766 (1981). Department Organization Order 20-5 delegated responsibility to administer all remaining activities of the commissions to the Office of Finance and Federal Assistance.

This final rule is not a major rule within the meaning of section 1(b) of Executive Order 12291.

This rule involving grants is exempt from all requirements of the Administrative Procedure Act (5 U.S.C. 553) including notice and opportunity for comment and delayed effective date. Repeal of the authorizing statute also affords the Department no discretion regarding removing this regulation. Therefore, this rule is being issued in final and will be effective upon date of publication in the **Federal Register**.

A Regulatory Flexibility Analysis was not prepared for this rule because a notice of proposed rulemaking was not required by the Administrative

Procedure Act or by any other law (5 U.S.C. 604).

This rule does not contain a collection of information requirement subject to the requirements of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 13 CFR Parts 500 through 590 (Chapter V)

Community development, Grant programs—housing, and urban development, Intergovernmental relations, Regional action planning commissions, Technical assistance.

The rights, duties, and obligations of all parties to contracts entered, and to grants-in-aid made, pursuant to the repealed statutory authorization and to chapter V of title 13 of the Code of Federal Regulations shall continue in effect.

CHAPTER V—REGIONAL ACTION PLANNING COMMISSIONS—[REMOVED]

In consideration of the foregoing, chapter V (parts 500 through 590) of title 13, Code of Federal Regulations is removed.

Dated: March 21, 1990.

Sonya G. Stewart,

Director for Office of Finance and Federal Assistance.

[FR Doc. 90-7017 Filed 3-27-90; 8:45 am]

BILLING CODE 3510-FE-M

Bureau of Export Administration

15 CFR Part 799

[Docket No. 90249-9304]

Validated License Controls on Genetically Modified Organisms

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On February 28, 1989 (54 FR 8281), the Bureau of Export Administration published an interim rule with request for comments that imposed foreign policy controls on certain biological organisms that are useful in biological warfare. The February 28 rule stated that viruses and viroids identified in ECCN 4997B and bacteria, fungi, and protozoa identified in ECCN 4998B require a validated license to all destinations except Canada. Commodity Interpretations 25 and 26, set forth in the February 28 rule, extended the licensing requirement to all "genetically engineered or manipulated agents," regardless of the organism's pathogenicity. This rule narrows the licensing requirement by specifying that those genetically modified organisms that contain DNA sequences associated with pathogenicity arising from source organisms found in Interpretations 25 and 26 may be exported to all destinations except Country Goups S and Z without a validated license.

This rule change is based on the following: A Department of Commerce analysis of public comments received in response to the February 28 interim rule; a recommendation made by the Biotechnology Technical Advisory Committee; and a recommendation of an interagency committee that reviews issues related to nonproliferation of chemical and biological weapons. In addition, this rule was reviewed by the Biotechnology Science Coordinating Committee, which studies biotechnology issues for the White House Science Advisor.

EFFECTIVE DATE: March 28, 1990.

FOR FURTHER INFORMATION CONTACT: James I. Seevaratnam, Bureau of Export Administration, Department of Commerce, Telephone: (202) 377-5695.

SUPPLEMENTARY INFORMATION:

Background

For several years, Commerce had controlled exports of viruses, viroids, bacteria, fungi, and protozoa unilaterally for national security reasons. The license requirement allowed screening of transactions for possible biological warfare uses.

The Omnibus Trade and Competitiveness Act of 1988 required the removal of all unilateral national security controls, retaining only those agreed upon by the Coordinating Committee for Multilateral Controls (COCOM). Recognizing the need to maintain controls to prevent biological warfare uses, an interagency policy group recommended replacing the national security control on certain of these microorganisms with a foreign policy based control.

The foreign policy control established on February 23, 1989, was based on the "Classification of Etiologic Agents on the Basis of Hazard" (U.S. Department of Health, Education, and Welfare, 3rd Edition, June 1972). While the previous national security control had covered the entire range of viruses, viroids, bacteria, fungi, and protozoa, the foreign policy control allowed export, without a validated license, of all organisms in Class 1 (agents of no or minimal hazard under ordinary conditions of handling) and a wide range of named organisms in Class 2 (agents of ordinary potential hazard).

Due to time constraints, the interagency group took a cautious approach to genetically modified organisms, requiring a validated license for all classes. Following public comments, full consultation with industry, and further study, the concerned agencies agreed that genetically modified organisms posed no more of a threat than any other organisms in the same pathogenicity class. As a result, the special controls based on genetic engineering or manipulation are being removed. Because of this modification to the controls, the exporting community in the biotech area will be able to export genetically modified organisms under a general license without the prior written approval of Commerce.

Review of Public Comments

The Bureau of Export Administration received 24 public comments in response to the interim rule published in the Federal Register on February 28, 1989. In general, the commenters expressed concern over the export of biological materials with the potential for use as weapons. However, they were virtually unanimous in their belief that controls covering all genetically engineered or manipulated organisms were overly broad and included innnocuous classes of organisms. Commenters were concerned that overly-broad controls would impede international research and inhibit the ability of U.S. scientists to compete in the development and commercializaton of biotechnologies.

Furthermore, many commenters warned that the requirement for a validated license to export all genetically engineered or manipulated agents would create an excessive paperwork burden, not only for the exporting public who would be required to submit numerous license applications, but also for the Department of Commerce, which would be required to process and review those applications. However, many of the commenters were unaware of existing export license requirements and, therefore, that the February 28, 1989 interim rule actually decontrolled numerous organisms that had been controlled unilaterally by the U.S. for national security purposes.

On April 21, 1989, the Biotechnology Technical Advisory Committee (BIOTAC) met to review the February 28 interim rule. It recommended that new language governing the export of genetically modified organisms be adopted and published in the Federal

Register. An interagency committee including representatives of the Departments of Commerce, State, and Defense, that reviews issues related to non-proliferation of chemical and biological weapons, reviewed the BIOTAC's recommended revised language and unanimously agreed to adopt its recommendation.

This rule amends the February 28, 1989 interim rule that required a validated license for the export of all genetically engineered and manipulated agents. In Supplement No. 1 to § 799.1, the Commodity Control List of the Export Administration Regulations, ECCNs 4997B and 4998B are revised to provided that only genetically modified organisms containing DNA sequences associated with pathogenicity arising from source organisms *not* found in Interpretations 25 or 26 (in § 799.2, Commodity Interpretations) require a validated license for export to all destinations except Canada.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0005.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

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

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and delay in effective date. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is being issued in final form. However, comments from the public are always welcome. Comments should be submitted to James I. Seevaratnam, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

1. The authority citation for part 799 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 FR U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 799. [Amended]

2. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 9 (Miscellaneous) is amended by adding a Note immediately following the heading of ECCN 4997B, to read as follows:

4997B Viruses or viroids for human, veterinary, plant, or laboratory use, except those listed in § 799.2, Interpretation 25. (See Interpretation 24 for classification of microorganisms on the basis of hazard or pathogenicity.)

Note: Genetically modified organisms that contain DNA sequences associated with pathogenicity arising from source organisms *not* found in Interpretation 25 require an individual validated license to all destinations except Canada; note source(s) of modifying DNA and sequences(s) (if any).

* * * * *

Supplement No. 1 to § 799.1 [Amended]

3. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 9 (Miscellaneous) is amended by adding a Note immediately following the heading of ECCN 4998B, to read as follows:

4998B Bacteria, fungi, and protozoa, except those listed in § 799.2, Interpretation 26. (See Interpretation 24 for classification of microorganisms on the basis of hazard of pathogenicity.)

Note: Genetically modified organisms that contain DNA sequences associated with pathogenicity arising from source organisms *not* found in Interpretation 26 require an individual validated license to all destinations except Canada; note source(s) of modifying DNA and sequences(s) (if any).

* * * * *

4. In § 799.2 (Commodity Interpretations), Interpretation 24 is amended by revising the title to read as follows:

Interpretation 24: Microorganism

* * * * *

5. In § 799.2 (Commodity Interpretations), Interpretation 25 is amended by revising the undesignated, introductory paragraph to read follows:

Interpretation 25: Viruses and Viroids

The commodities identified in the interpretation may be exported under General License G–DEST to Country Groups QTVWY.

* * * * *

6. In § 799.2 (Commodity Interpretations), Interpretation 26 is amended by revising the undesignated, introductory paragraph to read as follows:

Interpretation 26: Bacteria, Protozoa, and Fungi

The commodities identified in this interpretation may be exported under General License G–DEST to Country Groups QTVWY.

* * * * *

Dated: March 23, 1990.

James M. LeMunyon,

Deputy Assistant Secretary, for Export Administration.

[FR Doc. 90–7056–Filed 3–27–90; 8:45 am]

BILLING CODE 3510–DT–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 250

[Release No. 35–25058; File No. S7–14–89]

Exemption of the Issuance and Sale of Certain Securities by Public-Utility Subsidiary Companies of Registered Public-Utility Holding Companies; Exemption of Acquisition of Public-Utility Subsidiary Company Securities By Registered Holding Companies

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Final rule.

SUMMARY: The Commission has adopted rule 52 exempting certain transactions from the requirement of a declaration under section 6(a) of the Public Utility Holding Company Act of 1935 and from the application requirement of section 9(a) thereof.

The Commission is adopting rule 52 as an appropriate measure to ease the regulatory burden on registered holding-company systems. The Commission estimates that in doing so, applications for FY 89 would not have been filed had proposed rule 52 been in place.

EFFECTIVE DATE: March 28, 1990.

FOR FURTHER INFORMATION CONTACT: William C. Weeden, Assistant Director, (202) 272–7676, or Yvonne M. Hunold, Branch Chief, (202) 272–7676, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today has adopted rule 52 [17 CFR 250.52] under the Public Utility Holding Company Act of 1935 ("Act") [15 U.S.C. 79 *et seq.*]. Rule 52 exempts the issuance and sale of certain securities by public-utility subsidiary companies of registered holding companies under specified conditions. Rule 52 also includes an exemption, in accordance with section 9(c)(3) of the Act, to permit parent holding companies to acquire, without prior Commission authorization, the securities their subsidiaries would be permitted to issue under rule 52. Public notice of the proposed new rule was contained in Holding Company Act Release No. 24891 (May 17, 1989). The Commission has also published a notice in the **Federal Register** today proposing modification of rule 52 to eliminate or modify certain of the conditions contained in rule 52, and seeking public comment on the proposal.

Executive Summary

On May 17, 1989, the Commission published for comment [1] proposed rule 52 under the Act, which gives effect to section 6(b) of the Act. That section directs the Commission to exempt from Commission review the issue or sale of securities by any public-utility subsidiary company of a registered holding company, so long as the issue and sale are solely for the purpose of financing the business of the public-utility company and have been expressly authorized by the state commission of the state in which the public-utility company is organized and doing business.

Rule 52 is in furtherance of section 6(b) by establishing the appropriate conditions for exemption.

In addition, rule 52 includes an exemption under section 9(c)(3) of the Act to permit parent holding companies to acquire, without prior Commission authorization, the securities to be issued by their public-utility subsidiaries under rule 52. Since registered holding companies may finance the activities of subsidiaries at the parent-company level rather than by causing their subsidiaries to issue securities directly to third parties, the financing transaction would result in the parent purchasing securities from the subsidiary. Section 9(a) of the Act requires such a transaction to receive prior Commission approval unless the transaction is exempted under section 9(c).

The Commission received 11 comment letters concerning proposed rule 52. The rule, as adopted, has been modified in some respects to address commenters' concerns. The Commission believes that the rule should be promulgated essentially as proposed so as to permit the immediate realization of the rule's benefits. The Commission believes, however, in response to comments and on the basis of its own additional analysis, that further modification of rule 52 may be appropriate, and is therefore seeking comment, by separate notice, on the need for revising rule 52.

Background

Section 6(a) of the Act provides, among other things, that it is unlawful for a subsidiary of a registered holding company to issue and sell securities unless it has filed a declaration that meets the terms and conditions of section 7. Section 6(b) of the Act, however, directs the Commission to exempt from the requirements of section 6(a)

> the issue or sale of any security by any subsidiary of a registered holding company, if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company and have been expressly authorized by the State commission of the State in which such subsidiary company is organized and doing business * * *.

Thus, the Act expressly contemplates that the issue and sale of specified securities shall be exempt from the review procedures of section 6(a) where a state commission has exercised its authority to approve that issue and sale.

Section 6(b) also provides that the Commission may grant such exemptions "by rules and regulations or order, subject to such terms and conditions as it deems appropriate in the public interest or for the protection of investors or consumers * * *." In the past, the Commission has granted exemptions under section 6(b) upon application and pursuant to order, on a case-by-case basis. On May 17, 1989, the Commission published for comment proposed rule 52 under the Act. The rule will eliminate a significant amount of the paperwork and costs currently associated with the filing of the lengthy application for a section 6(b) exemption and with the Commission's review of those applications for those subsidiaries of registered holding companies that meet the conditions specified in the rule. This streamlined procedure is consistent with the Congressional purpose in enacting section 6(b) "to exempt the issue of securities by subsidiary companies in cases where holding company abuses are unlikely to exist." [2]

In addition to implementing section 6(b) of the Act, rule 52 also includes an exemption under section 9(c)(3) of the Act to permit parent holding companies to acquire, without prior Commission authorization, the securities to be issued by their public-utility subsidiaries under rule 52. Since registered holding companies may finance the activities of subsidiaries at the parent-company level rather than by causing their subsidiaries to issue securities directly to third parties, the financing transaction would result in the parent purchasing securities from the subsidiary. Section 9(a) of the Act requires such a transaction to receive prior Commission approval unless the transaction is exempted under section 9(c).[3]

Discussion

Rule 52 will exempt from the requirements of section 6(a) certain issues and sales of securities by utility subsidiaries of registered holding companies. If the issue and sale of such a security by a utility subsidiary of a registered holding company is to that holding company, such acquisition will also be exempt pursuant to section 9(c)(3) from the requirements of section 9(a) of the Act and rules thereunder.

Rule 52 provides that, for any security that meets the conditions in the rule, the issuer must file with the Commission, within 10 days after the issue or sale, a Certificate of Notification on Form U–6B–2 containing the information prescribed in that form.[4] The conditions specified by the rule are that:

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[1] *See* Holding Co. Act Release No. 24891 (May 17, 1989) [54 FR 22314, May 23, 1989].

[2] H.R. Rep. No. 1903, 74th Cong., 1st Sess. 66–67 (1935).

[3] Section 9(a) says, in pertinent part:

> Unless the acquisition has been approved by the Commission * * * it shall be unlawful—
>
> (1) for any registered holding company * * * to acquire * * * any securities or utility assets or any other interest in any business;

Section 9(c)(3) excepts from the requirement of section 9(a) the acquisition of

> such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public interest or the interest of investors or consumers.

[4] With respect to exempt financing transactions between a parent holding company and a subsidiary that involve the repetitive issue or sale of securities or part of an intrasystem financing program involving the issuance and sale of securities not exempted by the rule the filing of information on Form U–6B–2 may be done on a quarterly basis.

(1) The issue and sale of such security are solely for the purpose of financing the business of such public-utility subsidiary company;

(2) The issue and sale of such security have been expressly authorized by the state commission of the state in which such subsidiary company is organized and doing business;

(3) The issue and sale of such security will not cause the subsidiary company or the holding company system to exceed specified debts limits, or to fall below specified equity capitalization levels;

(4) Preferred stock, first mortgage bonds, or general and refunding mortgage bonds issued and sold conform with the Commission's Statements of Policy Regarding First Mortgage Bonds and Preferred Stock ("SOP"),[5] unless the company notifies the Commission in writing of its proposed deviation and the Commission states in writing that it has no objection;

(5) The issue and sale of common stock by the subsidiary company are only to the holding company;

(6) The issue and sale of securities to nonassociated persons occurs only when financing at the holding-company level is limited to common stock and short-term debt;

(7) The issue and sale of the security are either excepted from or in compliance with rule 50, or made after the company has notified the Commission in writing of its intent to issue and sell the securities pursuant to a negotiated offering and the Commission has stated in writing that it has no objection; and

(8) The security issued and sold is not convertible into any other security and does not (except for stockholders' preemptive rights) entitle the holder to purchase or otherwise acquire any other security.

The Commission has received 11 comment letters concerning proposed rule 52. Six of the letters were from registered holding companies or their legal counsel and support the proposed rule with modifications. A subcommittee of the American Bar Association's Section of Business Law also submitted a letter supporting the proposed rule. The Commission also received four letters in opposition to the proposed rule.

1. The Opposition to Proposed Rule 52

The letters opposing rule 52 were sent by the American Public Power Association ("APPA"),[6] the State of Ohio's Office of the Consumers' Counsel ("OCC"), the Municipal Wholesale Electric Customers of Ohio Power Company ("Municipals"), and Environmental Action, a nonprofit research and education organization based in Washington, DC.

The letters in opposition make similar arguments. They express concern about the loss of a federal forum in which various interests may be heard. They note that not all states allow consumers to participate in proceedings concerning financings or permit all interests to intervene.[7] They note further that with holding companies operating in more than one state, a financing decision concerning a subsidiary in one state may affect consumers in other states as costs are allocated among associate companies in the holding-company system. Thus, they argue, a broader federal forum is necessary because state regulation of these matters may not be sufficient for adequate consideration of the issues.

The opposition uniformly suggests that as an alternative to rule 52 as proposed, notice of the proposed financings by public-utility subsidiaries of registered holding companies be given in the **Federal Register** and that "automatic exemptions" be granted by the Commission if no objections are received during the prescribed time period.

2. Response to the Comments in Opposition

The argument of the commenters opposing the rule manifest a fundamental misunderstanding of the purpose of the Act in general, and of section 6(b) in particular. "[T]he general purpose of the Act was to regulate the issuance of securities which could not be reached by state commissions." *Alabama Electric Cooperative* v. *SEC*, 353 F.2d 905, 907 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 968 (1966), *quoted with approval in City of Lafayette* v. *SEC*, 454 F.2d 941, 954–55 (D.C. Cir. 1971). More specifically, in enacting section 6(b), Congress made a determination that the burden of Commission review under section 6(a) is not warranted where a state commission has exercised its authority to approve the issue or sale of securities to be used to finance the subsidiary's business, since under those circumstances "holding company abuses are unlikely to exist." [8] Rule 52 simply implements this Congressional mandate.

Section 6(b) also directs the Commission to grant exemptions by rule or order "subject to such terms and conditions as it deems appropriate in the public interest or for the protection of investors or consumers." The Act thus contemplates that the Commission may determine that it is appropriate in the public interest to exempt transactions by rule, rather than on a case-by-case basis. The transactions that will be exempted pursuant to this rule are routine transactions.[9] The Commission, in adopting this rule, has determined that, where the express requirements of section 6(b) and the conditions of proposed rule 52 are met, no useful purpose is served by providing still another layer of review at the federal level, and that the rule is therefore in the public interest.

Furthermore, the implication of the commenters' argument is that the issues for which they desire a federal forum are appropriate for consideration by the Commission. In this context, however, the Commission's jurisdiction reaches only to the issuance and sale of securities, not to the operations of the regulated company. *See City of Lafayette* v. *SEC*, 454 F.2d at 955. To the extent that the use of the proceeds from an issuance and sale of securities affects the general operation of the subsidiary, as argued by the commenters, jurisdiction and oversight would lie with the relevant state commission or another federal agency.

The alternative proffered by the commenters of publishing advance notice of the proposed financings in the **Federal Register** and providing opportunity for comment defeats the purpose of the exemption that section 6(b) directs the Commission to confer. Section 6(b) is intended to exempt registered companies covered by the exemption from both the necessity of prior Commission action and the burden of the review procedure. A requirement of advance notice is plainly contrary to the intent of the exemption, and the provision of an opportunity for public comment anticipates a review and consideration by the Commission of any adverse comments received. This is what the statute intended to avoid for the issuance or sale of securities to

[5] Holding Co. Act Release Nos. 13105 and 13106 (February 16, 1956), as amended in Holding Co. Act Release Nos. 16369 and 16758 (May 8, 1969 and June 22, 1970, respectively).

[6] APPA states that it is a national association representing over 1,750 consumer-owned utilities.

[7] They state that in Ohio the Public Utilities Commission has refused to allow OCC to intervene in utility financing proceedings and that the Municipals, as wholesale customers, are generally not granted standing to defend their interests before the Public Utilities Commission of Ohio.

[8] H.R. Rep. No. 1903, 74th Cong., 1st Sess. 66–67 (1935).

[9] The commenters objecting to the rule did not identify any particular transactions raising concerns that could be excluded from exemption in order to address specific problems. Instead, they objected generally to the idea of any exemption by rule.

finance a subsidiary's business where a state commission has already approved the transaction.

The commenters who oppose the proposed rule also overstate the case when they allege that adoption of the rule would bar them from meaningful participation in hearings concerning financings covered by the rule. While some of these groups may be excluded from participation in state financing hearings, it is reasonable to assume that in many instances they can voice their concerns in state rate-making proceedings. In addition, with regard to wholesale electric utility rates, these groups may have a forum in hearings held by the Federal Energy Regulatory Commission.

3. Comments in Support of Proposed Rule 52

As noted above, seven letters were received in support of proposed rule 52, one from a subcommittee under the American Bar Association's Section of Business Law, and six from registered holding companies or their legal counsel, namely, American Electric Power Company, The Columbia Gas System, Inc., Consolidated Natural Gas Company, New England Electric System, Northeast Utilities, and The Southern Company.[10]

Five of the commenters suggest that subparagraph (a)(6) of proposed rule 52 be made less restrictive. As proposed, subparagraph (a)(6) permits the exemption for debt or preferred stock issuances and sales at the subsidiary level "only when financing at the holding-company level consists exclusively of common stock." The provision was proposed to prevent the creation of complex and confusing capital structures that result from two-tier financing (the offering of debt and preferred stock at both the holding-company and subsidiary-company levels). The commenters argue, however, that most registered holding companies, even those that issue debt at the subsidiary level, at one time or another have outstanding notes to banks and commercial paper, and in a few cases, have also had debentures outstanding. The Commission believes that the commenters make a valid point. Certainly, the issuance of short-term debt at more than one corporate level is commonplace in the industry and to prohibit companies that do so from relying on the rule would largely defeat the rule's purpose. In addition, the Commission, as expressed in today's **Federal Register** notice seeking public comment on a revised rule 52, believes that valid reasons may exist to permit two-tier financing to include long-term debt at the holding-company level. We do not believe, however, that the rule should remove constraints against two-tier long-term debt financing without additional notice. The rule as adopted will therefore extend to two-tier financing situations only where financing at the holding-company level is limited to common stock and short-term debt. Subparagraph (a)(6) has been so changed. A new subparagraph, (d)(7), has been added to define "short-term debt."

A few other changes in the proposed rule 52 were suggested by the supportive commenters. One commenter, Consolidated Natural Gas Company ("Consolidated"),[11] recommends a simplified reporting procedure. The rule requires that the issuer/seller of an exempted security notify the Commission within 10 days of the issuance or sale of such security. Consolidated recommends that where an exempted securities transaction involves the repetitive issue and sale of securities (*e.g.*, a series of notes) or is part of an intrasystem financing program involving the issuance and sale of securities not exempted by this rule, the filing of information be required only on a quarterly basis. The Commission believes that the filing of information within the ten-day period is not necessary in such cases. The Commission further believes this proposed simplification of reporting requirements would ease the paperwork burden on holding companies without any loss of effective oversight by the Commission. Language that would permit this simplified reporting procedure has been added to paragraph (b) of the rule.

Consolidated also recommends that the scope of rule 52 be expanded to cover certain methods of financing between parent and subsidiary that have been authorized by the Commission in various orders, such as open-account advances or money-pool arrangements. The Commission believes that this proposal enlarges the scope of proposed rule 52 to such an extent that before it could be adopted, further notice is required. Rather than delay the adoption of rule 52 as proposed, the Commission has not included the proposal in rule 52. However, as noted above, the Commission has published notice in the **Federal Register** today seeking comment on a proposal to enlarge rule 52 to cover additional methods of financing between parent and subsidiary.

Finally, New England Electric System ("NEES") recommended that the references to "first mortgage bonds" in subsections (a) and (a)(4) be changed to "mortgage bonds" because New England Power Company ("NEPCO"), NEES' largest single subsidiary, no longer sells first mortgage bonds to the public, but sells general and refunding mortgage bonds ("G&R Bonds")[12] backed by a second mortgage on substantially all of its property and by pledged first mortgage bonds.[13]

The Commission is preliminarily of the view that rule 52 should permit financing by G&R Bonds because these instruments are necessary in certain limited circumstances. The Commission does not believe, however, that the rule as adopted should completely incorporate this change without additional notice and opportunity to comment. Where the Commission has approved the *initial* issue and sale of the G&R Bonds, however, there would not seem to be any valid reason to prohibit companies with this form of financing from immediately coming within the rule. Therefore, the Commission has added after the words "first mortgage bonds" in subsection (a) the words "general and refunding mortgage bonds the initial issue and sale of which have been authorized by the Commission," and after the words "first mortgage bonds" in subsection (a)(4) the words "general and refunding mortgage

[10] In addition to supporting proposed rule 52, all of these seven letters recommend that the exemption be extended to include nonutility subsidiary companies of registered holding companies. The Commission believes that it should defer action concerning the financing of nonutility subsidiaries pending further review by the staff. Three of the letters urged further rule changes to relieve the regulatory burden on registered holding companies. The Commission intends later to give full consideration to all of the proposed rulemaking contained in the Petition filed by the holding companies' task force.

[11] Consolidated also recommends a wording change to remove ambiguity. The second clause in the first sentence in the first paragraph of the rule originally stated: "any subsidiary of a registered holding company which is itself a public-utility company shall be exempt * * *." That language has been changed in order to avoid confusion as to which company (parent or subsidiary) the phrase "which is itself" refers. The language "any subsidiary of a registered holding company which is itself" has been changed to read: "any registered holding-company subsidiary which is."

[12] G&R Bonds differ from first mortgage bonds in that the former are issued under an indenture which provides for a subordinate (second) lien on the issuer's property rather than a first lien. The G&R Bond indenture provides that no further first mortgage bonds will be issued, which means that eventually the G&R Bonds acquire a first lien when all of the first mortgage bonds are retired.

[13] In addition to NEPCO, two subsidiary companies of Entergy Corporation, Mississippi Power & Light Company and New Orleans Public Service Inc., have received Commission authorization to issue and sell G&R Bonds.

bonds." As stated earlier, the Commission today is seeking comment on the need to revise rule 52 and, specifically, the need to approve the initial issue and sale of G&R Bonds and the need to continue to apply the provisions of the SOPs to bonds and preferred stock issued and sold by public-utility subsidiaries of registered holding companies.

Conclusion

The Commission believes that rule 52 is an appropriate measure to ease the regulatory burden on registered holding-company systems and has, accordingly, adopted rule 52 with the revisions described above.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities. The Commission did not receive any comments with respect to the Chairman's certification.

Costs and Benefits

Rule 52 will substantially decrease regulatory compliance costs for the registered holding companies. In fiscal year 1989, for example, 17 applications would not have been filed had proposed rule 52 been in place. In addition to the $2,000 filing fee per application, estimated savings per application would have been approximately $11,650 including legal, accounting, and management costs. Thus, for 17 applications filed in fiscal year 1989 the aggregate savings would have been approximately $232,000. Moreover, the reduction in aggregate Commission staff hours associated with reviewing and analyzing these applications would have been approximately 2,652 hours. The only cost incurred by the registered holding companies in complying with the proposed rule involves completing a Form U-6B-2 after the issue or sale of any security. It is estimated that approximately 30 minutes will be required to complete such a form.

Paperwork Reduction Act

The Office of Management and Budget approved the proposed rule for continued use through May 31, 1992 (Control No. 3235-0369).

List of Subjects in 17 CFR Part 250

Utilities.

Text of Adopted Rule 52

Part 250 of chapter II, title 17, *Code of Federal Regulations* is amended as set forth below:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for part 250 is amended by adding the following citation:

Authority: Secs. 3, 20, 49 Stat. 810, 833; 15 U.S.C. 79c, 79t, unless otherwise noted.

* * * * *

Section 250.52 is also issued under the authority contained in sections 6(b), 9(c)(3), and 20(a); 15 U.S.C. 79f(b), 79i(c)(3), 79t(a).

2. Section 250.52 is added to read as follows:

§ 250.52 Exemption of issue and sale of certain securities.

(a) Any registered holding-company subsidiary which is itself a public-utility company shall be exempt from section 6(a) of the Act or any rule thereunder with respect to the issue and sale of any common stock, preferred stock, first mortgage bonds, general and refunding mortgage bonds the initial issue and sale of which have been authorized by the Commission, or of any notes issued to a parent holding company the interest rates and maturity dates of which are designed to parallel a debenture or preferred stock issued by the parent holding company (collectively, "security") of which it is the issuer if:

(1) The issue and sale of such security are solely for the purpose of financing the business of such public-utility subsidiary company; and

(2) The issue and sale of such security have been expressly authorized by the State commission of the State in which such subsidiary company is organized and doing business; and

(3) The issue and sale of such security will not cause the Corporate Debt of the company proposing to issue and sell the security to exceed 65% of its Corporate Capitalization; will not cause the Consolidated Debt of the holding-company system to exceed 65% of its Consolidated Capitalization; will not cause the Corporate Common Stock Equity of the company proposing to issue and sell the security to fall below 30% of its Corporate Capitalization; and will not cause the Consolidated Common Stock Equity of the holding-company system to fall below 30% of its Consolidated Capitalization; and

(4) Such preferred stock, first mortgage bonds, or general and refunding mortgage bonds issued and sold conform with the Commission's Statements of Policy Regarding First Mortgage Bonds and Preferred Stock ("SOP") as expressed in Holding Co. Act Release Nos. 13105 and 13106 (February 16, 1956), as amended in Holding Co. Act Release Nos. 16369 and 16758 (May 8, 1969 and June 22, 1970, respectively), and as may be further amended by the Commission at any time after the adoption of this rule; provided, however that a company may issue and sell preferred stock, first mortgage bonds, or general and refunding mortgage bonds which deviate from the SOP if the company notifies the Commission in writing of its proposed deviation and the Commission has stated in writing that the Commission has no objection thereto; and

(5) The issue and sale of common stock by the subsidiary company are only to the holding company; and

(6) The issue and sale of securities to nonassociated persons occurs only when financing at the holding-company level is limited to common stock and short-term debt; and

(7) The issue and sale of the security are: (i) Excepted under rule 50(a)(1)-(4) (§ 250.50(a)(1)-(4)) from the requirement for competitive bidding of rule 50 (b) and (c) (§ 250.50 (b) and (c)); or (ii) made pursuant to competitive bidding under rule 50 (b) and (c) or under the Commission's Statement of Policy Concerning Application of Rule 50 Under the Public Utility Holding Company Act of 1935 as Related to the Distribution of Securities Registered Under Rule 415 Under the Securities Act of 1933 as expressed in Holding Co. Act Release No. 22623 (September 2, 1982); or (iii) made after the company shall have notified the Commission in writing of its intent to issue and sell the securities pursuant to a negotiated offering and the Commission has stated in writing that the Commission has no objection thereto; and

(8) The security issued or sold pursuant to this section is not convertible into any other security nor (except for stockholders' preemptive rights) entitles the holder to purchase or otherwise acquire any other security.

(b) Within ten days after the issue or sale of any security exempt under this section, the issuer or seller shall file with the Commission a Certificate of Notification on Form U-6B-2 containing the information prescribed by that form. However, with respect to exempt financing transactions between a parent holding company and a subsidiary which involve the repetitive issue or sale of securities or are part of an intrasystem financing program involving the issuance and sale of securities not

exempted by this rule, the filing of information on Form U–6B–2 may be done on a quarterly basis.

(c) If the issue and sale of a security which is exempted from the requirements of section 6(a) pursuant to section 6(b) and this section thereunder is part of a transaction in which a subsidiary utility company of a registered holding company is issuing and selling and such holding company is acquiring a security issued and sold by the subsidiary utility company, such acquisition is likewise exempt pursuant to section 9(c)(3) from the requirements of section 9(a) of the Act and rules thereunder.

(d) For the purposes of this section, the following terms shall have the meanings assigned:

(1) *Consolidated Capitalization* of a holding-company system shall mean, as of any particular time, an amount equal to the sum of (i) Consolidated Debt; (ii) the aggregate of the par value of, or stated capital represented by, the outstanding shares of all classes of common and preferred stock of all companies in a holding-company system which are held by any person not associated with such holding-company system; and (iii) the consolidated surplus of the holding-company system, paid-in surplus, earned surplus, and other surplus, if any.

(2) *Consolidated Debt* of a holding-company system shall mean, as of any particular time, an amount equal to the total principal amount of all indebtedness for borrowed money, secured or unsecured, created or incurred by all companies in a holding-company system which is held by any person not associated with such holding-company system.

(3) *Consolidated Common Stock Equity* of a holding-company system shall mean, as of any particular time, an amount equal to the sum of (i) the aggregate of the par value, or stated capital represented by, the outstanding shares of common stock of all companies in a holding-company system which are held by any person not associated with the holding-company system and (ii) the consolidated common stock surplus of the holding-company system, paid-in surplus, earned surplus, and other surplus, if any.

(4) *Corporate Capitalization* of a particular company shall mean, as of any particular time, an amount equal to the sum of (i) indebtedness for borrowed money, secured or unsecured, of such company, (ii) the aggregate of the par value of, or stated capital represented by, the outstanding shares of all classes of common or preferred stock of such company, and (iii) the surplus of such company, paid-in surplus, earned surplus, and other surplus, if any.

(5) *Corporate Debt* shall mean, as of any particular time, an amount equal to the total principal amount of all indebtedness for borrowed money, secured or unsecured, created or incurred by any company.

(6) *Corporate Common Stock Equity* shall mean, as of any particular time, an amount equal to the sum of (i) the aggregate of the par value, or stated capital represented by, the outstanding shares of common stock of the company and (ii) the common stock surplus of such company, paid-in surplus, earned surplus, and other surplus, if any.

(7) *Short-term Debt* shall mean a security or securities which have a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

By the Commission.

Dated: March 19, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–6834 Filed 3–27–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8296]

RIN 1545–AMOZ

Disclosure of Return Information to the Bureau of the Census

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that amend the regulations on Procedure and Administration. The final regulations authorize the disclosure of three additional items of return information to the Bureau of the Census for use in certain statistical programs and delete the authority to disclose those items of return information that the Bureau no longer needs. These regulations provide guidance to Internal Revenue Service personnel responsible for disclosing the information.

EFFECTIVE DATE: These regulations are effective March 28, 1990.

FOR FURTHER INFORMATION CONTACT: Paul Winkler, 202–566–4430 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document adopts without change the proposed amendments to the regulations on Procedure and Administration (26 CFR part 301) under section 6103(j)(1) of the Internal Revenue Code of 1986 that were published in 53 FR 50243 (December 14, 1988).

Before adopting the final regulations, the Internal Revenue Service solicited comments and requests for a public hearing on the proposed amendments. No comments or requests for a public hearing were received.

Under section 6103(j)(1), upon written request from the Secretary of Commerce, the Secretary of the Treasury or his delegate is to furnish such tax return information as may be prescribed by Treasury regulations to the Bureau of the Census for statutorily authorized statistical activities. Section 301.6103(j)(1)–1 of the regulations provides an itemized description of the return information authorized to be disclosed for this purpose.

Periodically, the disclosure regulations are amended to reflect the changing statistical needs of the Bureau of the Census for tax information, and these final regulations are an update of those regulations.

Explanation of Provisions

The request by the Secretary of Commerce for amendment of the regulations indicates that the Bureau of the Census needs the following three new data items from returns of individual taxpayers for use in its statutorily authorized postcensal population and per capita income estimates programs: (1) The type of tax return filed (i.e., Form 1040, Form 1040A, etc.); (2) whether the taxpayer itemized deductions for federal income tax purposes; and (3) whether the taxpayer received Social Security benefits. The Bureau needs this information to help it determine whether a taxpayer is over 65 years of age.

These regulations amend § 301.6103(j)(1)–1 of the present regulations to add three items to the list of return information authorized to be disclosed and deletes two items of return information that the Bureau of the Census no longer needs.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and

the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Paul Winkler, Office of the Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Accordingly, title 26, part 301 of the Code of Federal Regulations is amended as follows:

PART 301—[AMENDED]

Paragraph 1. The authority for part 301 continues to read in part:

Authority: 26 U.S.C. 7805. * * * section 301.6103(j)(1)–l also issued under 26 U.S.C. 6103(j).

Par. 2. In § 301.6103(j)(1)–l, paragraphs (b)(1) (i) through (xiv) are revised and paragraph (b)(1)(xv) is added to read as follows:

§ 301.6103(j)(1)–l Disclosures of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

* * * * *

(b) *Disclosure of return information to officers and employees of the Bureau of the Census.*

(1) * * *

(i) Taxpayer identity information (as defined in section 6103(b)(6) of the Code), validity code with respect to the taxpayer identifying number (as described in section 6109), and taxpayer identifying number of spouse, if reported;

(ii) District office and service center codes;

(iii) Marital status;

(iv) Numbers and classifications of report exemptions;

(v) Adjusted gross income;

(vi) Wage and salary income;

(vii) Dividend income;

(viii) Interest income;

(ix) Gross rent and royalty income;

(x) Type of tax return filed;

(xi) Residence information from the revenue sharing question;

(xii) Code indicators for Form 1040; Schedules C, D, E, F, and SE;

(xiii) Julian date relative to filing;

(xiv) Whether deductions were itemized; and

(xv) Social Security benefits.

* * * * *

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: March 15, 1990.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90–6935 Filed 3–27–90; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 375

[DoD Directive 5122.5]

Assistant Secretary of Defense (Public Affairs)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: An appendix is added to part 375 to serve as the foundation for planning and conducting public affairs activities throughout the Department of Defense. This appendix, "Principles of Information," has been included in part 375 to ensure its inclusion in public affairs responsibilities within the Defense Department.

EFFECTIVE DATE: March 14, 1990.

ADDRESSES: Office of the Director for Administration and Management, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, telephone 202–695–4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 375

Organization and function (government agencies).

Accordingly, 32 CFR Part 375 is amended to read as follows:

PART 375—[AMENDED]

1. The authority citation for part 375 continues to read as follows:

Authority: 10 U.S.C. 136.

2. The table of contents is amended by adding appendix A to part 375—Principles of Information.

3. Appendix A to part 375 is added as follows:

Appendix A to Part 375—Principles of Information

It is the policy of the Department of Defense to make available timely and accurate information so that the public, Congress, and the news media may assess and understand the facts about national security and defense strategy. Requests for information from organizations and private citizens will be answered in a timely manner. In carrying out this policy, the following principles of information will apply:

1. Information will be made fully and readily available, consistent with statutory requirements, unless its release is precluded by current and valid security classification. The provisions of the Freedom of Information Act will be supported in both letter and spirit.

2. A free flow of general and military information will be made available, without censorship or propaganda, to the men and women of the Armed Forces and their dependents.

3. Information will not be classified or otherwise withheld to protect the government from criticism or embarrassment.

4. Information will be withheld only when disclosure would adversely affect national security or threaten the safety or privacy of the men and women of the Armed Forces.

5. The Department's obligation to provide the public with information on its major programs may require detailed public affairs planning and coordination within the Department and with other government agencies. The sole purpose of such activity is to expedite the flow of information to the public: propaganda has no place in Department of Defense public affairs programs.

Dated: March 22, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–7071 Filed 3–27–90; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CCGD8–85–21]

Anchorage Grounds; Galveston Harbor, Bolivar Roads Channel, Texas

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule restricts the existing anchorage in Galveston Harbor to deep draft vessel use only and establishes a new anchorage for temporary use by shallow draft vessels.

EFFECTIVE DATE: April 27, 1990.

FOR FURTHER INFORMATION CONTACT: LTJG J. D. Irino, Project Officer, Commander, Eighth Coast Guard District (oan), Hale Boggs Federal

Building, 501 Magazine Street, New Orleans, LA 70130–3396, Tel. (504) 589–6234.

SUPPLEMENTARY INFORMATION: A supplemental notice of proposed rulemaking, discussing this change, was published in the **Federal Register** on November 30, 1989 (54 FR 49308). Interested parties were given until January 16, 1990 to submit comments. No comments were submitted.

Drafting Information

The principal persons involved in drafting this rulemaking are: LTJG J. D. Irino, Project Officer, c/o Commander, Eighth Coast Guard District Aids to Navigation Branch and CDR J. A. Unzicker, Project Attorney, Eighth Coast Guard District Legal Office.

Background

The Houston/Galveston Navigation Safety Advisory Committee recommended that the Coast Guard enlarge the Bolivar Roads Anchorage to provide a safe haven for shallow draft vessels and to ensure sufficient anchorage space is available for deep draft vessels. The Advisory Committee represents a broad spectrum of waterway users in the area. A notice of proposed rulemaking was published on January 9, 1986 (51 FR 991), however, no final regulatory action was taken. The Coast Guard believes this action is necessary.

Regulatory Evaluation

The regulatory changes ae considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that further evaluation is unnecessary. The added anchorage area is not expected to have any significant impact on navigation. Since the impact of this change 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

In accordance with section 2.B.2.c. of Commandant Instruction (COMDTINST) M16475.1B, this action has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation.

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 does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

In consideration of the foregoing, part 110 of title 33, Code of Federal Regulations is amended to read as follows:

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 110.197 is revised to read as follows:

§ 110.197 Galveston Harbor, Bolivar Roads Channel, Texas.

(a)(1) Anchorage area (A). The water bounded by a line connecting the following points:

Latitude	*Longitude*
29°20'48.5" N	94°42'54.0" W
29°20'43.0" N	94°44'46.5" W
29°21'15.0" N	94°44'27.0" W
29°21'05.0" N	94°42'52.0" W

and thence to the point of beginning.

(2) Anchorage area (B). The water bounded by a line connecting the following points:

Latitude	*Longitude*
29°20'43.0" N	94°44'46.5" W
29°20'37.0" N	94°46'08.0" W
29°21'14.0" N	94°45'50.0" W
29°21'15.0" N	94°44'27.0" W

and thence to the point of beginning.

(b) The regulations. (1) The anchorage area is for the temporary use of vessels of all types, but especially for naval and merchant vessels awaiting weather and other conditions favorable to the resumption of their voyages.

(2) Except when stress of weather makes sailing impractical or hazardous, vessels shall not anchor in anchorage area (A) exceeding 48 hours unless expressly authorized by the Captain of the Port to anchor for such longer periods.

(3) No vessel with a draft of less than 22 feet may occupy anchorage (A) without prior approval of the Captain of the Port.

(4) Vessels shall not anchor so as to obstruct the passage of other vessels proceeding to or from available anchorage spaces.

(5) Anchors shall not be placed in the channel and no portion of the hull or rigging of any anchored vessel shall extend outside the limits of the anchorage area.

(6) Vessels using spuds for anchors shall anchor as close to shore as practicable, having due regard for the provisions in paragraph (b)(4) of this section.

(7) Fixed moorings, piles or stakes, and floats or buoys for marking anchorages or moorings in place, are prohibited.

(8) Whenever the maritime or commercial interests of the United States so require, the Captain of the Port, or his authorized representative, is hereby empowered to direct the movement of any vessel anchored or moored within the anchorage area.

Dated: March 8, 1990.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 90–7005 Filed 3–27–90; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AD45

Health Care Outside the United States for Veterans With Service-Connected Disabilities

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: This regulation provides the authority for the Department of Veterans Affairs (VA) to furnish hospital care and medical services outside of the United States, to a veteran who is eligible for treatment of a service-connected disability or as part of a rehabilitation program, without regard to the veterans citizenship. The regulation governing extensions of community nursing home care in the Philippines is also revised to make it consistent with regulations governing such extensions in the United States.

EFFECTIVE DATE: April 27, 1990.

FOR FURTHER INFORMATION CONTACT: Paul C. Tryhus, Chief, Policies and Procedures Division (136F), Medical Administration Service, Veterans Health Services and Research Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2504.

SUPPLEMENTARY INFORMATION: The Veterans' Benefits and Services Act of 1988, Public Law 100–322, authorizes VA to furnish hospital care and medical services outside of the United States to a veteran who is not a citizen of the

United States, where the Secretary determines, as a matter of discretion and pursuant to these regulations, that furnishing such care is appropriate and feasible for the treatment of a service-connected disability or as part of a rehabilitation program. Finally, the regulation governing extensions of community nursing home care in the Philippines is revised to make it consistent with regulations governing such extensions in the United States which was revised on April 21, 1988, and the Philippines was inadvertently omitted.

The proposed rules were published on pages 47779 and 47780 of the **Federal Register** dated November 17, 1989. Interested persons were given 30 days to submit comments. No comments, objections or suggestions were received. Accordingly, the Department is making the regulations final as published.

These final regulations are considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more; result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions; have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary certifies that this final regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The change concerns the furnishing of health care outside the United States for veterans with service-connected disabilities without regard to the veteran's citizenship. This change imposes no regulatory, administrative, or paperwork burdens on any type of small entity.

(Catalog of Federal Domestic Assistance Numbers 64.009 and 62.011)

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved: March 6, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

In 38 CFR part 17, Medical, § 17.36 is amended to read as follows:

PART 17—MEDICAL

1. Section 17.36 is revised to read as follows:

§ 17.36 Hospital care and medical services in foreign countries.

The Secretary may furnish hospital care and medical services to any veteran sojourning or residing outside the United States, without regard to the veteran's citizenship:

(a) If necessary for treatment of a service-connected disability, or any disability associated with and held to be aggravating a service-connected disability;

(b) If the care is furnished to a veteran participating in a rehabilitation program under 38 U.S.C. chapter 31 who requires care for the reasons enumerated in 38 CFR 17.48(j)(2).

(Authority: 38 U.S.C. 624)

§ 17.37 [Removed and Reserved]

2. Section 17.37 is removed and reserved.

3. In § 17.38, paragraph (d) is revised to read as follows:

§ 17.38 Hospital or nursing home care at Veterans Memorial Medical Center, Philippines.

* * * * *

(d) *Extension of community nursing home care beyond 6 months.* The Director may authorize, for any veteran whose hospitalization was not primarily for a service-connected disability, an extension of nursing care in a public or private nursing home care facility at VA expense beyond six months when the need for nursing home care continues to exist, and

(1) Arrangements for payment of such care through a public assistance program (such as Medicaid) for which the veteran has applied, have been delayed due to unforeseen eligibility problems which can reasonably be expected to be resolved within the extension period, or

(2) The veteran has made specific arrangements for private payment for such care, and

(i) Such arrangements cannot be effectuated as planned because of unforeseen, unavoidable difficulties, such as a temporary obstacle to liquidation of property, and

(ii) Such difficulties can reasonably be expected to be resolved within the extension period; or

(3) The veteran is terminally ill and life expectancy has been medically determined to be less than six months.

(4) In no case may an extension under paragraph (d) (1) or (2) of this section exceed 45 days.

(Authority: 38 U.S.C. 210(c)(1); 620(a))

§ 17.39 [Removed and Reserved]

4. Section 17.39 is removed and reserved.

[FR Doc. 90–7027 Filed 3–27–90; 8:45 am]
BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3749–7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is approving a revision to the Ohio State Implementation Plan (SIP) for particulate matter. The revision was necessitated by USEPA's promulgation of new National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter equal to or less than 10 micrometers (PM_{10}).

The effect of this action is to document that Ohio's committal SIP satisfies USEPA's revised requirements for PM_{10} in areas designated as Group II (52 FR 29385). The Group II areas in Ohio are in Belmont, Butler, Columbiana, Franklin, Hamilton, Lorain, Mahoning, Montgomery, Richland, Sandusky, Scioto, Seneca, Stark, Summit, Trumbull, and Wyandot Counties.

This action will be effective May 29, 1990, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

DATES: This action is effective May 29, 1990.

ADDRESSES: Copies of the SIP revision, and other materials relating to this notice, are available at the following addresses. (It is recommended that you telephone Maggie Greene at (312) 886–6088, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266–0149.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinios 60604.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Air and Radiation Branch, U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987, USEPA promulgated revised National ambient Air Quality Standards (NAAQS) for particulate matter.[1] In the section of the **Federal Register** notice (52 FR 24679–82), entitled "Requirements for State Implementation Plans," USEPA set forth its SIP development policy for PM_{10}. For areas designated as Group II under this policy, the State is required to submit either of the following two types of SIP revisions:

(1) A complete SIP for particulate matter—10 microns and under (PM_{10}) with accompanying modeled attainment demonstration showing attainment and maintenance of the PM_{10} standard within 3 years of the SIP's adoption, or

(2) A "committal" SIP that supplements the existing SIP with enforceable commitments to perform the actions required at 52 FR 24681 for such "committal" SIPs.

On January 4, 1989, Ohio submitted a committal SIP for Group II areas to USEPA as a revision to its particulate matter SIP. The Group II areas of concern in Ohio are in Belmont, Butler, Columbiana, Franklin, Hamilton, Lorain, Mahoning, Montgomery, Richland, Sandusky, Scioto, Seneca, Stark, Summit, Trumbull, and Wyandot Counties.[2]

II. Evaluation of Committal SIP Required Provisions for Group II Areas

There are five provisions that are required by USEPA for inclusion in every State committal SIP. These provisions commit the State to perform the following activities:

(1) Gather ambient PM_{10} data, at least to an extent consistent with minimum USEPA requirements and guidance.[3]

(2) Analyze and verify the ambient PM_{10} data and report 24-hour PM_{10} NAAQS exceedances to the appropriate Regional Office within 45 days of each exceedance.

(3) When an appropriate number of verifiable 24-hour NAAQS exceedances becomes available (see § 2.0 of the PM_{10} SIP Development Guideline) or when data indicating an annual arithmetic mean (AAM) above the level of the annual PM_{10} NAAQS becomes available, acknowledge that a nonattainment problem exists and immediately notify the appropriate Regional Office.

(4) Within 30 days of the notification referred to in (3) above, or within 37 months of promulgation, whichever comes first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM_{10} standards, and immediately notify the appropriate Regional Office.

(5) Within 6 months of the notification referred to in (4) above, adopt and submit to USEPA a PM_{10} control strategy that assures attainment as expeditiously as practicable but no later than 3 years from approval of the committal SIP.

Comparison of the State's provisions with the above requirements indicates that no discrepancies, omissions, or shortcomings exist in the Ohio committal SIP.

III. Evaluation of Schedule Milestones

USEPA specified seven enforceable milestones for which timely commitment dates, consistent with the State's PM_{10} SIP Development Plan, were required. Ohio has acceptably committed to all required milestones.

IV. USEPA's Conclusion and Final Action

To be approvable, PM_{10} committal SIPs must incorporate all five provisions enumerated at 52 FR 24681 and provide enforceable milestone commitments that ensure program implementation. Because Ohio's proposed committal SIP commits to all of the five requisite provisions and to all enforceable milestones, USEPA is approving the Committal SIP for PM_{10} for the State of Ohio's Group II areas in Belmont, Butler, Columbiana, Franklin, Hamilton, Lorain, Mahoning, Montgomery, Richland, Sandusky, Scioto, Seneca, Stark, Summit, Trumbull, and Wyandot Counties.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on May 29, 1990. However, if we receive notice by April 27, 1990, that someone wishes to submit critical comments, then USEPA will publish:

(1) A notice that withdraws the action, and

(2) A notice that begins a new rulemaking by proposing the action and establishing a comment period. See 47 FR 27073 (June 23, 1982).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in the context to specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

On January 6, 1989, the Office of Management and Budget waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: March 19, 1990.

Valdas V. Adamkus,

Regional Adminstrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart KK—Ohio

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1880 is amended by adding new paragraph (h) to read as follows:

§ 52.1880 Control strategy: Particulate matter.

* * * * *

(h) *Approval.* On January 4, 1989, the State of Ohio submitted a committal SIP for particulate matter with an aerodynamic diameter equal to or less

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[1] The primary and secondary particulate matters NAAQS are now violated when either: (1) The expected annual arithmetic mean value of PM_{10} concentrations exceeds 50 micrograms per cubic meter of air (50 $\mu g/m^3$) (the annual standard), or (2) the expected number of days that the PM_{10} concentration exceeds 150 $\mu g/m^3$ is more than one per calendar year (the 24-hour standard).

[2] The Group II areas of concern were listed at 52 FR 29385 (August 7, 1987).

[3] Section 58.13 of 40 CFR part 58 requires States within 1 year after PM_{10} NAAQS are promulgated, to begin sampling PM_{10} every day (at least at one site) in areas with a PM_{10} nonattainment probability of 95 percent or greater, and every other day (at least at one site) in acreas with a nonattainment probability between 20 and 95 percent.

than 10 micrometers (PM_{10}) for Ohio's Group II areas. The Group II areas of concern are in Belmont, Butler, Columbiana, Franklin, Hamilton, Lorain, Mahoning, Montgomery, Richland, Sandusky, Scioto, Seneca, Stark, Summit, Trumbull, and Wyandot Counties. The committal SIP contains all the requirements identified in the July 1, 1987, promulgation of the SIP requirements for PM_{10} at 52 FR 24681.

* * * * *

[FR Doc. 90-7082 Filed 3-27-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300207A; FRL-3710-6]

Tomatoes; Definitions and Interpretations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends 40 CFR 180.1(h) by adding a commodity definition to define tomatoes to include tomatoes and tomatillos. This amendment, which will define the commodity terms for tolerance purposes, was initiated by the Agency.

EFFECTIVE DATE: March 28, 1990.

ADDRESSES: Written objections, identified by the document control number, [OPP-300207A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 24, 1990 (55 FR 2391), EPA issued a proposed rule that amended 40 CFR 180.1(h) by adding "tomatoes" to the general category of commodities in column A and defining the general commodity term for tolerance purposes by inserting the corresponding raw agricultural commodities "tomatoes" and "tomatillos" in the specific commodities listing in column B.

Tomato (*Lycopersicon esculentum*) and tomatillo (*Physalis ixocarpa*) are both members of the family *Solanaceae*. Growth habits of tomatillo are similar to tomatoes, and cultural practices are understood to be quite similar. Tomatillos differ from tomatoes in that the tomatillo fruit is enclosed in a thin husk, which is removed before the fruit is consumed. Due to the presence of the husk surounding the fruit, pesticide residues resulting from identical pesticide uses are expected to be comparable or even less on tomatillos (with husk removed) than residues which occur on tomatoes.

The Agency proposes the revision of 40 CFR 180.1(h) to add the general category "tomatoes." This revision will expand the tolerances and exemptions from the requirement of a tolerance established for residues of pesticide chemicals in or on the general category "tomatoes" to include the specific raw agricultural commodity tomatillos.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 19, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180-[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1(h) is amended by adding and alphabetically inserting a commodity definition for tomatoes in column A and tomatoes and tomatillos in column B, to read as follows:

§ 180.1 Definition and interpretations.

* * * * *

(h) * * *

A	B
* * * *	*
Tomatoes	Tomatoes, tomatillos
* * * *	*

* * * * *

[FR Doc. 90-7076 Filed 3-27-90; 8:45 am]

BILLING CODE 6560-50-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 424

[BPD-611-F]

RIN 0938-AE07

Medicare Program; Physician Involvement in Physical Therapy and Speech Pathology Services

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

ACTION: Final rule.

SUMMARY: This rule adopts as final without revision previously published provisions of an interim final rule regarding physician involvement in physical therapy and speech pathology services.

EFFECTIVE DATE: These regulations are effective May 29, 1990.

SUPPLEMENTARY INFORMATION: On September 20, 1989, we published an interim final rule in the Federal Register at 54 FR 38677 to implement section 8424 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647) and to relieve providers of outpatient

physical therapy and speech pathology and independent physical therapists of an inappropriate burden imposed by Federal regulations. [On November 6, 1989, we also published a correction of the interim final rule in the Federal Register at 54 FR 46614 to correct a technical error.] The interim final rule removes from the conditions of participation for providers of outpatient physical therapy and speech pathology at § 405.1717, and the conditions for coverage of the services of physical therapists in independent practice at § 405.1733, the requirements that physicians provide the referrals, periodic visits, and direction of treatment for non-Medicare patients. Its provisions permit a physician, a physical therapist, or a speech pathologist to establish the plan of care and review the results of treatment for non-Medicare patients. It also removes the requirement that the plan be reviewed at least every 30 days for non-Medicare patients. In addition, we made some minor editorial revisions to make the text easier to read and understand.

We did not receive any public comments on the interim final rule. Therefore, we are now adopting its provisions as a final rule. Requirements for physician involvement will continue to be in effect for Medicare patients.

(Secs. 1102, 1835(a)(1) (C) and (D) and 1861(p) of the Social Security Act (42 U.S.C. 1302, 1395n(a)(1) (C) and (D) and 1395x(p))

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

Dated: February 7, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: February 22, 1990.

Louis W. Sullivan,

Secretary.

PART 405—[AMENDED]

PART 424—[AMENDED]

Accordingly, the interim rule amending 42 CFR parts 405 and 424 which was published at 54 FR 38677 on September 20, 1989, and corrected at 54 FR 46614 on November 6, 1989, is adopted as a final rule without change.

[FR Doc. 90-6953 Filed 3-27-90; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6771

[OR-943-00-4214-10; GPO-078; OR-19657 (WASH)]

Partial Revocation of the Secretarial Order Dated May 13, 1929; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 84.41 acres of land withdrawn for the Bureau of Land Management's Powersite Classification No. 224 within the Wenatchee National Forest. The Bureau of Land Management has determined that the land is no longer needed for the purpose for which it was withdrawn. The revocation is needed to permit disposal of the land through land exchange. This action will open the land to surface entry. The land has been and remains open to mineral leasing and is temporarily closed to mining by a Forest Service exchange proposal.

EFFECTIVE DATE: April 27, 1990.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated May 13, 1929, is hereby revoked insofar as it affects the following described land:

Willamette Meridian

T. 24 N., R. 17 E.,
Sec. 26, lots 3 and 4.
The area described contains 84.41 acres in Chelan County.

2. At 8:30 a.m., on April 27, 1990, the land will be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, any segregations of record, and the requirements of applicable law.

Dated: March 2, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-7001 Filed 3-27-90; 8:45 am]

BILLING CODE 4310-33-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-286; RM-6609]

Radio Broadcasting Services; Baker, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 268B to Baker, California, as that community's first local broadcast service, in response to a petition for rule making filed on behalf of Mount Wilson FM Broadcasters, Inc. See 54 FR 27038, June 27, 1989. Coordinates used for Channel 268B at Baker are 35-15-54 and 116-04-25. With this action, the proceeding is terminated.

DATES: Effective May 7, 1990; the window period for filing applications on Channel 268B at Baker, California, will open on May 8, 1990, and close on June 7, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-286, adopted March 5, 1990, and released March 21, 1990. The full text of this Commission decision 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 of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under California, by adding Baker, Channel 268B.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-6945 Filed 3-27-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-119; RM-6417]

Radio Broadcasting Services; Stamping Ground, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 256A to Stamping Ground, Kentucky, as that community's first local service. Channel 256A can be allotted to Stamping Ground in compliance with the Commission's minimum distance separation requirements with a site restriction 3.3 kilometers (2.1 miles) north to avoid a short-spacing to Station WHNB(FM), Channel 257A, Harrodsburg, Kentucky. The coordinates are North Latitude 38-18-04 and West Longitude 84-40-52. With this action, this proceeding is terminated.

DATES: Effective May 7, 1990; the window period for filing applications will open on May 8, 1990, and close on June 7, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-119, adopted March 7, 1990, and released March 22, 1990. The full text of this Commission decision 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 of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Kentucky by adding Stamping Ground, Channel 256A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-6939 Filed 3-27-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-320; RM-6752]

Radio Broadcasting Services; Blackduck, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 252C2 for Channel 252A at Blackduck, Minnesota, in response to a petition filed by Roger Paskvan. We shall also modify the construction permit for Channel 252A (BPH-880426MB) to specify operation on Channel 252C2. Canadian concurrence has been obtained for the allotment of Channel 252C2 at coordinates 47-33-21 and 94-47-59.

EFFECTIVE DATE: May 7, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-320, adopted March 7, 1990, and released March 22, 1990. The full text of this Commission decision 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 of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota is amended by removing Channel 252A and adding Channel 252C2 at Blackduck.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-6940 Filed 3-27-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-468; RM-6889]

Radio Broadcasting Services; Aberdeen, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 287C3 for Channel 287A at Aberdeen, Mississippi, in response to a petition filed by Tenn-Tom Broadcasting Corporation. We shall also modify the license for Station WWZQ-FM to specify operation on Channel 287C3. The coordinates for Channel 287C3 are 33-50-20 and 88-18-30.

EFFECTIVE DATE: May 7, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-468, adopted March 7, 1990, and released March 22, 1990. The full text of this Commission decision 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 of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by revising the entry for Aberdeen, Mississippi, by removing Channel 287A and adding Channel 287C3.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-6942 Filed 3-27-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-7; RM-6573 and RM-6603]

Radio Broadcasting Services; Kimberling City, Cassville, and Seligman, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 227C2 for Channel 237A at Seligman, Missouri, and response to a counterproposal filed by Elvis Lee Moody. We shall also modify the license for Station KJEM-FM to specify Channel 227C2. The coordinates for Channel 227C2 are 36-26-40 and 94-05-30. To accommodate the upgrade at Seligman, we shall substitute Channel 261A for Channel 227A (vacant) at Cassville, Missouri. One application is on file for the Cassville Channel (BPH-880629MA), and the applicant will be given cut off protection and will be permitted to amend its application to specify the new Class A channel. The coordinates for Channel 261A are 36-37-00 and 93-48-31. The original petition, filed by Arthur C. Morris, requested the allotment of FM Channel 261A to Kimberling City, Missouri. The petition was withdrawn on May 26, 1989.

EFFECTIVE DATE: May 7, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-7, adopted March 7, 1990, and released March 22, 1990. The full text of this Commission decision 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 of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Missouri by removing Channel 237A and adding Channel 227C2 at Seligman, and by removing Channel 227A and adding Channel 261A at Cassville.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-6938 Filed 3-27-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-129, RM-6675]

Radio Broadcasting Services; Lake Geneva, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 241A to Lake Geneva, Wisconsin, as that community's first local FM service, at the request of Southern Wisconsin Company, Inc. *See* 54 FR 25744, June 19, 1989. Channel 241A can be allotted to Lake Geneva in compliance with the Commission's minimum distance separation requirements with a site restriction of 2 kilometers (1.3 miles) northwest of the community. The coordinates are 42-36-50 and 88-26-51. With this action, this proceeding is terminated.

DATES: Effective May 14, 1990; The window period for filing applications will open on May 15, 1990, and close on June 14, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-129, adopted February 22, 1990, and released March 21, 1990. The full text of this Commission decision 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 of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Wisconsin, by adding Lake Geneva, Channel 241A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-6943 Filed 3-27-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 591

[Docket No. 89-5; Notice 6]

RIN 2127-AD00

Importation of Motor Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards

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

ACTION: Final rule.

SUMMARY: The purpose of this notice is to amend the recently adopted regulation of the National Highway Traffic Safety Administration governing importation of motor vehicles and equipment subject to the Federal motor vehicle safety standards. The first amendment adds the agency's bumper and theft prevention standards to those Federal standards for which conformity is necessary for permanent importation of a motor vehicle into the United States. Although conformity of imported cars with these standards is required by statute, current importation regulations have never been amended to include them. The second amendment extends coverage of the bond required by NHTSA for a demonstration of conformity with the safety standards, to vehicles imported between January 31, 1990, and October 31, 1992, by importers who owned the vehicle as of October 31, 1988, and whose assigned place of employment was outside the U.S. at times from that date until the time of importation. This bond supersedes the current equivalent Customs bond. The

third amendment specifies the terms and conditions of the two NHTSA bonds. The final amendment adopts procedures for submitting petitions for remission and mitigation of bond forfeiture.

EFFECTIVE DATE: The effective date of the final rule is March 28, 1990.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, (202–366–5263).

SUPPLEMENTARY INFORMATION: On October 31, 1988, the President signed Public Law 100–562, the Imported Vehicle Safety Compliance Act of 1988 ("the 1988 Act"). A notice of proposed rulemaking to establish part 591 was published on April 25, 1989 (54 FR 17772), and a final rule on September 29, 1989 (54 FR 40069). As the notices states, the 1988 Act amends those provisions of the National Traffic and Motor Vehicle Safety Act of 1966 ("the Vehicle Safety Act") that relate to the importation of motor vehicles subject to the Federal motor vehicle safety standards (section 108(b), 15 U.S.C. 1397(b)). The importation of motor vehicles subject to the Federal motor vehicle bumper standard (15 U.S.C. 1916), and the Federal motor vehicle theft prevention standard (15 U.S.C. 601) was not included in these changes. Importation of passenger motor vehicles subject to the bumper standard is to be governed by joint regulations of both NHTSA and the Secretary of the Treasury (15 U.S.C. 1916(b)(3)), under terms and conditions (including the furnishing of a bond) sufficient to ensure their conformance, or their exportation or abandonment to the United States. Importation of vehicles and equipment subject to the theft prevention standard is flatly prohibited unless vehicles and equipment conform at time of entry. In reviewing agency programs, NHTSA and Customs have agreed that regulatory simplicity requires that all vehicles subject to NHTSA's standards should be imported pursuant to a NHTSA regulation. Accordingly, a notice was published on November 29, 1989, proposing amendments of part 591 to add the Federal bumper and theft prevention standards to its coverage (54 FR 49098). Comments on the notice were received from Ford Motor Co., Mercedes-Benz of North America, and National Automobile Dealers Association. The comments were non-substantive in nature, and supported the proposal. Because of the importance of this matter, the agency is repeating the preamble of the proposal.

The Federal Bumper Standard

Title I of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*) was enacted in 1972, and required NHTSA to promulgate bumper standards applicable to all passenger motor vehicles imported into the United States. In implementation of this requirement, NHTSA issued 49 CFR Part 581, *Bumper Standard*, effective September 1, 1978. The importation provisions in the Cost Saving Act for vehicles subject to the bumper standards were substantially similar to those for vehicles subject to the safety standards. No standard was to apply to a vehicle intended solely for export and so labeled or tagged. No person was to import a passenger motor vehicle manufactured on or after the effective date of a bumper standard unless it was in conformity with such a standard. However, it could be admitted under the joint regulations of the Secretaries of Treasury and Transportation under such terms and conditions (including the furnishing of a bond) as appeared appropriate to ensure conformity, or exportation or abandonment to the United States. The joint regulations could also provide for the "importation" (as contrasted with the "temporary importation" allowed by the Vehicle Safety Act) of any passenger motor vehicle after its first purchase for purposes other than resale.

However, the joint regulation that applied to the importation of vehicles subject to the Federal safety standards, 19 CFR 12.80, was never amended to incorporate the bumper standard, although NHTSA enforced it as part of its importation compliance procedures. With the advent of NHTSA's own vehicle importation regulation, 49 CFR part 591, this notice adds bumper standard importation requirements to the declarations required for entry, and amends the bond provisions to include compliance with the bumper standard. To fulfill the statutory requirement for joint issuance, the final rule is jointly issued under the authority of both regulatory agencies.

The bumper declarations and requirements are virtually identical with those required for the safety standards. There is one exception, however. NHTSA has interpreted the 1988 Act as requiring a showing of total compliance with the safety standards, or exportation or abandonment of the motor vehicle to the United States. NHTSA does not read the Cost Savings Act as imposing the same punishment in the absence of such a showing regarding the bumper standard. Therefore, in the event that a passenger motor vehicle demonstrates compliance with the safety standards, but not the bumper standard, the agency may choose to levy a penalty upon the bond instead of demanding export or abandonment of the vehicle, if the facts appear to justify it.

The Theft Prevention Standard

Title VI of the Cost Savings Act (15 U.S.C. 601 *et seq.)* requires NHTSA to issue a vehicle theft prevention standard that applies to "cover major parts which are installed by manufacturers into passenger motor vehicles in lines designated * * * as high theft lines", and the major replacement parts for those major parts. In implementation of this requirement, NHTSA issued 49 CFR part 541, *Federal Motor Vehicle Theft Prevention Standard*, effective April 24, 1986. Conformance with this standard requires the marking of certain original and replacement parts in the manner specified in the standard. Unlike the statutory importation requirements for safety and bumper standards, title VI contains a flat prohibition against the importation of vehicles and parts which are subject to the theft prevention standard, but are not marked in accordance with it. Therefore, vehicles and parts covered by the theft prevention standard must comply before their importation into the United States, whether the marking is affixed by the importer, or original manufacturer. In terms of part 591, this means that an importer must declare that his vehicle meets the theft prevention standard, even if it is accompanied by a declaration of nonconformance with the safety and bumper standards. If, in the first instance, the vehicle does not meet the theft prevention standard, it will not be allowed entry under bond or otherwise for the eventual production of a conformity statement. Admission under a false declaration may constitute a violation of the regulations of the Customs Service, and result in seizure of the vehicle.

This notice adopts appropriate changes in the language of the declarations, and also a new paragraph 591.5(k) that applies to replacement parts. It requires a declaration of conformity with the theft prevention standard by the importer of any major part covered by the standard.

Bonds for those eligible to import under present regulation. Under certain circumstances, and for a limited time, section 108(g) of the Vehicle Safety Act permits a nonresident (including any member of the Armed Forces) to continue to import a vehicle under the present regulation, that is, the Administrator need not have made a determination that it is capable of conformance, and conformance work

need not be performed by a registered importer. This exception applies to a single vehicle imported, for personal use and not for resale, between January 31, 1990, and October 31, 1992, by an individual whose assigned place of employment was outside the United States for the total period between October 31, 1988, and the date of importation, provided that the vehicle was acquired (or was subject to a binding contract to acquire) before October 31, 1988, and that the individual has not previously imported a nonconforming motor vehicle. Importation under this amendment is reflected in § 591.5(g).

NHTSA and Customs have agreed that as of January 31, 1990, all bonds given for conformance with the safety standards should be those of NHTSA. Therefore, appropriate inclusory language is adopted in this notice.

Conditions of the Conformance Bond

In its response to the proposal of part 591, General Motors commented that part 591 did not state the conditions of the bond. With the determination by Customs and NHTSA that the bond will be that of NHTSA, it is now possible for this agency to state those conditions. In general, they include the acts that the statute requires importers or registered importers to perform after entry of a vehicle and before its release. The bond is given to secure compliance with the Federal motor vehicle safety standards, and, if the vehicle has been imported under section 108(c) of the Vehicle Safety Act, no mitigation of the bond is contemplated for vehicles that appear to conform only partially with the safety standards. If full conformance with the safety standards is not achieved, the vehicle must be exported, or abandoned to the U.S. If none of these actions occur, the bond is forfeited. If a vehicle has been brought into full conformance with the safety standards, but not the bumper standard, NHTSA may not demand export or abandonment, but only a partial forfeiture of the bond. This differs from the practice under the present bond (in effect until January 31, 1990), which will continue until October 31, 1992, for vehicles imported pursuant to section 108(g). Under this condition, the principal submits a statement identifying the conforming party, and discussing the nature and extent of the work performed in the conformance process, within 120 days after entry (or longer, if the Administrator allows it). It has been the practice of Customs to release vehicles under a partial forfeiture of the bond when complete compliance has not been documented, and the vehicle has not been returned for export. A further condition of the bond for vehicles imported pursuant to section 108(c) is that the principal will make the vehicle available for inspection upon demand by NHTSA, and will not release it from custody before 30 days has passed after its submission of conformance certification to NHTSA. A further condition of the bond for vehicles imported pursuant to section 108(g) is that the principal will not sell the vehicle, or offer it for sale, until a statement had been issued by NHTSA that it is acceptable to do so.

These conditions are not set forth in § 591.8 (f) and (g). The bond that will apply to importers of vehicles pursuant to section 108(c) of the Act is depicted at Annex A. The bond that will apply to importers of vehicles pursuant to section 108(g) is depicted at Appendix B.

Petitions for Remission or Mitigation

In the event a bond is forfeited, a principal and/or surety may petition the Administrator for remission of the forfeiture. If the Administrator finds that all conditions of the bond have been, in fact, fulfilled, the forfeiture is remitted.

A petition may also be submitted for mitigation of the forfeiture. However, given the intent of the 1988 Act that the Federal motor vehicle safety standards be enforced more strictly than before, the agency has concluded that mitigation of forfeiture is inappropriate if a vehicle has been imported pursuant to new section 108(c) of the Vehicle Safety Act, and is not brought into compliance with all safety standards. Arguably, failure to conform should occur infrequently in the future. This is because a vehicle will not be admitted unless the agency has determined that it is capable of conformance, and the conformance work will be performed by those who have registered with NHTSA as undertaking to provide certifications that vehicles have been brought into conformity.

This restriction will not apply to importers of vehicles under section 108(g). Vehicles imported pursuant to this provision are exempt from eligibility determinations and need not be conformed by registered importers. If these vehicles fail to comply fully with the standards, and are not exported or abandoned, the bond will be forfeited, but the Administrator will entertain petitions for mitigation, just as the Customs Service does under the existing regulations.

Nor will the restriction apply to either category of importer if the condition of the bond that is not met relates to compliance with part 581, the Federal bumper standard. The primary purpose of this standard is the preservation of property, rather than the prevention of deaths and injuries. The fact that Congress draws a distinction is found in the permissive authority of the two Secretaries that allows importation of used passenger motor vehicles whether or not they comply with the bumper standard (15 U.S.C. 1916(b)(4)), but forbids the importation of vehicles that do not comply with safety standards unless the vehicles are brought into compliance with them.

These provisions are adopted as § 591.9.

Impacts

NHTSA has considered the impacts of this rule, and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation". It is intended to formalize existing statutory obligations of importers of motor vehicles not originally manufactured to comply with the Federal bumper standard, and to ensure that motor vehicles comply with the Federal theft prevention standard before their entry into the United States. It is not significant under Department of Transportation regulatory policies and procedures. Less than 2500 nonconforming motor vehicles a year are currently imported, and it is anticipated that this number will not increase. There is no substantial impact upon a major transportation safety program, and the action does not involve any substantial public interest or controversy. There is no substantial effect on state and local governments. The impact upon the Federal government is that the bonding obligation of the U.S. Customs Service with respect to motor vehicle compliance with Federal standards is transferred to the Department of Transportation.

The agency has also considered the effects of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact upon a substantial number of small entities. Because importers of vehicles that do not conform to the Federal motor vehicle safety standards currently must post conformance bonds of up to 300% of the entered value of the vehicle, the specification that they pay a bond of only 150% of such value should result in a lesser economic impact upon vehicle importers. Further, small organizations and governmental jurisdictions will not be significantly affected as they are not generally importers and purchasers of nonconforming motor vehicles.

NHTSA has analyzed this rule for purposes of the National Environmental

Policy Act. The rule will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported under the rule will not vary significantly from that existing before promulgation of the rule.

The declaration and bond requirements in this rule are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Although they are modifications of declarations presently existing in agency form HS–7, the declarations have been submitted to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). They will become effective upon approval by OMB.

The agency has analyzed the rule in accordance with the principles and criteria contained in Executive Order 12612 "Federalism", and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Miscellaneous

The signature of the Assistant Secretary of the Treasury on this notice represents that Department's exercise of its share of the joint authority provided for implementation of importation provisions of title I (relating to bumpers) of the Motor Vehicle Information and Cost Savings Act. It is understood that implementation of title VI (relating to theft) of that Act is under the sole authority of the Department of Transportation.

List of Subjects in 49 CFR Part 591

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, title 49 Code of Federal Regulations part 591 is amended as follows:

PART 591—[AMENDED]

1. The authority citation for part 591 is revised to read:

Authority: Pub. L. 100–562, 15 U.S.C. 1401, 1407, 1912, 1916, 2022, 2027; delegation of authority at 49 CFR 1.50.

2. The title of part 591 is revised to read "PART 591—IMPORTATION OF VEHICLES AND EQUIPMENT SUBJECT TO FEDERAL SAFETY, BUMPER AND THEFT PREVENTION STANDARDS".

3.–4. Sections 591.1, 591.2, and 591.3 are revised to read:

§ 591.1 Scope.

This part establishes procedures governing the importation of motor vehicles and motor vehicle equipment subject to the Federal motor vehicle safety, bumper, and theft prevention standards.

§ 591.2 Purpose.

The purpose of this part is to ensure that motor vehicles and motor vehicle equipment permanently imported into the United States conform with theft prevention standards issued under part 541 of this chapter and that they conform with, or are brought into conformity with, all applicable Federal motor vehicle safety standards issued under part 571 of this chapter and bumper standards issued under part 581 of this chapter. The purpose of this part is also to ensure that nonconforming vehicles and equipment items imported on a temporary basis are ultimately either exported or abandoned to the United States.

§ 591.3 Applicability.

This part applies to any person offering a motor vehicle or item of motor vehicle equipment for importation into the United States.

5. The introductory text of § 591.4 is revised to read:

§ 591.4 Definitions.

All terms used in this part that are defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391), and section 2 and section 601 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 and 2021), are used as defined in the Acts, except that the term "model year" is used as defined in part 593 of this chapter.

* * * * *

6. Sections 591.5 (a), (b), and (c) are revised and the introductory text of the section is republished to read:

§ 591.5 Declarations required for importation.

No person shall import a motor vehicle or item of motor vehicle equipment into the United States unless, at the time it is offered for importation, its importer files a declaration, in duplicate, which declares one of the following:

(a)(1) The vehicle was not manufactured primarily for use on the public roads and thus is not a motor vehicle subject to the Federal motor vehicle safety, bumper, and theft prevention standards; or

(2) The equipment item is not a system, part, or component of a motor vehicle and thus is not an item of motor vehicle equipment subject to the Federal motor vehicle safety, bumper, and theft prevention standards.

(b) The vehicle or equipment item conforms with all applicable safety standards (or the vehicle does not conform solely because readily attachable equipment items which will be attached to it before it is offered for sale to the first purchases for purposes other than resale are not attached), and bumper and theft prevention standards, and bears a certification label or tag to that effect permanently affixed by the original manufacturer to the vehicle, or to the equipment item or its delivery container, in accordance with, as applicable, parts 541, 555, 567, 568, and 581, or 571 (for certain equipment items) of this chapter.

(c) The vehicle or equipment item does not comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, but is intended solely for export, and the vehicle or equipment item, and the outside of the container of the equipment item, if any, bears a label or tag to that effect.

* * * * *

7. The introductory text of § 591.5(d) is revised to read:

* * * * *

(d) The vehicle does not conform with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, but the importer is eligible to import it because:

* * * * *

8. Section 591.5(e) is revised to read:

* * * * *

(e) The vehicle or equipment item requires further manufacturing operations to perform its intended function, other than the addition of readily attachable equipment items such as mirrors, wipers, or tire and rim assemblies, or minor finishing operations such as painting, and any part of such vehicle that is required to be marked by part 541 of this chapter is marked in accordance with that part.

* * * * *

9. Sections 591.5(f) introductory text and (f)(1) are revised to read:

* * * * *

(f) The vehicle does not conform with all applicable Federal motor vehicle safety and bumper standards (but does conform with all applicable Federal theft prevention standards), but the importer is eligible to import it because:

(1) The importer has furnished a bond, which is attached to the declaration, in an amount equal to 150% of the dutiable value of the vehicle, containing the terms and conditions specified in section 591.8; and

* * * * *

10. The introductory text of § 591.5(g) is revised to read:

* * * * *

(g) The vehicle does not conform with all applicable Federal motor vehicle safety and bumper standards (but it does conform with all applicable Federal theft prevention standards), but the importer is eligible to import it because:

* * * * *

11. In § 591.5, new paragraphs (g)(5), (g)(6), and (g)(7) are added to read:

* * * * *

(g) * * *

(5) The importer has furnished a bond, which is attached to the declaration, in an amount equal to 150% of the entered value of the vehicle as determined by the Secretary of the Treasury, containing the terms and conditions specified in section 591.8;

(6) The vehicle was not manufactured in conformity with all applicable safety and bumper standards, but it has been or will be brought into conformity; furthermore, within 120 days after entry or such additional time not to exceed 180 days after entry as the Administrator may allow, the importer will submit a true and complete statement to the Administrator, identifying the manufacturer, contractor, or other person who has brought the vehicle into conformity, describing the exact nature and extent of the work performed, and certifying that the vehicle or equipment item has been brought into conformity; and

(7) The importer will not sell the vehicle, or offer it for sale, until the Administrator issues a statement that the conditions of the bond required by § 591.6(c) have been satisfied.

* * * * *

12. The introductory text of § 591.5(h) is revised to read:

* * * * *

(h) The vehicle does not conform with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, but the importer is eligible to import it because:

* * * * *

13. Section 591.5(i)(2) is revised to read:

* * * * *

(i) * * *

(2) The equipment item was manufactured on a date when no applicable safety or theft prevention standard was in effect.

* * * * *

14. The introductory text of section 591.5(j) is revised to read:

* * * * *

(j) The vehicle or equipment item does not conform with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, but is being imported solely for the purpose of:

* * * * *

15. A new section 591.5(k) is added to read:

* * * * *

(k) The equipment item is subject to the theft prevention standard, and is marked in accordance with the requirements of Part 541 of this chapter.

* * * * *

16. Section 591.6(c) is revised to read:

§ 591.6 Documents accompanying declarations.

* * * * *

(c) A declaration made pursuant to § 591.5(f) or section 591.5(g) shall be accompanied by a bond in the form shown in Appendix A or Appendix B of this part, respectively, in an amount equal to 150% of the dutiable value of the vehicle for the conformance of the vehicle with all applicable Federal motor vehicle safety and bumper standards, or, if conformance with the safety standards is not achieved, for the delivery of such vehicle to the Secretary of the Treasury for export at no cost to the United States, or for its abandonment.

* * * * *

17. New §§ 591.8 and 591.9 are added to read:

§ 591.8 Conformance bond and conditions.

(a) The bond required under section 591.6(c) for importation of a vehicle not originally manufactured to conform with all applicable standards issued under part 571 and part 581 of this chapter shall cover only one motor vehicle, and shall be in an amount equal to 150% of the dutiable value of the vehicle.

(b) The principal on the bond shall be the importer of the vehicle.

(c) The surety on the bond shall possess a certificate of authority to underwrite Federal bonds. (See list of certificated sureties at 54 FR 27800, June 30, 1989)

(d) In consideration of the release from the custody of the U.S. Customs Service or the withdrawn from a Customs bonded warehouse into the commerce of, or for consumption in, the United States, of a motor vehicle not originally manufactured to conform to all applicable standards issued under part 571 and part 581 of this chapter, the obligors (principal and surety) shall agree to the following conditions of the bond:

(1) To have such vehicle brought into conformity with all applicable standards issued under part 571 and part 581 of this chapter within 120 days after the date of entry:

(2) * * *

(i) In the case of a vehicle imported pursuant to section 591.5(f), to file (or if not a Registered Importer, to cause the Registered Importer of the vehicle to file) with the Administrator, a certificate that the vehicle complies with each Federal motor vehicle safety and bumper standard in the year that the vehicle was manufactured and which applies in such year to the vehicle; or

(ii) In the case of a vehicle imported pursuant to section 591.5(g), to submit a true and complete statement to the Administrator, identifying the manufacturer, contractor, or other person who has brought the vehicle into conformity, describing the exact nature and extent of the work performed, and certifying that the vehicle has been brought into conformity with each Federal motor vehicle safety and bumper standard in the year that such vehicle was manufactured and which applies in such year to the vehicle.

(3) In the case of a Registered Importer, not to release custody of the vehicle to any person for license or registration for use on public roads, streets, or highways, or license or register the vehicle from the date of entry until 30 calendar days after it has certified compliance of the vehicle to the Administrator, unless the Administrator has notified the principal before 30 calendar days that (s)he has accepted such certification, and that the vehicle and bond may be released, except that the vehicle shall not be released if the principal has received written notice from the Administrator that an inspection of the vehicle will be required, or that there is reason to believe that such certification is false or contains a misrepresentation;

(4) In the case of a Registered Importer, to cause the vehicle to be available for inspection, if the principal has received written notice from the Administrator that an inspection is required.

(5) In the case of a Registered Importer, not to release the vehicle until the Administrator is satisfied with the certification and any modification thereof, if the principal has received written notice from the Administrator that there is reason to believe that the certification is false or contains a misrepresentation.

(6) If the principal has received written notice from the Administrator that the vehicle has been found not to comply with all applicable Federal motor vehicle safety standards, and

written demand that the vehicle be abandoned to the United States, or delivered to the Secretary of the Treasury for export (at no cost to the United States), to abandon the vehicle to the United States, or to deliver the vehicle, or cause the vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above, or to any other port of entry, and to execute all documents necessary for exportation of the vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator to the principal, to pay to the Administrator the amount of the bond.

(e) If the principal defaults on the obligation of paragraph (d)(6) of this section, to abandon the vehicle to the United States or to redeliver the vehicle to the custody of a District Director of Customs and to execute all documents necessary for its exportation, the obligors shall pay to the Administrator the amount of the bond given under the provisions of this section.

§ 591.9 Petitions for remission or mitigation of forfeiture.

(a) After a bond has been forfeited, a principal and/or a surety may petition for remission of forfeiture. A principal and/or surety may petition for mitigation of forfeiture only if the motor vehicle has been imported pursuant to § 591.5(g), or, if imported prusuant to § 591.5(f), only if the condition not met relates to the compliance of a passenger motor vehicle with part 581 of this chapter.

(b) A petition for remission or mitigation shall:

(1) Be addressed to the Administrator, identified as either a petition for remission or for mitigation, submitted in triplicate, and signed by the principal and/or the surety.

(2) State the make, model, model year, and VIN of the vehicle involved, and contain the Customs Entry number under which the vehicle entered the United States.

(3) State the facts and circumstances relied on by the petitioner to justify remission or mitigation.

(4) Be filed within 30 days from the date of the mailing of the notice of forfeiture incurred.

(c) A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

(d) If the Administrator finds that all conditions of the bond have, in fact, been fulfilled, the forfeiture is remitted.

(e) A decision to mitigate a forfeiture upon condition that a stated amount is paid shall be effective for not more than 60 days from the date of notice to the petitioner of such decision. If payment of the stated amount is not made, or arrangements made for delayed or installment payment, the full claim of forfeiture shall be deemed applicable. The Administrator shall collect the claim, or, if unable to collect the claim within 120 days, shall refer the matter to the Department of Justice.

18. Appendix A and appendix B are added to part 591 to read:

Appendix A—Section 591.5(f) Bond

Department of Transportation

National Highway Traffic Safety Administration

BOND TO ENSURE CONFORMANCE WITH MOTOR VEHICLE SAFETY AND BUMPER STANDARDS

(To redeliver vehicle, to produce documents, to perform conditions of release, such as to bring vehicle into conformance with all applicable Federal motor vehicle safety and bumper standards)

Know All Men by These Presents That

---

name of principal or surety; if a corporation, the State of incorporation of _____, as principal, street address or post office box number; city; state; ZIP code
and _____ of _____, name; State of incorporation, if any address
and _____ of _____, name; State of incorporation, if any address
as sureties, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of _____ dollars ($_____),
which represents 150% of the entered value of the following described motor vehicle as determined by the U.S. Customs Service:

---

model year, make, series, engine and chassis numbers for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns (jointly and severally), firmly by these presents.

WITNESS our hands and seals this _____ day of _____, 199__.

WHEREAS, motor vehicles may be entered under the provisions of section 108 of the National Traffic and Motor Vehicle Safety Act, and section 106 of the Motor Vehicle Information and Cost Savings Act; and

---

DOT Form XXXX

WHEREAS, pursuant to 49 CFR part 591, a regulation promulgated under the provisions of section 108, National Traffic and Motor Vehicle Safety Act of 1966, the above-bounden principal desires to import permanently the motor vehicle described above, which is a motor vehicle that was not originally manufactured to conform with the Federal motor vehicle safety and bumper standards; and

WHEREAS, pursuant to 49 CFR part 592, a regulation promulgated under the provisions of section 108, National Traffic and Motor Vehicle Safety Act of 1966, as amended, the above-bounden principal has been granted the status of Registered Importer of motor vehicles not originally manufactured to conform with the Federal motor vehicle safety standards (or, if not a Registered Importer, has a contract with a Registered Importer covering the motor vehicle described above); and

WHEREAS, pursuant to 49 CFR part 593, a regulation promulgated under the provisions of section 108, National Traffic and Motor Vehicle Safety Act of 1966, as amended, the Administrator of the National Highway Traffic Safety Administration has determined that the motor vehicle described above is eligible for importation into the United States; and

WHEREAS, the motor vehicle described above has been imported at the port of _____, and entered at said port for consumption on entry No. _____, dated _____, 199__,

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT—

(1) The above-bounden principal (the "principal"), in consideration of the permanent admission into the United States of the motor vehicle described above (the "vehicle"), voluntarily undertakes and agrees to have such vehicle brought into conformity with all applicable Federal motor vehicle safety and bumper standards within a reasonable time after such importation, as specified by the Administrator of the National Highway Traffic Safety Administration (the "Administrator");

(2) The principal shall then file, or if not a Registered Importer, shall then cause the Registered Importer of the vehicle to file, with the Administrator, a certificate that the vehicle complies with each Federal motor vehicle safety standard in the year that the vehicle was manufactured and which applies in such year to the vehicle, and that the vehicle complies with the Federal bumper standard (if applicable);

(3) The principal, if a Registered Importer, shall not release costody of the vehicle to any person for license or registration for use on public roads, streets, or highways, or license or register the vehicle from the date of entry until 30 calendar days after it has certified compliance of the vehicle to the Administrator, unless the Administrator notifies the principal before 30 calendar days that (s)he has accepted such certification and the vehicle and bond may be released, except that no such release shall be permitted, before or after the 30th calendar day, if the principal has received written notice from the Administrator that an inspection of such vehicle will be required, or that there is reason to believe that such certification is false or contains a misrepresentation.

Issued on: March 19, 1990.

Jerry Ralph Curry,

Administrator.

John P. Simpson,

Acting Assistant Secretary (Enforcement), Department of the Treasury.

(4) And if the principal has received written notice from the Administrator that an inspection is required, the principal shall

cause the vehicle to be available for inspection, and the vehicle and bond shall be promptly released after completion of an inspection showing no failure to comply. However, if the inspection shows a failure to comply, the vehicle and bond shall not be released until such time as the failure to comply ceases to exist;

(5) And if the principal has received written notice from the Administrator that there is reason to believe that the certificate is false or contains a misrepresentation, the vehicle or bond shall not be released until the Administrator is satisfied with the certification and any modification thereof;

(6) And if the principal has received written notice from the Administrator that the vehicle has been found not to comply with all applicable Federal motor vehicle safety and bumper standards, and written demand that the vehicle be abandoned to the United States, or delivered to the Secretary of the Treasury for export (at no cost to the United States), the principal shall abandon the vehicle to the United States, or shall deliver the vehicle, or cause the vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above, or any other port of entry, and shall execute all documents necessary for exportation of the vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator to the principal, the principal shall pay to the Administrator the amount of this obligation;

Then this obligation shall be void; otherwise it shall remain in full force and effect.

Signed, sealed, and delivered in the presence of—

_____

Name Address

_____(SEAL)

(Principal)

_____

Name Address

_____

Name Address

_____(SEAL)

(Surety)

_____

Name Address

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____ certify that I am the _____ of the corporation named as principal in the within bond; that _____, who signed the bond on behalf of the principal, was then _____ of said corporation; that I know his/her signature, and his/her signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

_____[Corporate Seal]

To be used when a power of attorney has been filed with NHTSA. May be executed by secretary, assistant secretary, or other officer.

Appendix B—Section 591.5(g) Bond

Department of Transportation

National Highway Traffic Safety Administration

BOND TO ENSURE CONFORMANCE WITH MOTOR VEHICLE SAFETY AND BUMPER STANDARDS

(To redeliver vehicle, to produce documents, to perform conditions of release, such as to bring vehicle into conformance with all applicable Federal motor vehicle safety and bumper standards)

Know All Men by These Presents That

_____

name of principal or surety; if a corporation, the State of incorporation

of _____, as principal, street address or post office box number; city; state; ZIP code

and _____ of _____, name; State of incorporation, if any address

and _____ of _____, name; State of incorporation, if any address

and _____ of _____, name; State of incorporation, if any address

as sureties, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of _____ dollars ($_____), which represents 150% of the entered value of the following described motor vehicle as determined by the U.S. Customs Service:

_____

model year, make, series, engine and chassis numbers for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns (jointly and severally), firmly by these presents

WITNESS our hands and seals this _____ day of _____, 199__

WHEREAS, motor vehicles may be entered under the provisions of section 108 of the National Traffic and Motor Vehicle Safety Act, and section 106 of the Motor Vehicle Information and Cost Savings Act; and

_____

DOT Form XXXX

WHEREAS, pursuant to 49 CFR part 591, a regulation promulgated under the provisions of section 108, National Traffic and Motor Vehicle Safety Act of 1966, the above-bounden principal desires to import permanently the motor vehicle described above, which is a motor vehicle that was not originally manufactured to conform with the Federal motor vehicle safety and bumper standards; and

WHEREAS, pursuant to § 591.5(g) of 49 CFR part 591, a regulation promulgated under the provisions of section 108, the above-bounden principal is eligible to import a motor vehicle under the provisions thereof: to wit, the above bounden principal's assigned place of employment was outside the United States as of October 31, 1988 and (s)he has not had an assigned place of employment in the United States between that date and the date of entry of the motor vehicle described above, and (s)he has not previously imported a motor vehicle into the United States manufactured on or after January 1, 1968, and (s)he had acquired (or had entered into a binding contract to acquire) the motor vehicle described above not later than October 31, 1988, and (s)he will enter the motor vehicle described above not later than October 31, 1992; and

WHEREAS, the motor vehicle described above has been imported at the port of _____, and entered at said port for consumption on entry No. _____, dated _____, 199__.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT—

(1) The above-bounden principal (the "principal"), in consideration of the permanent admission into the United States of the motor vehicle described above (the "vehicle"), voluntarily undertakes and agrees to have such vehicle brought into conformity with all applicable Federal motor vehicle safety and bumper standards within 120 days after such importation, or such longer time not to exceed 180 days after such importation, as specified by the Administrator of the National Highway Traffic Safety Administration (the "Administrator");

(2) When the vehicle has been brought into conformity, the principal shall then file with the Administrator, a true and complete statement that the vehicle complies with each Federal motor vehicle safety standard in the year that the vehicle was manufactured and which applies in such year to the vehicle, and that the vehicle also complies with the Federal bumper standard;

(3) The principal shall not offer the vehicle for sale, or sell the vehicle, until the principal has received written notice from the Administrator that the principal has fulfilled all the conditions of the bond.

(4) And if the principal has received written notice from the Administrator that an inspection is required, the principal shall cause the vehicle to be available for inspection, and the vehicle and bond shall be promptly released after completion of an inspection showing no failure to comply. However, if the inspection shows a failure to comply, the vehicle and bond shall not be released until such time as the failure to comply ceases to exist;

(5) And if the principal has received written notice from the Administrator that there is a reason to believe that the statement is false or contains a misrepresentation, the vehicle or bond shall not be released until the Administrator is satisfied with the statement and any modification thereof;

(6) And if the principal has received written notice from the Administrator that the vehicle has been found not to comply with all applicable Federal motor vehicle safety and bumper standards, and written demand that the vehicle be abandoned to the United States, or delivered to the Secretary of the Treasury for export (at no cost to the United States), the principal shall abandon the vehicle to the United States, or shall deliver the vehicle, or cause the vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above, or any other port of entry, and shall execute all documents necessary for

exportation of the vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator to the principal, the principal shall pay to the Administrator the amount of this obligation;

Then this obligation shall be void; otherwise it shall remain in full force and effect.

Signed, sealed, and delivered in the presence of—

_____

Name Address

_____(SEAL)

(Principal)

_____

Name Address

_____

Name Address

_____(SEAL)

(Surety)

_____

Name Address

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____ certify that I am the _____ of the corporation named as principal in the within bond; that _____, who signed the bond on behalf of the principal, was then _____ of said corporation; that I know his/her signature, and his/her signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

_____ [Corporate Seal]

To be used when a power of attorney has been filed with NHTSA. May be executed by secretary, assistant secretary, or other officer.

[FR Doc. 90-6927 Filed 3-23-90; 2:03 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 91290-0052]

RIN 0648-AC70

Fee Schedule for Foreign Fishing

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

ACTION: Final rule.

SUMMARY: NOAA adopts the 1990 fee schedule for foreign vessels fishing in the Exclusive Economic Zone (EEZ). This schedule adopts fees for only the species currently available for foreign fishing. Fees for these species are identical to fees charged under schedules adopted in 1988 and 1989. Under these schedules, owners or operators of foreign vessels paid $354 per fishing permit application. The poundage fees in foreign directed fisheries were assessed at 44.4 percent of the exvessel value of the species taken. No surcharge was required for the Fishing Vessel and Gear Damage Compensation Fund. This action complies with section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*

EFFECTIVE DATE: January 1, 1990.

ADDRESSES: Copies of a regulatory impact review (RIR) related to the impact of fees set at the levels set by this schedule are available through the contact named below.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, 301-427-2337, or telex 467856 US COMM FISH CI.

SUPPLEMENTARY INFORMATION: NOAA implements the schedule of permit application and poundage fees for fishing by foreign vessels in the EEZ in 1990. The schedule is consistent with section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Section 204(b)(10) requires that the fees recover costs of carrying out the purposes of the Magnuson Act which are attributed to foreign fishing. This schedule targets fee collections of about $2.239 million in 1990. No additional amounts are to be collected under provisions of section 204(b)(10(C).

Background

On December 26, 1989, NOAA published a Notice of Proposed Rulemaking (NPR) for a 15-day public comment period at 54 FR 52971. The NPR maintained the fee schedule at the levels charged in 1988 and 1989. It also removed from the schedule species that are no longer available for allocation for directed foreign fishing. The only remaining fish available for directed foreign fisheries and specified in the total allowable level of foreign fishing (TALFF species) are Atlantic mackerel and species taken as bycatch in directed fisheries for mackerel and Bering Sea snails. The other species were deleted from the schedule to avoid an implication that NOAA had reviewed current exvessel values of those species.

No public comments were received on the schedule proposed for 1990 by NOAA. NOAA therefore adopts as final the schedule proposed at 54 FR 52971 on December 26, 1989.

Classification

NOAA prepared a regulatory impact review (RIR) for the 1988 fee schedule which discussed the economic consequences and impacts of that fee schedule and alternatives. Copies of that RIR are available from the above named contact. Based on that RIR, the Administrator, NOAA, determined that the 1988 fee schedule complied with the requirements of section 2 of E.O. 12291. Since the species fees proposed for 1989 were not changed, NOAA anticipated no new economic impacts. It reached similar conclusions for the 1990 schedule and also concluded that the 1990 schedule does not constitute a major rule.

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

NOAA Directive 02-10 published at 45 FR 49312 (July 24, 1980) adopts internal procedures to implement the National Environmental Policy Act (NEPA), as amended (43 U.S.C. 4321 *et seq.*). Under those procedures, programmatic functions with no potential for significant environmental impacts are generally excluded from NEPA requirements. The fee schedule has a significant environmental impact on the fishery resources in the EEZ. At most, the fee schedule might affect the harvesting strategy of foreign fishing vessels and result in a different species mix being removed from the environment; however, the schedule meets the criterion that fees should minimize disruption of traditional fishing patterns on target species. The environmental impact of harvesting a very small total allowable level of foreign fishing catch is described in the fishery management plan for Squid, Butterfish, and Mackerel. Consequently, no further environmental assessment is necessary.

The Assistant Administrator for Fisheries finds for good cause, namely to implement the fee schedule as close to the beginning of the fishing season as possible and prior to the preparation of billings for the first quarter's catches, that it is impractical and contrary to the public interest to delay for 30 days the effective date of these regulations, under the provisions of section 553(d) of the Administrative Procedure Act. This action does not require changes in plans or strategies by foreign fishing companies since it makes no changes

from the fees which applied in 1988 and in 1989.

This rule has no information collection provisions covered by the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

This rule does not directly affect the coastal zone of any state with an approved Coastal Zone Management program. Neither does the rule contain policies with federalism implications sufficient to warrant a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

Dated: March 22, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 611—[AMENDED]

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

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

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 197 *et seq.*, and 16 U.S.C. 1361 *et seq.*

§ 611.22 [Amended]

2. Paragraphs § 611.22 (b)(1), (c), and (d) are revised as follows:

* * * * *

(b) *Poundage fees.*

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

TABLE 1—SPECIES AND POUNDAGE FEES

[Dollars per metric ton, unless otherwise noted]

Species	Poundage fees
Northwest Atlantic Ocean fisheries:	
1. Butterfish	274.61
2. Hake, red	183.97
3. Hake, silver	174.63
4. Herring, river	61.76
5. Mackerel, Atlantic	68.43
6. Other groundfish	119.09
7. Squid, Illex	103.98
8. Squid, Loligo	245.73
Alaska fisheries:	
21. Snails	128.42

* * * * *

(c) *Incremental amount.* An additional incremental amount will be added to the poundage fee Bill for Collection for fish harvested by a nation during the first quarter of the next fiscal year following notification under paragraph (10)(C) of section 204(b) of the Magnuson Act [16 U.S.C. 1824(b)(10)(C)]. This incremental amount will be added to all subsequent quarterly bills until the quarter specified when the Assistant Administrator notifies that nation that it has taken appropriate corrective action. The incremental amount in 1990 will be 78.0 percent of the total poundage fee in each quarter during which this provision applies.

(d) *Surcharges.* The owner or operator of each foreign vessel who accepts and pays permit application or poundage fees under paragraph (a) or (b) of this section must also pay a surcharge. The Assistant Administrator may reduce or waive the surcharge if it is determined that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator also may increase the surcharge during the year to a maximum level of 20 percent, if needed, to maintain capitalization of the fund. The Assistant Administrator has effectively waived the surcharge on 1990 fees.

* * * * *

[FR Doc. 90-7018 Filed 3-27-90; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 60
Wednesday, March 28, 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 Stabilization and Conservation Service

7 CFR Part 701

Conservation and Environmental Programs

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise 7 CFR part 701 by: (1) Revising 7 CFR 701.51 to clarify the calculation of the maximum cost-share percentages for the Emergency Conservation Program (ECP); and (2) revise § 701.70 to provide, uniformly for the Agricultural Conservation Program (ACP), the ECP, and the Forestry Incentives Program (FIP), that, for program purposes, an applicant will not be considered to have incurred costs which can be reimbursed under the program to the extent that the applicant has, or will, be compensated for such costs by third persons who are not themselves approved for program assistance for the project. The proposed rule would allow an exception to the third-party to the extent that the local State Agricultural Stabilization and Conservation Committee (ASC Committee), acting in accordance with instructions issued by the Deputy Administrator for State and County Operations (DASCO) of the Department's Agricultural Stabilization and Conservation Service (ASCS), determines that an exception is needed to accomplish program goals.

DATES: Comments must be received on or before April 27, 1990, in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments to: James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202–447–6221.

FOR FURTHER INFORMATION CONTACT: James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202–447–6221.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed for compliance with Executive Order 12291 and Departmental Regulation No. 1521–1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Title—Agricultural Conservation Program (ACP), Number—10.063; Title—Emergency Conservation Program (ECP), Number—10.054; Title—Forestry Incentives Program (FIP), Number 10.064; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

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

Authority for the ACP, ECP, and FIP is found in the Soil Conservation and Domestic Allotment Act of 1936, the Agricultural Credit Act of 1978, and the Cooperative Forest Assistance Act of 1978.

The statutory provisions authorizing the ACP provides in 16 USC 590h that the amount of cost-share assistance made available for approved projects shall be that amount which the Secretary of Agriculture determines necessary, taking into account: (1) The amount of expected conservation or environmental benefit accruing to the public; (2) the total cost of carrying out needed measures; (3) the degree to which appropriate conservation or pollution abatement practices will be applied in the absence of financial assistance; and (4) in order to avoid duplication of assistance, the degree to which the agricultural producer benefits from other public programs for conservation and environmental enhancement.

The ECP statute also does not set specific cost-share rates. Rather, it provides generally in 16 U.S.C. 2201 that the Secretary is authorized to make payment to approved agricultural producers who carry out emergency measures to control wind erosion on farmland or to rehabilitate farmland damaged by wind erosion, floods, hurricanes, or other natural disasters when, as a result of these conditions, new conservation problems have been created that: (1) If not treated, will impair or endanger the land; (2) materially affect the productive capacity of the land; (3) represent damage that is unusual in character and, except for wind erosion, is not the type that would recur frequently in the same area; and (4) will be so costly to rehabilitate that Federal assistance is or will be required to return the land to productive agricultural use.

FIP is authorized by the Cooperative Forest Assistance Act of 1978. The provisions set forth at 16 U.S.C. 2103 authorize the Secretary to develop a forestry incentives program to encourage the development, management and protection of nonindustrial private forest lands. The Secretary is permitted to make cost-shares available to approved landowners in the amount determined by the Secretary to be necessary, but not to exceed 75 percent of the actual costs incurred by the landowner.

First, because there has been some confusion about the ECP assistance calculation, this rule proposes clarifying

the provisions of § 701.51 regarding the maximum ECP cost-share allowance.

Second, funds for the ACP, the ECP, and the FIP are limited. This rule would also revise the regulations to provide uniformly for all three programs that a program applicant will not be considered to have incurred reimbursable costs, for program purposes, to the extent that the applicant has, or will, receive a contribution from third-parties who are not themselves eligible and approved for program assistance for the project. Local State ASC committee would be permitted to grant an exception to this "third-party" rule where the committee determines, acting in accordance with instructions from DASCO, that an exception is necessary to accomplish program goals. In no case, however, could the assistance received by the applicant exceed the net contribution that the applicant has otherwise made to the project (that is, the contribution made by the applicant independent of the actual or pending contribution of third-parties). This limitation is in addition to other limitations on payments that apply under part 701.

List of Subjects in 7 CFR Part 701

Disaster assistance, Forests and forest products, Grant programs, Natural resources, Rural areas, Soil conservation, Water resources, Wildlife.

Proposed Rule

Accordingly, it is proposed that the regulations at 7 CFR part 701 be revised as follows:

PART 701—CONSERVATION AND ENVIRONMENTAL PROGRAMS

1. The authority citation for part 701 shall be revised to read as follows:

Authority: 16 U.S.C. 590d, 590g–590o, 590p(a), 590q, 1501–1510, 1606, 2101–2111, 2201–2205; 48 U.S.C. 1469d(c).

2. Section 701.51 shall be revised to read as follows:

§ 701.51 Extent of cost-sharing.

(a) The maximum payment under this subpart per person, per disaster, is limited to $200,000, including the amount of any payment received by such person as the result of a disaster under a pooling agreement.

(b) The cost-share payments which may be made by ASCS for a practice under the program shall, subject to the maximum payment amount specified in paragraph (a) of this section and any other limitation as may apply, be further limited to the level of cost-share assistance established by the county committee not to exceed the following amounts:

(1) 64 percent of the first $62,500 of eligible reimbursable costs; plus

(2) 40 percent of the second $62,500 of eligible reimbursable costs; plus

(3) 20 percent of the remaining eligible reimbursable costs up to such amount as would produce a cost-share not in excess of the limitation in paragraph (a) of this section.

3. Section 701.70 is revised to read as follows:

§ 701.70 Practices carried out with aid from ineligible persons.

(a) Except as provided in paragraph (b) of this section, financial assistance which is made available, or will be made available, to a program participant from a person ineligible for cost-share assistance under this part for the practice, including aid from a State or Federal agency other than assistance made available under this part, shall be deducted from the program participant's total costs incurred for the practice for purposes of determining the applicant's eligible reimbursable costs under this part.

(b) Third party contributions need not be deducted under paragraph (a) of this section where it is determined by the State ASC Committee, in accordance with instructions of the Deputy Administrator, State and County Operations (DASCO), ASCS, that an exception would be in furtherance of program objectives. However, the total cost-share paid may not, in any case, exceed the net contribution (exclusive of any contribution by ineligible persons) otherwise made by the applicant to the cost of carrying out the practice.

Signed at Washington, DC, March 22, 1990.

John A. Stevenson,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 90-7066 Filed 3-27-90; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 89-222]

Horse Protection Inspection Guidelines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Horse Protection regulations to expand and clarify the procedures to be followed by Designated Qualified Persons in conducting inspections at horse shows, exhibitions, and sales or auctions. We believe these amendments are necessary to better protect horses under the Horse Protection Act.

DATES: Consideration will be given only to comments received on or before April 27, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 89–222. Comments received may be inspected at USDA, Room 1141, South Buidling, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Director, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, Room 269, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. (301) 436–8790.

SUPPLEMENTARY INFORMATION:

Background

The practice known as "soring" is the causing of suffering in show horses to affect their performance in the show ring. In 1970, Congress passed the Horse Protection Act (15 U.S.C. 1821–1831), referred to below as the Act, to eliminate the practice of soring, by prohibiting the showing or selling of sored horses. Exercising our rulemaking power under the Act, we issued regulations published at 9 CFR Part 11, referred to below as the regulations, that prohibit devices and methods that may sore horses. In 1979, in response to an amendment to the Act, we established guidelines under which show managements must, to avoid liability for any sore horses which are shown, hire individuals trained to conduct preshow inspections. These individuals, referred to as Designated Qualified Persons (DQP's), are trained and licensed under industry-sponsored DQP programs that we certify and monitor.

The requirements for DQP licensing are set forth in § 11.7 of the current regulations. As part of the licensing process, prospective DQP's are trained in procedures we have established for examining a horse prior to exhibition. The inspection procedures include both examination by palpation of the horse's pasterns and visual examination of the horse. Representatives of both the horse industry and animal welfare organizations have suggested that the

current guidelines for preshow DQP examination of a horse are not detailed enough to ensure a uniform and adequate inspection of all horses examined by DQP's. In response to these concerns, we published an advance notice of proposed rulemaking on May 12, 1989 [54 FR 20605–20606, Docket No. 89–057], in which we solicited comments on how best to clarify and make more specific the DQP inspection procedures, so as to detect more effectively horses that are sore. We received seven comments in response to our notice, and have reviewed and analyzed each of the comments. In this document, we are proposing to add to the regulations a new section, and designate it § 11.21, regarding inspection procedures to be carried out by DQP's, as discussed below. Current §§ 11.21 and 11.22 would be redesignated as §§ 11.22 and 11.23 respectively.

Preshow Observation of Horse's Movement

We are proposing to specify procedures for the DQP to follow in conducting preshow inspections. We would specify that the DQP shall direct the custodian of the horse to walk and/or turn the horse in a manner that allows the DQP to determine whether the horse exhibits signs of soreness. While watching the horse move, the DQP would determine whether the horse moves in a free and easy manner and whether it is free of any signs of soreness, such as unusual posture, distressed expression, or a reluctance to move.

Other Preshow Inspection Techniques

Under this proposed rule, the DQP would be required to follow certain specified procedures in physically examining a horse. We would specify that the DQP shall digitally palpate the front limbs of the horse, with particular emphasis on the pasterns. The DQP would be required to examine the posterior surface of the pastern by picking up the foot and examining the posterior (flexor) surface. The DQP would be further required to apply digital pressure to the pocket (sulcus), including the bulbs of the heel, and continue the palpation to the medial and lateral surfaces of the pastern, being careful to observe for responses to pain in the horse. The DQP would also be required to extend the foot and leg of the horse, while continuing to hold onto the pastern, to examine the front (extensor) surfaces, including the coronary band. We are also providing that the DQP may examine the rear limbs of the horse in like manner when he deems it necessary.

In this proposed rule, we are also specifying that the DQP examine the horse to ensure that those pads, other devices, and substances prohibited by § 11.2 of the regulations are not used, that the DQP ensure that the restrictions on workouts and performances specified in § 11.2(d) of the regulations are complied with, and that the "scar rule" provisions in § 11.3 of the regulations are not violated.

We are also providing in this proposed rule that the DQP may carry out additional inspection procedures as he deems necessary to determine whether a horse is sore.

Inspection of Horses in Unloading and Barn Areas

We believe that inspection of horses in the unloading and barn areas of show or sale grounds would enable a DQP to detect soreness in horses and other violations of the regulations, such as the use of prohibited substances. We believe that such inspection should include observing the horses for signs of soreness, such as unusual posture, distressed expression, or reluctance to move. In order to establish effective procedures for such inspections, we are proposing to require that horse industry organizations or associations that are seeking, or that have been granted, certification of a DQP program submit to the Department for approval procedures for conducting such inspections. Those associations and organizations seeking DQP program certification would be required to submit the procedures for approval along with the other information required for Department approval under current § 11.7(b). Those organizations or associations with DQP programs that have already been certified would have 30 days from the publication date of the document making final this proposal to receive Department approval of such procedures.

Organizational Sanctions

We are proposing to provide in § 11.7 of the regulations that those DQP's who fail to follow the procedures that would be established by this proposed rule would be subject to sanctions by the organization that has licensed the DQP. Licensing organizations that fail to impose such sanctions when appropriate would be subject to decertification by the Animal and Plant Health Inspection Service.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291 and Departmental Regulation 1512–1, and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million;" would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The changes to the regulations in this proposed rule would make explicit the procedures Designated Qualified Persons (DQP's) must follow when inspecting horses in accord with the Horse Protection Act regulations. The proposed changes would help ensure that the procedures that DQP's are already trained in are uniformly followed. In addition to specifying procedures for physical examination of a horse, the proposed regulations would direct DQP's to observe the horse as it is walked and turned. Additionally, the proposed regulations would require that DQP programs include procedures for inspection of horses in unloading and barn areas. We expect that implementation of these regulations would cause no change in the number of shows inspected by DQP's. We do not believe that the cost to show management for a DQP's services would increase as a result of these proposed changes.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), we have submitted the information collecton provisions that are included in this proposed rule for approval to the Office of Management and Budget (OMB). Please send written comments concerning any information collection to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Submit a duplicate copy of

your comments to Regulatory Analysis and Development, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Humane animal handling, Soring of horses.

Accordingly, 9 CFR part 11 would be amended as follows:

PART 11—HORSE PROTECTION REGULATIONS

1. The authority citation for part 11 would continue to read as follows:

Authority: 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506.

2. In § 11.7, paragraphs (b)(6), (7), and (8) would be redesignated as paragraphs (b)(7), (8), and (9), respectively, and a new paragraph (b)(6) would be added to read as follows:

§ 11.7 Certification and licensing of designated qualified persons (DQP's).

(b) * * *

(6) Procedures for inspection of horses in the unloading and barn areas of show or sale grounds, prior to such horses being shown.

* * * * *

§ 11.7 [Amended]

3. In § 11.7, paragraph (f)(1), the first sentence would be revised to read as follows: "Each horse industry organization or association having a DQP program certified by the Department shall issue a written warning to any DQP whom it has licensed who violates the rules, regulations, by-laws, or standards of conduct promulgated by such horse industry organization or association pursuant to this section, who fails to follow the procedures set forth in § 11.21 of this part, or who otherwise carries out his duties and responsibilities in a less than satisfactory manner, and shall cancel the license of any DQP after a second violation."

4. In § 11.7, paragraph (g), the first sentence would be revised to read as follows: "Any horse industry organization or association having a Department certified DQP program that has not received Department approval of the inspection procedures provided for in paragraph (b)(6) of this section, or that otherwise fails to comply with the requirements contained in this section, may have such certification of its DQP program revoked, unless, upon written notification from the Department of such failure to comply with the requirements in this section, such organization or association takes immediate action to rectify such failure and takes appropriate steps to prevent a recurrence of such noncompliance within the time period specified in the Department notification, or otherwise adequately explains such failure to comply."

§ 11.20 [Amended]

5. In § 11.20, paragraph (b)(2), the third sentence would be revised to read as follows: "Such physical examination shall be conducted in accord with the inspection procedures provided for in § 11.21 of this part."

6. Sections 11.21 and 11.22 would be redesignated as §§ 11.22 and 11.23 respectively, and a new § 11.21 would be added to read as follows:

§ 11.21 Inspection procedures for designated qualified persons (DQP's).

(a) Preshow inspection. (1) During the preshow inspection, the DQP shall direct the custodian of the horse to walk and/or turn the horse in a manner that allows the DQP to determine whether the horse exhibits signs of soreness. The DQP shall determine whether the horse moves in a free and easy manner and is free of any signs of soreness.

(2) The DQP shall digitally palpate the front limbs of the horse, with particular emphasis on the pasterns. The DQP shall examine the posterior surface of the pastern by picking up the foot and examining the posterior (flexor) surface. The DQP shall apply digital pressure to the pocket (sulcus), including the bulbs of the heel, and continue the palpation to the medial and lateral surfaces of the pastern, being careful to observe for responses to pain in the horse. While continuing to hold onto the pastern, the DQP shall extend the foot and leg of the horse to examine the front (extensor) surfaces, including the coronary band. The DQP may examine the rear limbs of the horse in like manner when he deems it necessary. While carrying out the procedures set forth in this paragraph, the DQP shall also inspect the horse to determine whether the provisions of § 11.3 of this part are being complied with.

(3) The DQP shall observe and inspect the horse to determine whether the provisions of § 11.2 of this part are being complied with.

(b) The DQP may carry out additional inspection procedures as he deems necessary to determine whether the horse is sore.

(c) The DQP shall assess appropriate penalties for violations, as set forth in the rule book of the certified program under which the DQP is licensed, and shall report all violations, in accord with § 11.20(b)(3) of this part.

* * * * *

§ 11.24 [Amended]

7. In § 11.24, paragraph (a), first sentence, the words "§ 11.21(a)(1) through § 11.21(a)(6)" would be removed, and the words "§ 11.22(a)(1) through 11.22(a)(6)" would be added in their place.

Done in Washington, DC, this 23rd day of March 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-7068 Filed 3-27-90; 8:45 am]

BILLING CODE 3410-34-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Rel. No. 34-27834; File No. S7-5-90]

Exemption of Securities Underlying Market Baskets From Registration Under Section 12(a)

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing new Rule 12a-7 under the Securities Exchange Act of 1934 ("Act"). The Rule would exempt from the registration provisions of section 12(a) of the Act securities that are traded as part of a market basket transaction provided that each component security otherwise is a national market system security and is listed and registered on another national securities exchange or quoted on the National Association of Securities Dealers Automated Quotation System. In addition, to be eligible for the exemption the stocks must be part of a standardized market basket containing at least 100 securities. The exemption would be applicable only to facilitate the trading of securities as part of a standardized market basket, including any delivery and settlement requirements, that has been approved for exchange trading by the Commission.

DATES: Comments must be received on or before April 27, 1990.

ADDRESSES: Persons wishing to submit written comments should file 3 copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Reference should be made to File No. S7-5-90. Copies of the submission and all written comments will be available for public inspection and copying at the Commission's Public Reference Room,

450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Sharon Lawson, Special Counsel, (202) 272-2406, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission ("SEC") is today proposing for comment Rule 12a-7 ("Proposed Rule") under the Securities Exchange Act of 1934 ("Act"). Under the Proposed Rule, securities comprising a market basket could be traded on a national securities exchange, solely as part of the market basket, without registering the securities on such an exchange under section 12 of the Act, provided the conditions specified in the Proposed Rule are satisfied at or prior to execution of the market basket trade.

Section 12 of the Act requires any security, other than an exempt security, to be registered in accordance with the requirements of that section before it can be traded on a national securities exchange. Section 12(f) of the Act, however, permits the Commission to extend unlisted trading privileges ("UTP") to national securities exchanges if the security is registered pursuant to section 12 of the Act or would be required to be so registered except for the exemption from registration provided in section 12(g) of the Act.[1] Before approving an application for UTP, 10 days notice must be given to the issuer of the security and the exchange on which the security is registered.[2] In the past the Commission routinely has granted UTP on stocks that were listed and registered on other national securities exchanges. In granting UTP on such stocks the Commission has relied on the fact that transactions in these securities are reported and consolidated with reports from other markets pursuant to the consolidated Transaction Reporting Plan.[3] In addition, the Commission has approved UTP in 25 OTC stocks on a pilot basis for the Midwest Stock Exchange, Inc. ("MSE").[4]

Recently the Commission approved two proposals to permit exchange trading of market baskets or stock portfolios.[5] The Chicago Board Options Exchange, Inc. ("CBOE") was granted approval to trade market baskets based on the Standard & Poor's ("S&P") 100 and 500 Indexes [6] while the New York Stock Exchange, Inc. ("NYSE") was granted approval to trade Exchange Stock Portfolios ("ESPs") based on the S&P 500 Portfolio Index.[7] Because transactions conducted on an exchange in market baskets entail transactions in each security comprising the basket,[8] section 12 would require the exchange to have registered, or to be granted UTP for, each individual security comprising the market basket.

In conjunction with their market basket proposals, both the NYSE and CBOE submitted applications for UTP on those stocks that comprise their market basket products that were not currently registered under section 12 on their respective exchanges.[9] The CBOE requested UTP on the 500 securities comprising the S&P 500 Index at the time of its UTP request. The NYSE requested UTP on 205 stocks, 39 of which were included in the S&P 500 Index and the remainder of which the NYSE believed might possibly be included in the S&P 500 on some future date.[10] The UTP applications of both markets were for the limited purpose of trading in the proposed market baskets.[11]

Because S&P can announce changes and substitutions in its indexes at any time,[12] however, trading in market baskets could be disrupted if the CBOE or NYSE had to submit a UTP application for the replacement security and wait the 10 day notice period required by section 12(f)(5) of the Act before its application could be approved. Many institutions, especially those using passive investment strategies, want to hold the securities included in widely published indexes such as the S&P 100 and S&P 500. To the extent that the NYSE or CBOE could not modify their market basket composition to reflect changes in these indexes as soon as Standard & Poor's made a change, market baskets would become a less cost-effective and efficient trading method, thereby decreasing their usefulness. For example, if Standard and Poor's announced a replacement security for the S&P 500 Index, buyers of a market basket that includes a security no longer included in the index would have to sell that security and buy the replacement security to assure that their market basket adequately reflected the index. These additional transactions would add unnecessary transaction costs, as well as a new basis risk,[13] for

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[1] Under section 12(f)(2) of the Act, in order to approve an application for UTP, the Commission must find that such a grant of UTP is consistent with the maintenance of fair and orderly markets and the protection of investors. In addition, if the Commission is considering an application for UTP on a security that is not registered on another national securities exchange, section 12(f)(2) directs the Commission to consider the public trading activity in such security, the character of such trading, the impact of granting UTP on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

[2] *See* section 12(f)(5) of the Act.

[3] The Consolidated Transaction Reporting Plan ("Plan") is an effective transaction reporting plan under Rule 11Aa3-1 under the Act. *See* 17 CFR 240.11Aa3-1. In conditioning the grant of UTP on reporting under the Plan, the Commission has stated that the availability of last sale information on securities traded pursuant to UTP should contribute to pricing efficiency and to ensuring that transactions on the market granted UTP are executed at prices which are reasonably related to those occurring in other markets.

[4] *See* Securities Exchange Act Release No. 24407 (April 29, 1987), 52 FR 17349 approving an MSE pilot program for UTP on 25 OTC issues subject to the development of a joint transaction reporting plan to accommodate such trading. *See also* Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38840 which announced the Commission's willingness to grant UTP on OTC securities if certain conditions were met.

[5] Market baskets or stock portfolios enable the trading of standardized baskets of stocks at an aggregate price in a single execution on an exchange floor. A trade in a market basket or portfolio results in a transfer to the buyer of ownership of each of the component stocks. When the transaction is completed, the buyer will be entitled to all rights attending ownership of the basket component stocks (including rights to vote and receive dividends), and will be free to sell or hold each stock separately.

[6] *See* Securities Exchange Act Release No. 27383, 54 FR 45846.

[7] *See* Securities Exchange Act Release No. 27382, 54 FR 45834. As discussed in more detail in that Release, the S&P 500 Portfolio Index is nearly identical to the S&P 500 Index containing the same stocks. The only differences are that the Portfolio Index will not contain fractional shares and will not necessarily be adjusted everytime S&P adjusts the S&P 500 Index.

[8] *See* note 5, *supra*.

[9] The indexes are comprised of stocks listed and registered on the American and New York Stock Exchanges in addition to stocks quoted on the National Association of Securities Dealers Automated Quotation System ("NASDAQ").

[10] The NYSE stated that UTP in these additional 166 issues only will be used to the extent these securities are actually included in the S&P 500 Stock Portfolio Index.

[11] The Commission approved the UTP applications of the NYSE and the CBOE, respectively, in Securities Exchange Act Release Nos. 27386 and 27387, 54 FR 45860 and 45862. The grant of UTP in the subject securities was specifically limited to trading the securities as part of the market basket products approved by the Commission for the CBOE and NYSE.

[12] S&P recently announced that changes in their indexes will be announced one week in advance although it is not obligated to do this in every case. Changes are generally announced on Wednesdays. Changes in an index occur for a variety of reasons such as the elimination of a component security due to a merger, acquisition, or going private transaction.

[13] For example, the price of the S&P 500 Index, as amended, could deviate by more than a minimal amount from the price of the component stocks of the market basket contract if the exchange traded contract was unable to be amended immediately.

buyers of market baskets. Moreover, these transactions also could disrupt the underlying markets for both the substituted securities and their replacements by adding buying or selling demand merely to adjust the basket.

In order to avoid unduly disrupting the trading in stock market baskets on an exchange any time a stock in an index on which the market basket is based is replaced, the Commission has decided to propose for comment Proposed Rule 12a–7. This rule would exempt from the registration requirements of section 12(a) of the Act, solely for the purpose of conducting market basket transactions, those stocks that comprise the market basket if certain conditions are met.

II. Discussion

Proposed Rule 12a–7, if adopted by the Commission, would provide a limited exemption from the registration requirements of section 12(a) of the Act for those stocks that are traded on an exchange only as part of a standardized market basket.[14] Under the terms of the Proposed Rule the exemption only would be available for stocks included in a standardized market basket if the market basket has been approved by the Commission for listing on a national securities exchange pursuant to the requirements of section 19(b) of the Act. Accordingly, the exemption under the Proposed Rule would be immediately available for those stocks included in the two market basket proposals that were recently approved by the Commission.[15]

Further, to be eligible for the exemption under the Proposed Rule, a stock must be a national market system ("NMS") security as defined in Rule 11Aa2–1 under the Act and either (1) registered on another national securities exchange or (2) quoted on NASDAQ. These requirements are important because NMS securities that are quoted on NASDAQ must meet the additional NASDAQ/NMS eligibility criteria, which require such stocks, with limited exceptions for insurance and investment companies, to be registered under section 12(g) of the Act.[16] In addition, the information that must be provided by the issuer to register securities under section 12(g) is substantially similar to the information required to register a security on a national securities exchange under section 12(b). Accordingly, the requirement that stocks either be registered on a national securities exchange or quoted on NASDAQ/NMS to be eligible for an exemption under the Proposed Rule ensures that information on such stocks is readily and publicly available, consistent with the purposes underlying the registration requirements of section 12.[17]

Finally, as noted above, only NMS securities as defined in Rule 11Aa2–1 under the Act could be exempted from the registration provisions of section 12 under the Proposed Rule. This requirement is significant because to be designated a NMS security last sale information must be reported through a consolidated transaction reporting system under Rule 11Aa3–1. Although individual transactions in exempted securities would not be permitted under the Proposed Rule, the Commission believes that consolidated transaction data is an important requirement for all individual stocks traded as part of a market basket on an exchange, because a buyer of a basket takes ownership of each component stock and will be free to sell or hold each stock separately. We also note that OTC securities that are designated NASDAQ/NMS must meet specific quantitative and qualitative requirements similar to those required for exchange listed stocks.[18] Accordingly, the NMS designation will ensure that all the stocks eligible for an exemption under the Proposed Rule are active and liquid stocks.

Because the Proposed Rule would grant an exemption from the registration requirements of section 12(a) only for the limited purpose of trading the stocks as part of a Commission approved market basket and then only if all of the conditions of the Proposed Rule, discussed above, are met, the Commission preliminarily believes that the Proposed Rule ensures that the regulatory purposes underlying section 12 will be met. First, with the limited exception for certain investment and insurance companies discussed above, only securities registered under either section 12(b) or 12(g) of the Act could be exempted under the Proposed Rule, thereby assuring that information about the issuers of those securities is available to the public.[19] Secondly, last sale reports must be available on a security for it to be eligible for the exemption. Finally, the Commission will continue to ensure that it is appropriate to grant stocks comprising a particular market basket an exemption under section 12(a) through its authority under section 19(b) to review market basket proposals of the national securities exchanges.[20]

The Commission recognizes that Proposed Rule 12a–7 would have the effect of eliminating the requirements for a discrete notice and comment period for each unlisted trading privilege application. The Commission preliminarily believes that this result is justified because a limited basket UTP application should not have the potential of changing the primary locus of trading for the market in the individual stock. In this regard, we note that each individual stock that is a component of a market basket only

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[14] Under the Proposed Rule, the term "standardized market basket" is defined as a group of at least 100 stocks purchased or sold in a single execution and at a single trading location with physical delivery and transfer of ownership of each component stock resulting from such execution.

[15] *See* notes 6 & 7, *supra*. Of course a stock would have to meet the other requirements of the Proposed Rule to be granted an exemption from registration.

[16] *See* NASD By-Laws, Schedule D, Part III, Para. 1810. The NASD's rules authorize the securities of insurance companies meeting the conditions of Section 12(g)(2)](G) of the Act and closed-end investment companies registered under Section 8 of the Investment Company Act of 1940 and whose securities are registered under the Securities Act of 1993 to be designated NASDAQ/NMS securities. Such issuers are subject to comprehensive disclosure under state law and the federal securities laws, respectively. American Depository Receipts based on the equity security of a foreign issuer also are eligible for NASDAQ/NMS inclusion if the underlying equity securities are registered under Section 12 of the Act.

[17] *See also* note 18, *infra*, and accompaning text discussing the importance of NMS designation.

[18] For example, these requirements set forth quantitative standards for inclusion in NASDAQ/NMS such as minimum public float and market value in addition to certain corporate governance standards such as requirements for independent directors and shareholder approval of certain stock issuances. We note that the standards for NASDAQ/NMS designation are higher than the standards for simply having a security quoted on NASDAQ.

[19] As noted above, under the NASDAQ/NMS criteria there is a limited exception from Section 12(g) registration for certain insurance and investment companies. Accordingly, NASDAQ/NMS quoted securities from these types of issuers, if included in a market basket, could be granted an exemption under the Proposed Rule even though they are not registered under Section 12. The Commission, however, believes this result is justified because such issuers are subjected to other comprehensive disclosure requirements. *See* note 16, *supra*.

[20] In limiting the exemption under the Proposed Rule to stocks included in market baskets that are only traded on a national securities exchange, the Commission does not intend to raise any implications that it believes such a market basket would not be appropriate for quotation on the NASDAQ System. Unlike the registration requirements for securities traded on exchanges under section 12(a) of the Act, there is no section of the Act that would prohibit the NASD from trading exchange listed stocks as part of a market basket approved by the Commission. The Commission, however, recognizes the competitive implications of exchange off-board trading restrictions that would prohibit exchange members from trading certain securities off an exchange floor. In this context, the Commission would be concerned about any exchange restrictions that would limit the ability of a market to quote and trade a market basket product similar to the market baskets approved for trading on the NYSE and CBOE.

accounts for a small component of the total index value [21] and that stocks eligible for the 12(a) exemption under the Proposed Rule can only be traded as part of the market basket. Accordingly, we believe that the impact on a particular underlying stock will be minimal. Finally, through the section 19(b) review process of market basket proposals and public comment on such proposals, the Commission will have an opportunity to assess the overall impact market basket trading may have on the stocks which are included in the basket and address any concerns.[22] In light of the benefits to be achieved by market basket trading, we do not believe on balance that any further regulatory goals would be achieved by requiring the exchanges to register, or apply for UTP, on each individual stock included in a market basket. To the contrary, it is our preliminary belief that without the availability of the exemption in the Proposed Rule, trading in market baskets could be unduly disrupted every time a security is replaced by another for little public benefit.

Commentators are invited to address generally whether the Proposed Rule is appropriate under the Act. In addition, specific comment is solicited on whether the conditions in the Proposed Rule are sufficient to ensure that the regulatory concerns underlying section 12 registration are not undermined. We also encourage comment on whether any of the terms and conditions in the Proposed Rule are unduly restrictive, overbroad, or unnecessary. Finally, we solicit comment on any competitive concerns that may be raised by granting an exemption to the exchanges on NASDAQ quoted stocks included in a market basket.

III. Regulatory Flexibility Act Status

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. § 605(b), the Chairman of the Commission has certified that the Proposed Rule herein will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

[21] As noted above, the Proposed Rule only applies to standardized market baskets which contain at least 100 stocks.

[22] Although not all securities ultimately included in a market basket will be known at the time of the Commission's review of a proposal to trade a market basket due to future substitutions, we will know the characteristics and type of securities which are intended to be included in a proposed market basket.

IV. Statutory Basis

Proposed Rule 12a–7 is being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 3(a)(12), 6, 11A, 12 and 23(a)(1) of the Act.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

V. Text of Proposed Rule

On the basis of the above discussion, the Commission is proposing to amend part 240 of chapter II, title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * * § 240.12a–7 also issued under 15 U.S.C. 78a *et seq.*, particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12), 6, 15 U.S.C. 78(f), 11A, 15 U.S.C. 78k, 12, 15 U.S.C. 78(l), and 23(a)(1), 15 U.S.C. 78(w)(a)(1).

2. By adding § 240.12a–7 as follows:

§ 240.12a–7 Exemption of stock contained in standardized market baskets from section 12(a) of the Act.

(a) Any component stock of a standardized market basket shall be exempt from the registration requirement of section 12(a) of the Act, solely for the purpose of inclusion in a standardized market basket, provided that all of the following terms and conditions are met:

(1) The standardized market basket has been duly approved by the Commission for listing on a national securities exchange pursuant to the requirements of section 19(b) of the Act; and

(2) The stock is a National Market System security as defined in Rule 11Aa2–1 under the Act [17 CFR 240.11Aa2–1] and is either (i) listed and registered for trading on a national securities exchange by the issuer or (ii) quoted on the National Association of Securities Dealers Automated Quotation System;

(b) When used in this rule, the term "standardized market basket" means a group of at least 100 stocks purchased or sold in a single execution and at a single trading location with physical delivery and transfer of ownership of each component stock resulting from such execution.

Dated: March 22, 1990.

By the Commission.

Jonathan G. Katz,

Secretary.

Regulatory Flexibility Act Certification

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that proposed Rule 12a–7 set forth in Securities Exchange Act Release No. 27834, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are that (1) the proposed rule would exempt from the registration provisions of section 12(a) of the Act only those securities that are traded as part of a standardized market basket and (2) the trading of stocks on an exchange as part of a standardized market basket would not have a significant impact on the markets for the individual securities comprising the basket.

Richard C. Breeden,

Chairman.

March 22, 1990.

[FR Doc. 90–7088 Filed 3–27–90; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Part 250

[Release No. 35–25059; File No. S7–4–90]

Seeking of Additional Comment on Provisions Now in Rule 52 Providing for the Exemption of the Issue and Sale of Certain Securities by Public-Utility Subsidiary Companies of Registered Public-Utility Holding Companies and Exemption of Acquisition of Public-Utility Subsidiary Company Securities by Registered Holding Companies

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Proposed rule.

SUMMARY: The Commission is seeking comment on the need to revise rule 52, the adoption of which has been noticed in the **Federal Register** today, to possibly eliminate or modify certain of the conditions (that are now part of the rule) exempting certain transactions from the requirement of a declaration under section 6(a) of the Public Utility Holding Company Act of 1935 and from the application requirement of section 9(a) thereof.

DATES: Comments must be submitted on or before June 26, 1990.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street

NW., Mail Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–4–90. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: William C. Weeden, Assistant Director, (202) 272–7676, or Yvonne M. Hunold, Branch Chief, (202) 272–7676, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is seeking comment on the need to revise rule 52 under the Public Utility Holding Company Act of 1935 ("Act") (15 U.S.C. 79 *et seq.*) to possibly eliminate certain of the conditions that are now part of the rule. Rule 52, the adoption of which has been noticed in the **Federal Register** today, exempts the issuance and sale of certain securities by public-utility subsidiary companies of registered holding companies under specified conditions, and also includes an exemption, in accordance with section 9(c)(3) of the Act, to permit parent holding companies to acquire, without prior Commission authorization, the securities their subsidiaries would be permitted to issue under rule 52. The Commission is requesting comment on the need to revise rule 52 to eliminate certain of the specified conditions.

Executive Summary

The Commission has today published notice in the **Federal Register** of the adoption of rule 52, which gives effect to section 6(b) of the Act. That section directs that the Commission exempt from Commission review the issue or sale of securities by any public-utility subsidiary company of a registered holding company, so long as the issue and sale are solely for the purpose of financing the business of the public-utility company and have been expressly authorized by the state commission of the state in which the public-utility company is organized and doing business. Rule 52 is in furtherance of section 6(b) by establishing the appropriate conditions for exemption. In addition, rule 52 includes an exemption under section 9(c)(3) of the Act to permit parent holding companies to acquire, without prior Commission authorization, the securities to be issued by their public-utility subsidiaries under rule 52. Since registered holding companies may finance the activities of subsidiaries at the parent-company level rather than by causing their subsidiaries to issue securities directly to third parties, the financing transaction would result in the parent purchasing securities from the subsidiary. Section 9(a) of the Act requires such a transaction to receive prior Commission approval unless the transaction is exempted under section 9(c).

The Commission, upon further review, believes that certain of the conditions that are now part of the rule may not be necessary to fulfill the purposes of the Act. In order to permit the immediate realization of the rule's benefits, the Commission by separate notice is today approving its adoption. By this notice, the Commission is seeking comment on the need to revise the rule to possibly eliminate or modify certain of those conditions and seeks comment on that proposal.

Background

Section 6(a) of the Act provides, among other things, that it is unlawful for a subsidiary of a registered holding company to issue and sell securities unless it has filed a declaration that meets the terms and conditions of section 7, and which the Commission has permitted to become effective. Section 6(b) of the Act, however, directs the Commission to exempt from the requirements of section 6(a)

> the issue or sale of any security by any subsidiary of a registered holding company, if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company and have been expressly authorized by the State commission of the State in which such subsidiary company is organized and doing business * * *.

Thus, the Act expressly contemplates that the issue and sale of specified securities shall be exempt from the review procedures of section 6(a) where a state commission has exercised its authority to approve that issue and sale.

Section 6(b) also provides that the Commission may grant such exemptions "by rules and regulations or order, subject to such terms and conditions as it deems appropriate in the public interest or for the protection of investors or consumers * * *." In the past, the Commission has granted exemptions under section 6(b) upon application and pursuant to order, on a case-by-case basis.

Today, the Commission has published notice in the **Federal Register** of the adoption of rule 52 under the Act. The rule will eliminate a significant amount of the paperwork and costs currently associated with the filing of the lengthy application for a section 6(b) exemption and with the Commission's review of those applications for those subsidiaries of registered holding companies that meet the conditions specified in the rule. This streamlined procedure is consistent with the Congressional purpose in enacting section 6(b) "to exempt the issue of securities by subsidiary companies in cases where holding company abuses are unlikely to exist." [1]

In addition to implementing section 6(b) of the Act, rule 52 also includes an exemption under section 9(c)(3) of the Act to permit parent holding companies to acquire, without prior Commission authorization, the securities to be issued by their public-utility subsidiaries under rule 52. Since registered holding companies may finance the activities of subsidiaries at the parent-company level rather than by causing their subsidiaries to issue securities directly to third parties, the financing transaction would result in the parent purchasing securities from the subsidiary. Section 9(a) of the Act requires such a transaction to receive prior Commission approval unless the transaction is exempted under section 9(c).[2]

Discussion

Rule 52 exempts from the requirements of section 6(a) certain issues and sales of securities by utility subsidiaries of registered holding companies. If the issue and sale of such a security by a utility subsidiary of a registered holding company is to that holding company, such acquisition will also be exempt pursuant to section 9(c)(3) from the requirements of section 9(a) of the Act and rules thereunder.

Rule 52 provides that, for any security that meets the conditions in the rule, the issuer must file with the Commission, within 10 days after the issue or sale, a Certificate of Notification on Form U–6B–2 containing the information prescribed in that form.[3] The conditions specified by the rule are that:

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[1] H.R. Rep. No. 1903, 74th Cong., 1st Sess. 66–67 (1935).

[2] Section 9(a) says, in pertinent part:

> Unless the acquisition has been approved by the Commission * * * it shall be unlawful—
>
> (1) for any registered holding company * * * to acquire * * * any securities or utility assets or any other interest in any business;

Section 9(c)(3) excepts from the requirement of section 9(a) the acquisition of such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public interest or the interest of investors or consumers.

[3] With respect to exempt financing transactions between a parent holding company and a public-utility subsidiary that involve the repetitive issue or

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(1) The issue and sale of such security are solely for the purpose of financing the business of such public-utility subsidiary company;

(2) The issue and sale of such security have been expressly authorized by the state commission of the state in which such subsidiary company is organized and doing business;

(3) The issue and sale of such security will not cause the subsidiary company or the holding company system to exceed specified debt limits, or to fall below specified equity capitalization levels;

(4) Preferred stock, first mortgage bonds, or general and refunding mortgage bonds issued and sold conform with the Commission's Statements of Policy Regarding First Mortgage Bonds and Preferred Stock ("SOP"),[4] unless the company notifies the Commission in writing of its proposed deviation and the Commission states in writing that it has no objection;

(5) The issue and sale of common stock by the subsidiary company are only to the holding company;

(6) The issue and sale of securities to nonassociated persons occurs only when financing at the holding-company level is limited to common stock and short-term debt;

(7) The issue and sale of the security are either excepted from or in compliance with rule 50, or made after the company has notified the Commission in writing of its intent to issue and sell the securities pursuant to a negotiated offering and the Commission has stated in writing that it has no objection; and

(8) The security issued and sold is not convertible into any other security and does not (except for stockholders' preemptive rights) entitle the holder to purchase or otherwise acquire any other security.

Request for Comments

The Commission is seeking comment on the need to revise rule 52 to eliminate or modify certain of the conditions that are now part of the rule. The Commission questions whether these conditions are necessary to fulfill the purposes of the Act, and whether they may actually place unnecessary restraints on the ability of a public-utility holding company system to finance in an efficient and least-cost manner. Accordingly, the Commission is seeking comment on the need to revise rule 52 to eliminate or modify those conditions and requests public comment on the need for any of the conditions contained in subsections [a][3] through [a][8] of rule 52. In addition, the Commission seeks comments on broadening rule 52 to include consideration of other methods of financing between parent and subsidiary, to permit two-tier financing where financing at the holding-company level includes common stock and all maturities (long and short) of debt, and to include mortgage bonds other than "first mortgage bonds" and "general and refunding mortgage bonds." The Commission also seeks comments on the need to require Commission approval of the initial issue and sale of general and refunding bonds, and the need to continue to apply the provisions of the SOPs to bonds and preferred stock issued and sold by public-utility subsidiaries of registered holding companies.

There are eight conditions:

The first two conditions (1) that the issue and sale of such security are solely for the purpose of financing the business of such public-utility subsidiary company, and (2) that the issue and sale of such security have been expressly authorized by the state commission of the state in which such subsidiary company is organized and doing business are conditions mandated by section 6(b), and must therefore be retained in the rule.

The third condition holds the subsidiary companies and the registered holding company system to specified debt/equity levels. The Commission believes that market forces or, in many cases, corporate policies, may dictate lower debt and higher equity percentages than rule 52 would require. A utility company will seek these lower debt (and higher equity) levels to maintain its credit ratings and to satisfy state public utility commissions. Thus, the debt/equity ratios required of rule 52 may be unnecessary.

The fourth condition requires that preferred stock, first mortgage bonds, or G&R Bonds issued and sold conform with the Commission's SOP, unless the company notifies the Commission in writing of its proposed deviation and the Commission states in writing that it has no objection. The SOPs, published by the Commission's staff nearly 25 years ago, are anachronistic in today's financial markets. The requirement, for example, of limiting nonrefundability of first mortgage bonds to five years may well have been appropriate during the 1950s and 1960s, but has been a burden on the marketing of first mortgage bonds during the 1970s and 1980s. On many occasions the Commission has granted deviations from the five-year limitation to permit an offer of first mortgage bonds to be marketed successfully.[5] Other provisions of the SOPs that appear no longer useful or that may present a hindrance to the raising of capital by the registered holding-company system focus on dividend limitations, allowable funded debt as a percent of bondable debt, and short-term debt limitations.

Conditions five and six concern two-tier financing. Condition five requires that the issue and sale of common stock by the subsidiary company be only to the holding company. This limitation was appropriate and justifiable in 1935 because of the paucity of disclosure available to the prospective minority common stock shareholder of a public-utility subsidiary of a holding company. The Commission, in the early years of the Act's history, was concerned about the ability of the stock purchaser to evaluate, without adequate and verifiable disclosure, the potential disadvantages of owning a minority interest. The situation is quite different now. Accurate information is readily available to an investor through prospectuses, 10–K filings and other public information, which allows the investor to make an informed decision as to the advisability of purchasing a minority interest. Thus, the Commission believes there may no longer exist valid reason to prohibit the public-utility subsidiaries of registered holding companies from financing in a manner available to corporate subsidiaries generally.

Condition six restricts public debt and preferred stock financing at more than one level. Rule 52 as adopted permits two-tier debt financing if the debt at the holding company level is limited to short-term debt. The Commission now seeks comment on the need to remove limitations on two-tier financing generally, and seeks comment on whether any restrictions should remain.

Condition seven concerns compliance with the requirements for competitive bidding. Rule 50, promulgated in 1941,[6]

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sale of securities or are part of an intrasystem financing program involving the issuance and sale of securities not exempted by this rule, the filing of information on Form U–6B–2 may be done on a quarterly basis.

[4] Holding Co. Act Release Nos. 13105 and 13106 (February 16, 1956), as amended in Holding Co. Act Release Nos. 16389 and 16758 (May 8, 1969 and June 22, 1970, respectively).

[5] *See, e.g., Georgia Power Co.*, Holding Co. Act Release No. 25006 (December 20, 1989); *Mississippi Power & Light Co.*, Holding Co. Act Release No. 24883 (May 9, 1989); *Louisiana Power & Light Co.*, Holding Co. Act Release No. 24774 (December 25, 2988); and *Columbia Gas Sys., Inc.*, Holding Co. Act Release No. 24627 (April 22, 1988).

[6] Rule 50, subject to five specified exceptions, "is applicable to every declaration and application

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requires that holding companies or their subsidiaries seek competitive bids for the sale of their securities, unless otherwise exempted by the Commission. Rule 50 was adopted in response to practices, detailed in the legislative history of the Act, that involved collusive "bankers' schemes for security profits" [7] between investment bankers, frequently located outside of the service territories of the holding company system, and the managers of holding companies. Rule 50 was passed to assist the Commission in making the necessary findings under sections 7(d)(3), (d)(4), and (d)(6) [8] that capital has been raised in an economical and efficient manner, that the fees and commissions paid for the sale of securities are reasonable, and that the terms and conditions of the security are not detrimental to the public interest or the interest of investors or consumers, respectively.

It clearly was appropriate for the Commission to promulgate rule 50 in 1941, because the rule assisted the Commission in making the requisite findings in an expeditious manner. In recent years, however, the requirement of competitive bidding has imposed unnecessary and, at times, substantial financial hardship on jurisdictional utility systems.[9] With financial markets now experiencing increased volatility, registered holding companies must be afforded the flexibility enjoyed by nonjurisdictional companies to access capital markets in the most advantageous manner. They should be permitted to use competitive bids, negotiated sales, or private placements.

There now exist other protections beside the competitive bidding requirement to preclude the recurrence of the evils the Act was directed to prevent. For example, rule 70 [10] precludes investment banks and commercial banks headquartered in cities outside of the service territories of the holding company system from exerting undue influence on the management of the holding company system by expressly limiting the participation of bank employees on the boards of directors of registered holding companies and their subsidiaries. Second, the securities issued under this rule must be approved expressly by a state commission. State public-utility commissions of today are far more sophisticated than they were in the 1930s and 1940s and, because the securities that the Commission is proposing to allow to be issued under rule 52 must be expressly approved by a state commission, there can be no question that the state commissions can call into question any fees, expenses, terms, or conditions associated with the sale of a particular security. Third, there is an abundance of public information available that discloses the cost of capital incurred by the jurisdictional public-utility subsidiaries for public and private sales of securities. This kind of exposure makes it unlikely that a collusive transaction between public-utility management and an investment banker could be consummated.[11] And finally, the Commission is persuaded by its experience that utility managers will continue, under most circumstances, to utilize competitive bidding so as to ensure the most economical cost of capital for their companies.

Condition eight prohibits use of rule 52 to issue convertible securities. This provision stems from Congress' concern with the complex capital structures and, frequently, the inequitable voting power that characterized the early holding companies. The lack of adequate disclosure left an investor ignorant of the voting rights, if any, attached to a security or the potential dilutive effects a convertible security would have on the equity of a public-utility company. Thus, Congress in section 7(c)(1) of the Act limited the types of securities that the Commission may permit registered holding company systems to issue or sell to a common stock, a bond, a guaranty, or a trustee's certificate. Congress, however, recognized that the Commission should be afforded the flexibility to permit other forms of securities, as circumstances dictate, "for the purpose of financing the business of the declarant as a public-utility company * * *".[12] For the reasons expressed earlier, the Commission believes that today's security disclosure statements are sufficient to enable an investor to ascertain the rights associated with the purchased security as well as any potential dilutive effects a convertible security may have on the common equity of the holding company system.

The Commission requests public comment on the need to revise rule 52, and to eliminate or modify the conditions contained in subsections (a)(3) through (a)(8) of rule 52. In addition, the Commission seeks comments on broadening rule 52 to include consideration of other methods of financing between parent and subsidiary. In particular, the Commission requests comment on whether to expand the rule to permit

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regarding the issuance or sale of any securities of, or owned by, any registered holding company or subsidiary company thereof * * *" In particular, rule 50(b)(1), in relevant part, prohibits the Commission from authorizing a proposal that is subject to this rule unless:

(1) * * * the applicant or declarant– * * * publicly invite sealed, written proposals for the purchase or underwriting of such securities, and has complied with paragraph (c) hereof * * * In the event that at least two independent proposals for the purchase or underwriting of the securities are received, rule 50(c) provides, in relevant part, that:

(c) * * * the applicant or declarant may, without further order of or filing with the Commission, issue or sell the securities in accordance with the terms and conditions contained in the application, if granted or in the declaration, if effective;

Rule 50(c) does not permit the proposed issuance or sale of securities to be consummated in any other event without the filing of an amendment which shall include certain specified information and by further order of the Commission authorizing such issuance or sale

[7] H.R. Doc. No. 137, 74th Cong. 1st Sess. (1935).

[8] Section 7(d) provides, in relevant part, that the Commission "* * * shall permit a declaration regarding the issue or sale of a security to become effective" unless the Commission makes certain findings, including, among other things, that—

* * * * *

(3) financing by the issue and sale of the particular security is not necessary or appropriate to the economical and efficient operation of a business in which the applicant lawfully is engaged or has an interest;

(4) the fees, commissions, or other remuneration, to whomsoever paid, directly or indirectly, in connection with the issue, sale or distribution of the security are not reasonable;

* * * * *

(6) the terms and conditions of the issue or sale of the security are detrimental to the public interest or the interest of investors or consumers.

[9] *See, e.g., National Fuel Gas Co.*, Holding Co. Act Release No. 24438 (August 11, 1987); *Northeast Utils.*, Holding Co. Act Release No. 18974 (May 8, 1975).

[10] Rule 70(b) and 70(d) limit the participation of affiliated persons of commercial banks and investment banks whose principal place of business is located outside the state(s) served by the holding company system or the subsidiary company on the boards of directors of a registered holding company or a subsidiary company thereof to no more than 25% of the members of their respective boards of directors.

[11] To the extent the issuance or sale, through private placement or public offering, occurs in the state(s) in which the company operates, information concerning the terms and conditions of these securities should be provided in the form of a filing to the authorities involved. The issuing company will also be required, pursuant to the Act, to file on Form U–6B–2 the terms and conditions of any issuance or sale of such securities within 10 days after the transaction. Form U–6B–2 is a public document.

For comparative purposes, state authorities may rely on numerous public sources, such as newspapers (*e.g., The Wall Street Journal*), trade magazines (*e.g.*, Salomon Brothers), statistical listings of securities in the public markets (*e.g.*, Bond Market Roundup), and Merrill Lynch's publication, "Fixed Income Weekly."

[12] Section 7(c)(2)(B), which is the statutory basis for authorizing, for example, the issuance and sale of preferred stock by jurisdictional utility companies, provides, in relevant part, that:

(c) The Commission shall not permit a declaration regarding the issue or sale of a security to become effective unless it finds that—

* * * * *

(2) Such security is to be issued or sold solely * * * (B) for the purpose of financing the business of the declarant as a public-utility company.

two-tier financing where financing at the holding-company level includes common stock and all maturities (long and short) of debt, to allow the issue and sale of mortgage bonds other than "first mortgage bonds" and "general and refunding mortgage bonds," the need to approve the initial issue and sale of general and refunding bonds, and the need to continue to apply the provisions of the SOPs to bonds and preferred stock issued and sold by public-utility subsidiaries of registered holding companies.

Conclusion

The Commission is persuaded that the regulatory burden on registered holding-company systems may be further lessened by eliminating the conditions now contained in subsections (a)(3) through (a)(8) of rule 52.

Regulatory Flexibility Act Certification

Pursuant to, section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed revised rule will not, if adopted, have a significant economic impact on a substantial number of small entities.

Costs and Benefits

Revised rule 52 will substantially decrease regulatory compliance costs for the registered holding companies. In fiscal year 1989, for example, 20 applications would not have been filed had revised rule 52 been in place. In addition to the $2,000 filing fee per application, estimated savings per application would have been approximately $11,600 including legal, accounting, and management costs. Thus, for 20 applications filed in fiscal year 1989 the aggregate savings would have been approximately $272,000. Moreover, the reduction in aggregate Commission staff hours associated with reviewing and analyzing these applications would have been approximately 3,120 hours. The only cost incurred by the registered holding companies in complying with the revised rule involves completing a Form U-6B-2 after the issue or sale of any security. It is estimated that approximately 30 minutes will be required to complete such a form.

Paperwork Reduction Act

The Office of Management and Budget ("OMB") approved rule 52 for continued use through May 31, 1992 (Control No. 3235-0369). The revised rule is also subject to the Paperwork Reduction Act but will not be submitted to OMB because there will be no change in the record keeping or reporting requirements.

List of Subjects in 17 CFR Part 250

Utilities.

Text of Proposed Revised Rule 52

Part 250 of chapter II, title 17, *Code of Federal Regulations* is proposed to be amended as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for part 250 continues to read in part as follows:

Authority: Secs. 3, 20, 49 Stat. 810, 833; 15 U.S.C. 79c, 79t, unless otherwise noted.

2. Section 250.52 is revised to read as follows:

§ 250.52 Exemption of issue and sale of certain securities.

(a) Any registered holding-company subsidiary which is itself a public-utility company shall be exempt from section 6(a) of the Act or any rule thereunder with respect to the issue and sale of any common stock, preferred stock, mortgage bond, or of any note issued to a parent holding company the interest rates and maturity dates of which are designed to parallel a debenture or preferred stock issued by the parent holding company of which it is the issuer if:

(1) The issue and sale of such security are solely for the purpose of financing the business of such public-utility subsidiary company; and

(2) The issue and sale of such security have been expressly authorized by the state commission of the state in which such subsidiary company is organized and doing business.

(b) Within ten days after the issue or sale of any security exempt under this section, the issuer or seller shall file with the Commission a Certificate of Notification on Form U-6B-2 containing the information prescribed by that form. However, with respect to exempt financing transactions between a parent holding company and a subsidiary which involve the repetitive issue or sale of securities or are part of an intrasystem financing program involving the issuance and sale of securities not exempted by this rule, the filing of information on Form U-6B-2 may be done on a quarterly basis.

(c) If the issue and sale of a security which is exempted from the requirements of section 6(a) pursuant to section 6(b) and this section thereunder is part of a transaction in which a subsidiary utility company of a registered holding company is issuing and selling and such holding company is acquiring a security issued and sold by the subsidiary utility company, such acquisition is likewise exempt pursuant to section 9(c)(3) from the requirements of section 9(a) of the Act and rules thereunder.

By the Commission.

Dated: March 19, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-6836 Filed 3-27-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Belt Entry Review; Public Hearing

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public hearing; change of location.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold a public hearing to receive public comment on the Agency's report regarding belt conveyor entry ventilation in underground coal mines (55 FR 9732, March 15, 1990). The hearing will be held in Reston, Virginia.

DATES: All requests to make oral presentations for the record should be submitted at least five days prior to the hearing date. The order of appearance will be determined by the Agency prior to the hearing. Immediately before the hearing, any unallotted time will be made available to persons making late requests. The public hearing will be held on Wednesday, April 18, 1990, beginning at 9 a.m.

ADDRESSES: The hearing will be held in Reston, Virginia in the Auditorium of the U.S. Geological Survey, National Center, Room 1C111, 12201 Sunrise Valley Drive. (Located off of Reston Parkway).

Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203 or telephone the Office of Standards at (703) 235-1910.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On March 15, 1990, MSHA published a hearing notice (55 FR 9732). The hearing

was originally scheduled to take place in Washington DC, in the Main Auditorium of the Frances Perkins Department of Labor Building. However, the Agency now anticipates that more persons may wish to attend the hearing than can be accommodated by that auditorium. For this reason, MSHA has now set the hearing location at the U.S. Geological Survey, in Reston, Virginia which has a larger seating capacity, and has rescheduled the hearing for April 18, 1990.

Dated: March 22, 1990.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 90-7069 Filed 3-27-90; 8:45 am]

BILLING CODE 4510-43-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP7E3536/P506; FRL-3708-9]

Pesticide Tolerance for Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for residues of the pesticide chlorpyrifos in or on the raw agricultural commodities cherimoya, feijoa (pineapple guava), and sapote. The proposed regulation to establish a maximum permissible level for residues of the pesticide in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Written comments, identified by the document control number [PP 7E3536/P506], must be received on or before April 27, 1990.

ADDRESSES: By mail, submit comments to: Public Information Branch, Field Operations Division (H7506), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 246, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716B, CM No. 2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No.4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition 7E3536 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of California.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the pesticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol (TCP) in or on the raw agricultural commodities cherimoya, feijoa (pineapple guava), and sapote at 0.1 part per million (ppm), of which no more than 0.05 ppm is chlorpyrifos. The petition was later amended to propose the tolerance at 0.05 ppm for residues of chlorpyrifos per se in or on the named commodities.

The petitioner proposed that use on these commodities be limited to California based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year dog feeding study with no-observed-effect levels (NOELs) for cholinesterase (ChE) inhibition at 0.01 mg/kg/day for plasma, 0.1 mg/kg/day for red blood cells, and 1.0 mg/kg/day for brain cells.

2. A voluntary human study with a ChE NOEL of 0.03 mg/kg/day (based on 20 days of exposure at this level).

3. A 2-year mouse chronic toxicity/oncogenicity study with a NOEL of 15 ppm for systemic effects (equivalent to 2.25 mg/kg/day) and no carcinogenic effects observed under the conditions of the study at all levels tested (0.5, 5, and 15 ppm, equivalent to 0.07 mg/kg, 0.7 mg/kg, and 2.1 mg/kg).

4. A three-generation reproduction study with no reproductive effects observed at the dietary levels tested (0.1 mg/kg/, 0.3 mg/kg, and 1.0 mg/kg).

5. A rat teratology study which was negative for developmental toxicity at all dose levels (0.1, 3.0, and 15.0 mg/kg/day).

6. An acute delayed neurotoxicity study in the hen that was negative at 100 mg/kg.

7. A 2-year rat feeding/oncogenicity study with a NOEL of 0.1 mg/kg/day for systemic effects based on decreased plasma and brain cholinesterase activity and no observed carcinogenic effects at all levels tested (0.05, 0.1, 1.0, and 10 mg/kg/day) under the conditions of the study.

8. Several mutagenicity studies which were all negative. These include an Ames Salmonella assay; a CHO/HGPRT mutation assay; a micronucleus assay for chromosomal aberration; and an unscheduled DNA synthesis assay.

9. A general metabolism study in rats shows that the major metabolite of chlorpyrifos is TCP. TCP is considered to be less toxic than chlorpyrifos and is not a ChE inhibitor. Several available toxicity studies utilizing TCP are described below.

a. A 90-day rat feeding with a systemic NOEL of 30 mg/kg/day.

b. A 1-year chronic feeding study in dogs with a systemic NOEL of 3 mg/kg/day.

c. A rat teratology study with no developmental toxicity observed at the dosages tested (50, 100, and 150 mg/kg).

d. Mutagenicity studies (including an Ames Salmonella assay, a CHO/HGPRT assay, and an unscheduled DNA synthesis) were negative for mutagenic effects.

Existing tolerances for chlorpyrifos are established for combined residues of chlorpyrifos and its TCP metabolite. In the Registration Standard for Chlorpyrifos, dated June 1989, the Agency concluded that the TCP metabolite is less toxic than the parent compound and in some cases tolerances can be lowered by reducing the tolerances to levels adequate to cover residues for chlorpyrifos per se. The Agency is currently reviewing data that

will allow a comprehensive tolerance revision to remove TCP from the tolerance expression for many commodities. Tolerances for cherimoya, fiejoa, and sapote are proposed for chlorpyrifos per se since the residue data indicate that a tolerance of 0.05 ppm is adequate to cover residues of chlorpyrifos resulting from the proposed use of the pesticide.

The acceptable daily intake (ADI), based on the human voluntary ChE study (ChE NOEL of 0.03 mg/kg/day) and using a 10–fold safety factor, is calculated to be 0.003 mg/kg of body weight/day. The anticipated residue contribution (ARC) from dietary exposure to chlorpyrifos residues is estimated at 0.004216 mg/kg/day. The proposed tolerances will contribute a negligible incremental increase in dietary exposure and risk.

Although additional plant and animal metabolism data are needed to fully characterize the residues, the available metabolism data are adequate to support the proposed use of chlorpyrifos on these commodities.

An adequate analytical method, gas chromatography, is available in the *Pesticide Analytical Manual*, Vol. II (PAM II), for enforcement purposes. There is no expectation of secondary residues in meat and milk since cherimoya, feijoa (pineaple guava), and sapote are not animal feed commodities. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.342 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested person are invited to submit written comments on the proposed regulation. Comments should bear a notation indicating the document control number, [PP 7E3536/P506]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 16, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.342, by adding new paragraph (c), to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

(c) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the pesticide chlorpyrifos (*O,O*–diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate) in or on the following commodities:

Commodities	Parts per million
Cherimoya	0.05
Feijoa (pineapple guava)	0.05
Sapote	0.05

[FR Doc. 90-7077 Filed 3-27-90; 8:45 am]

BILLING CODE 6560-50-D

40 CFR Part 180

[PP 7F1910/P509; FRL-3735-1]

Pesticide Tolerance for Paraquat

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish tolerances for the desiccant, defoliant, and herbicide paraquat (1,1'-dimethyl-4,4' bipyridinium-ion) in or on the raw agricultural commodities (RACs) dry beans and bean straw. ICI Americas, Inc., requested the establishment of these maximum permissbile levels for residues of the herbicide.

DATES: Comments, identified by the document control number [PP 7F1910/P509], must be received on or before April 27, 1990.

ADDRESSES: By mail, submit written comments to: Information Services Branch, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW, Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of April 28, 1977 (42 FR 21640), which announced that Chevron Chemical Co., Ortho Division, 940 Hensley St., Richmond, CA 94804, had submitted a pesticide petition (PP 7F1910), proposing to amend 40 CFR 180.205 by establishing a tolerance to permit residues of the pesticide paraquat in or on the RAC beans (dry) at 0.3 part per million (ppm).

There were no comments received in response to the notice of filing.

The petitioner subsequently amended the petition by submitting a revised Section F proposing to establish a tolerance for residues of paraquat in or on the RAC bean straw at 30 ppm. Because there is a potential increase in risk to humans from the revision, the tolerance of 30 ppm on bean straw is being proposed for 30 days to allow for public comment.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data listed below were considered in support of these proposed tolerances:

1. Several acute studies placing technical-grade paraquat in Toxicity Category I.

2. A 1–year feeding study with dogs fed dosages of 0, 0.45, 0.93, and 1.51 milligrams/kilogram (mg/kg) of body weight (bwt) day with a no-observed-effect level (NOEL) of 0.45 mg/kg/day based on increased severity and extent of chronic pneumonitis in both sexes, especially the males, at 0.93 mg/kg/day.

3. A 2-year chronic feeding/oncogenicity study in mice fed dosages of 0, 1.87, 5.62, and 15/18.75 mg/kg day (the highest dosage had to be increased from 15 to 18.75 mg/kg/day (the highest dose tested [HDT]) and a systemic NOEL of 1.87 mg/kg/day based on renal tubular degeneration in the males and weight loss and decreased food intake in females.

4. A 2-year chronic feeding/oncogenicity study in rats fed dosages of 0, 1.25, 3.75, and 7.5 mg/kg/day with equivocal (uncertain) evidence of carcinogenicity (squamous cell carcinomas in the head region [ear, nasal cavity, oral cavity, and skin]) not associated with oral exposure but the result of topical exposure (through powdered diet) in males at 7.5 mg/kg/day (HDT) and an approximate systemic NOEL of 1.25 mg/kg/day based on incidences of opacities, cataracts, and nonneoplastic lung lesions (alveolar macrophages and eipthelialization, and slight peribronchiolar lymphoid hyperplasia).

5. A 2-year chronic feeding/oncogenicity study in rats fed dosages of 0, 0.3, 4.15/5.12 (M/F), and 12.25/15.25 mg/kg/day (HDT) and a systemic NOEL of 4.15/5.12 mg/kg/day based on increased mortality in males and females; decreased erythrocytes, hemoglobin, and serum protein in males and females; decreased hematocrit, glucose and corpuscular cholinesterase activity in males; decreased leukocytes, albumin to globulin ratio and alkaline phosphatase, GOT and GPT activities in females; increased polymorphonucleocytes in males; increased potassium and glucose in females; decreased absolute and/or relative weights of heart (males and females) and liver and brain (females); and increased absolute weights of kidneys (males and females) and the ovaries at 12.25/15.25 mg/kg/day (HDT).

6. A three-generation reproduction study with rats fed dosages of 0, 1.25, 3.75, and 7.5 mg/kg/day with no reproductive effects observed at 7.5 mg/kg/day (HDT) and a systemic NOEL of 1.25 mg/kg/day based on increased incidence of alveolar histiocytosis in the lungs of males and female parents.

7. A developmental toxicity (teratology) study in mice fed dosages of 0, 1, 5, and 10 mg/kg/day with no teratogenic effects occurring at dosages up to and including 10 mg/kg/day (HDT); a fetotoxic NOEL of 5 mg/kg/day based on partially ossified sternebrae at 10 mg/kg/day, and a maternal toxicity NOEL of 1.0 mg/kg/day based on weight reduction at 5.0 mg/kg/day.

8. A developmental toxicity study in rats fed dosages of 0, 1, 5, and 10 mg/kg/day with no teratogenic effects occurring at dosages up to and including 10 mg/kg/day with a fetotoxic NOEL of 1.0 mg/kg/day based on weight reduction and slight retardation in ossification at 5.0 mg/kg/day, and a maternal toxicity NOEL of 1.0 mg/kg/day based on piloerection, hunched appearance, weight loss and respiratory distress at 5.0 mg/kg/day.

9. Eighteen acceptable mutagenic studies were submitted for paraquat. These include six gene mutation assays with *S. typhimurium* (TA 92, TA 98, TA 100, TA 1535, TA 1537, and TA 1538, and G46 his^- strains), *A. nidulans* (strains 35 and P_3); and L5178Y mouse lymphoma cells in culture; four structural chromosome aberration assays; dominant lethal (Charles River CD-1 mice and Swiss-Webster mice); cytogenetic (human lymphocytes and two bone marrow assays of Wistar rats) and micronucleus in mice; seven DNA damage repair assays: *S. typhimurium* (TA 1978 and TA 1538 strains), *Saccaromyces cervesisiae* (D4, JDI, and "other" strains), human embryo epithelial cells; rat hepatocytes in culture; and sister chromatid exchange in Chinese hamster lung fibroblasts. Paraquat was negative in 10 studies (mostly gene mutation and chromosome aberration studies and one DNA damage/repair assay); weakly positive in four studies (two gene mutation, one chromosome aberration, and one DNA damage/repair assay); and positive in four studies (all DNA damage/repair assays).

The acceptable daily intake (ADI), based on the 1-year dog feeding study (NOEL of 0.45 mg/kg/day) and using a hundredfold safety factor, is calculated to be 0.0045 mg/kg/day. The theoretical maximum residue contribution from published tolerances for a 1.5-kg diet is calculated to be 0.001865 mg/kg/day. Published tolerances utilize 41.4 percent of the ADI. The current action will utilize an additional 0.9 percent of the ADI. The tolerances and previously established tolerances utilize a total of 42.38 percent of the ADI for overall U.S. population. For U.S. subgroup populations, nonnursing infants and children aged 1 to 6 years, the current action and previously established tolerances utilize, respectively, a total of 80.4 and 95.6 percent of the ADI, assuming that the residue levles are at the established tolerances and that 100 percent of the crop is treated.

There are no desirable data lacking for this chemical. There are currently no actions pending against the continued registration of this pesticide. The Agency (Peer Review Committee) initially classified paraquat as a "C" oncogen based on the significant increase of squamous cell carcinomas in the head region (ear, nasal cavity, oral cavity, and skin) of the high dose (7.5 mg/kg/day) male (Fischer rats) in the rat chronic feeding/oncogenicity study. Review of the study by an independent laboratory concluded that those tumor sites should not be combined; without the combination, there were no statistically significant tumor increases for any particular tumor type. Discussion and review by the Agency (Peer Review Committee) conlcuded that these tumor sites normally should not be combined when the exposure to the chemical is by the oral route and that these tumors are likely the result of topical exposure to paraquat contained in the powdered diet (paraquat is a topical irritant), not the result of exposure through the gastrointestinal tract. The Agency considered two additional studies (rat and mouse oncogenicity studies done by the Japanese) and further evaluated the tumors in the male rats. Based on all the information, the Agency concluded that there is no evidence of carcinogenicity in male Wistar (Japanese) rats at 12 mg/kg/day (HDT); female Wistar rats at 15 mg/kg/day (HDT); female and male mice (Japanese) at 13 mg/kg/day (HDT); male and female mice (SPF Swiss derived) at 15/18.75 mg/kg/day; and female Fischer rats at 7.5 mg/kg/day (HDT). The Agency concluded that there was at best equivocal evidence of carcinogenicity in male Fischer rats at

7.5 mg/kg/day and that this equivocal evidence was associated with irritation due to topical exposure, and not with oral exposure. According to EPA Carcinogenicity Guidelines, paraquat was, therefore, placed in Category E for the oral exposure route. Because paraquat is a restricted-use pesticide and precautionary measure are required to protect applicators from the acute toxicity of the chemical, the potential for oncogenic effects by excessive (irritating) topical exposure is not a concern for applicators.

The pesticide is useful for the purposes for which these tolerances are sought. The nature of the residues in plants and animals is adequately understood for the purpose of establishing the tolerances. Adequate analytical methodology (quantitation by spectrophotometry) is available for enforcement purposes. The method is listed in the Pesticide Analytical Manual (PAM), Vol. II, as method I for crops. Any secondary residues occurring in meat, milk, poultry, and eggs will be covered by existing tolerances on these commodities.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR part 180 would protect the public health. It is proposed, therefore, that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 7F1910/P509]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 16, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.205(a), by adding and alphabetically inserting entries for the following raw agricultural commodities, to read as follows:

§ 180.205 Paraquat; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Beans, dry	0.3
Bean straw	30.0
* * * * *	

[FR Doc. 90-7078 Filed 3-27-90; 8:45 am]

BILLING CODE 6560-50-D

40 CFR Part 799

[OPTS-42114; FRL 3712-9]

N-Methylpyrrolidone; Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a test rule under section 4 of the Toxic Substances Control Act (TSCA) that would require manufacturers and processors of *N*-methylpyrrolidone (NMP) (CAS No. 872-50-4) to test NMP for oncogenicity, mutagenicity, developmental toxicity, reproductive toxicity, neurotoxicity, subchronic toxicity, and pharmacokinetics. This proposed rule is being issued in support of the Consumer Product Safety Commission's (CPSC) need for health effects data on this substance. CPSC regularly reviews chemicals that may be used as substitutes for essential yet dangerous chemicals found in consumer goods. NMP is being reviewed because of its use as a substitute for methylene chloride in paint strippers.

DATES: Submit written comments on or before May 29, 1990. If persons request an opportunity to submit oral comments by May 15, 1990, EPA will hold a public meeting on this rule in Washington, DC. For further information on arranging to speak at the meeting, see Unit VIII. of this preamble.

ADDRESS: Submit written comments identified by the document control number (OPTS-42114) in triplicate to: TSCA Public Docket Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

A public version of the rulemaking record supporting this action is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is issuing a proposed test rule under section 4(a) of TSCA for health effects testing of NMP.

I. Introduction

A. Background

Section 4 of TSCA authorizes EPA to require testing of chemical substances and mixtures whose manufacture, processing, distribution in commerce, and use may present an unreasonable risk to human health or the environment, or which are produced in substantial quantities and may result in significant or substantial human exposure, if existing data are inadequate to reasonably determine the effects on human health. The health effects data obtained as a result of this rule would allow CPSC and EPA to determine if NMP does or does not present an unreasonable risk to human health if utilized as a substitute for methylene chloride. CPSC and EPA are aware that other pyrrolidones may be substituted for NMP, and it may be necessary to initiate separate rulemakings for these and other methylene chloride substitutes.

B. Test Rule Development under TSCA

Under section 4(a) of TSCA, EPA shall by rule require testing of a chemical to develop appropriate test data if the Administrator makes certain findings as described in TSCA under section 4(a)(1)(A) or (B). Discussions of the statutory section 4 findings are provided in EPA's first and second proposed test rules which were published in the **Federal Register** of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300).

In evaluating the testing requirements for NMP, EPA considered the specific testing needs requested by CPSC in addition to all available published and unpublished information on the production volume, use, exposure, and toxicity of this chemical. From its evaluation of these data, EPA is proposing specific health effects testing for NMP.

II. Review of Available Data

A. Profile

NMP is a colorless liquid with a mild amine odor; it has a molecular weight of 99.132 daltons and is infinitely soluble in water. NMP has a vapor pressure of 0.334 mm Hg at 25°C, a flash point of 95°C, and a boiling point of 202°C at 760 mm Hg (Ref. 1).

B. Production

NMP is currently produced in the US by two manufacturers at three plant sites: BASF Wyandotte Corporation (BASF) in Geismar, LA and GAF Corporation (GAF) in Calvert City, KY and Texas City, TX (Ref. 1). Public documents estimate 1989 production of NMP at 55 million pounds with annual market growth rates of 4 to 5 percent (Ref. 2). The sole importer of NMP is the Mitsubishi Corporation (Ref. 2). Known processors are listed in References 2 and 19.

C. Uses

NMP is an inert, stable, polar solvent that is used in a wide variety of processes. Its commercial uses result from its strong and frequently selective solvent power. In recent years, NMP has replaced other solvents of poorer stability, greater volatility, or better defined or known toxicity. One of the major uses of NMP is the extraction of aromatics from lubricating oils. It is also used as a medium for polymerization and as a solvent for finished polymers. It is the preferred solvent in a variety of chemical reactions and in the manufacture of numerous chemical intermediates and end products such as plastics, surface coatings, and pesticides. An important new use of this chemical is as a substitute for methylene chloride in paint strippers. NMP is also used in the recovery and purification of acetylenes, olefins, and diolefins, in the removal of sulfur compounds from natural and refinery gases, and in the dehydration of natural gas (Ref. 1).

D. Human Exposure

1. *Occupational.* The 1983 National Occupational Exposure Survey (NOES), conducted by the National Institute for Occupational Safety and Health (NIOSH), reports that over 71,000 US employees are potentially exposed to NMP in all uses at 3,527 plants (Ref. 5). Of this total, it has been estimated that over 19,000 are female. The National Occupational Hazard Survey (NOHS) reports that over 25,000 employees are exposed to NMP in all uses at 2,450 facilities (Ref. 5). It is estimated that 13 percent of all exposures result from exposure to the chemical during its manufacture, while an estimated 87 percent of all exposures result from exposure to trade name products which contain NMP.

Approximately 9 to 11 percent of the production volume of NMP is used for paint stripping and 2,200 to 7,800 workers at 220 to 380 facilities are reportedly exposed (Ref. 5). Dermal exposure is estimated to be between 300 to 1,000 mg/day, while inhalation exposure during various stripping applications including automotive, aircraft, military, furniture refinishing, and other specialty applications is estimated to range from approximately 0.2 to 12,000 mg/year depending on the job description (Ref. 5).

2. *Consumer.* NMP is estimated to be used in 10 percent of the paint strippers market, and an estimated 2.7 million consumers are currently exposed to NMP as a component in paint strippers (Ref. 6). As the market share for NMP increases, the number of consumers potentially exposed will also increase. EPA has estimated typical and heavy user exposure scenarios for low and high ventilation rates (Ref. 6). Estimated inhalation exposure for typical users under low ventilation is approximately 12,000 mg/year, while exposure under high ventilation is reduced to approximately 6,000 mg/year. Estimated inhalation exposure for heavy users under low ventilation is approximately 35,000 mg/year, while exposure under high ventilation is reduced to 18,000 mg/year. Dermal exposure for typical users is approximately 300 mg/year and dermal exposure for heavy users is approximately 1,000 mg/year. Consumer exposure estimates can vary greatly with changes in the assumptions used for the calculations. Exposure to NMP in paint strippers is a range of values depending on factors such as ventilation, application method, rate of NMP release to air, duration, and amount of stripper used.

E. Health Effects

1. *Oncogenicity.* The oncogenic potential of NMP was investigated by Lee in a 2-year inhalation study in rats (Ref. 7). No carcinogenicity data were presented in the report. However, it was summarized that a slightly greater incidence of pituitary tumors was found in both male and female rats at the low dose, but not at the high dose; female rats at the low dose exhibited a decreased incidence of mammary gland tumors and an increased incidence of mammary gland hyperplasia. The study is deemed inadequate for the evaluation of the oncogenic potential of NMP since: (1) Only one animal species was used; (2) the maximum tolerated dose might not have been reached; (3) detailed carcinogenicity data were not reported.

2. *Mutagenicity.* Wells (Ref. 8), Mortelmans (Ref. 9), and BASF (Ref. 10) reported that NMP was not mutagenic at various dose levels, in several *Salmonella* strains, with and without metabolic activation in the Ames *Salmonella*/ microsome assay.

BASF conducted a dominant lethal assay and chromosomal aberrations study (Ref. 11). Although BASF reported negative results in both studies, sufficient information on study methods and results were not provided and study adequacy could not be evaluated by EPA.

3. *Developmental toxicity.* Becci administered NMP dermally to rats during days 6 through 15 of gestation (Ref. 12). This study establishes both a lowest observed adverse effect level (LOAEL) and a no observed adverse effect level (NOAEL) of 750 mg/kg/day and 237 mg/kg/day, respectively, for rats for both maternal and developmental toxicity. Resorptions increased and fetal body weight decreased at the LOAEL. In addition, skeletal anomalies including missing sternebrae, fused/split/extra ribs, incomplete closing of the skull, incomplete ossification of vertebrae, fused atlas and occipital bones, and reduced or incomplete hyoid bone were observed at this dose.

Schmidt (Ref. 13) administered NMP in mice via intraperitoneal injection. He observed an increase in post-implantation loss and a reduction in the body weight of treated fetuses in addition to morphological defects including: exencephaly, open eyelids, microphthalmia, cleft palate, oligodactyly, shortened or kinked tails,

fusion and curvature of neck and chest vertebrae, and fusion of sternebrae and ribs. No data were provided on the maternal animals for either strain; thus, maternal toxicity is unknown. The study did not cover the major period of organogenesis (days 6 through 15) and insufficient doses were tested to establish a dose-response relationship.

BASF (Ref. 14) and Lee (Ref. 7) conducted developmental toxicity tests in rats and mice by various routes of administration. Although fetal malformations and developmental effects were noted in their results, each of the studies had inherent flaws.

Results of the Lee study were compromised because there was an aberrantly low number of corpora lutea in the animals of the low dose group. Because of the low number of corpora lutea/litter, values for resorptions/litter and mean fetal weight are misleading.

The methods used in the studies by BASF departed from EPA guidelines on many points which compromised the results. The most significant problems are: (1) No vehicle control group was used; (2) only two doses were used to establish a dose-response relationship; (3) the dose period did not cover the major portion of organogenesis; (4) maternal weights were not recorded; (5) there was no examination for internal, soft-tissue abnormalities and only limited summarized data were presented; thus, no statistical analysis could be performed.

4. *Reproductive toxicity.* No data were available on the reproductive toxicity of NMP.

5. *Neurotoxicity.* No data were available on the neurotoxicity of NMP.

6. *Subchronic toxicity.* GAF evaluated the subchronic effects of NMP in feeding studies in rats and mice (Ref. 15). Although GAF reported no treatment related histopathological or pathological effects, sufficient information on study methods and results was not provided and study adequacy could not be evaluated by EPA.

Becci administered NMP in the diet of Beagle dogs (Ref. 16). In male dogs, an apparent increase in megakaryocytes in the sternal marrow was observed with increased dose.

Lee evaluated toxicity by inhalation in rats exposed to an aerosol-vapor mixture of NMP (Ref. 7). Rats experienced excessive mortality and extreme respiratory difficulty at the high dose. Exposure was discontinued after 10 days. Focal pneumonia, bone marrow hypoplasia, atrophy of spleen and thymus lymphoid tissues, an increase in neutrophils, and a relative decrease in lymphocytes were observed. Clinical observations included lethargy and respiratory difficulty in all treated groups.

BASF and GAF conducted several subacute toxicity studies. No treatment-related pathological and/or histopathological abnormalities were reported (Ref. 1). Sufficient information on study methods and results were not provided and study adequacy could not be evaluated by EPA.

7. *Acute toxicity.* Acute toxicity data on NMP are summarized in the support document for this rulemaking. For more details on acute toxicity, see Reference 1.

8. *Pharmacokinetics.* Wells and Digenis (Ref. 18) observed rapid distribution of radiolabeled NMP in rats following intravenous administration. There was a significant decline in plasma levels after the first 30 minutes. Metabolites were measured approximately 4 hours after dosing. After 6 hours, the highest accumulation of radioactivity occurred in the liver and intestines although the thymus and bladder had the largest concentrations when expressed on a per gram of tissue basis. Elimination was predominately via the urine, but there was some elimination via the feces. The acid hydrolysis product of one of the three identified metabolites, 4-(methylamino)butanoic acid, accounted for 70 percent of the radiolabel excreted in urine.

III. Findings

Although findings under either sections 4(a)(1)(A) or (B) may independently support testing, EPA is proposing the testing of NMP under section 4(a)(1)(A) and (B) of TSCA.

Under section 4(a)(1)(B)(i), EPA finds that NMP is produced in substantial quantities and that there may be substantial human exposure to NMP during its manufacture, processing, and use.

Total imports and domestic annual production of NMP are in excess of 55 million pounds per year (Ref. 2). EPA finds that this amount is substantial as that term is used in TSCA section 4(a)(1)(B). An estimated 2.7 million consumers may be exposed to NMP when used in paint strippers as a methylene chloride substitute. An estimated 71,000 workers may be routinely exposed to NMP or products containing NMP during manufacture and processing and more than 19,000 of these workers are female (Ref. 5). EPA finds that the number of people who may be exposed to NMP is substantial as that term is used in TSCA section 4(a)(1)(B).

Under section 4(a)(1)(A)(i), EPA finds that the manufacture, processing, and use of NMP may present an unreasonable risk of injury to human health due to its potential to cause developmental and subchronic toxicity. The basis for the finding that NMP may cause developmental effects is presented in Unit II.E. and in References 12, 13, and 14, while the basis for the finding that NMP may cause subchronic toxicity is presented in Unit II.E. and in References 7, 15, and 16. Exposure to NMP is described in Unit II.D. and in References 5 and 6.

The finding that NMP may pose developmental toxicity is based upon a TSCA section 8(e) notice (Ref. 14). On October 23, 1987, mouse and rat teratology studies and a published developmental toxicity study were submitted. Additional information submitted on November 17, 1987, includes a summary of BASF's position on prenatal toxicity, summaries of two additional developmental toxicity studies of NMP, and summaries of developmental toxicity studies on pyrrolidone. Data in these reports suggest that NMP may cause developmental toxicity (Ref. 22).

The finding that NMP may pose subchronic toxicity is based on a 4-week inhalation study in rats providing evidence that NMP may have an effect on blood following subchronic exposure. Rats exposed to 1 mg/L (aerosols) for only 10 days showed depletion of hematopoietic cells in the bone marrow and atrophy of the lymphoid tissues of the thymus, spleen, and lymph nodes (Ref. 7). Refer to Unit II.E. and References 15 and 16 for additional details supporting this finding for subchronic toxicity.

The findings for the above potential health effects under section 4(a)(1)(A)(i), and the potential substantial human exposure, support EPA's concern that the manufacturing, processing, and use of NMP may present an unreasonable risk of injury to human health.

Under section 4(a)(1)(A)(ii) and (B)(ii), EPA finds that there are insufficient data and experience from which the potential health risks from manufacturing, processing, and use of NMP can reasonably be determined or predicted. The oncogenic potential of NMP was investigated by Lee in a 2-year inhalation study in rats (Ref. 7). However, the study appears to be inadequate for the evaluation of the oncogenicity of NMP (Ref. 20). EPA's risk assessment guidelines for oncogenicity state that a 2-year cancer bioassay in two species is necessary for risk assessment. A negative 2-year bioassay in one species is not adequate to eliminate a concern for the oncogenic

potential of a chemical. If the complete study by Lee is submitted to EPA before the final rulemaking and found adequate, then one additional bioassay in a different species would be necessary. If this complete rat study is not submitted to EPA or if it is submitted before the final rulemaking and found inadequate, then a two-species bioassay would be necessary.

Mutagenic effects of NMP were evaluated by BASF in a dominant lethal assay and a chromosomal aberration study. Although BASF reported negative results in both studies, sufficient information on study methods and results were not provided and study adequacy could not be evaluated by EPA (Ref. 21). If the complete study is not submitted to EPA or if it is submitted before the final rulemaking and found inadequate, then the studies would be required to be conducted according to EPA test guidelines and Good Laboratory Practice Standards (GLP).

Becci established the LOAEL and NOAEL for developmental and maternal toxicity in the rat (Ref. 12). However, the EPA guidelines require adequate developmental toxicity data on at least two mammalian species to perform risk assessments for developmental toxicity on NMP. Schmidt's study in the mouse is inadequate for risk assessment because none of the dosing regimens for the study included dosing at three different levels during gestation days 6 through 15 (Ref. 13). Other studies conducted by Lee and BASF on the developmental toxicity of NMP and submitted in the TSCA section 8(e) notice (Ref. 14) are inadequate for the reasons described in Unit II.E.

Lee evaluated the subchronic effects of NMP in an inhalation study in rats. However, EPA believes this study is inadequate for risk assessment (Ref. 17). Other subchronic toxicity studies that have been conducted are inadequate for reasons described in Unit II.E.

Wells and Digenis administered NMP in rats intravenously to study its distribution, metabolism, and elimination (Ref. 18). The intravenous route is required in the EPA pharmacokinetics test guideline. However, the intravenous portion of the test needs to be conducted concurrently with the dermal, oral, and inhalation routes because it provides a reference point (i.e., 100 percent Absorption) for the study. No data are available for dermal, oral, or inhalation routes. Therefore, an additional intravenous administration would be necessary to provide a reference point for these other routes.

No data are available on the reproductive toxicity or neurotoxicity of NMP. Therefore, EPA cannot evaluate NMP's potential reproductive or neurotoxic effects.

Under section 4(a)(1)(A)(iii) and (B)(iii), EPA finds that testing of NMP is necessary to develop such data for oncogenicity, mutagenicity, developmental toxicity, reproductive toxicity, neurotoxicity, subchronic toxicity, and pharmacokinetics. Once EPA makes the finding in either section 4(a)(1)(A)(i) or (B)(i), EPA may require any health effects testing for which EPA finds that there are insufficient data and for which testing is necessary to determine whether the substance presents or does not present an unreasonable risk to human health or the environment. EPA believes the data resulting from the proposed testing will be relevant to a determination as to whether manufacturing, processing, and use of NMP does or does not present an unreasonable risk of injury to human health. As noted, studies have been conducted on the mutagenicity and oncogenicity of NMP that have only been provided in summary form. These data may be submitted to EPA in response to this proposed rule. If EPA determines these studies are adequate, then the final test requirements for NMP would be modified accordingly.

Because of the above concerns for oncogenicity, mutagenicity, developmental toxicity, reproductive toxicity, subchronic toxicity, and neurotoxicity for the described exposures to NMP, EPA finds that pharmacokinetics test data are necessary. Ultimately, the purpose for generating pharmacokinetics data is for use in risk assessment. Such applications offer a means for making extrapolations of toxicologic data from species to species, from route to route of administration, and from high to low doses. Dose selections for the chronic toxicity studies would be improved by prior knowledge of the extent of absorption by the routes of administration to be used. In addition, data would be used to detect major differences between sexes relative to the processes of absorption, tissue distribution, biotransformation, and excretion. These data would also determine whether the extent of metabolism is modified by different routes of administration of the test substance or by repeated dosing.

IV. Proposed Rule

A. Proposed Testing and Test Standards

EPA is proposing that testing be conducted in accordance with TSCA GLP Standards (40 CFR part 792). The tests would be conducted according to specific test guidelines set forth in 40 CFR part 798 and other published tests would be conducted according to specific test guidelines set forth in 40 CFR part 798 and other published test methods as specified in this test rule for NMP and identified in the following table.

The pharmacokinetics test standards and reporting requirements are not being proposed at this time. Rather, EPA has decided to await publication of its generic pharmacokinetics test guideline. EPA plans to publish this generic guideline in the near future. Shortly after its publication, EPA also plans to propose in a separate **Federal Register** notice that pharmacokinetics testing of NMP be conducted according to this generic guideline with any chemical specific modifications to this guideline applicable to NMP. Reporting requirements for this test will concurrently be proposed.

PROPOSED TESTING, TEST STANDARDS AND REPORTING REQUIREMENTS FOR NMP

Test	Test Standard (40 CFR citation)	Reporting Deadline for Final Report[1]	Interim Reports (6 month Required)
Health Effects:			
Oncogenicity: Inhalation	798.3300	53	8
Mammalian cells in culture	798.5300	10	1
Drosophilag sex-linked recessive lethal test[2]	798.5275	22	1
Mouse visible specific locus or mouse biochemical specific locus test[2]	798.5200	51	8
	798.5195		
In vitro cytogenetics test	798.5375	10	1

PROPOSED TESTING, TEST STANDARDS AND REPORTING REQUIREMENTS FOR NMP—Continued

Test	Test Standard (40 CFR citation)	Reporting Deadline for Final Report[1]	Interim Reports (6 month Required)
In vivo cytogenetics test:			
Chromosomal analysis or micronucleus assay	798.5385		
	798.5395	24	2
Rodent dominant lethal[2]	798.5450	36	[5]4/1
Heritable translocation[2]	798.5460	[3]25	4
Developmental toxicity: Oral	798.4900	12	1
Reproductive toxicity: Oral	798.4700	29	4
Functional observational battery: Acute and subchronic inhalation	798.6050	21	3
Motor activity test: Acute and subchronic inhalation	798.6200	21	3
Neuropathology: Subchronic inhalation	798.6400	21	3
Subchronic: Inhalation	798.2450	15	2
Pharmacokinetics	Deferred		

[1] Number of months after the effective date of the final rule, except as indicated.
[2] Following Agency review of all existing data for NMP, EPA has determined that the proposed testing would be performed.
[3] Figure indicates the reporting deadline calculated from the date of test sponsor notification by certified letter or FEDERAL REGISTER notice to initiate test.
[4] The mouse biochemical specific locus test was proposed on December 23, 1987 (53 FR 51847) as an alternative to the mouse visible specific locus test for all section 4 rules and is proposed for testing on NMP.
[5] Four progress reports will be required for the rodent dominant lethal test if the result of the in vitro cytogenetics test is positive; one report will be required if the result of the in vivo cytogenetics test is positive.

The following conditions also apply to the proposed test standards:

1. *Mutagenicity.* If the result of the mammalian cells in culture test is positive, a Drosophila sex-linked recessive lethal test (SLRL) would be conducted by the inhalation route. Three dose levels would be required and duration of exposure would be for one 24–hour time period. A positive result in the SLRL test would trigger a mouse visible specific locus (MVSL) or mouse biochemical specific locus (MBSL) test which would be conducted by the inhalation route. Two dose levels would be tested and exposure would be for 6 hours per day. Duration of exposure would be dependent upon accumulated total dose desired for each group. The MBSL was proposed in 53 FR 51847 (December 23, 1987) as an alternative to the MVSL for all section 4 rules and is proposed for testing on NMP. If the SLRL test is negative, the MVSL or MBSL test would not be required.

If the result of the in vitro mammalian cytogenetics test is positive, a dominant lethal test would be required by the inhalation route. Three dose levels would be used with the highest dose, or highest dose attainable, producing signs of toxicity. Duration of exposure would be for 6 hours per day for 5 days. A positive result in the dominant lethal test would trigger a heritable translocation test by the inhalation route.

If the in vitro cytogenetics test is negative, the in vivo cytogenetics test would be required. The in vivo cytogenetics test would be administered by intraperitoneal injection since this is the most applicable route to identify genetic effects for NMP. Should the in vivo cytogenetics test results prove negative, no further chromosomal aberrations testing would be required. A positive result in the in vivo cytogenetics test would trigger the dominant lethal test; and again, if the dominant lethal test is positive, a heritable translocation test would be conducted.

EPA believes that the MVSL/MBSL and/or heritable translocation tests are necessary when the SLRL and/or dominant lethal assays are positive to establish definitively whether a substance is capable of eliciting heritable mutagenic effects. Under the approach proposed, EPA would consider the positive results in the lower-tier tests in a public program review, together with other relevant information, during which interested persons would be able to give their views to EPA. If, after the review, EPA determined that the MVSL or MBSL and/or the heritable translocation test(s) were still appropriate, EPA would notify the test sponsors by letter or **Federal Register** notice that they must conduct the test(s). If EPA determined that the test(s) were no longer necessary, EPA would propose to amend the rule to delete the test requirement.

For a more detailed discussion concerning mutagenicity tiered testing and program review, see the final test rule for the C9 aromatic hydrocarbon fraction (50 FR 20662; May 17, 1985).

2. *Developmental toxicity.* The developmental toxicity test would be required in a mammalian species other than the rat. A satellite group in rats, mice, hamsters, or rabbits would also be required to test for NMP transport across the placenta.

3. *Neurotoxicity.* Duration of exposure for acute testing would be for 6 hours per day for 1 day; duration of exposure for subchronic testing would be for 6 hours per day 5 days per week for 90 days.

B. Test Substance

EPA is proposing that NMP of at least 99.5 percent purity be used as the test substance because EPA is interested in evaluating the effects attributable to NMP itself. EPA believes that this grade of NMP is readily available.

C. Persons Required to Test

Because of the findings in Unit III, EPA is proposing that persons who manufacture (including import) and/or process, or who intend to manufacture and/or process NMP, other than as an impurity, at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements in this proposed rule. Byproduct manufacturers and importers of NMP are considered manufacturers under this rule. As explained in 40 CFR part 790, initially manufacturers but not processors of NMP would be required to submit letters of intent or exemption applications.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for NMP. EPA is interested in evaluating the effects attributable to NMP itself and has specified a relatively pure substance for testing.

D. Reporting Requirements

As required in 40 CFR 799.10, all data developed under the final rule would be reported in accordance with its TSCA GLP Standards which appear in 40 CFR part 792. In addition, 40 CFR part 790

requires test sponsors to submit individual study plans at least 45 days prior to the initiation of each study. Recently, EPA issued a proposed rule (54 FR 21237; May 17, 1989) which would amend the procedural rule found at 40 CFR part 790. One of the modifications included in this rule would eliminate the requirement to submit study plans as required above unless specified in a particular test rule or consent order. The comment period for this proposed rule closed on June 16, 1989. If this proposed action is promulgated, it would apply to this rule.

V. Issues for Comment

1. This proposed rule specifies TSCA test guidelines with minor modifications as the test standards for health effects testing of NMP. EPA is soliciting comments as to whether these test guidelines are appropriate and adequate to characterize the health effects of NMP.

2. EPA requests comments on the route of exposure for testing. EPA is proposing that testing be conducted primarily by the oral and inhalation routes. NMP's low volatility makes the oral route the most applicable method. Because of NMP's use in paint strippers, however, inhalation is a major route of exposure. EPA noted that the oncogenicity study by BASF was conducted by inhalation with aerosol and vapor. EPA requests comment on the effect of NMP's low volatility in relation to high test dose concentrations and achievement of a maximum tolerated dose.

3. A number of acute, subacute, subchronic, and developmental toxicity studies, and a rat oncogenicity study have been conducted. Only brief summaries have been provided to CPSC and EPA. EPA solicits the submission of these studies and data during the comment period.

4. Because consumers use NMP in the home, vulnerable populations including babies, children, men and women of reproductive ages, senior citizens, and health impaired individuals may be exposed. Also, because of substantial worker and consumer exposure to NMP, EPA believes exposure to NMP is significant and solicits comment.

5. EPA is proposing that pharmacokinetics testing be conducted with NMP, but has deferred proposing test standards and reporting requirements until the publication of the EPA generic pharmacokinetics test guideline. However, EPA requests comment on tiering sections of the pharmacokinetics study based on final test results for health effects testing.

VI. Economic Analysis of the Proposed Rule

EPA has prepared an economic analysis that evaluates the potential for significant economic impacts on industry as a result of the proposed testing (Ref. 2). The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impacts as a result of these test costs by examining four market characteristics of NMP: (1) Price sensitivity of demand; (2) market expectations; (3) industry cost characteristics; and (4) industry structure.

Total testing costs for the proposed testing of NMP are estimated to range from $2.6 to $3.6 million. To predict the financial decision-making practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period to finance the testing expenditure in the first year.

The annualized test costs, using a 7 percent cost of capital over a period of 15 years, range from $288,000 to $399,000. Based on 1989 production of 55 million pounds, the annualized test cost per pound range from $0.0052 to $0.0072. Thus, the increase in NMP price due to the testing will be less than 1 cent per pound. These costs are less than 1 percent (0.33 to 0.48 percent) of the current price of $1.59 per pound.

EPA believes that the potential for adverse economic impact resulting from the costs of testing is low. This conclusion is based on the following observations: (1) The annualized cost of testing is very low at approximately 0.48 percent of product prices in the upper bound case; and (2) demand for NMP does not appear to be sensitive to a price increase in this range.

For a complete discussion of test cost estimation and potential for economic impact resulting from these costs, refer to the economic analysis which is contained in the public record for this rulemaking (Ref. 2).

VII. Availability of Test Facilities and Personnel

As required by section 4(b)(1) of TSCA, EPA determined that there will be available test facilities and personnel to perform the testing specified in this proposed rule (Ref. 4). Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (PB 82–140773). A copy of this study is contained in the rulemaking record for this proposed rule.

VIII. Public Meeting

If requests for oral comments are submitted, EPA will hold a public meeting in Washington, DC after the close of the public comment period. Persons who wish to attend or to present comments at the meeting should call Mary Lou Hewlett, Test Rules Development Branch (202) 475–8162 by May 14, 1990. The meetings are open to the public, but active participation will be limited to EPA representatives and those who requested to comment. Participants are requested to submit copies of their statements by the meeting date. These statements and a transcript of the meeting will become part of EPA's rulemaking record.

IX. Comments Containing Confidential Business Information

All comments will be placed in the public file unless they are clearly labeled as Confidential Business Information (CBI) when they are submitted. While a part of the record, CBI comments will be treated in accordance with 40 CFR part 2. A sanitized version of all CBI comments should be submitted to EPA for the public file.

X. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS–42114). This record contains the basic information considered by EPA in developing this proposal and appropriate **Federal Register** notices. EPA will supplement this record as necessary.

A public version of the record, from which all CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Room, Rm. G–004, NE Mall, 401 M St., SW., Washington, DC 20460, from 8 am to 4 pm, Monday through Friday, except legal holidays.

The record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(b) Notice of final rule on data reimbursement policy and procedures (48 FR 31786; July 11, 1983).

(2) TSCA test guidelines cited as test standards for this rule.

(3) Communications before proposal consisting of:

(a) Contact reports of telephone conversations.

(b) Meeting summaries.

(4) Reports--published and unpublished factual materials including: Chemical Testing Industry, Profile of Toxicological Testing (October, 1981).

(5) Data received under section 8(e) of TSCA.

B. References

(1) Syracuse Research Corporation. "Executive Summary of Data on *N*-methylpyrrolidone," Syracuse, NY. (November 15, 1988).

(2) USEPA. "Economic Impact Analysis of Proposed Test Rule *N*-methylpyrrolidone, Non-Confidential version," Washington, DC. (April 13, 1989).

(3) [Reserved]

(4) USEPA. Evaluation of TSCA test guidelines for neurotoxicity testing. Mathtech, Inc. Contract number 68-02-4235. Regulatory Impact Branch, Office of Toxic Substances, Washington, DC. (April 14, 1987).

(5) USEPA. Exposure assessment for NMP in paint strippers. Intra-agency memorandum. E. Jackson to R. Jones. Office of Toxic Substances. Washington, DC. (November 1, 1989).

(6) USEPA. Consumer exposure assessment for NMP in paint strippers. Intra-agency memorandum. P. Kennedy to B. Jones. Office of Toxic Substances. Washington, DC. (July 11, 1989).

(7) Lee, K. P., Chromey, N. C., Culik, R., Barnes, J. R., and Schneider, P. W. "Toxicity of *N*-methyl-2-pyrrolidone: Teratogenic, subchronic, and two-year inhalation studies." *Fundamentals of Applied Toxicology*, 9(2): 222-235 (1987).

(8) Wells, D. A., Thomas, H. F. and Digenis, G. A. "Mutagenicity and cytotoxicity of *N*-methyl-2-pyrrolidone and 4-(methylamino)butanoic acid in the *Salmonella*/microsome assay." *Journal of Applied Toxicology*, 8(2):135-139 (1988).

(9) Mortelmans K., Haworth, S., Lawlor, T., Speck, W., Tainer, B. and Zieger, E. "*Salmonella* mutagenicity tests: II. Results from the testing of 270 chemicals." *Environmental Mutogenesis*, 8(7):1-119 (1986).

(10) BASF. Report on the testing of *N*-methylpyrrolidone for mutagenic effects on male mice after single intra-peritoneal application. West Germany: BASF, (1976). (English Summary).

(11) BASF. Report on the testing of *N*-methylpyrrolidone for mutagenic effects on Chinese Striped Hamsters after 6 weeks of inhalation. West Germany: BASF, (1976). (English Summary).

(12) Becci, P. J., Knickerbocker, M. J., Reagan, E. L., Parent, R. A. and Burnette, L. W. "Teratogenicity study of *N*-methylpyrrolidone after dermal application to Sprague-Dawley rats." *Fundamentals of Applied Toxicology*, 2(2):73-76 (1982).

(13) Schmidt, R. "Experimental animal investigations on the embryotoxic and teratogenic effect of *N*-methylpyrrolidone." *Biologische Rundschau*, 14(1):38-41 (1976). (German; English translation).

(14) TSCA Section 8(e) submission. Submitted to EPA by Ciba-Geigy Corporation. Submission No. 8EHQ-1087-0695. October 23, 1987.

(15) GAF. Letter from J. Ansell, GAF, to the Consumer Product Safety Commission, Washington, DC. (November 18, 1986).

(16) Becci, P. J., Gephart, L. A., Koschier, F. J., Johnson, W. D. and Burnette, L. W. "Subchronic feeding study in Beagle dogs of *N*-methylpyrrolidone." Journal of Applied Toxicology, 3(2):83-86 (1983).

(17) USEPA. Data adequacy for section 4 subchronic toxicity on NMP. Intra-agency memorandum. A. Clevenger to B. Jones. Office of Toxic Substances. Washington, DC. (July 7, 1989).

(18) Wells, D. A. and Digenis, G. A. "Disposition and metabolism of double-labeled (tritium and carbon-14) *N*-methyl-2-pyrrolidone in the rat." Drug Metabolism Disposition, 16(2):243-249 (1988).

(19) USEPA. Production exposure profile on *N*-methyl-2-pyrrolidone. Report prepared by Donna Ozolins. Economics and Technology Division. Office of Toxic Substances, Washington, DC. (February 17, 1988).

(20) USEPA. Testing evaluation of NMP for oncogenic effects. Intra-agency memorandum. D. Lai to R. Jones. Office of Toxic Substances. Washington, DC. (July 7, 1989).

(21) USEPA. Data adequacy for section 4 mutagenicity testing on NMP. Intra-agency memorandum. M. Cimino to R. Jones. Office of Toxic Substances. Washington, DC. (July 7, 1989).

(22) USEPA. Data adequacy for developmental toxicity testing on NMP. Intra-agency memorandum. J. Seed to B. Jones. Office of Toxic Substances. Washington, DC. (June 30, 1989).

XI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this proposed test rule would not be major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it would not have an annual effect on the economy of at least $100 million, would not cause a major increase in prices, and would not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, would not have a significant impact on a substantial number of small businesses because: (1) They would not be expected to perform testing themselves or to participate in the organization of the testing effort; (2) they would experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2070-0033.

Public reporting burden for this collection of information is estimated to average 5,300 hours per response, the estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to OMB, Paperwork Reduction Project (2070-0033), Washington, DC 20503. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 799

Chemicals, Chemical Export, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Testing.

Dated: March 17, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR, chapter I, subchapter R, part 799 be amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, and 2625.

2. By adding § 799.2900 to read as follows:

§ 799.2900 N-Methylpyrrolidone

(a) *Identification of test substance.* (1) *N*-methylpyrrolidone (CAS No. 872-50-4) shall be tested in accordance with this section.

(2) NMP of at least 99.5 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (including import) or process or intend to manufacture or process NMP, including persons who manufacture or process or intend to manufacture or process NMP as a byproduct, or who import or intend to import products which contain NMP, after the date specified in paragraph (e)(1) of this section to the end of the reimbursement period, shall submit letters of intent to conduct testing, submit study plans, conduct tests and submit data, or submit exemption applications, as specified in this section, subpart A of this part, and parts 790 and 792 of this chapter for single-phase rulemaking. Persons who manufacture, import, or process NMP only as an impurity are not subject to these requirements.

(c) *Health effects testing*—(1) *Oncogenicity*— (i) *Required testing.* (A) Oncogenicity testing shall be conducted in the rat and in the mouse in accordance with § 798.3300 of this chapter except for the provision in paragraph (b)(6) in § 798.3300.

(B) For the purpose of paragraph (c)(1)(i) of this section, the following provisions also apply:

(*1*) *Route of administration.* NMP shall be administered by inhalation.

(*2*) [Reserved]

(ii) *Reporting requirements.* (A) Oncogenicity testing shall be completed and a final report submitted to EPA within 53 months of the date specified in paragraph (e)(1) of this section.

(B) Progress reports shall be submitted to EPA at 6–month intervals beginning 6 months after the effective date of the final rule until submission of the final report.

(2) *Mutagenic effects—gene mutations*—(i) *Required testing.* (A) A gene mutation test in mammalian cells shall be conducted with NMP in accordance with § 798.5300 of this chapter.

(B)(*1*) A sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted with NMP in accordance with § 798.5275 of this chapter except for the provisions in paragraphs (d)(5)(ii) and (d)(5)(iii) of § 798.5275, unless the result of the mammalian cells in culture gene mutation test conducted pursuant to paragraph (c)(2)(i)(A) of this section is negative.

(*2*) For the purpose of paragraph (c)(2)(i)(B)(*1*) of this section, the following provisions also apply:

(*i*) *Dose level and duration of exposure.* For the initial assessment of mutagenicity, it is sufficient to test a single dose of the test substance for screening purposes. This dose should be the maximum tolerated dose, or that which produces some indication of toxicity, or shall be the highest dose attainable. At least three dose levels shall be tested. Exposure shall be for one 24–hour time period.

(*ii*) *Route of administration.* Animals shall be exposed to NMP by inhalation.

(C)(*1*) A mouse visible specific locus (MVSL) or mouse biochemical specific locus (MBSL) test shall be conducted with NMP in accordance with § 798.5200 or § 798.5195, except for the provisions in paragraphs (d)(5)(ii) and (d)(5)(iii) of § 798.5200 for the MVSL and of § 798.5195 for the MBSL if the result of the sex-linked recessive lethal test conducted pursuant to paragraph (c)(2)(i)(B) of this section is positive and if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated.

(*2*) For the purpose of paragraph (c)(2)(i)(C)(*1*) of this section, the following provisions also apply:

(*i*) *Dose levels and duration of exposure.* A minimum of two dose levels shall be tested. Exposure shall be for 6 hours per day. Duration of exposure shall be dependent upon accumulated total dose desired for each group.

(*ii*) *Route of administration.* Animals shall be exposed to NMP by inhalation.

(ii) *Reporting requirements.* (A) The gene mutation tests shall be completed and final reports submitted to EPA as follows:

(*1*) The gene mutation test in mammalian cells is due within 10 months of the effective date of the final rule.

(*2*) The sex-linked recessive lethal test in *Drosophila melanogaster*, if required, is due within 22 months of the effective date of the final rule.

(*3*) The MVSL test or MBSL test, if required, is due within 51 months of the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice under paragraph (c)(2)(i)(C) of this section that testing shall be initiated.

(B) Progress reports shall be submitted to EPA for the gene mutation test in mammalian cells at 6–month intervals beginning 6 months after the effective date of the final rule until the final report is submitted to EPA.

(C) Progress reports shall be submitted to EPA for the sex-linked recessive lethal test, if required, at 6–month intervals beginning 6 months after the final report is submitted to EPA for the gene mutation test in mammalian cells until the final report for the sex-linked recessive lethal test is submitted.

(D) Progress reports shall be submitted to EPA for the MVSL test or MBSL test, if required, at 6–month intervals beginning 6 months after the date of EPA's notification of the test sponsor that testing shall be initiated, until the final report is submitted.

(3) *Mutagenic effects—chromosomal aberrations*— (i) *Required testing.* (A) An in vitro cytogenetics test shall be conducted with NMP in accordance with § 798.5375 of this chapter.

(B)(*1*) An in vivo bone marrow cytogenetics test shall be conducted with NMP in accordance with either § 798.5385 (chromosomal analysis) or § 798.5395 (micronucleus assay) of this chapter except for the provisions in paragraphs (d)(5)(ii), (d)(5)(iii), and (d)(5)(iv) of § § 798.5385 and 798.5395 unless the in vitro test conducted pursuant to paragraph (c)(3)(i)(A) of this section is negative.

(*2*) For the purpose of paragraph (c)(3)(i)(B)(*1*) of this section, the following provisions also apply:

(*i*) *Dose levels.* At least three dose levels shall be tested. The highest dose tested shall be the maximum tolerated dose or that dose producing some signs of cytotoxicity (e.g., partial inhibition of mitosis or a change in the ratio of polychromatic to normochromatic erythrocytes) or shall be the highest dose attainable.

(*ii*) *Route of administration.* Animals shall be administered NMP by intraperitoneal injection.

(*iii*) *Treatment schedule.* The test substance shall be administered once only.

(C)(*1*) A dominant lethal test shall be conducted with NMP in accordance with § 798.5450 of this chapter except for the provisions in paragraphs (d)(5)(ii) and (d)(5)(iii) of § 798.5450, unless either the chromosomal analysis or micronucleus test conducted pursuant to paragraph (c)(3)(i)(B) of this section is negative.

(*2*) For the purpose of paragraph (c)(3)(i)(C)(*1*) of this section, the following provisions also apply:

(*i*) *Dose level and duration of exposure.* The duration of exposure shall be for 6 hours per day for 5 consecutive days. Three dose levels shall be used. The highest dose shall produce signs of toxicity (e.g., slightly reduced fertility) or shall be the highest dose attainable.

(*ii*) *Route of administration.* Animals shall be exposed to NMP by inhalation.

(D)(*1*) A heritable translocation test shall be conducted with NMP in accordance with § 798.5460 of this chapter except for the provisions in

paragraphs (d)(5)(ii) and (d)(5)(iii) of § 798.5460, if the result of the dominant lethal test conducted pursuant to paragraph (c)(3)(i)(C) of this section is positive and if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated.

(*2*) For the purpose of paragraph (c)(3)(i)(D) of this action, the following provision also applies:

(*i*) *Dose level and duration of exposure.* The duration of exposure shall be for 6 hours per day for 5 consecutive days. At least two dose levels shall be tested. The highest dose shall result in toxic effects (which shall not produce an incidence of fatalities which would prevent a meaningful evaluation), or shall be the highest dose attainable.

(*ii*) *Route of administration.* Animals shall be exposed to NMP by inhalation.

(ii) *Reporting requirements.* (A) The chromosomal aberration tests shall be completed and the final reports submitted to EPA as follows:

(*1*) The in vitro cytogenetics test is due within 10 months of the effective date of the final rule.

(*2*) The in vivo cytogenetics test, if required, is due within 24 months of the effective date of the final rule.

(*3*) The dominant lethal test, if required, is due within 36 months of the effective date of the final rule.

(*4*) The heritable translocation test, if required, is due within 25 months of the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice under paragraph (c)(3)(i)(D) that testing shall be initiated.

(B) Progress reports shall be submitted to EPA for the in vitro cytogenetics test at 6–month intervals beginning 6 months after the date specified in paragraph (e)(1) of this section until the final report is submitted.

(C) Progress reports shall be submitted to EPA for the in vivo cytogenetics test, if required, at 6–month intervals beginning 6 months after the date the final report is submitted for the in vitro cytogenetics test until the in vivo cytogenetics final report is submitted.

(D) Progress reports shall be submitted to EPA for the dominant lethal test, if required, at 6–month intervals beginning 6 months after the date the final report is submitted for the in vitro cytogenetics test if the result of the in vitro cytogenetics test is positive, or at 6– month intervals beginning 6 months after the date the final report is submitted for the in vivo cytogenetics test if the result of the in vivo cytogenetics test is positive, until the dominant lethal final report is submitted.

(E) Progress reports shall be submitted to EPA for the heritable translocation test, if required, at 6–month intervals beginning 6 months after the date of EPA's notification of the test sponsor that testing shall be initiated, until the final report is submitted.

(4) *Developmental toxicity*—(i) *Required testing.* (A) Oral developmental toxicity testing shall be conducted in accordance with § 798.4900 of this chapter except for the provisions in paragraphs (a), (e)(1)(i), (e)(2), (f)(1), and (f)(3) of § 798.4900.

(B) For the purpose of paragraph (c)(4)(i)(A) of this section, the following provisions also apply:

(*1*) *Purpose.* In the assessment and evaluation of the toxic characteristics of a chemical, determination of the potential developmental toxicity is important. The developmental toxicity study is designed to provide information on the potential hazard to the unborn which may arise from exposure of the mother during pregnancy, and to determine the concentration of the test substance in the maternal, placental, and fetal tissues.

(*2*) *Animal selection.* Developmental toxicity testing shall be conducted in a mammalian species other than the rat. Placental transfer, however, shall be conducted in the rat, mouse, hamster, or rabbit. Commonly used laboratory strains shall be employed. The strain shall not have low fecundity and shall preferably be characterized for its sensitivity to developmental toxins.

(*3*) *Additional test groups*—(*i*) *Placental transfer.* To determine the concentration of test substance in maternal, placental, and fetal tissues, at least three pregnant rats, mice, hamsters, or rabbits shall be added to each dose level. At least two fetuses per litter shall be used to determine the concentration of the test substance in fetal tissue.

(*ii*) *Control group.* A concurrent control group shall be used. This group shall be an untreated or sham treated control group, or, if a vehicle is used in administering the test substance, a vehicle control group. Except for treatment with the test substance, animals in the control group(s) shall be handled in an identical manner to test group animals.

(*4*) *Treatment of results.* Data shall be summarized in tabular form, showing for each test group: the number of animals at the start of the test, the number of pregnant animals, the number and percentages of live fetuses, the number of fetuses with any soft tissue or skeletal abnormalities, and the amount of test substance found in the maternal, placental, and fetal tissues.

(*5*) *Test report.* In addition to the reporting requirements as specified under part 792, subpart J, of this chapter, the following specific information shall be reported:

(*i*) Toxic response data by concentration.

(*ii*) Species and strain.

(*iii*) Date of death during the study or whether animals survived to termination.

(*iv*) Date of onset and duration of each abnormal sign and its subsequent course.

(*v*) Food, body weight, and uterine weight data.

(*vi*) Pregnancy and litter data.

(*vii*) Fetal data (live/dead, sex, soft tissue and skeletal defects, resorptions).

(*viii*) The amount of test substance found in the maternal, placental, and fetal tissues shall be reported for all animals for all dose levels.

(ii) *Reporting requirements.* (A) Developmental toxicity testing shall be completed and a final report submitted to EPA within 12 months of the effective date of the final rule.

(B) Progress reports shall be submitted to EPA at 6–month intervals beginning 6 months after the effective date of the final rule.

(5) *Reproductive toxicity*—(i) *Required testing.* (A) Reproductive toxicity testing shall be conducted in accordance with § 798.4700 of this chapter except for the provision in paragraph (c)(5)(i)(A) and (c)(5)(ii) of § 798.4700.

(B) For the purpose of paragraph (c)(5)(i)(A) of this section, the following provisions also apply:

(*1*) NMP shall be administered orally.

(*2*) [Reserved]

(ii) *Reporting requirements.* (A) Reproductive toxicity testing shall be completed and a final report submitted to EPA within 29 months of the effective date of the final rule.

(B) Progress reports shall be submitted to EPA at 6–month intervals beginning 6 months after the effective date of the final rule.

(6) *Neurotoxicity*—(i) *Required testing*— (A) *Functional observational battery.* (*1*) A functional observational battery shall be conducted with NMP in accordance with § 798.6050 of this chapter except for the provisions in paragraphs (d)(4)(ii), (d)(5), and (d)(6) of § 798.6050.

(*2*) For the purpose of paragraph (c)(6)(i)(A) of this section, the following provisions also apply:

(*i*) *Lower doses.* The data from the lower doses shall show either graded

dose-dependent effects or no neurotoxic (behavioral) effects at any dose tested.

(*ii*) *Duration and frequency of exposure.* For the acute testing, animals shall be exposed for 6 hours per day for 1 day. For the subchronic testing, animals shall be exposed for 6 hours per day 5 days per week for a 90–day period.

(*iii*) *Route of exposure.* Animals shall be exposed to NMP by inhalation.

(B) *Motor activity.* (*1*) Motor activity tests shall be conducted with NMP in accordance with § 798.6200 of this chapter except for provisions in paragraphs (d)(4)(ii), (d)(5), and (d)(6) of § 798.6200.

(*2*) For the purpose of paragraph (c)(6)(i)(B) of this section, the following provisions also apply:

(*i*) *Lower doses.* The data from the lower doses shall show either graded dose-dependent effects or no neurotoxic (behavioral) effects at any dose tested.

(*ii*) *Duration and frequency of exposure.* For the acute testing, animals shall be exposed for 6 hours per day for 1 day. For the subchronic testing, animals shall be exposed for 6 hours per day 5 days per week for a 90–day period.

(*iii*) *Route of exposure.* Animals shall be exposed by inhalation.

(C) *Neuropathology.* (*1*) Neuropathology testing shall be conducted with NMP in accordance with § 798.6400 of this chapter except for provisions in paragraphs (d)(4)(ii), (d)(5), (d)(6), and (d)(8)(iv)(C) of § 798.6400.

(*2*) For the purpose of paragraph (c)(6)(i)(C) of this section, the following provisions also apply:

(*i*) *Lower doses.* The data from the lower doses shall show either graded dose-dependent effects or no neurotoxic (behavioral) effects at any dose tested.

(*ii*) *Duration and frequency of exposure.* Animals shall be exposed for 6 hours per day 5 days per week for a 90–day period.

(*iii*) *Route of exposure.* Animals shall be exposed to NMP by inhalation.

(*iv*) *Clearing and embedding.* After dehydration, tissue specimens shall be cleared with xylene and embedded in wax or plastic medium except for the sural nerve which should be embedded in plastic. Multiple tissue specimens (e.g. brain, cord, ganglia) may be embedded together in one single block for sectioning. All tissue blocks shall be labelled to provide unequivocal identification. A method for plastic embedding is described by Spencer et al. in paragraph (d) of this section.

(ii) *Reporting requirements.* (A) The neurotoxicity tests required under paragraph (c)(6) shall be completed and the final results submitted to EPA within 21 months of the effective date of the final rule.

(B) Progress reports shall be submitted to EPA at 6–month intervals beginning 6 months after the effective date of the final rule until submission of the final report.

(7) *Subchronic inhalation toxicity*—(i) *Required testing.* A subchronic inhalation toxicity test shall be conducted with NMP in accordance with § 798.2450 of this chapter.

(ii) *Reporting requirements.* (A) The subchronic inhalation toxicity test shall be completed and the final report submitted to EPA within 15 months of the effective date of the final rule.

(B) Progress reports shall be submitted to EPA for the subchronic inhalation toxicity test at 6–month intervals beginning 6 months after the effective date of the final rule until the final report is submitted.

(8) *Pharmacokinetics testing*—(i) *Required testing.* Pharmacokinetics testing is required.

(ii) *Test standard.* [Reserved]

(iii) *Reporting requirements.* [Reserved]

(d) *Reference.* For additional background information, the following reference should be consulted.

(1) Spencer, P. S., Bischoff, M. C., and Schaumburg, H. H. "Neuropathological methods for the detection of neurotoxic disease." In: "Experimental and Clinical Neurotoxicology." Spencer, P. S. and Schaumburg, H. H., eds. Baltimore, MD: Williams and Wilkins, pp. 743–757 (1980).

(2) [Reserved]

(e) *Effective dates.* (1) The effective date of the final rule is May 11, 1990.

(2) The guidelines and other test methods cited in this section are referenced here as they exist on the effective date of the final rule.

(Information collection requirements have been approved by the Office of Management and Budget under Control Number 2070–0033)

[FR Doc. 90–7079 Filed 3–27–90; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 80

[GEN Docket No. 90–133; FCC 90–91]

Maritime Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: As a result of international revisions adopted at the 1987 World Administrative Radio Conference for Mobile Services (1987 Mobile WARC), this Notice of Proposed Rule Making proposes to revise the rules regarding the high frequency (HF) bands that are allocated exclusively to the maritime mobile service. A major task of the 1987 Mobile WARC was to rearrange the channelling of the exclusive maritime mobile HF bands between 4000–27500 kHz (HF bands), which had not been reviewed since 1974, and to incorporate the new bands allocated to the maritime mobile services by the 1979 World Administrative Radio Conference. Internationally, the changes will take effect on July 1, 1991, and will affect every licensed ship and coast station worldwide that operates in the HF bands.

DATES: Comments must be received on or before June 8, 1990, and reply comments on or before July 9, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathryn S. Hosford, Special Services Division, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554; or telephone (202) 632–7197.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, GEN Docket No. 90–133, adopted March 8, 1990, and released March 20, 1990. The complete text of the Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The full text also may be purchased from the Commission's copy contractor: International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037; telephone 202–857–3600.

Summary of Notice of Proposed Rule Making

1. The Notice of Proposed Rule Making (Notice) sets forth the proposed amendments that are necessary to implement the Final Acts of the World Administrative Radio Conference for Mobile Services, 1987, (1987 Mobile WARC) into the Commission's Rules. This is the second in a series of three rule making proceedings implementing the 1987 Mobile WARC into the Commission's Rules.

2. The revisions adopted by the 1987 Mobile WARC expanded the frequency spectrum available for newer forms of maritime mobile systems. The United States supported these changes. Consequently, the Notice proposes an increase in frequencies for digital

selective calling (DSC), narrow-band direct-printing (NBDP), and voice radiotelephony. It also proposes a decrease in spectrum available for manual Morse code in accordance with the new international requirements.

3. The Notice proposes to reflect the international footnote changes in the Table of Frequency Allocations and to amend the frequency tables for NBDP to reflect the changes in existing NBDP frequencies and add 200 duplex frequencies and 153 simplex frequencies. It also proposes to revise the HF distress and safety frequencies, radiotelephony frequencies on the Mississippi River, and six private communications frequencies for Alaska. For business and operational use, the Notice proposes to revise the existing frequencies and to add two new frequencies.

4. Because the number of frequencies for manual Morse code telegraphy for ship stations decreased internationally, the Notice proposed fewer frequencies for each of the 62 Channel Series currently denoted in the Rules. It also proposed 9 replacement frequencies in the 16 MHz and 22 MHz bands for coast stations working manual Morse code telegraphy in accordance with international revisions. The 1987 Mobile WARC also provided new spectrum in the 19 and 26 MHz bands, 19705–19755 kHz and 26122.5–26145 kHz, for coast station Morse telegraphy, wideband telegraphy, facsimile, and special transmission systems. Because there are no 18 MHz band frequencies available for ship station Morse code telegraphy that would correspond with the 19 MHz band coast frequencies, the Notice proposed to add frequencies for coast station Morse code telegraphy at 26 MHz only. Further, all the available spectrum is not needed for Morse code telegraphy because it has limited daily and seasonal use due to propagation effects and there are currently only 14 licensed public coast stations operating HF Morse code telegraphy. Of the 22.5 kilohertz of spectrum allocated in the 26 MHz band for coast stations, it proposed to use 4.4 kilohertz for Morse code telegraphy. Consequently, the Notice proposed to add 11 frequencies in the 26122.5–26126.9 kHz band to 47 CFR 80.357(b) for coast stations working Morse code telegraphy.

5. Internationally, the working frequencies for ship stations equipped to use wideband telegraphy, facsimile, and special transmission systems were reallocated and spaced 4 kHz apart. Individual countries, however, may assign frequencies with a different channelling arrangement to meet the needs of specific systems. The Commission's Rules, 47 CFR 2.106, footnote US296, and 80.363(a), currently contain 2 sets of ship frequencies for facsimile based on 4 kHz spacing. Considering that the authorized bandwidth for ship and coast stations operating facsimile is 3 kHz, 47 CFR 80.205(a), the Notice proposed to adjust the ship frequencies for facsimile to reflect the band reallocation using a 3 kHz channel spacing. It noted that a 3 kHz channelling plan will use the spectrum more efficiently. Commission records indicate that no non-government ship assignments for facsimile have been made on the existing frequencies although extensive use of these bands is made by the government agencies for wideband purposes.[1] Further, the Commission's Rules already permit frequencies in the 2000–27500 kHz band to be assigned to coast stations for facsimile. It proposed to amend 47 CFR 80.363(b) to add the particular bands where coast facsimile is permitted internationally. Because of the expansion of facsimile in the work place generally, it noted that operational use in the maritime mobile service would be facilitated if specific bands were identified. Comments are requested on the proposals to denote frequencies for ship facsimile based on a 3 kHz channel spacing and to specify the bands for coast facsimile in accordance with international provisions. Information also is requested on the industry's need for facsimile generally.

6. Turning to an area where the 1987 Mobile WARC expanded the available spectrum, the number of HF frequencies that were allocated for DSC tripled. Therefore, the Notice proposed to replace the frequency table in 47 CFR 80.359(a) with three tables: a "Worldwide" table, an "Atlantic" table, and a "Pacific" table. Although only the frequencies proposed for worldwide use are specifically paired under international regulations, it proposed to pair the frequencies in all three tables and make them available to public coast stations. It noted that the majority of DSC communications will be with public coast stations using paired frequencies. It also noted that DSC is a new method of automated calling. As a new system, the Commission did not wish to limit the implementation of DSC by restricting assignments beyond proposing the three tables with broad geographic terms. Consequently, operators should be aware that these frequencies will be shared internationally among public coast stations and government users. Comments are requested on the three tables proposed, the pairing of all frequencies, the needs of private coast stations, and the potential for sharing DSC frequencies.

7. Another area where the 1987 Mobile WARC provided for an increase in spectrum was radiotelephony (voice). In addition to revising the channelling plans for the radiotelephony duplex frequencies (*i.e.*, public correspondence) based on 3 kHz spacing, the 1987 Mobile WARC allocated an additional 70 frequency pairs for duplex operations.[2] Before these additional frequencies can be assigned by administrations, however, they must be added to the worldwide allotment plan in Appendix 25 of the Radio Regulations. The International Frequency Registration Board (IFRB) is currently reviewing each country's request. The IFRB is scheduled to issue an initial allotment plan in October, 1990, and a final allotment plan on July 1, 1991. Because the Commission does not know the exact allotments permitted the United States at present, the Notice proposed two tables of frequencies in 47 CFR 80.371(b) for public correspondence: Table A contains the new frequencies to which existing stations must transfer, and Table B is reserved for additional frequencies which may be allotted to the United States once the international review is concluded. In this manner, the Commission will be in a better position to distribute any frequencies allotted internationally. Comments should address the needs of the industry as a whole. Information such as, frequency usage by channel and location, that would assist the Commission in deciding how best to distribute the additional allotments equitably is requested. The parties should recognize, however, that the United States will not necessarily obtain approval from the IFRB for use of any additional frequencies.[3]

8. In addition to the 70 new duplex frequencies allocated for radiotelephony, 24 frequencies were added internationally for simplex operations. The Notice proposed to

[1] The government agencies are in agreement with a 3 kHz channelling plan.

[2] The 70 additional frequency pairs were divided evenly between government and non-government users. Consequently, 35 pairs would be available for non-government use. See Public Notice, *supra*.

[3] The Commission requested all 35 channels at the 9 public coast station locations for a total of 315 allotments. Resolution 325 stipulates the priorities to be used in developing a worldwide HF plan as follows: (1) Administrations having no allotments in appendix 25; (2) administrations where an allotment was rejected as failing to meet the required protection criteria; and (3) administrations asking for additional allotments to satisfy an increase in radiotelephony traffic. Our submissions fall into category 3, the lowest priority.

make available two new frequencies at 4 MHz and 6 MHz (one in each band) for business and operational use under 47 CFR 80.373(c). The short range 4 MHz and 6 MHz frequencies could augment the current business and operational frequencies that are in heavy demand. The remaining 22 frequencies are between 12 MHz and 25 MHz and typically provide longer range service for the high seas. Consequently, it proposed to make these simplex frequencies available for public correspondence in 47 CFR 80.371(b)(3). Coast station applicants would be limited to 1 kW peak envelope power (PEP) and required to justify using simplex rather than duplex radiotelephony frequencies for public correspondence. Applicants should be aware that these simplex frequencies, unlike the duplex frequencies, would not be protected internationally.[4] Further, the Notice noted that existing simplex frequencies are used extensively by the U.S. government and foreign vessels. Consequently, there exists a potential for substantial interference to these simplex frequencies because they are used for many purposes worldwide. Regardless, the Commission expects that this proposal would provide flexibility to expand public correspondence where needed. Comments are requested on using simplex frequencies for public correspondence that are shared extensively with the U.S. government and the international community. Comments also should address what types of public correspondence communications may warrant simplex rather than duplex frequency assignments with a power limit of 1 kW PEP.

9. The 1987 Mobile WARC also revised certain radiotelephony frequencies that are available for multiple purposes. International provisions permit distress and safety frequencies 4125 kHz and 6215 kHz to be used on a simplex basis for initiating communications between ship and coast stations (call and reply). The frequency 4125 kHz is available also on a simplex basis for business and operational use. Additionally, two of the paired coast frequencies identified for call and reply, are available on a simplex basis for business and operational purposes (*i.e.*, 4417 kHz and 6516 kHz are paired with 4125 kHz and 6215 kHz, respectively). Currently, the Commission's Rules permit the frequencies 4125.0 kHz, 4419.4 kHz, and 6521.9 kHz to be used for business and operational purposes, but the Rules do not include any frequencies in the 4 MHz and 6 MHz bands for call and reply purposes. Therefore, as permitted by international provisions, the Notice proposed to add a frequency pair in the 4 MHz and 6 MHz bands to 47 CFR 80.369(d) for call and reply purposes. Additionally, it proposed to continue to permit these frequencies to be used for business and operational purposes in 47 CFR 80.373(c). Comments regarding the relative requirements for distress and safety, call and reply, and business and operational communications on these frequencies are requested.

10. The last issue regarding newly available frequencies concerns spectrum in the 4000–4063 kHz and 8100–8195 kHz bands allocated for radiotelephony in the maritime mobile service on a shared basis with the fixed service. In 1979, these frequency bands, previously allocated exclusively to the fixed service, were re-allocated internationally to the maritime mobile and fixed services on co-primary basis. In 1983, these bands were channelized and the provisions for maritime mobile use were adopted internationally. The Notice proposed to incorporate a new section, 47 CFR 80.374, into the Commission's Rules to list 49 maritime mobile channels, which are shared with the fixed services, in accordance with international provisions. In addition to the ship-to-ship operations permitted internationally, the proposed changes would allow the 4 MHz frequencies to be used by coast stations.[5] All public coast station applications would be submitted to the Frequency Assignment Subcommittee (FAS) for coordination with existing government fixed users on a case-by-case basis for a particular coast station's characteristics. Because these bands are used extensively by the fixed services, maritime frequency assignments will be limited.[6] The Notice indicated that these proposed changes to the Commission's Rules are important because they would permit, where possible, the maritime mobile service access to these shared bands. This would promote the use of these bands in which the maritime mobile service has a co-primary allocation and would provide the necessary data to make contributions to International Radio Consultative Committee (CCIR) sharing studies concerning the maritime mobile and fixed services.

11. As indicated previously, under the international Radio Regulations at 0001 hours UTC on July 1, 1991, all coast and ship stations (worldwide) operating in the exclusive maritime mobile HF bands must cease transmitting on their old frequencies and start transmitting on their new frequencies. Virtually every maritime mobile licensee authorized an HF frequency will have to change frequency. Effective immediately, the Commission will start specifying both the "current" and the "transfer" frequencies on all coast station licenses generated. The Commission expects that approximately half the existing coast station licenses would be updated through the processing of renewals and modifications of licenses over the next 1½ years. Each remaining coast station licensee will be notified of the frequency to which it must transfer its operation approximately 90 days prior to the effective date of July 1, 1991. The Commission encourages licensees to renew prior to their expiration date to enable us to process the applications in a timely manner and minimize the number of 90 day notifications involved.

12. Frequency changes for authorized ship stations present a different set of problems. Ship station licenses simply indicate authorized bands and not individual frequencies. While the administrative impact of updating licenses is not at issue, the practical problem of informing the ship operators is of great concern. The Commission expects that it would be in the interest of public coast stations, which provide the services to commercial vessels, to assist in disseminating information to these ship operators. Consequently, most commercial ship operators should be advised of the frequency changes through Public Notices by the Commission or advisories directly from public coast stations. For the business

[4] These simplex radiotelephony frequencies are considered "common use" frequencies under the international Radio Regulations. As such, they cannot be notified for inclusion in the Master International Frequency Register which provides stations with interference protection. These frequencies can be listed in the international List of Coast Stations but the document offers no interference protection. See Radio Regulation No. 1220 and Recommendation 304.

[5] Internationally, the 4 MHz frequencies are limited to ship stations (see Radio Regulation No. 517). Individual countries, however, may deviate from international provisions so long as harmful interference is not caused to services carried by other administrations in accordance with international regulations (see Radio Regulation No. 342). The Notice indicated that coast station operation is possible without interference to other administrations because of the limited range of frequencies in the 4 MHz and 8 MHz bands. It further noted that the U.S. proposal to the 1987 Mobile WARC was to make these frequencies available to both ship and coast stations.

[6] The proposed frequencies or station characteristics may need to be changed to permit sharing between the maritime mobile and fixed services. In some instances, no shared frequency assignments may be found.

and recreational users, however, more direct avenues than publication in the Federal Register was needed. Consequently, the Notice proposed to send information denoting the transfer frequencies to any entity or organization that furnishes its mailing address. Requests should be mailed to the International Liaison Staff, Special Services Division, Private Radio Bureau, with attention to "Docket 90-133, Revision of HF Maritime Frequencies" and should indicate the type of operation and frequencies currently in use (for example, recreational use of 4125.0 kHz, 4143.6 kHz, and 4419.4 kHz by yacht club members). Publications of this information by magazines or news letters concerning the maritime service or manufacturers of HF maritime equipment would be especially helpful.

13. Effective July 1, 1991, additional HF frequencies also will become available. The Notice proposed that these frequencies be available after that date through the normal application process. It also proposed to amend the Rules, however, to require applications for public coast stations to include a justification for additional channels based on the criteria recently proposed for NBDP (*i.e.*, 40 percent usage of existing frequencies at peak hours).[1] This justification would be required for public coast station applicants that request frequencies for manual Morse code telegraphy in 47 CFR 80.357(b), for radiotelephony in 47 CFR 80.371(b), and for the shared 4 MHz and 8 MHz frequencies in 47 CFR 80.374. This requirement would foster the efficient use of the available frequencies. On the other hand, it proposed to handle the new 26 MHz band frequencies for public coast stations working Morse code telegraphy, 47 CFR 80.357(b) and the new 4 MHz and 6 MHz band frequencies for radiotelephony call and reply, 47 CFR 80.369(d), differently. These additional frequencies represent a simple expansion to present assignments. Because there is no frequency pool available from which assignments could be distributed, these new frequencies could be added to frequency groups already assigned (*i.e.*, a 26 MHz frequency would be added to stations currently authorized frequencies in the 4, 6, 8, 12, 16, and 22 MHz bands). Thus, the Notice proposed to include these new frequencies automatically on public coast licenses renewed or modified after adoption of the Report and Order in this proceeding. It noted that this procedure would be efficient and fair because all licensees would have equal access to these new frequencies without encountering the delays inherent in the application process.

14. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information requirement on the public if the proposed requirement to submit a justification for additional frequencies is adopted. This justification is proposed for public coast stations requesting additional Morse code telegraphy working frequencies, public correspondence frequencies, and the limited shared spectrum in the 4 MHz and 8 MHz bands. The proposal would require public coast station applicants to include a traffic showing based on records kept for other business purposes. Because public coast stations are common carriers, they already maintain records on traffic for billing purposes and must file tariffs with the Commission for the communication services provided. Additionally, there are currently only 34 licensed public coast stations operating in the HF bands. Stations operating on frequencies in the HF bands typically service the high seas, cover large service areas, and offer the potential for worldwide interference. With regard to the 4 MHz and 8 MHz shared spectrum, a statement of need and expected use would be extremely valuable for coordination with the fixed operations currently located in these bands. Further, this requirement would not be imposed on coast station applicants generally, but only on those parties that wish to pursue the newly available frequencies. Because public coast stations currently maintain these records for other purposes, the submission of a showing based on the schedule of service and the amount of traffic on existing frequencies for public coast stations should not be a significant burden. Nevertheless, the collection of information requirement contained in the proposed rules has been submitted to Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Federal Communications Commission.

15. In accordance with section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), our initial analysis of the economic impact of these proposals to small entities is as follows:

(a) *Reason for action.* This action is proposed to incorporate the international revisions to the HF bands (4000–27500 kHz) adopted by the 1987 Mobile WARC into the Commission's Rules.

(b) *Objectives.* The objective of this proposal is to bring the maritime mobile service within the United States into conformance with international requirements. The HF band revisions adopted by the 1987 Mobile WARC decrease frequencies allocated for Morse code and increase frequencies available for newer forms of maritime communications (*i.e.*, automated DSC and NBDP telegraphy, and radiotelephony). To provide for this shift in services, the existing frequencies in the maritime mobile HF bands were rearranged. These revisions provide for growth in the maritime mobile service by providing for a more effective use of the radio spectrum.

(c) *Legal Basis.* The proposed action is authorized under section 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), and 303(r). These sections authorize the Commission to make such rules and regulations as may be necessary to encourage more effective use of the radio spectrum.

(d) *Reporting, recordkeeping, and other compliance requirements.* The Notice proposed that public coast station applicants that wish additional frequencies for coast Morse code telegraphy, public correspondence, or the new 4 MHz and 8 MHz shared spectrum submit a showing of need. Because public coast stations are common carriers, they already maintain records on traffic for billing purposes and must file tariffs with the Commission for the communication services provided. At present, there are 34 licensed public coast stations operating in the HF bands. Because public coast stations currently maintain these records for other purposes, the submission of a showing based on the schedule of service and the amount of traffic on existing frequencies for public coast stations should not be a significant burden.

(e) *Federal rules which overlap, duplicate, or conflict with this rule.* None.

(f) *Description, potential impact, and number of small entities involved.* The proposed revisions would change

[1] The submission of a justification of need based on traffic for public coast stations is similiar to the requirement recently proposed for NBDP frequencies, 47 CFR 80.361(a). See Notice of Proposed Rule Making, PR Docket No. 89-524, adopted November 2, 1989, 4 FCC Rcd 8072 (1989).

virtually every ship and coast station frequency in the HF bands. The proposed frequency changes would require all equipment that is crystal tuned to be re-fitted with new crystals. Consequently, all businesses using such equipment, including the fishing industry, would be affected. There are currently over 40,000 licensed ship and coast stations operating in the HF bands. The Commission estimates that between five and ten percent of existing stations use equipment that is crystal tuned and the cost of re-fitting a radio with new crystals should not exceed $100. It requests comments on the estimates presented here and the potential impact of the proposed rule changes to small entities generally.

(g) *Any significant alternatives minimizing the impact on small entities and existing licensees and consistent with the stated objectives.* None. These changes are necessary to comport with international treaty requirements.

16. This is a non-restricted notice and comment rule making proceeding. See 47 CFR 1.1206(a) for the rules governing permissible *ex parte* contacts.

17. The proposals may have an impact on both U.S. firms doing business in foreign countries and foreign firms doing business in the U.S. Therefore, pursuant to the 1989 Canada-United States Trade Agreement (Pub. L. 100–449, 102 Stat. 1851) the Commission will provide a seventy-five day comment period. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 8, 1990 and reply comments on or before July 9, 1990. All relevant and timely comments will be considered by the Commission before taking final action in this proceeding.

18. In order to avoid unduly burdening the **Federal Register** and to save the approximate $7,800 in printing costs, we are publishing a summary of this Notice of Proposed Rule Making in the **Federal Register** without the appendices that contain the proposed rules and reference summaries. Copies of the entire document are available from the Commission's duplication contractor: International Transcription Service, Inc., Suite 140, 2100 M Street NW., Washington, DC 20037; telephone 202–857–3800. This procedure satisfies notice requirements as well as the needs of the public while saving the Commission significant printing costs.

19. *It is ordered,* That a copy of this Notice shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 2

Frequency allocations, Radio, Treaties.

47 CFR Part 80

Coast stations, Communications equipment, Marine safety, Radio, Ship stations, Telegraph, Telephone.

Donna R. Searcy,

Secretary.

[FR Doc. 90–6941 Filed 3–27–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–138, RM–7040]

Radio Broadcasting Services; Newnan and Peachtree City, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by South Metro Broadcasting Company, Inc., licensee of Station WMKJ(FM), Channel 244A, Newnan, Georgia, seeking to change the community of license for Channel 244A from Newnan to Peachtree City, Georgia, and to modify its license accordingly. Coordinates for this proposal are 33–22–46 and 84–37–22.

DATES: Comments must be filed on or before May 14, 1990, and reply comments on or before May 29, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mark E. Fields, Miller & Fields, P.C. P.O. Box 33003, Washington, DC 20033 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–138, adopted March 7, 1990, and released March 22, 1990. The full text of this Commission decision 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 of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–6949 Filed 3–27–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–137, RM–7095, RM–7106]

Radio Broadcasting Services; Morris and Pontiac, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately filed petitions for rule making. The first petition was filed on behalf of Nelson Enterprises, Inc., ("Nelson"), seeking allotment of Channel 276A to Morris, Illinois, as a second local service. The proposal to allot Channel 276A to Morris would require the substitution of Channel 229A for Channel 276A at Pontiac, Illinois. The second petition filed on behalf of Livingston County Broadcasters, Inc., ("WJEZ"), licensee of Station WJEZ(FM), Pontiac, Illinois, seeks to substitute Channel 229A for Channel 276A at Pontiac, Illinois, and to modify the license for Station WJEZ(FM) to specify operation on Channel 229A. The coordinates for Channel 276A at Morris, Illinois, are North Latitude 41–18–39 and West Longitude 88–22–08. The coordinates for Channel 229A at Pontiac, Illinois, are North Latitude 40–52–31 and West Longitude 88–36–11.

DATES: Comments must be filed on or before May 14, 1990, and reply comments on or before May 29, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In

addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jerrold Miller, Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033, (Attorney for Nelson Enterprises, Inc., and Livingston County Broadcasters, Inc.)

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This a a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–137, adopted March 7, 1990, and released March 21, 1990. The full text of this Commission decision 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 of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments. See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–6947 Filed 3–27–90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90–140, RM–7197]

Radio Broadcasting Services; Pierre, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Robert E. Ingstad seeking the substitution of Channel 224C1 for Channel 224A at Pierre, South Dakota, and the modification of his license for Station KGFX–FM accordingly. Channel 224C1 can be allotted to Pierre in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.6 kilometers (6.0 miles) northwest to avoid a short-spacing to the proposed allotment of Channel 224C3 to Ainsworth, Nebraska. The coordinates for this allotment are North Latitude 44–26–00 and West Longitude 100–26–00. In accordance with section 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 224C1 at Pierre or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before May 14, 1990, and reply comments on or before May 29, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Clifford M. Harrington, Esq., Fisher, Wayland, Cooper and Leader, 1255 23rd Street, NW., Suite 800, Washington, DC 20037 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–140, adopted March 5, 1990, and released March 21, 1990. The full text of this Commission decision 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 of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–6946 Filed 3–27–90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90–139; RM–7149]

Radio Broadcasting Services; Oshkosh and Winneconne, WI; and Menominnee, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a joint petition by Value Radio Corp., the licensee of Station WMGV(FM), Channel 280A, Oshkosh, Wisconsin, and CJL Broadcasting, Inc., the licensee of Station WCJL–FM, Channel 280A, Menominee, Michigan, proposing the substitution of Channel 280C3 for Channel 280A at Oshkosh, the change of community of license for Station WMGV(FM) to specify Channel 280C3 at Winneconne, the substitution of Channel 279C3 for Channel 280A at Menominee, and the modification of the license of Station WCJL–FM accordingly. The proposal could provide the community of Winneconne with its first local FM service, as well as provided Menominee with its first wide coverage area FM service. Channel 280C3 at Winneconne requires a site restriction of 16.2 kilometers (10 miles) northwest of the city, at coordinates 44–15–09 and 88–44–48. Channel 279C3 at Menominee requires a site restriction of 13 kilometers (8 miles) west of that community at coordinates 45–06–21 and 87–46–43. The Menominee proposal also requires concurrence by the Canadian government.

DATES: Comments must be filed on or before May 14, 1990, and reply comments on or before May 29, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: David D. Oxenford, Esq., Scott R. Flick, Esq., Fisher, Wayland, Cooper and Leader, 1255 Twenty-third Street, NW., Suite 800, Washington, DC. 20037–1125 (counsel for petitioners).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–139, adopted March 5, 1990, and released March 21, 1990. The full text of this Commission decision 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 of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–6948 Filed 3–27–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on a Petition to List the Mexican Spotted Owl as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petition has been found to present substantial information indicating that listing the Mexican spotted owl (*Strix occidentalis lucida*) as a threatened or endangered species may be warranted. A status review is initiated.

DATES: The finding announced in this notice was made February 27, 1990. Any currently available information should be submitted by April 27, 1990. Newly acquired information should be submitted by October 22, 1990, to be incorporated into the 1-year finding on this petition. The Service will accept information on the status of the Mexican spotted owl at any time.

ADDRESSES: Information, comments, or questions should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 3530 Pan American Highway, NE, Suite D, Albuquerque, New Mexico 87107. The petition, findings, supporting data, and comments are available for public inspection, by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Peterson, Field Supervisor, at the above address (505/883–7877 or FTS 474–7877).

SUPPLEMENTARY INFORMATION: .

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the Federal Register. If the finding is positive, the Service is also required to promptly commence a status review of the species.

Dr. Robin D. Silver submitted a petition to the Service to list the Mexican spotted owl (*Strix occidentalis lucida*) as a threatened or endangered species. The petition was dated December 21, 1989, and was received by the Service on December 22, 1989.

The Mexican spotted owl occurs in the southwestern U.S. and Mexico. In the U.S., the bird is found predominately in the mountains of New Mexico and Arizona, southern Utah and Colorado, and western Texas. In Mexico the bird is found in the Sierra Madre Occidental and Sierra Madre Oriental from the U.S.-Mexico border to the State of Michoacan. The reported nesting and breeding habitat for the bird in the U.S. is mixed conifer or ponderosa pine/Gambel oak forests that have the following characteristics: multi-storied stands, moderately closed to closed canopy, large trees, and stand decadence as indicated by the presence of mistletoe, broken tree tops, tree heart rot, standing dead trees, and fallen logs. The amount of suitable habitat in the U.S. is estimated at slightly more than 3,000,000 acres. This amount of habitat represents a significant portion of the Mexican spotted owl's range. Ninety percent of the suitable U.S. habitat occurs on National Forest lands administered by the U.S. Forest Service.

The U.S. Forest Service conducted intensive inventories in 1988 and 1989 to locate Mexican spotted owls on National Forest lands in Arizona and New Mexico. Approximately 1,000,000 acres were inventoried and a total of 337 spotted owl territories were identified. A territory refers to an area occupied by a single owl or pair of owls. From these data, the Forest Service has estimated that National Forest lands in the two states contain 860 (+/−200) pairs of Mexican spotted owls.

The petition stated that the Mexican spotted owl merits listing under the act because current population numbers are low, essential habitat is facing widespread present and threatened destruction, and existing regulatory mechanisms for protection are inadequate. The petition provided information indicating that present Forest Service policies may not provide the type of management needed to sustain viable owl populations on National forest lands, which constitute most of the suitable Mexican spotted owl habitat in the U.S.

After a review of the petition, references cited therein, and information otherwise available to the Service, the Service has found that the petition presents substantial information indicating that listing the Mexican spotted owl as a threatened or endangered species may be warranted. This finding initiates a status review for the Mexican spotted owl as required under section (4)(b)(3)(A) of the Act. Within one year of receiving the petition, the Service is required under section 4(b)(3)(B) of the Act to make a finding as to whether the petitioned action is warranted.

The Service would appreciate any additional data, information, or comments from the public, government agencies, the scientific community, industry, or any other interested party concerning the status of the Mexican spotted owl.

Author

This notice was prepared by Charles McDonald, Albuquerque Ecological

Services Field Office, at the above address.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1543).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Dated: March 15, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–7054 Filed 3–27–90; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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 announces that the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) have submitted proposals contained in Amendment 5 to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) for Secretarial review and are requesting comments from the public.

DATES: Written comments on the amendment should be submitted on or before May 23, 1990.

ADDRESSES: Copies of the amendment are available from the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609.

Comments should be sent to Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702. Mark envelopes, "Comments on Amendment 5."

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires that a Council-prepared fishery management plan or amendment be submitted to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon receipt, immediately publish a notice that the document is available for public review and comment. The Secretary will consider public comments in determining whether to approve the proposed action.

Amendment 5 proposes to: (1) Extend the management area of the Atlantic migratory groups of king and Spanish mackerel through the jurisdictional area of the Mid-Atlantic Council to the New York/Connecticut border. (2) Revise previously cited problems in the fishery and identify five new ones. (3) Add a new FMP objective. (4) Revise the fishing year for Gulf group Spanish mackerel to April 1–March 31. (5) Revise the overfishing definition. (6) Assign responsibility for annual pre-season adjustments (maximum sustainable yield, total allowable catch, quotas, bag limits, and permits) for Gulf mackerel groups to the Gulf Council and for Atlantic migratory groups to the South Atlantic Council. Also, include Cobia in the annual stock assessment procedure. (7) Continue unified management of the Gulf migratory group of king mackerel until separate management of eastern and western Gulf groups can be determined. (8) Redefine recreational bag limits as daily limits instead of trip limits. (9) Delete the FMP provision specifying that king and Spanish mackerel caught under the bag limit may be sold unless the commercial fishery for that group or zone is closed. (10) Require that a shareholder or officer of a corporation, or the vessel operator, must meet income qualifications in order for the vessel to be eligible for a commercial permit. (11) Specify that Gulf group king mackerel can be taken only by hook and line or run-around gillnets. (12) Establish a daily bag limit of two cobia per person per day. (13) Establish a minimum size limit for king mackerel of 12 inches (30.5 cm) fork length or 14 inches (35.6 cm) total length. (14) Add a definition of "conflict" to the FMP. (16 U.S.C. 1801 *et seq.*)

Dated: March 22, 1990.

Richard H. Schaefer,

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

[FR Doc. 90–7038 Filed 3–23–90; 11:22 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 55, No. 60
Wednesday, March 28, 1990

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

Commodity Credit Corporation

1990—Crop Honey Price Support Program

AGENCY: Commodity Credit Corporation (CCC), Department of Agriculture (USDA).

ACTION: Notice of proposed determinations.

SUMMARY: The purpose of this notice is to propose a level of price support for the honey price support program for the 1990 crop. It is also proposed to continue lower loan repayment provisions now in place for the 1990 crop. These proposed determinations are made in accordance with the provisions of section 201(b) of the Agricultural Act of 1949, as amended.

DATES: Comments must be received on or before April 27, 1990 in order to be assured of consideration.

ADDRESSES: Mail comments to Bruce R. Weber, Director, Commodity Analysis Division, USDA–ASCS, Rm. 3741 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Jane K. Phillips, Agricultural Economist, Commodity Analysis Division, USDA, ASCS, room 3754 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–7601. The Preliminary Regulatory Impact Analysis describing the options considered in developing these proposed determinations and the impact of implementing each option is available from the above-named individual.

SUPPLEMENTARY INFORMATION: These proposed determinations have been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1521–1 and have been classified "not major." It has been determined that these proposed determinations will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases 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 U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which these proposed determinations apply are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of proposed determinations since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

In order to implement a price support program for the 1990 crop of honey by April 1, 1990, the beginning of the marketing season, comments must be received by April 27, 1990, to be assured of consideration.

Domestic production, imports, CCC and commercial stocks, and honey pledged as collateral for CCC price support loans are expected to result in a total supply of honey in the United States for 1990 of 441 million pounds.

Section 201(b) of the Agricultural Act of 1949 (the Act), as amended by the Food Security Act of 1985, provides that the price support level for the 1990 crop of honey shall be 95 percent of the price support rate for the previous year's crop, but not less than 75 percent of the simple average price received by producers of honey for the preceding 5 crop years, excluding the high and low years. The Omnibus Budget Reconciliation Act of 1987 amended section 201(b)(1) of the Act by adding subparagraph (D) which provides that, once the support levels have been determined using the above method, the rates for the 1987 through 1990 crops must be reduced by specified amounts. Pursuant to subparagraph (D), the amount specified for the 1990 crop must be reduced by 0.25 cents.

The price support loan rate for the 1989 crop of honey was 56.86 cents per pound prior to being reduced in accordance with subparagraph (D). This amount, when reduced by 5 percent, equals 54.02 cents per pound. Seventy-five percent of the simple average price received by producers in the 5 preceding crop years, excluding the highest and lowest years, is 37.17 cents per pound. Therefore, since the established loan rate (54.02 cents per pound) is in excess of that amount, 54.02 cents per pound if reduced by 0.25 cents per pound, resulting in a price support loan rate for 1990—crop honey of 53.77 cents per pound.

Under the provisions of section 201(b) of the Act the Secretary may permit producers who have obtained price support loans with respect to the 1986–1990 crops of honey to repay such loans at a level that is the lesser of:

(a) The loan level determined for such crop; or

(b) Such level that the Secretary determines will:

(1) Minimize the number of loan forfeitures;

(2) Not result in excessive total stocks of honey;

(3) Reduce the costs incurred by the Federal Government in storing honey; and

(4) Maintain the competitiveness of honey in domestic and export markets.

Accordingly, the following determinations are proposed with respect to the 1990 crop:

Proposed Determinations

The 1990 program will be a price support loan program with a loan rate of 53.77 cents per pound.

Producers with price support loans for the 1990—crop honey will be permitted to repay such loans at the lesser of the loan level for such crop or at a level which the Secretary of Agriculture, or a designee, determines will minimize the number of loan forfeitures, not result in excessive total stocks of honey, reduce the costs incurred by the Federal Government in storing honey, and maintain the competitiveness of honey in domestic and export markets. At this present time, it is contemplated that a repayment level may be established in a range of 35 to 45 cents a pound. These levels roughly reflect the wide range of potential landed import prices for honey. A repayment level in this range would result in direct competition with imported honey whereby commercial sales of domestically produced honey

would increase and total stocks of domestically produced honey would decrease. This increased competition would minimize the number of loan forfeitures and thus reduce the costs incurred by the Federal Government in storing honey. Repayment within this range would not only make domestically produced honey more competitive with foreign honey in domestic markets but would increase its competitiveness in foreign markets as well.

Consideration will be given to all views and recommendations that are received within the comment period relating to the above determinations.

All comments will be available for public inspection in room 3741 of USDA's South Building during business hours (8 a.m. to 4:30 p.m.).

Authority: 7 U.S.C. 1466; 15 U.S.C. 714b and 714c.

Signed at Washington, DC, on March 21, 1990.

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 90-7065 Filed 3-27-90; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Joint Meeting of the Computer Peripherals, Components, and Related Test Equipment and Computer Systems Technical Advisory Committee; Closed Meeting

A joint meeting of the Computer Peripherals, Components, and Related Test Equipment, and Computer Systems Technical Advisory Committee will be held April 20, 1990, at 9 a.m., in the Herbert C. Hoover Building, Room 1617-F, 14th street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems, computer peripherals, components and related test equipment or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information, call Ruth D. Fitts at 202-377-4959.

Dated: March 22, 1990.

Ruth D. Fitts,

Acting Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 90-7014 Filed 3-27-90; 8:45 am]

BILLING CODE 3510-DT-M

Semiconductor Technical Advisory Committee; Closed Meeting

A meeting of the Semiconductor Technical Advisory Committee will be held April 19, 1990, at 9 a.m., in the Herbert C. Hoover Building, Room 1617-F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to semiconductors and related equipment or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information, call Ruth D. Fitts at 202-377-4959.

Dated: March 22, 1990.

Ruth D. Fitts,

Acting Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 90-7015 Filed 3-27-90; 8:45 am]

BILLING CODE 3510-DT-M

Transportation and Related Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held April 19, 1990, at 9:30 a.m., in the Herbert C. Hoover Building, Room 1414, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology. The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 13, 1989, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information, call Ruth D. Fitts at 202-377-4959.

Dated: March 22, 1990.

Ruth D. Fitts,

Acting Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 90-7016 Filed 3-27-90; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-351-804]

Postponement of Final Antidumping Duty Determination and Postponement of Antidumping Duty Public Hearing: Industrial Nitrocellulose From Brazil

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in the antidumping duty investigation to postpone the final determination, as permitted by section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)).

Based on this request, we are postponing our final determination as to whether sales of industrial nitrocellulose from Brazil have occurred at less than fair value until not later than May 28, 1990. We are also postponing our public hearing in the antidumping duty investigation until May 2, 1990.

EFFECTIVE DATES: March 28, 1990.

FOR FURTHER INFORMATION CONTACT: Michael Ready at (202) 377-2613, or Louis Apple at (202) 377-1769, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On March 5, 1990, we published a preliminary determination of sales at less than fair value of this merchandise. This notice stated that if the investigation proceeded normally, we would make our final determination by May 14, 1990.

On March 7, 1990, respondent requested a postponement of the final determination in the antidumping duty investigation until not later than May 28, 1990, pursuant to section 735(a)(2)(A) of the Act (19 U.S.C. 1673d(a)(2)(A)). This respondent accounts for all of the exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the subject merchandise under investigation request a postponement of the final determination following a preliminary affirmative determination we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final antidumping duty determination until not later than May 28, 1990.

PUBLIC COMMENT: In accordance with § 353.38 of the Department's regulations (19 CFR 353.38), if requested we will hold a public hearing to afford interested parties an opportunity to comment on the preliminary determination in the antidumping duty investigation at 9:30 a.m. on May 2, 1990, at the U.S. Department of Commerce Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

Ten copies of the business proprietary version and five copies of the public version of case briefs must be submitted to the Assistant Secretary by April 23, 1990. Ten copies of the business proprietary version and five copies of the public version of rebuttal briefs must be submitted to the Assistant Secretary by April 30, 1990.

An interested party may make an affirmative presentation at the public hearings only on arguments included in that party's case brief, and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Written arguments should be submitted in accordance with § 353.38 of the Commerce Department's regulations (19 CFR 353.38), and will be considered only if received within the time limits specified in this notice.

The U.S. International Trade Commission is being advised of this postponement in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act.

Dated: March 16, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-7012 Filed 3-27-90 8:45 am]

BILLING CODE 3510-DS-M

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background: Each year the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than March 31, 1990, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

Antidumping Duty Proceedings	Period
Australia: Canned Bartlett Pears (A-602-039)	03/01/89-02/28/90
Canada: Construction Castings (A-122-503)	03/01/89-02/28/90
Canada: Certain Fresh Cut Flowers (A-122-604)	03/01/89-02/28/90
Chile: Standard Carnations (A-337-602)	03/01/89-02/28/90
Colombia: Certain Fresh Cut Flowers (A-301-602)	03/01/89-02/28/90
Ecuador: Certain Fresh Cut Flowers (A-331-602)	03/01/89-02/28/90
Finland: Rayon Staple Fiber (A-405-071)	03/01/89-02/28/90
France: Brass Sheet and Strip (A-427-602)	03/01/89-02/28/90
France: Rayon Staple Fiber (A-427-072)	03/01/89-02/28/90
Israel: Oil Country Tubular Goods (A-508-602)	03/01/89-02/28/90
Italy: Certain Valves and Connections of Brass, for Use in Fire Protection Systems (A-475-401)	03/01/89-02/28/90
Italy: Brass Sheet and Strip (A-475-601)	03/01/89-02/28/90
Japan: Ferrite Cores (of the type used in consumer electronic products) (A-588-016)	03/01/89-02/28/90
Japan: Stainless Steel Butt-Weld Pipe Fittings (A-588-702)	03/01/89-02/28/90
Japan: Television Receivers, Monochrome and Color (A-588-015)	03/01/89-02/28/90
Sweden: Brass Sheet & Strip (A-401-601)	03/01/89-02/28/90

Antidumping Duty Proceedings	Period
Taiwan: Light-Walled Welded Rectangular Carbon Steel Tubing (A-583-803)	08/24/88-02/28/90
Thailand: Certain Circular Welded Carbon Steel Pipes & Tubes (A-549-502)	03/01/89-02/28/90
People's Republic of China: Chloropicrin (A-570-002)	03/01/89-02/28/90
Federal Republic of Germany: Brass Sheet & Strip (A-428-602)	03/01/89-02/28/90
Suspended Investigation	
Brazil: Frozen Concentrated Orange Juice (C-351-005)	01/01/89-12/31/89
Colombia: Certain Textiles & Textile Products (C-301-401)	01/01/89-12/31/89
Thailand: Certain Textiles & Textile Products (C-549-401)	01/01/89-12/31/89
Countervailing Duty Proceedings	
Argentina: Leather Wearing Apparel (C-357-001)	01/01/89-12/31/89
Argentina: Textile Mill Products and Apparel (C-357-404)	01/01/89-12/31/89
Brazil: Certain Castor Oil Products (C-351-029)	01/01/89-12/31/89
Brazil: Cotton Yarn (C-351-037)	01/01/89-12/31/89
Canada: Standard Carnations (C-122-603)	01/01/89-12/31/89
Chile: Standard Carnations (C-337-601)	01/01/89-12/31/89
France: Brass Sheet & Strip (C-427-603)	01/01/89-12/31/89
Iran: In-Shell Pistachios (C-507-501)	01/01/89-12/31/89
Israel: Oil Country Tubular Goods (C-508-601)	01/01/89-12/31/89
Mexico: Certain Iron Metal Construction Castings (C-201-009)	01/01/89-12/31/89
Mexico: Certain Textile Mill Products (C-201-405)	01/01/89-12/31/89
Netherlands: Standard Chrysanthemums (C-421-601)	01/01/89-12/31/89
New Zealand: Carbon Steel Wire Rod (C-614-504)	10/01/88-09/30/89
Pakistan: Cotton Shop Towels (C-535-001)	01/01/89-12/31/89
Peru: Certain Textile Mill Products and Apparel (C-333-402)	01/01/89-12/31/89
South Africa: Ferrochrome (C-791-001)	01/01/89-12/31/89
Sri Lanka: Certain Textile Mill Products and Apparel (C-542-401)	01/01/89-12/31/89
Thailand: Certain Apparel (C-549-401)	01/01/89-12/31/89
Turkey: Certain Welded Carbon Steel Pipe & Tube (C-489-502)	01/01/89-12/31/89

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by March 31, 1990.

If the Department does not receive by March 31, 1990 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: March 16, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-7009 Filed 3-27-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-403-801]

Initiation of Antidumping Duty Investigation: Fresh and Chilled Atlantic Salmon From Norway

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of fresh and chilled Atlantic salmon from Norway are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of fresh and chilled Atlantic Salmon from Norway are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before April 16, 1990. If that determination is affirmative, we will make preliminary determination on or before August 7, 1990.

EFFECTIVE DATE: March 20, 1990.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Tracey Oakes, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1769 or (202) 377-3003, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On February 28, 1990, we received a petition filed in proper form by The Coalition for Fair Atlantic Salmon Trade. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioner alleges that imports of fresh and chilled Atlantic salmon from Norway are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in section 353.14 of the Department's regulations.

United States Price

Petitioner's estimate of United States Price (USP) for fresh and chilled Atlantic salmon is based upon the monthly F.O.B. foreign port prices of fresh and chilled Atlantic salmon for September, October, November and December, 1989, as reported in U.S. Census Bureau IM-146 reports. The Petitioner adjusted the above import statistics for estimated movement charges.

Foreign Market Value

Petitioner's estimate of foreign market value is based on the constructed value of the Norwegian product. The source for this data is a 1988 Norwegian

Directorate Study that reports the 1988 average production cost figures for farms producing salmon.

Petitioner also alleges sales below the cost of production. Because the Petitioner failed to provide sufficient information, pursuant to section 773(b) of the Act, we have determined that we do not have reasonable grounds to believe or suspect that there are sales below the cost of production. Therefore, we are not initiating a sales below the cost of production investigation at this time.

According to Petitioner's estimates, comparison of foreign market value and United States price results in dumping margins of between 22.22 percent to 84.86 percent, depending on the region in Norway that the fresh and chilled Atlantic salmon are raised.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on fresh and chilled Atlantic salmon from Norway and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of fresh and chilled Atlantic Salmon from Norway are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by August 7, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The product covered by this investigation is the species Atlantic salmon (Salmo salar) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon; Chinook (also called "king" or "quinnat"); Coho ("silver"); Sockeye ("redfish" or "blueback"); Humpback ("pink"); and Chum ("dog"). Atlantic salmon is a whole or nearly-whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh-water ice ("chilled"). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon is currently provided for under the following HTS subheadings: 0302.12.00.60.8 and 0302.12.00.65.3. Prior to January 1, 1989, Atlantic salmon was classifiable under item 110.2045 of the *Tariff Schedules of the United States Annotated (TSUSA).*

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations.

Preliminary Determination by ITC

The ITC will determine by April 16, 1990, whether there is a reasonable indication that imports of fresh and chilled Atlantic salmon from Norway are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: March 20, 1990.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-7010 Filed 3-27-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-582-802, A-580-806, A-583-808]

Postponement of Preliminary Antidumping Duty Determinations; Sweaters Wholly or in Chief Weight of Man-Made Fiber From Hong Kong, the Republic of Korea, and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the petitioner in these investigations to postpone the preliminary determinations, as permitted in section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673b(c)(1)(A)). Based on this request, we are postponing our preliminary determinations as to whether sales of sweaters wholly or in chief weight of man-made fiber from Hong Kong, the Republic of Korea, and Taiwan have been made at less than fair value until not later than April 20, 1990.

EFFECTIVE DATE: March 28, 1990.

FOR FURTHER INFORMATION CONTACT: Mary Clapp, Kate Johnson, or Carole Showers at (202) 377-3965, 377-8830 or 377-3217, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On February 16, 1990, we published a notice of postponement (55 FR 5641) of the preliminary determinations in the antidumping duty investigations to determine whether sweaters wholly or in chief weight of man-made fiber from Hong Kong, the Republic of Korea, and Taiwan are being, or are likely to be, sold in the United States at less than fair value. The notice stated that we would issue our preliminary determinations by April 6, 1990.

On March 19, 1990, counsel for the petitioner requested that the Department postpone the preliminary determinations an additional 14 days, *i.e.*, until not later than 210 days after the date of receipt of the petition, in accordance with section 733(c)(1)(A) of the Act. Accordingly, we are postponing the date of the preliminary determinations until not later than April 20, 1990. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-7013 Filed 3-27-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-015]

Television Receivers, Monochrome and Color, From Japan; Determination Not To Revoke In Part

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of determination not to revoke in part.

SUMMARY: On January 24, 1990, the Department of Commerce published the final results of its administrative reviews of the antidumping finding on television receivers, monochrome and color, from Japan. The reviews covered three manufacturers/exporters of this merchandise to the United States and various periods from April 1, 1981 through February 28, 1989.

In that notice we determined that Toshiba Corporation had satisfied some of the requirements for revocation under § 353.54(b) of the Commerce Regulations. However, there was insufficient evidence on the record to determine whether Toshiba had satisfied another of the requirements for revocation, which is to demonstrate that there is no likelihood of resumption of sales at less than fair value. Therefore, we gave interested parties an opportunity to comment on that one issue.

Based on our analysis of the comments received we have determined not to revoke in part the antidumping finding on Japanese televisions with regard to Toshiba.

EFFECTIVE DATE: March 28, 1990.

FOR FURTHER INFORMATION CONTACT: Wendy J. Frankel, David S. Levy, or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 2399) the final results of its administrative reviews of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971).

We had preliminarily determined not to revoke the finding with respect to Toshiba because the company's margin was more than *de minimis*. However, after reviewing the comments received and correcting certain clerical errors, we found that Toshiba's margin was zero for the partial fifth period, and that Toshiba had no shipments during the ninth period. Since Toshiba also had zero margins for the periods April 1, 1979 through March 31, 1980 and April 1, 1982 through March 31, 1983, and had no shipments during the intervening period, we determined in our final results that Toshiba had satisfied part of the requirements for revocation under § 353.54(b) of the Commerce Regulations.

However, there was insufficient evidence on the record to determine whether Toshiba had satisfied another requirement for revocation, which is to demonstrate that there is no likelihood of resumption of sales by Toshiba at less than fair value. Therefore, we invited interested parties to comment on the final results with regard to the issue of likelihood of resumption of LTFV sales by Toshiba.

Scope of Review

Imports covered by the reviews are shipments of television receiving sets, monochrome and color, and include but are not limited to projection televisions, receiver monitors, and kits (containing all the parts necessary to receive a broadcast television signal and produce a video image). Not inlcuded are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image.

This notice covers one manufacturer/exporter of Japanese television receivers, Toshiba Corporation (Toshiba).

Analysis of Comments Received

We received comments from two domestic parties, Zenith Electronics Corp. (Zenith) and the Unions (the United Electrical Workers of America, Independent, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, and the Industrial Union Department, AFL-CIO). We also received comments from Toshiba.

Comments: Zenith and the Unions state that the Department should not revoke the antidumping finding on Japanese televisions with respect to Toshiba because the company has not satisfied any of the requirements for revocation.

Zenith and the Unions assert that the competitive market conditions cited in the Department's denial of revocation for Hitachi and Sanyo still exist (54 FR 35517, August 28, 1989). Television receiver prices in the United States remain depressed as a result of increasing imports from low-cost producers in such countries as the Republic of Korea, Taiwan, Mexico, Malaysia, Hong Kong, Thailand, the People's Republic of China, the Philippines, and Singapore. Increased competition, along with the strength of the yen and high production costs in Japan, place Japanese manufacturers at a competitive disadvantage in the United States. The domestic parties argue that sales at LTFV are inevitable under these conditions. The substantial dumping margins found by the Department in recent administrative reviews of other Japanese companies demonstrate that U.S. prices of imported Japanese television receivers have not kept pace with rising costs and exchange rates, and remain well below prices in Japan.

Zenith and the Unions contend that Toshiba has not demonstrated that it would not resume dumping if the finding were to be revoked. The domestic parties claim that despite the existence of the antidumping finding, Toshiba was able to continue sales in the United States at unfair prices by shifting production of televisions to the United States and to other countries or by exporting large quantities of color picture tubes to the United States. Zenith and the Unions also point out that while Toshiba focused on a comparison of its U.S. sales prices with those of its Japanese competitors, it failed to provide information on its home market pricing practices. As a result, the domestic parties argue that the Department does not have sufficient information with which to assess the likelihood of resumed dumping by Toshiba.

The Unions contend that Toshiba models, if exported from Japan, would have dumping margins between 24.74 and 70.84 percent. Lacking any Toshiba home market information, the Unions base their analysis on a comparison of advertised Toshiba U.S. prices with the constructed value of similar merchandise produced by another Japanese manufacturer.

Although Toshiba had no shipments to the United States during the ninth review period, Zenith and the Unions argue that Toshiba has strong incentives to resume exports to the United States

from Japan. Japanese manufacturers have excess capacity in both their television receiver and picture tube production facilities, but are faced with increasing import competition in Japan and import restrictions in such alternative markets as the European Community (EC) and the People's Republic of China as well as antidumping duties in the United States. The Japanese had avoided antidumping duties by exporting televisions assembled outside Japan as well as color picture tubes to the United States. However, the antidumping duty orders on televisions from the Republic of Korea and Taiwan, and on color picture tubes from Japan, reduce the ability of Japanese manufacturers to resort to these strategies. As a result, the domestic parties fear that Toshiba would quickly shift production of complete televisions back to Japan and resume exports from Japan to the United States if the finding were to be revoked. Both domestic parties also argue that the profit potential of the liquid crystal display (LCD) and high-definition TV (HDTV) technologies being developed in Japan will prompt Japanese manufacturers to export televisions incorporating these technologies to the United States.

Zenith and the Unions question the credibility of Toshiba's letter of agreement not to resume LTFV sales in the future, citing several instances of misconduct as well as other antidumping investigations involving Toshiba as evidence that Toshiba might not honor its commitment to abstain from LTFV sales if excluded from the finding.

Zenith and the Unions dispute whether Toshiba is actually eligible for revocation, arguing that Toshiba's pattern of no shipments or no sales at LTFV does not meet the standards of either the current or the pre-1989 regulations. Zenith also expresses concern that the Department has no information on Toshiba's television sales activities in the United States during the period between the fifth and ninth reviews (October 1983 through February 1987).

Finally, Zenith and the Unions contend that the statute requires that the Department verify any factual information submitted by Toshiba in support of the current revocation proceeding, as well as the information used by the Department for the second, third, and fourth review periods.

Toshiba claims that it is eligible for revocation because its sales of Japanese televisions during the first, fourth, and partial fifth administrative reviews were found to be at or above fair value.

Toshiba argues that the Department's practice has been to review company-specific information in determining whether there is a likelihood of resumption of sales at LTFV. The Department's 1989 regulations codify this practice. According to Toshiba, the Department bases a revocation decision on general information about market conditions only when company-specific price data are unavailable. The Department relied on such general information in denying revocation for Hitachi and Sanyo because these companies had no commercial shipments (and, therefore, no company-specific price data) for five and six years, respectively (54 FR 35517, August 28, 1989). Toshiba claims that its case is different because the Department has detailed company-specific pricing information from the first, fourth, and partial fifth review periods, during which the Department found no margins for Toshiba.

Toshiba offers several arguments in support of its contention that it will not resume LTFV sales in the future. Toshiba notes that its strategy is to produce large-screen televisions with specialized features for the high end of the market, where it can compete on the basis of quality, technology, and added features rather than price. During periods in which general market conditions or other factors caused other firms to dump in the United States, Toshiba claims it expanded its U.S. market share while selling at or above fair value, as determined by the Department. Thus, Toshiba argues that it would not have to sell at dumped prices in the future to be competitive and retain or even increase its U.S. market share. In addition, Toshiba claims to have a policy of determining in advance if a product would be sold at LTFV and refusing to manufacture any product that would have to be sold at such prices.

Toshiba claims that it has no incentive to resume exports of Japanese televisions to the United States. The company has made considerable investments in a television plant in Tennessee and a picture tube factory in New York. According to Toshiba, production costs at these facilities are much lower than those in Japan. The Tennessee plant currently has sufficient capacity to supply the U.S. market, and produces all but one size of the Toshiba television receiver models sold in the United States. Additionally, both U.S. facilities have the capability of further expansion, and Toshiba has been increasing its design and engineering capabilities at the Tennessee plant.

Toshiba asserts that the Department should not consider the general market factors on which it based its denial of revocation for Hitachi and Sanyo. However, Toshiba argues that, even if the Department were to examine general market conditions in this case, they would not indicate a likelihood of resumption of LTFV sales by Toshiba.

Toshiba claims that its U.S. pricing practices are not affected by low-cost imports from third countries. Imports from these countries are concentrated in the small-screen, less-expensive segments of the U.S. market. Therefore, these imports do not compete with Toshiba televisions, which are sold at the upper end of the U.S. television market. Further, Toshiba notes that the yen has depreciated against the dollar since November 1988, making it easier to export to the United States at fair value.

Toshiba disputes the Department's assumption that tightening EC import controls would result in increased Japanese exports to the United States. For example, Toshiba contends that EC import restrictions on television receivers are actually being eliminated as the EC moves toward an open market. Even if this were not the case, Toshiba states that EC import barriers would have only a minimal impact on the company's Japanese exports. Toshiba also notes that it has a production facility in the United Kingdom.

Finally, Toshiba asserts that the development of LCD and HDTV technology does not provide a basis for the assumption that LTFV sales will resume. Toshiba argues that HDTV is expected to be extremely expensive, making it unlikely to become a mass-merchandise consumer product, and that speculation as to likely costs of production and pricing with respect to HDTV in a consumer market is utterly without foundation. Toshiba also argues that there are different kinds of LCD technology, and it is not yet clear whether LCD televisions will be within the scope of the antidumping finding. Even if other manufacturers incorporate these new technologies in television receivers in the future, Toshiba claims that it is developing LCDs for use in computer displays, and is adding capacity for HDTV cathode ray tubes for business use only.

Department's Position: Although Toshiba's arguments have some merit, we determine that we cannot conclude from the evidence in the record that there is no likelihood of resumption of LTFV sales by Toshiba. We acknowledge that Toshiba has made substantial investments in U.S.

manufacturing facilities, and that the Department found no dumping margins for the three review periods during which Toshiba had shipments. However, these factors by themselves do not demonstrate that there is no likelihood of resumed dumping, and Toshiba did not present sufficient additional information to support its contention that LTFV sales would not resume if the finding were to be revoked.

Many of Toshiba's arguments in support of revocation are intended to demonstrate that it has no incentive to resume shipments from Japan. However, the Department's concern is not whether shipments would resume, but whether dumping would occur in the event that Toshiba were to resume shipments.

The Department's practice in evaluating the likelihood of resumption of LTFV sales is to first examine company-specific pricing practices and data. As noted above, Toshiba claims that the data used by Department in finding zero dumping margins during the first, fourth, and partial fifth administrative reviews, combined with more recent data on its U.S. pricing practices, demonstrate that LTFV sales would not resume if the finding were to be revoked.

Although Toshiba argues that the zero margins found for the first, fourth, and partial fifth reviews prove that it has competed in the U.S. market without dumping, the data used by the Department in calculating those margins are nearly seven years old. Toshiba also claims that it was able to sell televisions in the United States at fair market value and increase its market share between 1983 and 1986, while other companies were dumping. However, Toshiba televisions sold in the United States since 1984 were not imported from Japan, and there is no evidence on the record to indicate that had these sets been from Japan they would not have been sold at LTFV. Furthermore, Toshiba failed to provide any data on its Japanese home market prices that could be compared with its prices in the United States, offering instead only a comparision of its U.S. prices with those of its competitors, which is irrelevant for purposes of the antidumping law.

As a result, we consider the available Toshiba-specific price data to be insufficient for evaluating the likelihood of resumption of LTFV sales of Japanese televisions. Therefore, we have used the type of analysis used in the case of Hitachi and Sanyo. We have examined competitive pricing pressures, market factors, and conditions in both the U.S. and the home market in making our determination. Although the domestic parties argue that Toshiba's record does not qualify it for possible revocation and expressed their doubts about Toshiba's credibility, we disagree with the first of these factors, and need not make a decision with respect to the latter.

In our notice denying revocation for Hitachi and Sanyo, we stated:

> In the most recent administrative reviews of this finding (*See, e.g., Television Receivers, Monochrome and Color, From Japan: Final Results of Antidumping Duty Administrative Review* (52 FR 8940, March 20, 1987); and *Television Receivers, Monochrome and Color, From Japan: Final Results of Antidumping Duty Administrative Review* (54 FR 13197, April 6, 1989)), we found substantial dumping margins for several Japanese respondents that have continued to export televisions from Japan for sale in the U.S. market. Competition in the U.S. market is further affected by television imports, including many at LTFV, from such countries as the Republic of Korea and Taiwan. Given the high production costs in Japan and the high value of the yen, it is difficult to see how Hitachi and Sanyo, if they were to resume shipments to the United States on a competitive basis, could compete in such a tight market without selling at LTFV. We have no reason to believe that present market conditions in the United States and Japan will change.

Although we acknowledge that the yen has depreciated against the dollar since 1988, the value of the yen has not returned to the level that prevailed before its sizeable appreciation, which began in 1985. The other conditions cited above still exist, and we do not expect them to change sufficiently to eliminate our concern about the resumption of LTFV sales by Toshiba.

We do not accept Toshiba's argument that it is not affected by these pressures as a result of its high-end marketing strategy. Price competition exists in all segments of the market, and we expect the competitive pressures in the high end of the market to increase as more producers moves towards production of increasingly sophisticated televisions.

The development of such new technologies as LCDs, some of which the Department has determined to be within the scope of the finding, could significantly affect this competition in the future. Although the development of these technologies is still in its early stages, we believe that there is a significant and real potential for adapting them for future use in television receivers. Given the large amount of research and development currently being conducted by Japanese companies, including Toshiba, we foresee that televisions manufactured with LCD and other new technologies will be exported from Japan to the United States. As a result, we do not accept Toshiba's assertion that it has no incentive to resume exports to the United States. Although Toshiba claims that the LCD and other technologies it is currently developing are not necessarily for use in television receivers, it offered no evidence that it does not intend to develop these technologies for use in televisions.

Moreover, some of the information submitted by Toshiba indicates that dumping could resume if the finding were to be revoked for Toshiba. For example, the data submitted by Toshiba reveal that its production costs are greater in Japan than in the United States, thereby creating a likelihood that prices of Toshiba televisions in Japan are also higher than those in the United States. Toshiba's practice of performing an LTFV analysis on any new products that may be manufactured for export to the United States is also significant. By stating that it has refused to produce new products on the basis of its internal LTFV analysis, Toshiba tacitly acknowledges the potential for dumping.

For these reasons, we are not satisfied that there is no likelihood of the resumption of LTFV sales by Toshiba. Therefore, we believe that revocation of the finding for Toshiba is not warranted.

Since we do not intend to revoke the antidumping finding for Toshiba, the domestic parties' argument that the Department must verify any factual information submitted by Toshiba in support of the current revocation proceeding, as well as that used by the Department in past reviews, is moot.

Final Results of Review

Based on our analysis of the comments received on this issue, we are not satisfied that there is no likelihood of resumption of sales by Toshiba at LTFV. Therefore, we have determined not to revoke the antidumping finding with regard to Toshiba.

This notice is in accordance with section 751(c) of the Tariff Act (19 U.S.C. 1675(c)(1)) and 19 CFR 353.25 (1989).

Dated: March 19, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-7008 Filed 3-27-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-403-802]

Initiation of Countervailing Duty Investigation: Fresh and Chilled Atlantic Salmon From Norway

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers or exporters in Norway of fresh and chilled Atlantic salmon, (hereinafter referred to as the subject merchandise), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of fresh and chilled Atlantic salmon from Norway materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, we will make our preliminary determination on or before May 24, 1990.

EFFECTIVE DATE: March 28, 1990.

FOR FURTHER INFORMATION CONTACT: Elizabeth Graham or Rick Herring, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-4105 and (202) 377-3530.

SUPPLEMENTARY INFORMATION:

The Petition

On February 28, 1990, we received a petition in proper form from The Coalition for Fair Atlantic Salmon Trade, filed on behalf of the U.S. industry producing fresh and chilled Atlantic salmon. The Coalition is comprised of companies in Maine and Washington producing the subject merchandise. In compliance with the filing requirements of § 355.12 of the Commerce Regulations (19 CFR 355.12), the petition alleges that producers and exporters of fresh and chilled Atlantic salmon in Norway receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Since Norway is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Norway materially injure, or threaten material injury to, the U.S. industry.

Petitioner has alleged that it has standing to file the petition. Specifically, petitioner has alleged that it is an interested party as defined under section 771(9)(C) of the Act and that it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party as described under paragraph (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce officials cited in the "For Further Information Contact" section of this notice.

Initiation of Investigation

Under section 702(c) of the Act, we must make the determination on whether to initiate a countervailing duty proceeding within 20 days after a petition is filed. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) Alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. We have examined the petition on fresh and chilled Atlantic salmon from Norway and have found that most of the programs alleged in the petition meet these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether Norwegian producers or exporters of fresh and chilled Atlantic salmon receive subsidies. However, we are not initiating an investigation on one program because the petition failed to allege the elements necessary for the imposition of a duty and failed to provide the necessary supporting information. If our investigation proceeds normally, we will make our preliminary determination on or before May 24, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item number(s). The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The product covered by this investigation is the species Atlantic salmon (Salmo salar) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon, Chinook (also called "king" or "quinnat"), Coho ("silver"), Sockeye ("redfish" or "blueback"), Humpback ("pink"), and Chum ("dog"). Atlantic salmon is a whole or nearly-whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh-water ice ("chilled"). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon is currently provided for under the following HTS subheadings: 0302.12.0060.8 and 0302.12.0065.3. Prior to January 1, 1989, Atlantic salmon was classifiable under item 110.2045 of the *Tariff Schedules of the United States Annotated (TSUSA).*

Allegations of Subsidies

Petitioner lists a number of practices by the Government of Norway which allegedly confer subsidies on producers or exporters of fresh and chilled Atlantic salmon. We are initiating an investigation of the following programs:

- *District Development Bank Loans, Loan Guarantees and Investment Grants.*
- *Regional Development Fund Loans, Loan Guarantees, Investment Grants, and Regional Transport Subsidies.*
- *State Fisheries Bank Loans.*
- *Norwegian Bank for Industry Loans.*
- *Loans from the Institute for Financing of Structural Readaptation.*
- *Loans from the Fund for Industrial Enterprises.*
- *State Industry Bank Loans.*
- *State Agricultural Bank and Development Fund Loans.*
- *State Industry Fund Loans.*
- *Regional Capital and Tax Incentives.*
- *Norwegian Central Bank Loans.*
- *Government-Funded Aquaculture Research and Development.*
- *Export Transportation Subsidy for Salmon.*
- *Norwegian Export Council Export Financing.*

We are not initiating an investigation on the allocation of fish farming licenses. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) Alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. The program listed above was alleged to confer domestic subsidies. The elements which must be alleged for a domestic subsidy program are (1) specificity (*i.e.*, the program is limited to a specific enterprise or industry or group of enterprises or industries), (2) provision of a countervailable benefit (*i.e.*, a subsidy paid or bestowed directly or indirectly on the manufacturer, producer or exporter of any class or kind of merchandise). We are not initiating on this program because petitioner failed to explain how the allocation or granting of licenses conferred a benefit upon the subject merchandise.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-proprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information, either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations.

Preliminary Determination by ITC

The ITC will determine by April 16, 1990, whether there is a reasonable indication that imports of fresh and chilled Atlantic salmon materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, this investigation will continue according to the statutory procedures. This notice is published pursuant to section 702(c)(2) of the Act.

Dated March 20, 1990.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-7011 Filed 3-27-90; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 90365-0005]

RIN No. 0693-AA49

Approval of Federal Information Processing Standards Publication 151-1, POSIX; Portable Operating System Interface for Computer Environments

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a revision of Federal Information Processing Standard 151, POSIX: Portable Operating System Interface for Computer Environments, which will be published as FIPS Publication 151-1. This revised standard supersedes FIPS 151 in its entirety.

SUMMARY: On April 13, 1989, notice was published in the **Federal Register** (54 FR 14829) that a revision of Federal Information Processing Standard Publication (FIPS PUB) 151, POSIX: Portable Operating System Interface for Computer Environments, was being proposed for Federal use.

FIPS PUB 151, POSIX, was approved in September 1988 on an interim basis, pending completion of voluntary industry standards activities on the POSIX specifications.

The written comments submitted by interested parties and other material available to the Department relevant to this proposed revision were reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve the revised standard as Federal Information Processing Standards Publication (FIPS PUB) 151-1, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

This FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATES: This standard is effective September 28, 1990.

ADDRESSES: Interested parties may purchase copies of this standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this revised standard is set out in the Where to Obtain Copies Section of the announcement section of the standard.

FOR FURTHER INFORMATION CONTACT: Roger Martin, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3295

Dated: March 21, 1990.

John W. Lyons,

Director.

FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATION 151-1

[date]

Announcing the Standard for POSIX: Portable Operating System Interface for Computer Environments

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

Name of Standard. POSIX: Portable Operating System Interface for Computer Environments (FIPS PUB 151-1).

Category of Standard. Software Standard, Operating Systems.

Explanation. This publication announces the adoption of IEEE Std 1003.1-1988 of the Institute of Electrical and Electronics Engineers (IEEE) Standard for Portable Operating System Interface for Computer Environments as a Federal Information Processing Standard (FIPS). IEEE Std 1003.1-1988 defines a C language source interface to an operating system environment. This standard is for use by computing professionals involved in system and application software development and implementation. This standard is the first component of a series of specifications needed for application portability. The Appendix to this standard discusses the elements needed in an Applications Portability Profile.

Approving Authority. Secretary of Commerce.

Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology

(National Computer Systems Laboratory).

Cross Index. The Institute of Electrical and Electronic Engineers Standard for Portable Operating System Interface for Computing Environments, IEEE Std 1003.1–1988 (POSIX).

Related Documents.

a. Federal Information Resource Management Regulation 201–39, Acquisition of Federal Information Processing Resources by Contracting.

b. Draft Proposed American National Standard X3J11/88–02, "Programming Language C".

Objectives. This FIPS permits Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of this FIPS are:

a. To promote portability of computer application programs at the source code level.

b. To simplify computer program documentation by the use of a standard portable system interface design.

c. To reduce staff hours in porting computer programs to different vendor systems and architectures.

d. To increase portability of acquired skills, resulting in reduced personnel training costs.

e. To maximize the return on investment in generating or purchasing computer programs by insuring operating system compatibility.

Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard specifications.

Applicability. This FIPS shall be used for operating systems that are either developed or acquired for Government use where POSIX-like interfaces are required. This FIPS is applicable to the entire range of computer hardware, including:

a. Micro-computer systems.

b. Mini-computer systems.

c. Engineerg workstations.

d. Mainframes.

Specifications. The POSIX FIPS specifications are the specifications contained in the Institute of Electrical and Electronics Engineers Standard for Portable Operating System Interface for Computer Environments, IEEE Std 1003.1–1988 (POSIX) as modified below. IEEE Std 1003.1–1988 defines a C language source code level interface to an operating system environment. IEEE std 1003.1–1988 refers to and is a complement to draft ANSI standard X3J11/88–002, C Language, which is under development by Accredited Standards Committee X3. IEEE Std 1003.1–1988 requires specific areas of ANSI X3J11/88–002, C Language, to complete the environment specification for portable application software.

The following modifications to IEEE Std 1003.1–1988 for Portable Operating System Interface for Computer Environments are required for implementations of POSIX that are acquired by Federal agencies:

a. Inconsistencies with CLK TCK exist between the IEEE Std 1003.1–1988 and the referenced ANSI/X3.159–198x Programming Language C Standard draft 13 May 1988 (X3J11/88–002). This inconsistency shall be resolved in the ratified C Standard. Until the C Standard is ratified, CLK TCK is to be treated as a POSIX-only symbol.

b. The implementation shall support the option POSIX CHOWN RESTRICTED.

c. The implementation shall support the option (NGROUPS MAX) such that the value of (NGROUPS MAX) is greater than or equal to eight (8).

d. The implementation shall support the setting of the group-ID of a file (when it is created) to that of its parent directory.

e. The implementation shall support the functionality associated with the feature (POSIX SAVED IDS).

f. The implementation shall support the functionality associated with the feature (POSXI VDISABLE).

g. The implementation shall support the option_POSIX_JOB_CONTROL.

h. The implementation shall support the functionality associated with the feature [_POSIX_NO_TRUNC].

i. In Section 6.4.1.2, the sentence "If a read( ) is interrupted by a signal after it has successfully read some data, either it shall return -1 with errno set to [EINTR], or it shall return the number of bytes read. "shall be deleted and replaced with the sentence "If a read( ) is interrupted by a signal after it has successfully read some data, it shall return the number of bytes the system has read."

In Section 6.4.2.2, the sentence "If a write( ) is interrupted by a signal after it successfully writes some data, either it shall return -1 with errno set to [EINTR], or it shall return the number of bytes written," shall be deleted and replaced with the sentence "If a write( ) is interrupted by a signal after it successfully writes some data, it shall return the number of bytes the system has written."

j. The environment for the login shell shall contain the environment variables HOME and LOGNAME as defined in Section 2.7.

Implementation. This standard is effective _____ (*please insert date which is 6 months after date of publication in the* **Federal Register**). This standard is compulsory and binding for use in all solicitations and contracts for new operating systems where POSIX-like interfaces are required. The other elements identified in the Appendix should be considered in planning for future procurements.

a. *Acquisition of a Conforming Portable Operating System Environment.* Operating system environments which are to be acquired for Federal use after the effective date of this standard and where POSIX-like interfaces are required shall use this FIPS. Conformance to this FIPS shall be considered whether the operating system environments are:

1. developed internally,

2. acquired as part of an ADP system procurement,

3. acquired by separate procurement,

4. used under an ADP leasing arrangement, or

5. specified for use in contracts for programming services.

b. *Interpretation of the FIPS for Portable Operating System Interface for Computer Environments.* NIST provides for the resolution of questions regarding the FIPS specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of this FIPS should be addressed to: Director, National Computer Systems Laboratory, Attn: POSIX FIPS Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

c. *Validation of Conforming Operating Systems Environments.* NIST has developed cooperatively with industry a validation suite for measuring conformance to this standard. This suite will be required for testing conformance of POSIX implementations. Requirements for testing will be announced in the near future.

Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency

heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only be a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of soliciation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

Where to Obtain Copies: Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the Institute of Electrical and Electronics Engineers, Incorporated.) When ordering, refer to Federal Information Processing Standards Publication 151–1 (FIPSPUB151–1), and title. Payment may be made by check, money order, or deposit account.

Appendix A

POSIX, as currently defined, is the crucial first step in providing a vendor independent interface specification between an application program and an operating system. The current definition, however, must be extended in order to provide interface specifications for full operating system functionality. These additional interface specifications must include:

(1) *Shell and Tools:* These functions provide an interactive interface for users to control processing. Example: listing the files in a directory.

(2) *Advanced Utilities:* These utilities provide additional capabilities and specialized functions that make users and programmers more productive. Example: full-screen editing.

(3) *System Administration:* These functions are required to operate and maintain the system. Example: mount a file system.

(4) *Terminal Interface Extensions:* These functions are called by application programs. They enable programs to perform interactive terminal operations in a way that is independent of the type of terminal being used. Example: turn on attributes such as blinking characters or reverse video.

POSIX, when fully extended, will provide the functionality required to support source code portability for a wide range of applications across many different machines and operating systems. However, even the extended POSIX will not be sufficient to achieve portability for all applications.

There is increasing recognition of the need for an architectural approach to applications portability. This recognition has come about because earlier attempts to use a language-based approach to applications portability were not successful. Language portability is only one aspect of the problem of porting applications softwear from one operating system environment to another. Applications software portability depends on additional factors which include:

(1) Characteristics of the underlying hardware/software, (e.g. word length, input/output (I/O) graphics, architecture, processor, operating system),

(2) Portability of softwear utilities used by the application (e.g. data base management, graphics, operating system functions, and communications),

(3) Data form, format and representation that may need to be transported with the software, and

(4) Language implementation (compiler/interpreter/processor) including specific limits or subsets of the language used in programming, (e.g. magnitude of numeric values, number of subscripts and number of labels).

Unless each of these factors is addressed as part of an overall architecture, the benefits of applications portabiltiy will not be fully realized.

A planned Applications Portability Profile (APP) has been developed to provide sufficient functionality to accommodate a broad range of application requirements. The functional components of the APP constitute a "tool box" of standard elements that can be used to develop and maintain portable applications. A key aspect of the APP is that it is an open systems architecture based upon non-proprietary standards. The current planned components of the APP are summarized in Figure 1 and described in the following paragraphs. Additional components may be added as technology changes and as Federal Government requirements change.

Database Management

Database management is an important aspect of applications portability. A growing number of organizations use a Database Management System (DBMS) to allow application programs, written in a variety of languages, to work on the same basic data. In addition, a DBMS can facilitate language independence in the design, development, and maintenance of data resources.

FIPS 127–1, Database Language SQL, and FIPS 156, Information Resource Dictionary Systems (IRDS) are the initial components to meet the database management requirements.

Data Interchange

In addition to the mechanism for managing data, the data itself is an important aspect of applications portability. In many situations, the problems associated with porting the applications software from one system to another pales in comparison to the problem of porting the data. There are three categories of particular concern regarding data interchange:

- Graphics
- Product Data
- Document Processing

FIPS 128, Computer Graphics Metafile (CGM) is the initial component to meet the graphics requirements. Initial Graphics Exchange Specification (IGES) and Product Data Exchange Specification (PDES) are the initial components to meet the requirements to exchange product data. Standard Generalized Markup Language (SGML) and Office Document Architecture/Office Document Interchange Format (ODA/ODIF) are the initial components to meet the requirements for document processing.

Network Services

There are two basic network services that should be provided:

File Management is an integral part of most applications. File management functions have traditionally focused on accessing data within a local file system. That focus has now shifted to functions that permit shared access to files in a heterogeneous environment of computer hardware, software, and networks. A standard approach to managing this shared access to remove files is an important aspect of software portability. Failure to provide shared access to remove files will inevitably lead to local, incompatible approaches that inhibit application portability.

Transparent File Access (TFA) is the initial component to meet file management facility requirements.

Data Communications facilities permit interoperability among applications in a heterogeneous environment of computer hardware, software, and networks. The requirement to manage shared access to remove files is just part of a larger requirement for applications software to perform its functions in a network environment. Here again, failure to provide this function will inevitably lead to local, incompatible approaches that inhibit applications portability.

Government Open Systems Interconnection Profile (GOSIP) is the initial component to satisfy the data communications requirements.

User Interface

The most neglected aspect of applications software portability is the requirement to maintain a consistent user interface across all systems on which the application resides. The fact that the application is likely to be distributed over a heterogeneous environment of computer hardware, software, and networks means that the user interface facility must provide the flexibility to allow the user to interact with programs within such an environment.

The X Window System is the initial component to meet user interface requirements.

Programming Services

The most emphasized aspect of applications software portability is the requirement for programming language portability from one system to another. The major problem is that programming language portability is often equated with applications software protability. A key requirement for programming languages is that a sufficient variety be included to encompass the full range of application requirements.

The C language binding is the initial component for programming language interfaces. Additional bindings will be developed for FORTRAN, COBOL, Ada, and Pascal.

Function	Element	Specification
Operating System.	Extended POSIX	FIPS 151-1 (IEEE Std 1003.1-1988). IEEE P1003.2 (proposed FIPS).
Data Base Management.	SQL	FIPS 127-1.
	IRDS	FIPS 156.
Data Interchange:		
—Graphics	CGM	FIPS 128.
—Product Data.	IGES & PDES	NBSIR 88-3813.
—Document Processing.	SGML	FIPS 152.
	ODA/ODIF	ISO/IS 8613.
Network Services:		
—Data Communications.	OSI	FIPS 146 (GOSIP).
—File Management.	TFA	IEEE P1003.xx.
User Interface.	X Window System	Version 11, Release 3 (proposed FIPS).
Programming Services.	C	X3J11/88-002.
	COBOL	FIPS 021-3.
	FORTRAN	FIPS 069-1.
	Ada	FIPS 119.
	Pascal	FIPS 109.

Figure 1—Applications Portability Profile

While NIST will continue to work with both national and international standards organizations to produce the needed specifications, current federal requirements dictate immediate action. In order to meet this need NIST will adopt a series of specifications based on emerging national and international standards.

These specifications will include interface specifications for (1) Shell and Tools, (2) Advanced Utilities, (3) System Administration, (4) Terminal Interface Extensions, (5) X Window System, and (6) TFA.

The components of the APP represent varying stages of maturity. Some have not been introduced into the formal standards process (i.e. X Window System), others exist only as draft standards (e.g. POSIX), and others have been adopted as national and international standards (e.g. SQL). As these standards mature there will be a need to update the APP to reflect the changes that will occur. NIST will establish a process to ensure that the APP incorporates the evolving (maturing) consensus of the national and international standards activities for each of the functional components of the APP. In addition, specifications for bindings for languages and other APP components may be required. NIST will identify the need for these bindings and augment the APP as required.

Both users and vendors will be included in this process through an ongoing series of user workshops and implementation workshops which will provide forums for feedback and comments on the evolving APP. The user workshops will be designed to (1) provide users with information about the progress of defining the APP and (2) provide NIST with input and feedback on the evolving APP and what priorities should be given to the various functional components. The Implementors Workshops will provide a forum in which to discuss the evolving APP with the vendors and to get feedback on the technical merits of the proposals. These implementor workshops will be designed to ensure that there is a general consensus on the part of vendors to commit to building products to the evolving APP specifications.

[FR Doc. 90-7055 Filed 3-27-90; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Shickrey Anton, From Objections by South Carolina Coastal Council

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Appeal and Request for Comments.

On October 4, 1989, the Secretary of Commerce received a notice of appeal from Shickrey Anton. Mr. Anton is appealing to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR Part 930, subpart H. The appeal is taken from an objection by the South Carolina Coastal Council (State) to Mr. Anton's consistency certification for a U.S. Army Corps of Engineer's permit to place dredged or fill material in a wetland in the South Carolina coastal zone.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

Mr. Anton requests that the Secretary override the State's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that (1) The proposed activity furthers one or more of the national objectives or purposes contained in sections 302 or 303 of the CZMA; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest; (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act; and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with South Carolina's coastal zone management program. *See* 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within thirty days of the publication of this notice and should be sent to Kirsten Erickson, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atomospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235. Copies of comments should also be sent to Mr. H. Stephen Snyder, South Carolina Coastal Council, 4130 Faber Place, Charleston, South Carolina 29405.

All nonconfidential documents submitted or received in this appeal are available for public inspection during business hours at the offices of the State

and the Office of the Assistant General Counsel for Ocean Services, NOAA.

FOR ADDITIONAL INFORMATION CONTACT: Kirsten Erickson, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., suite 603, Washington, DC 20235, (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: March 22, 1990.

Thomas A. Campbell,

General Counsel.

[FR Doc. 90–7111 Filed 3–27–90; 8:45 am]

BILLING CODE 3510–08–M

Permits; Pacific Coast Groundfish Fishery

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

ACTION: Notice of receipt of an experimental fishing permit application and request for comments.

SUMMARY: This notice acknowledges receipt of an application for an experimental fishing permit to continue to harvest groundfish on domestic trawl vessels using detachable codends of various mesh sizes in the exclusive economic zone off the coasts of Washington, Oregon, and California. If granted, this permit would allow fishing practices which otherwise would be prohibited by Federal regulations. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan and implementing regulations.

DATES: Comments on this application must be received by April 20, 1990.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Termnial Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140; or Rodney R. McInnis, 213–514–6199.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations at 50 CFR part 663 specify that experimental fishing permits (EFPs) may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at 50 CFR 663.10.

An EFP application to harvest groundfish with bottom trawl gear using detachable condends of various mesh sizes in the exclusive economic zone off the coasts of Washington, Oregon, and California was received on March 6, 1990. The application represents the fourth of five phases of a West Coast Groundfish Mesh Size Study conducted by the University of Washington under a Saltonstall/Kennedy grant from NOAA. The major goal of the experimental fishery is to compare the effectiveness of different mesh size gear regulations with the current trip limit regime implemented under the FMP. Current groundfish regulations at 50 CFR 663.26 prohibit the use of a mesh size smaller than four and one-half inches in bottom trawls and prohibit detachable codends if the vessel is carrying a net with smaller than four and one-half inch mesh.

To obtain meaningful results in comparing gear regulations with trip limits, the applicant is requesting that the current trip limits and groundfish quota restrictions be waived for the duration of the experiment. An EFP, if granted, would authorize the use of detachable codends of various mesh sizes and would waive current trip limits and groundfish quota restrictions for the time, area, and vessels specified.

The applicant proposes to conduct no more than 30 experimental fishing trips operating out of various ports in Washington, Oregon, and California from June 1, 1990, to December 31, 1990. However, no more than three vessels will be involved in the experimental fishery at one one time and each vessel will have an observe employed by the University of Washington aboard. The proposed experimental fishery will utilize bottom otter trawls with five detachable codends per trip with each codend having a different mesh size, ranging from three inches up to six inches or more. Three general types of groundfish fishing strategies are proposed in the experiment; (1) Use of bottom trawls with roller gear targeting on a mixture of rockfish species (primarily the *Sebastes* complex); (2) use of bottom trawls with mud gear targeting on the slope assemblage of groundfish consisting primarily of Dover sole, sablefish, and *Sebastolobus* spp.; and (3) use of bottom trawls with mud gear targeting on the shelf assemblage of groundfish consisting primarily of a mixture of flatfish species. The application indicates that the majority of the experimental harvest will be within the current groundfish trip limits. However, some harvest in excess of the trip limits for sablefish, widow rockfish, yellowtail rockfish, Pacific ocean perch, the *Sebastes* complex are expected by the applicant to obtain sufficient information on the catch performances of different mesh sizes to contrast with the effects of trip limits.

In 1989, an EFP was issued for Phase III of this West Coast Groundfish Mesh Size Study. The applicant is requesting an EFP for 1990 that is essentially the same as the EFP issued in 1989. There were 50 trips conducted in 1989, resulting in the following excess harvest over trip limits: widow rockfish—143.5 metric tons (mt); Pacific ocean perch—29.3 mt; sablefish—84.0 mt; *Sebastes* complex—140.7 mt; and yellowtail rockfish—193.2 mt. If the maximum of 30 trips takes place in 1990, the applicant estimates the following excess harvest over trip limits: widow rockfish—86 mt; Pacific ocean perch—18 mt; sablefish—50 mt; *Sebastes* complex—84 mt; and yellowtail rockfish—116 mt. If trip limits are applied to the Deepwater complex in 1990 as they were in 1989, then the applicant estimates that an excess harvest of Deepwater complex of 19 mt.

The application will be discussed at the April 3–6, 1990, public meeting of the Pacific Fishery Management Council in Eureka, California. The decision to approve or deny issuance of an EFP will be based on a number of considerations, including recommendations made by the Council and comments received from the public. A copy of the application is availble for review at the NMFS, Northwest Regional Office, address above.

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

Dated: March 22, 1990.

Richard H. Schaefer,

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

[FR Doc. 90–7101 Filed 3–23–90; 2:32 pm]

BILLING CODE 3510–22–M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 90–4–90JL]

Determination of Negotiated Jukebox Licenses

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of determination.

SUMMARY: The Tribunal has determined that a negotiated jukebox license is in effect covering a quantity of music not substantially smaller than the quantity of music performed on jukeboxes from

March 1, 1988 to March 1, 1989. The jukebox compulsory license is therefore suspended for the term of the negotiated license, ending December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, Suite 450, 1111 20th Street, NW., Washington, DC 20036 (202–653–5175).

SUPPLEMENTARY INFORMATION: In October 1988, Congress amended the Copyright Act ot provide, among other things, for a procedure by which the jukebox compulsory license could be suspended if the owners and users of music on jukeboxes were to reach their own voluntary license agreement.

The new section 116A of the Copyright Act directs that the Copyright Royalty Tribunal, at the end of the one-year period beginning on the effective date of the Berne Convention Implementation Act (March 1, 1989), shall determine whether or not sufficient negotiated licenses are in effect to suspend the jukebox compulsory license. A sufficient number of negotiated licenses would be reached if they provide "permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on jukeboxes during the one-year period" before the new section went into effect—March 1, 1988 to March 1, 1989.

As the legislative history states, "The purpose of this provision is to authorize the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI) and SESAC, Inc.—the three performing rights organizations named in current section 116 of the Copyright Act—to negotiate jointly with the Amusement and Music Operators of America (AMOA), the terms and rates of licenses for performances of copyrighted musical works in any, some or all of their repertories by jukeboxes." House Report, at 26.

Consequently, ASCAP, BMI, SESAC and AMOA informed the Tribunal earlier this year that an "agreement in principle" had been reached, and upon that basis the Tribunal published a notice of proposed determination in the Federal Register asking the public whether an agreement reached between ASCAP, BMI, SESAC, and AMOA would cover a quantity of music not substantially smaller than the quantity of music performed on jukeboxes in the year ending March 1, 1989. No comments were solicited on the merits of the "agreement in principle," the Tribunal having no authority to review the agreement. 55 FR 4218 (February 7, 1990).

A joint comment was filed February 27, 1990 by ASCAP, BMI, SESAC and AMOA in which the parties cited the legislative history of the Berne Convention Implementation Act of 1988 that an agreement between AMOA and the three societies would necessarily cover enough music to suspend the compulsory license. The parties also submitted evidence concerning the dominance of the three performing rights societies and of the trade association in the jukebox music industry.

On March 22, 1990, ASCAP, BMI, SESAC and AMOA informed the Tribunal that the agreement between them was signed that day, and on March 23, 1990, the parties filed a copy of the agreement with the Tribunal. The agreement covers a ten-year period, from January 1, 1990 through December 31, 1999.

Discussion

Section 116A calls for the Tribunal to make a determination "at the end of the 1-year period beginning on the effective date of the Berne Convention Implementation Act of 1988" (March 1, 1990) whether negotiated licenses "are in effect." One interpretation of that language would hold that the agreement between ASCAP, BMI, SESAC and AMOA would have had to be in effect by March 1, 1990. The Tribunal asked informally for comments on this question from ASCAP, BMI, SESAC and AMOA, which were filed March 2, 1990.

The Tribunal is persuaded by its own research that such a conclusion is not warranted based on a case decided by the U.S. Court of Appeals for the District Circuit, *Western Fuels-Utah, Inc.* v. *Lujan*.

In that case the Court held that the Bureau of Land Management was justified in interpreting "at the end of" as not meaning "by the end of." The BLM was reasonable in concluding that "at the end of" could include a reasonable period of time after the end of the lease period so long as its procedures were started before the end of the period. *Western Fuels-Utah, Inc.* v. *Lujan*, No. 85–5417 (D.C. Cir., decided February 9, 1990).

Here, we believe that the situation is quite similar. ASCAP, BMI, SESAC and AMOA had informed the Tribunal prior to the end of the one-year period of an agreement which had been substantially reached and they concluded the agreement within a reasonable time after the one-year period.

Accordingly, the Tribunal finds that, based on the evidence submitted by the parties and the Congressional intent expressed in the legislative history, a voluntary agreement is in effect providing permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on jukeboxes from March 1, 1988 to March 1, 1989. The term of the agreement extends to December 31, 1999. Consequently, the jukebox compulsory license is suspended until December 31, 1999.

Dated: March 23, 1990.

J.C. Argetsinger,

Chairman.

[FR Doc. 90–7103 Filed 3–27–90; 8:45 am]

BILLING CODE 1410–90–M

DEPARTMENT OF DEFENSE

Office of Secretary

Defense Advisory Committee on Women in the Services (DACOWITS); Conference

AGENCY: Department of Defense.

ACTION: Notice of conference.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming conference of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the DACOWITS is to assist the Secretary of Defense on matters relating to women in the Services. The Committee meets semiannually.

DATES: April 21–25, 1990 (Summarized agenda follows).

ADDRESSES: Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia, unless otherwise noted in agenda.

AGENDA: Sessions will be conducted daily and will be open to the public. The agenda will include the following:

Saturday, April 21, 1990, 10:00 a.m.–5:30 p.m.

For DACOWITS Class of 1990 only: Conference registration; Orientation briefings on the DACOWITS, Army, Navy, Marine Corps, Air Force, and Coast Guard.

Sunday, April 22, 1990, 8:00 a.m.–6:30 p.m.

Conference registration; Office of the Secretary of Defense (OSD) Overview; Defense Equal Opportunity Management Institute briefing; Nurse Corps Retention briefing; Get Acquainted Luncheon (current DACOWITS members, military representatives, legal advisors, and liaison officers only; Subcommittee Sessions; and Social.

Monday, April 23, 1990, 7:15 a.m–10:00 p.m.

Official Opening Ceremony in Pentagon Auditorium, Room 5A1070 (board buses at hotel at 7:15 a.m.; ceremony begins at 8:30 a.m.); visit National Military Command Center (current and former DACOWITS members only); Installation Visit Luncheon; DoD Sex Roles in the Active Duty Military Survey briefing; Career Counseling for Prospective Women Officers briefing; Women in the Coast Guard Study briefing; Subcommittee Sessions; and OSD Reception and Dinner (by invitation only).

Tuesday, April 24, 1990, 8 a.m.–5 p.m.

Subcommittee Sessions; DoD Health Care Survey briefing; Members of the Public Presentations; OSD Luncheon (by invitation only); and Executive Committee Mark-up.

Wednesday, April 25, 1990, 7:30 a.m–11:00 a.m.

No-host Breakfast (current DACOWITS members only); Individual Review of Resolutions; and General Business Session.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Mary C. Pruitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (202) 697–2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the conference.

(1) Members of the public will not be permitted to attend official OSD luncheon or reception and dinner.

(2) All business sessions, to include the Executive Committee meetings, will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the conference.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than April 6.

(5) Length and number of oral presentations to be made will depend on the number of requests received from the members of the public.

(6) Oral presentation by members of the public will be permitted only on Tuesday, April 24 before the full Committee.

(7) Each person desiring to make an oral presentation must provide the DACOWITS office 1 copy of the presentation by April 6 and make available 100 copies of any material that is intended for distribution at the conference.

(8) Persons submitting a written statement for inclusion in the minutes of the conference must submit to the DACOWITS staff one copy either before or by the close of the conference.

(9) Other new items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chair or Director, DACOWITS and Military Women Matters, to consider.

(10) Members of the public will not be permitted to enter into oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to orally question the scheduled speakers if recognized by the Chair and if time allows after the official participants have asked and/or made comments.

(12) Questions from the public will not be accepted during the Subcommittee Sessions, the Executive Committee meetings, or the Business Session on Wednesday, April 25.

Dated: March 22, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–7070 Filed 3–27–90; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Notice was published on March 20, 1990, at 55 FR 10280 that the Naval Research Advisory Committee Panel on Tactical Defense Suppression in the Year 2000 will meet on March 26, 1990, at the Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, Virginia. The date and location of the meeting have been changed. The meeting will be held on April 4, 1990 at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia.

This Notice is being published late because additional critical budget information which impacts upon panel requirements necessitates a change in the date and location of the meeting. Operational necessity constitutes an exceptional circumstance not allowing for 15 days Notice of the meeting change.

In accordance with 5 U.S.C. section 552b(e)(2), the meeting rescheduling is publicly announced at the earliest practical time.

Date: 26 March 1990.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

DEPARTMENT OF EDUCATION

[CFDA No.: 84.192]

Adult Education for the Homeless Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1991.

Purpose of Program: The Adult Education for the Homeless Program provides assistance to enable State educational agencies to plan and implement, either directly or through contracts or subgrants, a program of literacy training and basic skills remediation for adult homeless individuals within their States.

Deadline for Transmittal of Applications: June 15, 1990.

Deadline for Intergovernmental Review: August 15, 1990.

Applications Available: March 30, 1990.

Available Funds: $7,397,000.

Estimated Range of Awards: $75,000–$500,000.

Estimated Average Size of Awards: $247,000.

Estimated Number of Awards: 30.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), and part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-Wide Requirements for Drug-Free Workplace (Grants)); and (b) The regulations for this program in 34 CFR part 441.

Invitational Priority

The Secretary is particularly interested in applications that meet the following invitational priority:

Applications from States that propose a program of education for homeless adults that is targeted to a homeless population sharing common characteristics (such as homeless single parents, homeless alcoholic men, or homeless victims of spousal abuse).

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria.

The Secretary assigns the fifteen points, reserved in 34 CFR 441.20(b), as follows: 10 points to selection criterion (c)—Plan of operation—in 34 CFR 441.21(c) for a total of 25 points for that criterion; and 5 points to selection criterion (d)—Quality of key personnel—in 34 CFR 441.21(d) for a total of 20 points for that criterion.

FOR FURTHER INFORMATION CONTACT: Paul R. Geib, Jr., Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue SW (room 4512, Mary E. Switzer Building), Washington, DC 20202-7242. Telephone (202) 732-2364; or James Parker, Program Services Branch, Division of Adult Education and Literacy, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue SW. (room 4418, Mary E. Switzer Building), Washington, DC 20202-7320. Telephone (202) 732-2399.

Program Authority: 42 U.S.C. 11421.

Dated: March 1, 1990.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 90-7003 Filed 3-27-90; 8:45 am]

BILLING CODE 4000-01-M

National Commission on Drug-Free Schools; Meeting

AGENCY: National Commission on Drug-Free Schools; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a forthcoming meeting of the National Commission on Drug-Free Schools. Notice of this meeting is offered pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. Appendix 2.

DATES/TIMES: April 17, 1990; meeting to be held between the hours of 8:30 a.m.–4 p.m.

LOCATION: Forest Hill High School, located at 2607 Raymond Road, Jackson, Mississippi 39204.

FOR FURTHER INFORMATION CONTACT: William Modzeleski, Executive Director, National Commission on Drug-Free Schools, Washington, DC., 20202-7584; (202) 732-6140.

AGENDA: The morning session will consist of a public hearing, with testimony offered by individuals and organizations representing local and statewide areas of interest of the Commission. The afternoon session will consist of discussions by Commission members with students and educators on drug-related issues of concern to the state.

SUPPLEMENTARY INFORMATION: The National Commission on Drug-Free Schools was established pursuant to section 5051 of Public Law 100-690. Co-chaired by the Secretary of Education and the Director of the Office of National Drug Control Policy, the membership consists of selected members of the Senate and House of Representatives, and citizen members representing various areas of drug education, prevention, and law enforcement. The legislative mandate of the Commission is to develop recommendations for identifying drug-free schools and campuses, identifying model programs to achieve drug-free schools, and to make other findings that are consistent with its mission.

This meeting is open to the public. Records of Commission proceedings are available for public inspection at the Office of the Commission, 330 C Street, SW., Washington, DC., from the hours of 9 a.m. to 5 p.m. during Federal government working days.

Dated: March 16, 1990.

Ted Sanders,

Under Secretary.

[FR Doc. 90-6952 Filed 3-27-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 et. seq.) The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE desk officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586-2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–580.
3. 1902–0137.
4. Fuel Purchase Practices.
5. Revision.
6. Biennially reporting.
7. Mandatory.
8. Businesses or other for profit.
9. 67 respondents.
10. 67 responses.
11. 90 hours per response.
12. 6030 hours (total).
13. The information requested is needed to comply with the requirements of Section 205(f)(2) of the Federal Power Act for a review "not less frequently than every two years" of "practices * * * to insure efficient use of resources."

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. Subsections 764(a), 764(b), 772(b), and 790a.

Yvonne Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90–7099 Filed 3–27–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[GP90–7–000]

Barbara T. Fasken; Petition to Reopen and Vacate Final Well Determinations

March 21, 1990.

On March 8, 1990, Barbara T. Fasken, Individually and as Independent Executrix of the Estate of David Fasken, Deceased, (Fasken) filed a petition requesting the Commission to reopen and vacate determinations that two wells operated by Fasken qualify as stripper wells under section 108 of the Natural Gas Policy Act of 1978. The determinations, obtained by David Fasken, predecessor-in-interest to Fasken, are on wells located in Eddy County, New Mexico, as described below:

Well name	FERC Control no.
Arco "9", Morrison No. 1	JD82–20888.
Arco "10", Federal No. 2	JD81–10098, JD82–11525.

Fasken likewise requests the Commission to vacate subsequent determinations of enhanced recovery for these wells, and seeks to withdraw each relevant application for these determinations. The purchaser of gas from these wells is ENRON/ Transwestern Pipeline Company (ENRON).

Fasken states that she has discovered through recent internal investigations that the field staff of an independent engineering firm retained by David Fasken had restricted production from each of these wells during the 90-day qualifying periods and that she has been unable to discern a basis upon which the determinations can be sustained. Fasken states she has tendered to ENRON $1,311,257.72 in refunds, plus interest, for her working interest share in the wells for the period October 1, 1980, thorugh May 31, 1989, and requests that refunds required of her be limited to the extent of her working interest share only.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 30 days following publication of this notice in the **Federal Register.** All protests will be considered by the Commission, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of Fasken's petition are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–6972 Filed 3–27–90; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3749–6]

Science Advisory Board; Relative Risk Reduction Strategies Committee; Cancellation of Meeting

The meeting of the Relative Risk Options Subcommittee of the Relative Risk Reduction Strategies Committee scheduled for April 2, 1990 has been cancelled. (See 55 FR 4478, February 8, 1990) The meeting will not be rescheduled.

Dated: March 21, 1990.

Donald G. Barnes,

Science Advisory Board.

[FR Doc. 90–7080 Filed 3–27–90; 8:45 am]

BILLING CODE 6560–01–M

[FRL–3749–5]

Clean Water Act; Availability of Listing Decisions, Individual Control Strategies, and Responses to Comments and Petitions

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of final listing decisions, individual control strategies (ICS's), and responses to comments and petitions under section 304(1) of the Clean Water Act.

SUMMARY: Notice is hereby given to the availability of the United States Environmental Protection Agency's (U.S. EPA) final listing decisions, including approvals and disapprovals of the lists of waters, point sources, pollutants, and individual control strategies (ICS's) submitted by the Commonwealth of Virginia, and U.S. EPA's responses to comments and petitions under section 304(1) of the Clean Water Act as amended by the Water Quality Act of 1987. The U.S. EPA Region III Regional Administrator made the above final decisions on March 20, 1990 and is hereby giving the required notice of the availability of these decisions and the administrative record.

DATES: Petitions to add waters and comments on all aspects of the Agency's decisions with regard to the lists of waters, point sources, pollutants and individual control strategies were to be submitted to the U.S. EPA by October 4, 1989. Comments and petitions received after this date were considered as Agency time and resources permitted. The Regional Administrator is to respond to all comments and petitions on or before June 4, 1990.

ADDRESSES: The U.S. EPA's responses to comments and petitions, and final decisions on approving and disapproving the lists of waters, point sources, pollutants and ICS's are available for public review. To obtain a copy of these decisions contact: Mr. Thomas Henry (3WM53), Permits Enforcement Branch, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107.

The administrative record containing the U.S. EPA's documentation supporting its final decision is on file and may be inspected at the U.S. EPA Region III office between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday except holidays. To make arrangements to examine the administrative record contact the person named above.

FOR FURTHER INFORMATION CONTACT: Thomas Henry (3WM53), Permits

Enforcement Branch, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107, telephone (215) 597–8243, [FTS] 597–8243.

SUPPLEMENTARY INFORMATION: Section 304(1) of the Clean Water Act (CWA) as amended by the Water Quality Act of 1987 requires every state to develop lists of impaired waters, identify certain point sources and amounts of pollutants causing toxic impacts, and to develop individual control strategies (ICS's) to achieve water quality standards by no later than June, 1992. Where the state fails to submit ICS's or U.S. EPA disapproves the ICS's, then U.S. EPA in cooperation with the state is to develop ICS's by June, 1990 to achieve water quality standards by no later than June, 1993. ICS's will take the form of National Pollutant Discharge Elimination System (NPDES) permits for the individual point sources.

The deadline for each state to submit this information to the U.S. EPA was February 4, 1989. The U.S. EPA proposed approvals or disapprovals of the states' lists and ICS's on June 2, 1989. The CWA further requires the U.S. EPA to accept petitions to add waters to the lists and take public comment for a 120 day period on the proposed approvals and disapprovals of lists of waters, point sources, pollutants and individual control strategies submitted by the states. The public comment period closed on October 4, 1989. Any comment or petition received after that date and prior to this decision was considered as the Agency's time and resources permitted.

Following the close of the comment period the Regional Administrator considered the comments and petitions and has issued a response to those comments and petitions regarding the Commonwealth of Virginia. These responses are available for public inspection at the above address. The U.S. EPA is required to finalize all decisions on or before June 4, 1990.

This action gives notice of the final decision of the Agency with respect to the listings, including approvals and disapprovals of the Commonwealth of Virginia's lists of waters, point sources, pollutants and individual control strategies. This decision was based on the consideration of comments and petitions received and on a determination of whether the approval or disapproval of the various lists meets the requirements of section 304(1) of the Clean Water Act and 40 CFR parts 122, 123 and 130.

EPA plans to set forth its position on the judicial reviewability of the final listing decisions in a forthcoming **Federal Register** Notice prior to July 26, 1990.

Dated: March 20, 1990.

Edwin B. Erickson,

Regional Administrator, EPA Region III.

[FR Doc. 90–7081 Filed 3–27–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget of Review

March 20, 1990.

The Federal Communication Commission has submitted the following information collection requirement to the Office of Mangement and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501–3529).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632–7513.

OMB Number: 3060–0167.

Title: Section 43.42, Reports on pensions and benefits.

Action: Extension.

Respondents: Businesses.

Frequency of Response: On occasion.

Estimated Annual Burden: 23 responses; 1,840 hours total annual burden; 80 hours average burden per response.

Needs and Uses: Dominant common carriers with annual operating revenue of $100 million or more are required to file copies of their pension plans or any proposed changes to approved plans with the Commission. The information is used by the Commission to ascertain the reasonableness of pension costs as far as they enter into the determination of rates.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–6936 Filed 3–27–90; 8:45 am]

BILLING CODE 6712–01–M

Advisory Committee for the 1992 ITU World Administrative Radio Conference for Dealing With Frequency Allocations in Certain Parts of the Spectrum (92–WARC Advisory Committee)

The FCC Industry Advisory Committee for the ITU 1992 World Administrative Radio Conference for Dealing with Frequency Allocations in Certain Parts of the Spectrum (92–WARC Advisory Committee) will meet between 2:30 p.m. and 5:30 p.m. on Thursday, April 12, 1990, in Room 856 at Commission premises located at 1919 M Street, NW., Washington, DC.

The agenda for this first meeting of the Committee will be to explain the purpose of the 92–WARC and its status, to discuss the FCC Notice of Inquiry in General Docket 89–554, to review the Charter and organization of the Committee (including timeliness, deadlines, and informal working groups), and to discuss potential 92–WARC issues.

Designated Federal Official for the Committee is Walda Roseman, Office of International Communications, Federal Communications Commission, Washington, DC 20554, (202) 632–0935.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–6937 Filed 3–27–90; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Melchaisedec Broadcasting Co., et al.

1. The Commission has before it the following groups of mutually exclusive applications for six new FM stations:

Applicant, City and State	File No.	MM docket No.
I		
A. Annetta Covany d/b/a Melchaisedec Broadcasting Company; Big Bear City, CA	BPH–880128MF	90–75
B. Grizzly FM, Inc.; Big Bear City, CA	BPH–880128MH	

Applicant, City and State	File No.	MM docket No.
C. Parallel Communications; Big Bear City, CA	BPH-880128MP	
D. Bear Valley Broadcasting (Previously Dismissed); Big Bear City, CA	BPH-880126NM	
Issue heading and Applicant(s)		
1. See Appendix, B		
2. See Appendix, B		
3. See Appendix, B		
4. Comparative, A, B, C		
5. Ultimate, A, B, C		
II		
A. Dri-Five, Inc.; Elk Mound, WI	BPH-880222MU	90-74
B. Michael A. Phillips; Elk Mound, WI	BPH-880224MS	
C. Emalee C. Payne; Elk Mound, WI	BPH-880225MQ	
Issue heading and Applicant(s)		
1. Air Hazard, C		
2. Comparative, A, B, C		
3. Ultimate, A, B, C		
III		
A. Newburgh Broadcasting Corporation; Newburgh, IN	BPH-880322MC	90-59
B. Ruth H. Steele; Newburgh, IN	BPH-880323MI	
C. Owen-Durneyer Partnership; Newburgh, IN	BPH-880324NN	
D. TBS Broadcasting Company; Newburgh, IN	BPH-880324NT	
Issue heading and Applicant(s)		
1. Comparative, A-D		
2. Ultimate, A-D		
IV		
A. Eastern Company d/b/a Eastco; Sunderland, VT	BPH-871223MR	90-60
B. Ronald Morlino; Sunderland, VT	BPH-871224MF	
C. Radio South Burlington, Inc.; Sunderland, VT	BPH-871224MJ	
Issue heading and Applicant(s)		
1. Comparative, All applicants		
2. Ultimate, All applicants		
V		
A. Radio South Burlington, Inc.; Winchester, NH	BPH-880126MR	90-63
B. Radio Keene, Inc.; Winchester, NH	BPH-880126MY	
C. Agape Broadcasting; Winchester, NH	BPH-880126NN	
Issue heading and Applicant(s)		
1. Air Hazard, A,C		
2. Comparative, A,B,C		
3. Ultimate, A,B,C		
VI		
A. Radio South Burlington, Inc.; Lebanon, NH	BPH-880126MG	90-73
B. Family Broadcasting, Inc.; Lebanon, NH	BPH-880126ND	
C. Maxine W. Snow; Lebanon, NH	BPH-870126NX	
D. E. H. Close; Lebanon, NH	BPH-880126OF	
E. Mary Ann Salvatoriello; Lebanon, NH	BPH-880126OM [Dismissed Herein]	
Issue heading and Applicant(s)		
1. Comparative, All		
2. Ultimate, All		

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 purchased 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 (Big Bear City, California)

Additional Issue Paragraphs

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of B (Grizzly).

2. To determine whether B's (Grizzly) organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 and 2 above, whether B (Grizzly) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90-6951 Filed 3-27-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200332.

Title: San Francisco Port Commission/Nedlloyd Lines Terminal Agreement.

Parties: San Francisco Port Commission (Port) Nedlloyd Lines (Nedlloyd).

Synopsis: The Agreement provides Nedlloyd the non-exclusive right to use the North Container Terminal at the Port of San Francisco for the berthing of its vessels, the loading and discharging of its cargoes, and related terminal operations. Nedlloyd agrees to use the facilities as its published regularly scheduled Northern California port of call. Nedlloyd will pay the Port dockage at 60% of the applicable Port's tariff charges and will pay wharfage on full containers according to a schedule based on annual throughput volume. The term of the Agreement is for five years.

Agreement Nos.: 224-200333, 224-200334, 224-200335 and 224-200336.

Title: Jacksonville Port Authority/C.N. Lloyd Brasileiro, Green Cove Maritime, Inc., O.W. Wallenius Lines and NYK Lines Terminal Agreements.

Parties: Jacksonville Port Authority (JPA)/C. N. Lloyd Brasileiro (Lloyd) (224-200333), Green Cove Maritime, Inc. (GCM) (224-200334), O. W. Wallenius Lines (Wallenius) (224-200335), NYK Lines (NYK) (224-200336).

Synopsis: The Agreements provide for JPA to grant Lloyd, GCM, Wallenius and NYK certain discounts from JPA's tariff charges for Dockage based on vessel overall length. The agreements expire September 30, 1990.

Agreement No.: 224-200337.

Title: South Carolina State Ports Authority/Orient Overseas Container Line Inc. Terminal Agreement.

Parties: South Carolina State Ports Authority (Authority) Overseas Container Line Inc. (OOCL).

Synopsis: The Agreement provides OOCL with the use of "Area O" at the Authority's Wando Terminal, Port of Charleston, for the berthing of vessels, marshalling of containers and other acts incidental to container shipping terminal operations. OOCL agrees to pay the Authoirty a $32.50 fee per loaded twenty-foot equivalent unit and an $11.00 fee per empty container for certain terminal services. The term of the Agreement is for five years and may be extended for two additional five-year terms.

By Order of the Federal Maritime Commission.

Dated: March 22, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-7006 Filed 3-27-90; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants; Greenshields, Cowie & Co. Ltd. et al.

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Greenshields, Cowie & Co. LTD, St. Nicholas House, St. Nicholas Rd., Sutton, Surrey, England. Officers: Derek Victor Moule, Chairman, Keith George White, Deputy Chairman, John Robert Charles Ellery, Operations Dir., Nigel Victor Charles Jackaman, Director, Cedric Lachlan McCallum, Director, Heather Ann Scully, Secretary, Maria Elena Heredia, Gen. Manager

Lincoln Moving and Storage Co. Inc. dba Lincoln International, 1071 Andover Park West, P.O. 58150, Seattle, WA 98138. Officers: Christopher James Di Julio, Pres./Chrm./Stockh., Donna Marie Di Julio, Director/ Stockholder, Therese Fowler, Vice President/ Director

Vidura Phojanakong, 150-50 87th Ave., Jamaica, NY 11432. Officer: Sole Proprietor

Sumitomo Warehouse (U.S.A.), Inc., 1411 W. 190th St., #365, Gardena, CA 90248-4307. Officers: Hisashi Tanaka, President, Ken Sakurai, V. Pres./ Secr./Financial Officer, Ikuo Kagawa, Director

ACC Shipping U.S.A. Ltd., 495 Union Ave., Middlesex, NJ 08846. Officers: Nicholas J. Castagna, President, Jeffery Eskenas, Director

Hirdes Freight Ltd., 170 Broadway, Suite 405, New York, NY 10038. Officers: Thomas Hirdes, President, F.J. Hirdes, Director, H. Kell, Director, H.J. Moench, Director

J.P. Milton International Corporation, 181 S. Franklin Ave., Valley Stream, NY 11581. Officers: Milton Cruz, President, Teresa Cruz, Vice President

Amber Marine International Ltd., 5216 Wesley Terrace, Rosemont, IL 60018. Officers: Robert A. Zabka, Vice President/Director, Catherine A. Rapsys, Secretary/Treasurer

B.L.T. Forwarding Company, Inc., 8675 N.W. 53rd Street, Miami, FL 33166. Officers: Leda M. Herrera, Pres./Dir./ Stockh., Manaton Inc., Stockholder

Dated: March 23, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-7085 Filed 3-27-90; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Revocations; Overseas Project Transport, Inc. et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 2333.

Name: Overseas Project Transport, Inc.,

Address: 3347 Rauch, Houston, TX 77029,

Date Revoked: October 28, 1989.

Reason: Failed to maintain a valid surety bond.

License Number: 2791.

Name: Helstern & Associates,
Address: 4100 17th St., #6, San Francisco, CA 94114.
Date Revoked: November 2, 1989.
Reason: Failed to maintain a valid surety bond.

License Number: 2859.
Name: Seko-Air Freight, Inc. dba Seko-Ocean Forwarding, Inc.,
Address: 3839 N. Willow St., Schiller Park, IL 60176.
Date Revoked: Novembver 9, 1989.
Reason: Failed to maintain a valid surety bond.

License Number: 3062.
Name: Technion Industries, Inc. dba Kennelly & Sisman Company,
Address: 20501 Pennsylvania Rd., Riverview, MI 48192.
Date Revoked: November 25, 1989.
Reason: Failed to maintain a valid surety bond.

License Number: 1541.
Name: JRL, Inc.,
Address: 7910 12th Avenue South, Minneapolis, MN 55420.
Date Revoked: November 27, 1989.
Reason: Failed to maintain a valid surety bond.

License Number: 1308.
Name: Alpha Cargo Service Corporation,
Address: 1222 East Imperial Ave., El Segundo, CA 90245.
Date Revoked: December 31, 1989.
Reason: Failed to maintain a valid surety bond.

License Number: 178.
Name: Stanley Lindo & Company, Inc.,
Address: c/o M. G. Ruiz, P.O. 48679, Los Angeles, CA 90048.
Date Revoked: January 1, 1990.
Reason: Failed to maintain a valid surety bond.

License Number: 173
Name: International Shipping Corporation,
Address: 1511 East 11th Avenue, Hialeah, FL 33013.
Date Revoked: January 3, 1990.
Reason: Failed to maintain a valid surety bond.

License Number: 1996.
Name: Ernst A. Fransz, dba Indonesia Nusantara Freight Forwarding Service,
Address: 8411 So. LaCienega Blvd., Inglewood, CA 90301.
Date Revoked: January 20, 1990.
Reason: Failed to maintain a valid surety bond.

License Number: 1272.
Name: Helstrom International, Inc.,
Address: 324 Albany Street, New York, NY 10280.
Date Revoked: March 13, 1990.
Reason: Surrendered license voluntarily.

License Number: 3181.
Name: Alphamain (USA), Inc.,
Address: 1201 Corbin Street, Port Elizabeth, NJ 07201.
Date Revoked: March 13, 1990.
Reason: Surrendered license voluntarily.

License Number: 3119.
Name: All Fast Express, Inc.,
Address: 944 Pacific Ave., Long Beach, CA 90813.
Date Revoked: March 15, 1990.
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,
Acting Director, Bureau of Domestic Regulation.

[FR Doc. 90-7086 Filed 3-27-90; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Shares Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 16, 1990.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Bank Shares Incorporated,* Minneapolis, Minnesota; to acquire through a newly formed subsidiary, Marquette Information Services, Inc., Minneapolis, Minnesota, certain data processing assets of Marquette Bank Minneapolis, N.A., Minneapolis, Minnesota, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 22, 1990.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 90-7040 Filed 3-27-90; 8:45 am]
BILLING CODE 6210-01-M

First Seven Day Financial, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.4 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments are regarding this application must be received not later than April 16, 1990.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Seven Day Financial, Inc.,* Lancaster California; to become a bank holding company by acquiring 100

percent of the voting shares of Antelope Valley Bank, Lancaster, California.

Board of Governors of the Federal Reserve System, March 22, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-7041 Filed 3-27-90; 8:45 am]

BILLING CODE 6210-01-M

Walter Shafer; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 11, 1990.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Walter Shafer*, Newkirk, Oklahoma; to acquire an additional 8.83 percent of the voting shares of Eastman National Bancshares, Inc., Newkirk, Oklahoma, and thereby indirectly acquire Eastman National Bank of Newkirk, Newkirk, Oklahoma.

Board of Governors of the Federal Reserve System, March 22, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-7043 Filed 3-27-90; 8:45 am]

BILLING CODE 6210-01-M

Sturm Investments, Inc.; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 16, 1990.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Sturm Investments, Inc.*, Omaha, Nebraska; to engage *de novo* in the issuance and holding of secured promissory notes relating to stock purchases by key personnel of the entity or affiliated entities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 22, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-7042 Filed 3-27-90; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Consortium of Federal, Academic, and Industry Logistics Experts; Meeting

Notice is hereby given that the Consortium of Federal, Academic, and Industry Logistics Experts will meet April 11, 1990, from 10 a.m. to 12 noon in Crystal Mall Building 4, room 1129, Arlington, Virginia. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the implementing regulation, 41 CFR part 101-6.

The agenda for this meeting will include a presentation by Mr. Edward T. Mazzullo, U.S. Department of Transportation, Office of Hazardous Materials Transportation. The subject is the Impact of Performance Oriented Packing Regulations on the Federal Logistics Community.

The meeting will be open to the public.

For further information, contact Mr. William B. Foote, Assistant Commissioner for Customer Service and Marketing, GSA/FSS, Washington, DC 20406, telephone (703) 557-7970.

Dated: March 13, 1990.

Donald C.J. Gray,

Commissioner.

[FR Doc. 90-7034 Filed 3-27-90; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Extension of Comment Period for Request for Comments and Secondary Data Relevant to Occupational Exposure to Synthetic and Natural Mineral Fibers

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice of extension of comment period for request for comments and secondary data.

SUMMARY: On Tuesday, February 13, 1990, (55 FR 5073), NIOSH published a notice in the **Federal Register** requesting comments and secondary data from all interested parties concerning synthetic and natural mineral fibers. This notice extends the date for comments and secondary data concerning the notice from April 16, 1990, to May 31, 1990.

DATES: Comments and secondary data concerning the February 13, 1990, (55 FR 5073) notice should be submitted by May 31, 1990.

ADDRESSES: Please submit any information, comments, suggestions, or recommendations in writing to: Dr. Richard W. Niemeier, Director, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C-14, Cincinnati, Ohio 45226.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton B. Doak, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C–30, Cincinnati, Ohio 45226, (513) 533–8324, or FTS 684–8324.

Dated: March 21, 1990.

Larry W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 90–7057 Filed 3–27–90; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 84N–0102]

Cumulative List of Orphan Drug and Biological Designations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: By this notice, the Food and Drug Administration (FDA) is announcing the availability of a cumulative list of designated orphan drugs and biologics as of December 31, 1989. FDA has announced the availability of previous lists, which are brought up-to-date quarterly, identifying the drugs and biologicals granted orphan-drug designation pursuant to section 526 of the Federal Food, Drug, and Cosmetic Act.

ADDRESSES: Copies of the list of current orphan-drug designations and of any future lists are or will be available from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and the National Information Center for Orphan Drugs and Rare Diseases (NICODARD), P.O. Box 1133, Washington, DC 20013–1133.

FOR FURTHER INFORMATION CONTACT: National Information Center for Orphan Drugs and Rare Diseases (NICODARD), P.O. Box 1133, Washington, DC 20013–1133, 1–800–456–3505.

SUPPLEMENTARY INFORMATION: FDA's Office of Orphan Products Development reviews and takes final action on applications submitted by sponsors seeking orphan-drug designation under section 526 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 306bb). In accordance with this section of the act, which requires public notification of designations, FDA maintains a list of designated orphan drugs and biologicals. This list is made current on a quarterly basis and is available upon request from NICODARD (contact identified above). At the end of each calendar year, the agency publishes an up-to-date cumulative list of designated orphan drugs and biologicals including the names of designated compounds, the specific disease/condition for which the compounds are designated, and the sponsors' names and addresses. The cumulative list of compounds receiving orphan-drug designation through 1988 was published in the **Federal Register** of April 21, 1989 (54 FR 16294). This list is available on request from FDA's Dockets Management Branch (address above). Those requesting a copy should specify Docket No. 84N–0102, which is the docket number for this notice.

The list that is the subject of this notice consists of designated orphan drugs and biologicals through December 31, 1989, and, therefore, brings the April 21, 1989, publication up to date.

The orphan-drug designation of a drug or biological applies only to the sponsor who requested the designation. Each sponsor interested in developing an orphan drug or biological must apply for orphan-drug designation in order to obtain exclusive marketing rights. Any request for designation must be received by FDA before the submission of a marketing application for the proposed indication for which designation is requested. (See 53 FR 47577; November 23, 1988.) Copies of the interim guidelines for use in preparing an application for orphan-drug designation may be obtained from the NICODARD (address above).

The names used in the cumulative list for the drug and biological products that have not been approved/licensed for marketing may not be the established/proper names approved by FDA for these products if they are eventually approved/licensed for marketing. Because these products are investigational, some may not have been reviewed for purposes of assigning the most appropriate established proper name.

Future designations which are no longer pursued by the applicant and have been actively withdrawn by the sponsor during the preceding year will be cited at the end of the designation list under the appropriate product classification (drug or biological). The current cumulative list reflects designations withdrawn from inception of this program through December 31, 1989.

Dated: March 22, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–6931 Filed 3–27–90; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: *Minneapolis District Office,* chaired by John Feldman, District Director. The topic to be discussed is health claims and food labeling reform.

DATES: Thursday, April 5, 1990, 9:30 a.m. to 11 a.m.

ADDRESSES: 835 South Van Buren, Continential Rm., Green Bay, WI 54307–3508.

FOR FURTHER INFORMATION CONTACT: Don Aird, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401. 612–34–4103.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: March 22, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–7061 Filed 3–27–90; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: *Dallas District Office,* chaired by Gerald E. Vince, District Director. The topic to be discussed is health messages on food labels.

DATES: Tuesday, April 10, 1990, 10 a.m. to 12 m.

ADDRESSES: Food and Drug Administration, 1445 North Loop West, Suite 420, Houston, TX 77008.

FOR FURTHER INFORMATION CONTACT: Sheryl Lunnon-Baylor, Consumer Affairs Officer, Food and Drug Administration, 1445 North Loop West, Suite 420, Houston, TX 77008, 713–220–2322.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA

officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: March 22, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-7062 Filed 3-27-90; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is annoucing the following district consumer exchange meeting: Minneapolis District Office, chaired by John Feldman, District Director. The topic to be discussed is health messages and food labeling reform.

DATES: Monday, April 16, 1990, 10 a.m. to 11:30 a.m.

ADDRESSES: University of Wisconsin-Superior, 16th and Catlin Ave., Rothwell Student Center, Rm. 111, Superior, WI 55880.

FOR FURTHER INFORMATION CONTACT: Don Aird, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Avenue, Minneapolis, MN 55401, 612-334-4103.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: March 22, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-7063 Filed 3-27-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N-0332]

Report on Evaluation of Incentives for Development of Orphan Medical Foods; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the final report of the Federation of American Societies for Experimental Biology (FASEB) entitled "Evaluation of Incentives for Development of Orphan Medical Foods" is available to the public.

DATES: The final report became publicly available on January 29, 1990.

ADDRESSES: Submit written requests for single copies of this final report to the Special Publication Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, along with $18 to cover the cost of each copy of the report. Send two self-addressed adhesive labels to assist that office in processing your request. In the near future, this final report will be available from the National Technical Information Service, 5275 Port Royal Rd., Springfield, VA 22161. Copies of the report are on display at the Life Sciences Research Office (LSRO), FASEB (address above), and at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Yetley, Center for Food Safety and Applied Nutrition (HFF-265), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0087.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 25, 1989 (54 FR 35400), FDA announced that the LSRO of FASEB, under FDA contract 223-88-2124, was undertaking a study to determine the needs and incentives for, and barriers to, the development and use of orphan medical foods.

In its final report, FASEB presents an analysis of current incentives for sponsors of orphan medical foods, an impact analysis of current barriers to the development of medical foods, and a series of recommendations for the future.

Dated: March 21, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-7064 Filed 3-27-90; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; April Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of April 1990.

Name: Advisory Commission on Childhood Vaccines

Date and Time: April 25-26, 1990, 9:00 a.m.—5:00 p.m.

Place: Conference Room E, Parklawn Building, 5600 Fishers Lane, Rockville, M.D. 20857.

The meeting is open to the public.

Purpose: The Commission (1) Advises the Secretary on the implementation of the Program, (2) on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table, (3) advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions, (4) surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and (5) recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: Agenda items for the meeting will include but not be limited to: status report on the Vaccine Injury Compensation Program; discussion on DTP and MMR/Polio Vaccine Injury Distribution Materials, IOM Study on Pertussis Vaccine; Publicity Plan for the Vaccine Injury Compensation Program; Evaluation Plan for the Vaccine Injury Compension Program; Hepatitis B and Heamophilus Influenzae Type b vaccines.

Public comment will be permitted at the end of each meeting day. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation, by April 13th to Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, Health Resources and Services Administration, Room 7-90, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Vaccine Injury Compensation Program will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Room E before 10:00 a.m., April 25 and 26. These persons will be allocated time as time permits.

Anyone requiring information regarding the subject Council should contact Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, Room 7–90, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6593. Compensation Program, Bureau of Health Professions, Health Resources and Services Administration, Room 7–90, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6593.

Agenda Items are subject to change as priorities dictate.

Dated: March 22, 1990.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 90–6930 Filed 3–27–90; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of National Diabetes Advisory Board

Pursuant to Pub. L. 92–463, notice is hereby given of the National Diabetes Advisory Board's meeting date which will be April 2, 1990. The meeting will begin at 8 a.m. and adjourn at approximately 3:30 p.m. The Board will meet at the Sheraton Gunter Hotel, 205 East Houston Street, San Antonio, Texas 78205. The purpose of the meeting is to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat diabetes mellitus. Although the entire meeting will be open to the public, attendance will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

For any further information, please contact Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045. His office will provide, for example, a membership roster of the Board and an agenda and summaries of the actual meetings.

Dated: March 21, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–7021 Filed 3–27–90; 8:45 am]

BILLING CODE 4140–01–M

Availability and Intent To Grant an Exclusive License; Recombinant Toxic Fusion Protein

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 USC 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the DHHS, Public Health Service, National Institutes of Health, has available for licensing and is contemplating the grant of an exclusive license to Protein Design Labs, Inc., 3181 Porter Drive, Palo Alto, CA 94304, under the Government's partial ownership interest in U.S. Patent Application Serial Number 341,361. This patent application is entitled "Recombinant Toxin Fusion Protein," and names as inventors Drs. Pastan, FitzGerald, Chaudhary, Waldman and Queen (the latter being an employee of Protein Design Laboratories). This application was filed on April 21, 1989, as a continuation-in-part of U.S. Patent Application Serial Number 911,227. This intended grant of exclusive license rights will be limited to the development of recombinant products for: (i) the treatment or prevention of all forms of cancer except cancers of the skin, nervous system and lung; and (ii) treatment or prevention of autoimmune disease (including but not limited to rheumatoid arthritis, type I diabetes, systemic lupus erythematosus, multiple sclerosis, organ transplant rejection, and graft-versus-host disease) using recombinant antibody-toxin fusion proteins that bind to T lymphocytes or B lymphocytes. The National Institutes of Health presently is accepting license applications for the remaining unlicensed fields of use.

DATES: Written objections must be received within sixty (60) days of the date of this announcement per the requirements of 37 CFR part 404. Objecting parties are advised to specifically address the agency findings required under 37 DFR 404.7

ADDRESSES: Send inquiries, objections or comments to: Director, Office of Technology Transfer, Building 31, Room B1C38, National Institutes of Health, Bethesda, MD 20892. The NIH will consider properly filed competing applications as objections.

FOR FURTHER INFORMATION CONTACT: Reid G. Adler, J.D., Director of the Office of Technology Transfer, at the Bethesda address given above; telephone: (301)496–0750.

SUPPLEMENTARY INFORMATION: The NIH intends to grant to Protein Design Labs an exclusive license in the United States, its territories, possessions, and selected foreign countries to practice the invention claimed in the above-identified patent application for the indicated fields of use. Patent rights in this invention are co-owned with Protein Design Labs by virtue of joint inventorship. The exclusive license will be royalty bearing and will comply with the provisions of 35 U.S.C. 209 and 37 CFR part 404.

The applicant has presented an acceptable development and marketing plan, and NIH has found that it is in the public interest to award this license to bring the invention to the point of practical application and, thereby, to make it available to the public. The license will be granted unless NIH receives written evidence and argument that convincingly establish that the intended course of action is not in the public interest or otherwise consistent with the requirements of 37 CFR part 404.

Dated: March 20, 1990.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 90–7023 Filed 3–27–90; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselors Meeting; Review of Draft NTP Technical Reports

Pursuant to public law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee and associated *ad hoc* Panel of Experts (*Peer Review Panel*) on April 25 and 26, 1990, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina. The primary agenda topic is the peer review of draft Technical Reports on long-term toxicology and carcinogenesis studies from the National Toxicology Program (NTP). There also will be a presentation on the role of hyperplasia in carcinogenesis by staff of the Division of Toxicology Research and Testing (DTRT), NIEHS.

The draft Technical Reports are listed alphabetically by chemical name along with supporting information in the attached table. All studies were done using Fischer 344 rats and B6C3F$_1$ mice. Draft Technical Reports can be requested from the NTP Public Information Office, Mail Drop B2–04, P.O. Box 12233, Research Triangle Park, NC 27709, telephone: (919) 541–3991, FTS: 629–3991.

The meeting will begin at 9:00 a.m. on April 25 and at 8:30 a.m. on April 26. The entire meeting is open to the public,

limited only by space available. The tentative agenda will APPROXIMATE times is as follows:

Wednesday, April 25

9 a.m.–4 p.m.—Peer Review of Draft Technical Reports on the toxicology and carcinogenesis studies of: (in the order listed)

(1) 3,3-Dimethylbenzidine
(2) Methyl Bromide
(3) Sodium Azide
(4) Tris (2-Chloroethyl) Phosphate
(5) Ethylene Thiourea—re-review of deferred report
(6) Amphetamine Sulfate—re-review of deferred report (Following staff presentations and Board discussion of each report, there will be opportunity for public comment in accordance with the guidelines listed below.)

4 p.m.–5 p.m.—Presentation on the Role of Hyperplasia in Carcinogenesis

Thursday, April 26

Peer Review of the draft Technical Report on the toxicology and carcinogenesis studies of Sodium Fluoride

8:30 a.m.–10:15 a.m.—NTP Staff Presentations and Peer Review by the Panel

10:30 a.m.–12:30 p.m.—Public Comment (depending on amount of time requested)

1:30 p.m.–3:00 p.m.—Public Comment

3 p.m.–4 p.m.—Concluding Discussion and Motions by the Panel (or immediately following the conclusion of the public comment period if that occurs before 3 p.m.)

Special Note Regarding Public Attendance at the April 26 Review of Sodium Fluoride

All persons wishing to attend are requested to preregister as space is limited. Seating preference will be given to those who preregister with the Executive Secretary.

Public Comments

Written public comments on any report must be received by April 23 so that copies can be distributed to Panel members and made available at the meeting. Persons wanting to make remarks from the floor during the public comment period must notify the Executive Secretary by telephone or by mail no later than April 17, 1990, and provide a written copy of remarks by April 23 to permit distribution to the Panel. Oral presentations should supplement the written statement to accommodate all the speakers and allow time for discussion; oral presentations will be restricted to seven minutes.

The Program would welcome receiving toxicology and carcinogenesis information from completed, ongoing or planned studies by others, as well as current production data, human exposure information, and use and use patterns on any of the studies listed in this announcement. Please contact the Executive Secretary by telephone or mail.

The Executive Secretary, Dr. Larry G. Hart, NTP, P.O. Box 12233, RTP, North Carolina 27709, telephone (919–541–3971, FTS 629–3971), will receive preregistration and will furnish final agendas, a roster of subcommittee and panel members, and other program information prior to the meeting. Summary minutes subsequent to the meeting will be available upon request.

Dated: March 21, 1990.

David P. Rall,

Director, National Toxicology Program.

SUMMARY DATA FOR NTP TECHNICAL REPORTS TO BE REVIEWED AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING APRIL 25–26, 1990

Chemical CAS no.	Staff scientist/ technical report no.	Primary uses	Route/exposure levels	Study laboratory	Peer review recommendations
DL-Amphetamine sulfate 60–13–9.	Dr. J. Dunnick, 919–541–4811 TR–387.	Treatment of narcolepsy and weight problems; for behavior disorders in children.	Oral in Feed: REM: 0, 20, 100, PPM.	Microbiological Associates.	Tabled for further consideration (11/20/89).
3,3'-Dimethylbenzidine dihydrochloride 612–82–8.	Dr. D. Morgan, 919–541–2264, TR–390.	Dye; chemical intermediate for Azo Dyes; curing agent for urethane resins.	Oral with Water (water): Rats only: 0, 30, 70, 150 PPM.	Hazleton (Vienna).	
Ethylene thiourea (ETU) 96–45–7.	Dr. R. Chhabra, 919–541–3386, TR–388.	Intermediate for antioxidants, insecticides, fungicides, dyes, pharmaceuticals. Accelerator for neoprene, epichlorohydrin, and Polyethylene rubbers.	Oral in Feed: R: 0, 25,83,250, M: 0,100, 333,1000 PPM.	Battelle Columbus Laboratory.	Tabled for further consideration (11,21,89).
Methyl bromide 74–83–9	Dr. R. Yang, 919–541–2947, TR–385.	Fumigant; extractant; wool degreasing; in ionization chambers; fire-extinguishing agent; insecticide; rodenticide.	Inhalation: Mice only: 0,10,33,100 PPM.	Brookhaven National Lab) (DOE).	
Sodium azide 26628–22–8	Dr. K. Abdo, 919–541–7819, TR–389.	Herbicide, pesticide, reagent, medicine, fungicide.	Oral, gavage, (distilled water): Rats only: 0,5,10 MG/KG.	Microbiological Associates.	
Sodium fluoride 7681–49–4	Dr. J. Bucher, 919–541–4532, TR–393.	Electroplating; insecticide; ceramics; dentistry; medicine; fluoridation agent; chemical intermediate.	Oral with water (deionized water): R&M: 0,25,100,175 PPM.	Battelle Columbus Laboratory.	
Tris(2-chloroethyl) phosphate 115–96–8.	Dr. H. Matthews, 919–541–3252, TR–391.	Flame retardant; plasticizer	Oral, Gavage (corn oil): R: 0,44,88; M: 0,175,350 MG/KG.	Microbiological Associates.	

[FR Doc. 90–7022 Filed 3–27–90; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Life Fellowship Seffner, FL, PRT 747094.

The applicant requests a permit to import six wild-caught Cayman Amazon parrots (*Amazona leucocephala caymensis*) from the Cayman Islands for captive breeding purposes.

Documents and other information submitted with this application are available to the public during normal business hours (7:45 am to 4:15 pm) in Room 430, 4401 N. Fairfax Dr., Arlington, VA 22201, or by writing to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, P.O. Box 3507, Arlington, VA 22203–3507.

Interested persons may comment on any of this application within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: March 22, 1990.

Karen Willson,

Acting Chief, Branch of Permits U.S. Office of Management Authority.

[FR Doc. 90–7053 Filed 3–27–90; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1028–0014), Washington, DC 20503, telephone 202–395–7340.

Title: A–1-Inventory of Hydrologic Data Acquisition Areal Investigation, and Miscellaneous Activities.

OMB Approval Number: 1028–0014.

Abstract: Respondents supply information to locate water data collected as part of areal investigations. The information is used to characterize the chemical and biological quality of water and to describe water availability.

Bureau Form Number: 9–2081.

Frequency: On occasion.

Description of Respondents: Federal, State, and local water scientists and water managers.

Estimated completion time: 0.25 hours.

Annual Responses: 93.

Annual Burden Hours: 140 hours.

Bureau clearance officer: Geraldine A. Wilson, 703–648–7309.

Dated: February 28, 1990.

Philip Cohen,

Chief Hydrologist.

[FR Doc. 90–6966 Filed 3–27–90; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Indian Affairs

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, requirements, related forms and explanatory material may be obtained by contacting the Bureau Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1076–0106), Washington, DC 20503, telephone (202) 395–7340.

Title: Higher Education Annual Report, 25 CFR part 40.

OMB Approval Number: 1076–0106.

Abstract: The collection of information is necessary for the Office of Indian Education Programs to implement program accountability while performing the mission of educating Indian college students.

Bureau Form Number: 4310–02.

Frequency: Annually.

Description of Respondents: Bureau of Indian Affairs Higher Education Programs and Tribal organizations which have contracted to administer the Higher Education Programs.

Estimated Completion Time: 40 hours.

Annual Responses: 93.

Annual Burden Hours: 5766 hours.

Bureau Clearance Officer: Gail Sheridan, 343–1685.

Edward F. Parisian,

Deputy to the Assistant Secretary—Indian Affairs/Director (Indian Education Programs).

[FR Doc. 90–6965 Filed 3–27–90; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[MT–070–09–4050–91–287]

Recreation Actions for the Butte District, MT

AGENCY: Bureau of Land Management, Butte District Office.

SUMMARY: The following described restrictions will apply to all public lands within the Butte District, effective immediately:

Dumpsters provided for paying customers only.—Disposal of garbage hauled in from offsite sources is not allowed at this site.

Weed free feed required.—Applies Districtwide.

Establishment of a facilities use fee for day users of Holter Lake Campground. Effective at the beginning of the 1990 use season, a fee for the use of the facilities at Holter Lake on a daily basis will be imposed. This fee will be in addition to the camping fee which has been in effect for several years. The camping fee also qualifies overnight users for use of all facilities.

FOR FURTHER INFORMATION CONTACT: Any of the following Bureau of Land Management offices:

District Manager, Butte District Office, P.O. Box 3388, Butte, Montana 59702, (406) 494–5059

Area Manager, Headwaters Resource Area, Butte, Montana 59702, (406) 494–5059

Dated: March 16, 1990.

James R. Owings,

District Manager.

[FR Doc. 90–7000 Filed 3–27–90; 8:45 am]

BILLING CODE 4310–DN–M

[OR–020–4410–08: GPO–136]

Burns District Advisory Council; Meeting and Tour

AGENCY: Bureau of Land Management, Interior

ACTION: Notice, Burns District Advisory Council meeting and tour.

SUMMARY: Notice is hereby given in accordance with Section 309 of the Federal Land Management and Policy Act of 1976, that a meeting and tour by the Burns District Advisory Council will be held on May 10 and 11, at the Burns District Office located on Highway 20, 3 miles west of Hines, Oregon. The meeting will begin at 9 a.m. on Thursday, May 10; the tour will leave the Burns District Office at 9 a.m. on Friday, May 11.

The agenda for the meeting will include: (1) a briefing on the Three Rivers Resource Management Plan (RMP); (2) a report on recent geothermal energy activity near Fields, Oregon; (3) a briefing on the proposed Steens Mountain winter sports program; (4) an update on the rangeland monitoring and evaluation program; (5) an overview of the Burns District 1990 Annual Work Plan; and (6) other miscellaneous items.

The tour will visit various locations to discuss issues identified in the Three Rivers RMP.

DATES: The meeting will begin at 9 a.m. and should adjourn by 5 p.m. Pacific Standard Time on May 10 and the field tour will begin at 9 a.m. and conclude at the Burns District Office by 6 p.m. on May 11.

FOR FURTHER INFORMATION CONTACT: Joshua L. Warburton, District Manager, Bureau of Land Management, HC 74–12533 Highway 20 West, Hines, Oregon 97738. Phone (503) 573–5241.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Interested persons may make oral statements to the council at the end of the meeting or file written statements for the council's consideration. Anyone desiring to make an oral statement must notify the District Manager, Bureau of Land Management, HC 74–12533 Highway 20 West, Hines, Oregon 97738, by May 7, 1990. The tour will be open to the general public. However, interested persons will need to provide their own transportation and meals. Road conditions will require 4-wheel drive vehicles with high clearance. Individuals wishing to attend the tour should contact the Burns District office at the above address.

Dated: February 26, 1990.

Joshua L. Warburton,

Burns District Manager.

[FR Doc. 90–7036 Filed 3–27–90; 8:45 am]

BILLING CODE 4310-33-M

[WY-010-00-4333-08]

Intention to Evaluate the Off-Road Vehicle Management Decisions; Grass Creek Resource Area, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to evaluate the Off-Road Vehicle (ORV) management decisions in the Grass Creek Management Framework Plan (MFP) for the Bureau of Land Management (BLM) Grass Creek Resource Area, Worland District, Wyoming.

SUMMARY: The BLM, Worland District, is initiating a planning evaluation for the Grass Creek MFP. It is possible that the evaluation will result in an amendment of the MFP. The evaluation was initiated with a Notice of Intent, published in the **Federal Register**, May 10, 1988. An environmental assessment (EA) is being prepared as part of the evaluation. The EA will aid in determining whether or not an amendment or revision of the MFP will be necessary and if an environmental impact statement (EIS) must be prepared.

This plan evaluation will assess the adequacy of the Grass Creek MFP in guiding the management of motor vehicle use in a way that is compatible with current land management objectives and will reduce conflict among the resource users.

DATES: Scoping and issue identification for the planning evaluation has begun and comments will be received for 30 days following publication of this Notice. Other public involvement during the evaluation process will be announced in local media and through mailings to the public and interest groups who participated in the planning process for the Grass Creek MFP.

ADDRESSES: Documentation of the plan evaluation process and completed documents will be available at the Grass Creek Resource Area, 101 South 23rd Street, P.O. Box 119, Worland, Wyoming 82401.

FOR FURTHER INFORMATION CONTACT: If you would like further information concerning the planning evaluation or wish to be placed on the mailing list, contact Joseph T. Vessels, Area Manager, Grass Creek Resource Area, at the above address or phone (307) 347–9871.

SUPPLEMENTARY INFORMATION: The Grass Creek Resource Area has previously conducted public scoping pertaining to this MFP evaluation in which public comments were received from April through July 1988. Approximately 70 percent of the respondents favored a change in the existing motor vehicle use designations. Amendments to land use plans are protestable under the planning regulations (43 CFR parts 1600–1610).

Dated: March 16, 1990.

James K. Murkin,

Acting State Director.

[FR Doc. 90–7035 Filed 3–27–90; 8:45 am]

BILLING CODE 4310-22-M

[ID-010-00-4212-22]

Firearms Closure Order; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Firearms closure order.

SUMMARY: Pursuant to 43 CFR 8364.1(a), the following described public lands are closed to the possession and discharging of all firearms, subject to the exemptions listed below.

Boise Meridian, Idaho

T. 2 N., R. 2 E

Sec. 20: SE¼SE¼.

Containing 40 acres, more or less, in Ada County, Idaho. This order shall become effective immediately, and shall remain in effect until revoked or rescinded. Exempt from this order are employees of federal, state, and local governmental agencies while on official business of the agency, and any agent, contractor, or cooperator while in the performance of an official duty for the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: For further information concerning this closure order, contact Lee Kliman at the BLM Boise District Office, 3948 Development Avenue, Boise, Idaho 83705, or call (208) 334–1582.

SUPPLEMENTARY INFORMATION: The subject lands are being closed to protect government employees, government property, wild horses and borros, and persons that may be visiting the Wild Horse Corral facilities and National Weather Station that are located on the above described property. Any person failing to comply with this closure order shall be subject to prosecution under penalty of law as provided in 43 CFR 8360.0–7 and State law. Noncompliance is considered a misdemeanor, punishable by a fine not to exceed $1000 and/or imprisonment for a term not to exceed 12 months.

Dated: March 19, 1990.

Rodger E. Schmitt,

Associate District Manager.

[FR Doc. 90–7032 Filed 3–27–90; 8:45 am]

BILLING CODE 4310-GG-M

[ID-942-00-4730-12]

Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10 a.m., March 19, 1990.

The plat representing the dependent resurvey of portions of the south boundary and the subdivisional lines, and the subdivision of sections 34 and 35, T. 46 N., R. 4 W., Boise Meridian, Idaho, Group No. 727, was accepted March 12, 1990.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

All inquiries about these lands should be sent to the Idaho State Office, Bureau of Land Management, 3380 American Terrace, Boise, Idaho, 83706.

Dated: March 19, 1990.

Jerrold E. Knight,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 90-7031 Filed 3-27-90; 8:45 am]

BILLING CODE 4310-GG-M

[OR-100-00-6310-02; GPO-171]

Meeting; Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The District Advisory Council for the Bureau of Land Management, Roseburg District will meet April 25, 1990, beginning at 8:30 a.m. in the Roseburg District Office Auditorium. On the agenda are the management plan for the North Umpqua Wild and Scenic River, northern spotted owl, prescribed burn program, reforestation, and a forestry tour of various sites in the Drain Resource Area.

ADDRESSES: Bureau of Land Management, Roseburg District, 777 NW Garden Valley Blvd., Roseburg, OR 97470.

FOR FURTHER INFORMATION CONTACT: Mel Ingeroi, Public Affairs Specialist, (503) 672-4491.

SUPPLEMENTARY INFORMATION: The meeting is open to the public, and a public comment period will be provided at 10:30 a.m. Written statements for the Council can be mailed to the District Manager prior to the meeting or presented to the Council during the meeting. The tour group will depart the District Office parking lot at 11:30 a.m. Interested members of the general public are welcome to follow along, but transportation will not be provided. Summary minutes will be available for public review within 30 days of the meeting.

Dated: March 22, 1990.

John L. Hayes,

Acting District Manager.

[FR Doc. 90-7048 Filed 3-27-90; 8:45 am]

BILLING CODE 4310-33-M

[NV-930-00-4212-14; N-45234]

Realty Action; Competitive Sale; Mineral County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action regarding reoffering of public land.

SUMMARY: The Notice of Realty Action published in the Federal Register on Monday, July 3, 1989, Vol. 54, No. 126, Page 27951, identified the following described 8.21 acres of public land as suitable for sale under sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976:

Mount Diablo Meridan

T. 8 N., R. 30 E.,
Sec. 26, Lot 1.

A competitive sale was held on February 1, 1990. A high bidder was declared and given 180 days to submit the balance of the purchase price. Patent will be issued upon receipt of the full bid amount.

Patent, when issued, will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States; Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

Since the land has no known mineral value, the mineral estate will be conveyed simultaneously with the surface estate in accordance with section 209(b)(1) of Public Law 94-579.

The patent will also be subject to:

1. Those rights for highway purposes which have been granted to the State of Nevada Department of Highways, its successors or assignees, by the U.S. Department of the Navy, by Grant of Easement Nev-046896 under the authority of the Act of Congress of October 25, 1951.

2. Those rights for highway purposes which have been granted to the Nevada Department of Transportation, its successors or assignees, by Highway Easement Deed dated October 27, 1983, recorded in Book 95, Pages 19-28, Document No. 065576 of the Mineral County Recorder's Office 9N-38203).

3. An easement for powerline purposes granted to Sierra Pacific Power Company by the Department of the Navy, being 20 feet in width on each side of the centerline, recorded in the records of Mineral County as File No. 18871 of Book 37, Pages 330-334 (N-11404).

The land is segregated by terms of the original Notice of Realty Action, from all forms of nondiscretionary appropriation under the public land laws, including location under the general mining laws. The segregative effect will terminate on March 30, 1990, prior to issuance of patent. Upon publication of this notice in the Federal Register, the land described above will be segregated from all forms of nondiscretionary appropriation under the public land laws, including location under the general mining laws. The segregative effect of this Notice of Realty Action shall terminate upon issuance of patent or other document of conveyance to such land, upon publication in the Federal Register of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

If the high bidder fails to submit the balance of the purchase price by July 31, 1990, the land will be offered to the other bidder that participated in the February 1, 1990 sale. If the second bidder declines the offer to purchase the land for the amount of its February 1 bid, the land will not be reoffered, but will be removed from sale. For a period of 45 days after the date of the notice, interested parties may submit comments regarding the proposed decision to not reoffer the subject land to the Bureau of Land Management, Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706. Any adverse comments will be evaluated by the District Manager. The Nevada State Director, Bureau of Land Management, may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: March 12, 1990.

James W. Elliott,

District Manager.

[FR Doc. 90-6732 Filed 3-27-90; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-00-4212-13; N-47854]

Realty Actions; Sales, Leases, etc.: NV

March 19, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange conveyance.

SUMMARY: This notice advises the public of the completion of an exchange of land between the United States and the White Pine Lumber Co. of Reno, Nevada.

EFFECTIVE DATE: March 5, 1990.

FOR FURTHER INFORMATION CONTACT: Vienna Welder, BLM Nevada State Office, P.O. Box 12000, Reno, NV 89520, 702–785–6526.

SUPPLEMENTARY INFORMATION:

1. Pursuant to section 206 of the Federal Land Policy and Management Act, the Federal mineral estate in the following described land has been conveyed to the White Pine Lumber Co.:

Mount Diablo Meridian, Nevada

T. 41 N., R. 18 E.,
Sec. 1, Lots 1–4, S½N½;
Sec. 2, Lots 1, 2, SE¼NE¼.
T. 42 N., R. 18 E.,
Sec. 1, SW¼NW¼, S½SW¼;
Sec. 2, Lot 2, S½NE¼, SE¼;
Sec. 11, E½NE¼;
Sec. 12, SE¼;
Sec. 13, Lots 2, 3, 8, W½NE¼NE¼, SE¼NE¼NE¼, NW¼NE¼,S½NE¼;
Sec. 23, E½E½;
Sec. 24 Lots 4–7, S½NW¼, N½SW¼, SW¼SE¼;
Sec. 26, E½E½;
Sec. 35 E½E½, SW¼NE¼, W½SE¼;
Sec. 36, Lots 1–4, W½E½, W½W½, SE¼SW¼.
T. 41 N., R. 19 E.,
Sec. 3, Lots 3, 4, S½NW¼, SW¼;
Sec. 4, Lots 1–4, S½N½, S½.
T. 42 N., R. 19 E.,
Sec. 16, E½;
Sec. 20, NE¼;
Sec. 21, N½, N½S½;
Sec. 23, E½, E½W½;
Sec. 26, SE¼NE¼;
Sec. 30, Lots 2, 4, SW¼NE¼, SE¼NW¼;
Sec. 31, NE¼NW¼;
Sec. 34, SW¼SW¼;
Sec. 35, W¼NE¼, E½NW¼, NE¼SW¼, NW¼SE¼.

Containing 5,789.59 acres in Washoe County.

2. In exchange for the above mineral interests, the United States acquired the mineral estate in the following described lands:

Mount Diablo Meridian, Nevada

T. 41 N., R. 19 E.
Sec. 20, E½W½.
T. 42 N., R. 21 E.,
Sec. 35, SW¼NE¼.
T. 41 N., R. 22 E.,
Sec. 3, S½SW¼;
Sec. 4, SW¼NE¼, SE¼NW¼, NW¼SE¼, SE¼SE¼;
Sec. 6, Lot 2, SW¼NE¼;
Sec. 10, S½NE¼, NE¼NW¼;
Sec. 11, SW¼NW¼, NE¼SW¼, S½SE¼;
Sec. 12, S½SW¼, SW¼SE¼;
Sec. 13, NE¼, N½NW¼, N½SE¼, SE¼SE¼;
T. 40 N., R. 22½ E.,
Sec. 1, Tract 37.
T. 40 N., R. 23 E.,
Sec. 6, Lots 14, 15, SE¼SW¼;
Sec. 7, SW¼NE¼, NE¼NW¼, W½SE¼;
Sec. 9, Tract 51A, W½NW¼, NW¼SW¼;
Sec. 16, Tracts 51B, 51D, E½SE¼;
Sec. 17, SW¼NW¼, NE¼SW¼, S½SE¼;
Sec. 18, NE¼NE¼;
Sec. 20, Lot 3, Tract 53C;
Sec. 21, Lot 2, Tracts 53B, 53D, E½NE¼, SW¼NE¼, NE¼SE¼;
Sec. 27, N½SW¼;
Sec. 28, SE¼NE¼, N½SE¼.
T. 41., R. 23 E.,
Sec. 3, SW¼NE¼;
Sec. 7, SE¼NE¼;
Sec. 8, SW¼NW¼, W½SW¼;
Sec. 13, W½SE¼;
Sec. 16, S½SW¼, N½SE¼, SW¼SE¼;
Sec. 17, SW¼NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 18, Lot 4;
Sec. 19, Lot 1, E½NW¼, W½SE¼;
Sec. 21, NW¼NE¼, E½W½;
Sec. 24, NW¼NE¼, SE¼NW¼, N½SW¼, SW¼SW¼;
Sec. 26, NE¼NE¼, S½N½, NW¼SW¼;
Sec. 27, E½SE¼, SW¼SE¼;
Sec. 28, N½NW¼, SW¼NW¼;
Sec. 30, W½E½;
Sec. 31, NW¼NE¼, SE¼NE¼, E½SE¼.

Containing 4,918.05 acres in Washoe County.

The mineral estate acquired by the United States is being proposed for withdrawal and is, therefore, not being opened to entry.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 90–7058 Filed 3–27–90; 8:45 am]

BILLING CODE 4310–HC–M

[NV–050–00–4410–08]

Intention to Prepare Stateline Resource Management Plan and Environmental Impact Statement; Stateline Resource Area, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare the Stateline Resource Management Plan and Environmental Impact Statement (RMP/EIS) for the Stateline Resource Area, Las Vegas District and an invitation for the public to participate in the identification of issues, review of planning criteria, and formulation of alternatives for the RMP/EIS. This Notice is also an invitation to the public to nominate or recommend for consideration in this RMP/EIS "Area of Critical Environmental Concern" (ACECs).

SUMMARY: This Notice describes the proposed planning action, the geographic area affected, anticipated issues, preliminary planning criteria, preliminary alternatives, the disciplines to be used to prepare the plan, the kind and extent of public participation activities, ACEC nomination procedures, and the appropriate Bureau of Land Management (BLM) Offices to contact for further information.

DATES: Public comment and participation are integral parts of the planning process. Written comments on the anticipated issues, preliminary planning criteria, preliminary alternatives and nominations of potential ACECs should be sent to the Area Manager, Bureau of Land Management, Stateline Resource Area, P.O. Box 26569, Las Vega, Nevada, 89126. In order to be considered in the scoping process, comments must be received by May 4, 1990. Nine informal public workshops are scheduled to assist the public in making their wishes known. All meetings are scheduled to be held from 7 p.m. to 9 p.m. The meeting dates and locations are listed below:

Tuesday, April 17, 1990; Las Vegas District Office (BLM); 4765 Vegas Driver, Las Vegas Nevada.

Wednesday, April 18, 1990; Las Vegas District Office (BLM); 4765 Vegas Drive, Las Vegas, Nevada.

Thursday, April 19, 1990; Las Vegas District Office (BLM); 4765 Vegas Drive, Las Vegas, Nevada.

Tuesday, April 24, 1990; Virgin Valley High School; 136 North Yucca, Mesquite, Nevada.

Wednesday, April 25, 1990; Laughlin School; 2750 South Needles Highway, Laughlin, Nevada.

Thursday, April 26, 1990; Searchlight Nugget Casino; 100 North Highway 95, Searchlight, Nevada.

Monday, April 30, 1990; Beatty Community Center; Beatty, Nevada.

Tuesday, May 1, Pahrump Community Center; 150 North Highway 160, Pahrump, Nevada.

Thursday, May 3, 1990; Las Vegas District Office (BLM); 4765 Vegas Driver, Las Vegas Nevada.

FOR FURTHER INFORMATION CONTACT: Roger Alexander, RMP Team Leader, Stateline Resource Area, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 646–8800.

SUPPLEMENTARY INFORMATION:

1. Description of the Proposed Planning Action

The BLM proposes to develop a single RMP/EIS for the Stateline Resource Area that will meet the requirements of the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA). This Resource Area is currently administered under the Clark Management Framework Plan (Clark MFP), completed in 1984, and the Esmeralda-Southern Nye RMP/EIS, completed in 1986. These land use plans have proven to be inadequate to meet the demands resulting from rapid growth (Las Vegas, Laughlin, Pahrump, Mesquite) and the listing of the desert

tortoise as an endangered species. Rather than amend the current plans on a single issue basis, the decision has been made to prepare a complete RMP/EIS for the entire planning area. The Stateline RMP/EIS will provide new management goals, objectives, and direction where needed. It will also bring forward valid existing management goals, objectives, and direction from the two existing planning documents.

The Stateline RMP/EIS will be prepared on an accelerated time-frame; the planning process is scheduled to be completed by May 1992.

2. The Geographic Area Covered by the Resource Plan

The Stateline Resource Area includes public lands comprising approximately 4.2 million acres in Clark and Nye Counties, Nevada. A copy of the map depicting the involved lands in on file for public inspection at the BLM's Las Vegas District Office, 4765 Vegas Drive, Las Vegas, Nevada, 89126.

3. General Types of Issues Anticipated

The public is invited to participate in the identification of issues related to the Stateline RMP/EIS. The following are anticipated planning issues identified by BLM:

A. Land Tenure

The existing land use plans for the Stateline Resource Area identified public lands for disposal (transfer from Federal ownership); the identified lands have not, however, entirely satisfied the demand for large tracts of land for industrial purposes or community expansion, nor have the identified lands always been located in areas that are responsive to local needs.

B. Desert Tortoise

Desert tortoise habitat occupies approximately three million acres (71%) of the planning area; a majority of the programs administered by Stateline Resource Area occur within that habitat. The listing of the desert tortoise as an endangered species requires management actions and changes in land uses not currently provided for by the two existing land use plans.

C. Mineral Development

Sand and gravel operations, while essential to the growth and development of southern Nevada, are often in conflict with the predominant land use of the local communities (residential or business). In addition, mineral exploration and development activities can adversely impact desert tortoise habitat and other natural and recreational values.

D. Off-highway Vehicle (OHV) Use

Existing OHV use designations are often in direct conflict with management objectives for desert tortoise habitat and other uses of the public lands, including the Colorado River Salinity Control Program, bighorn sheep habitat management, livestock grazing, non-motorized recreation, protection of natural values, and air and watershed management.

E. Rangeland Classification

The recent drought conditions in Southern Nevada, the listing of the desert tortoise as an endangered species, and the competing demands for the use of the public lands have called into question the existing rangeland classification in the planning area. The permittees and lessees generally want the public rangelands reclassified as ephemeral-perennial, while other segments of the public and other management agencies such as Fish and Wildlife Service and the National Park Service (NPS) want the existing ephemeral classification to be retained and the rangelands managed accordingly.

F. Special Management Areas/ACECs

There is increasing public pressure to protect natural, recreational, and scenic values on the public lands. In order to protect these values, it is often necessary to use a special management designation, such as an ACEC, to direct management attention towards limiting or eliminating competing and conflicting uses and managing for a dominant use.

G. Utility corridors

The demand to locate major utility transmission rights-of-way in the planning area has always been high, and is expected to continue; in order to minimize conflicts with other uses of the public lands, utility corridors need to be designated.

4. Preliminary Planning Criteria

The public is invited to participate in the development of planning criteria to guide the data collection, analysis and decision making during planning.

Preliminary planning criteria for the Stateline RMP/EIS that are in addition to those required by regulations and BLM Manual requirements are as follows:

A. The Stateline RMP/EIS will make planning determinations for all public lands located within the planning area boundary, including those public lands administered by other BLM offices.

B. The Statement RMP/EIS effort will rely on available inventories of the lands and resources in the planning area to reach sound management decisions. Those decisions requiring additional inventories will be deferred until such time as the inventories can be conducted.

C. In accordance with BLM Manual 1620, the following resource will not be analyzed nor have determinations made in the Stateline RMP/EIS:

Coal—The resource is potentially present in the planning area, but not in sufficient quantity or quality to warrant demand or interest by industry or the public (1620.06A.). If, in the future, new technology becomes available and/or demand increases, a plan amendment will have to be prepared before any coal-related activities can be authorized.

D. All valid existing management decisions from the Clark County MFP and the Esmeralda-Southern Nye RMP/EIS will be brought forward into the Stateline RMP/EIS.

E. Decisions about *specific* range, wildlife, and watershed improvements will not be made in the RMP/EIS, but rather in subsequent activity-level plans (habitat management plans, allotment management plans, etc.) designed to implement the Stateline RMP/EIS decisions.

F. Management use and protection of water, water sources, riparian zones, and other related values will be given a high priority.

G. Geographic Information System (GIS) will not be used, except in those cases where the information is currently digitized and available.

H. Watershed determinations will be based on hydrographic basins.

I. The Stateline RMP/EIS will incorporate a method for amending the plan on a regularly scheduled basis.

J. Wilderness study areas that are *not* designated as wilderness by Congress will be "released" from further study. The Stateline RMP/EIS will, therefore, make determinations concerning the management of all wilderness study areas in the planning area on the contingency that they may be "released."

K. Management Concerns (those matters that do not qualify as issues but need to be analyzed) will be identified in the Draft RMP/EIS.

L. Wilderness recommendations will be made for approximately 15,000 acres of public lands adjacent to Valley of Fire State Park (which were inadvertently left out of the wilderness inventory process) and for all lands acquired since the wilderness inventory

was initially completed (including the SUMMA lands).

M. All public lands identified for disposal outside of areas with specific legislative authorities such as Santini-Burton, Ft. Mojave, and Eldorado Valley will be disposed of by the most appropriate method.

5. Preliminary Plan Alternatives

The public is invited to participate in the formulation of alternatives to be analyzed in the RMP/EIS.

No-Action Alternative

The No-Action Alternative is the continuation of current management direction under existing land use plans, Memoranda of Understanding, cooperative agreements, and activity plans.

Other Alternatives

No other alternatives have been developed or conceptualized at this stage of the planning process. The intent of BLM is to develop, with public input, a range of alternatives that will eventually result in the best use(s) of the public lands in the planning area.

6. Disciplines Represented on the Planning Team

The RMP/EIS team will be comprised of the following disciplines: Team Leader, Wild Horse and Burro Specialist/Range Conservationist, Wildlife Biologist, Archaeologist/Writer-Editor, Geologist, Outdoor Recreation Specialist, Realty Specialist, Archaeologist, Hydrologist, Soil Scientist, Fire Management Specialist, and Social/Economic Specialist.

7. Public Participation

Public comment is currently solicited in regards to the anticipated issues, preliminary planning criteria, alternatives, and nomination for potential ACECs. Nine informal public workshops to address these four items are scheduled for April 17, 18, 19, 24, 25, 26, and 30, and May 1 and 3, 1990 (See above for locations and times).

The public scoping period will run from March 30, 1990 through May 4, 1990; all written comments must be received by May 4, 1990, to be considered in the scoping process.

Persons interested in participating in the planning process should submit their name and address for inclusion on the Stateline RMP/EIS mailing list to the Area Manager, Bureau of Land Management, Stateline Resource Area, P.O. Box 26569, Las Vegas, Nevada 89126.

Informal public comments and input are encouraged throughout the development of this RMP/EIS. The next formal public comment period will be offered with the publication of the Draft RMP/EIS.

8. ACEC Nomination Procedures

Individuals or organizations submitting nominations for ACECs must include the following information for each potential ACEC:

A. Name, location, and size of each potential ACEC.

B. A description of the value, resource, system, or hazard requiring special management attention (this information will be used to evaluate the relevance and importance of each potential ACEC).

C. Provision(s) for special management attention (this information will be used to develop management goals, objectives, and direction for each designated ACEC, if any).

9. Location of Planning Documents

Planning documents and other pertinent materials may be examined at the Stateline Resource Area Office located in Las Vegas, Nevada between 7:30 a.m. and 4:15 p.m., Monday through Friday.

Dated: March 22, 1990.

Fred Wolf,

Associate State Director, Nevada.

[FR Doc. 90-7046 Filed 3-27-90; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

National Capital Memorial Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Monday, April 9, at 1:30 p.m., in the Executive Conference Room at the National Capital Planning Commission, 1325 G Street, NW., Washington, DC.

The Commission was established by Public Law 99-652, for the purpose of advising the Secretary of the Interior or the Administrator of the General Services Administration, depending on which agency has jurisdiction over the lands involved in the matter, on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia or its environs, as well as such other matters concerning commemorative works in the Nation's Capital as it may deem appropriate. The Commission evaluates each memorial proposal and makes recommendations to the Secretary or the Administrator with respect to appropriateness, site location and design, and serves as an information focal point for those seeking to erect memorials on Federal land in Washington, DC, or its environs.

The members of the Commission are as follows:

James Ridenour, Chairman, Director, National Park Service, Washington, DC

George M. White, Architect of the Capitol, Washington, DC

Honorable Andrew J. Goodpaster, Chairman, American Battle Monuments Commission, Washington, DC

J. Carter Brown, Chairman, Commission of Fine Arts, Washington, DC

Glen Urquhart, Chairman, National Capital Planning Commission, Washington, DC

Honorable Marion S. Barry, Jr., Mayor of the District of Columbia, Washington, DC

Richard G. Austin, Acting Administrator, General Services Administration, Washington, DC

Honorable Richard B. Cheney, Secretary of Defense, Washington, DC.

The purpose of the meeting will be review and take action on the following:

I. Review Legislative Proposals

(a) H.J. Res. 470, a bill to authorize the Cadmus Foundation, Inc., to establish a memorial on Federal land in the District of Columbia or its environs to honor the teaching profession.

(b) H.R. 3954, a bill to authorize the establishment of a memorial on Federal land in the District of Columbia to honor individuals who have served as volunteers in the Peace Corps.

II. Memorial to the women who served in Vietnam.

Site Selection for Area I.

Dated: March 20, 1990.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 90-6950 Filed 3-27-90; 8:45 am]

BILLING CODE 4310-70-M

Meeting of National Park System Advisory Board

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that a meeting of the National Park System Advisory Board will be held in Room A2 of the Fort Mason Conference Center, Buchanan and Marina Boulevard, San Francisco, California on April 25 and 26, 1990. The general business session will start at 8:00 a.m. Wednesday morning, April 25, and is planned to conclude by

noon on Thursday, April 26. The purpose of the Board is to advise the Secretary of the Interior on matters relating to the National Park System, to other related areas, and to the administration of the Historic Sites Act of 1935. The Board will consider potential National Historic Landmark nominations plus a variety of matters pertaining to the National Park System and other related areas. The meeting will follow an orientation tour and briefings on National Park System units and related Service interests in the Bay area.

Potential National Historic Landmarks will be taken up at about 10:00 a.m. Wednesday morning, April 25, for approximately two hours. Other topics scheduled for discussion include partnership park arrangements, the Presidio of San Francisco, educational program in the National Park System, volunteerism, urban park issues, the upcoming Columbus Quincentennial, and tourism matters. The Board will also be addressed by officials of the Department of the Interior and the National Park Service.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis.

Anyone may file with the Board a written statement concerning matters to be discussed. Persons wishing further information concerning this meeting or who which to submit written statements may contact David L. Jervis, National Park Service (022), P.O. Box 37127, Washington, DC 20013-7127 (telephone 202-343-4030).

Draft summary minutes of the meeting will be available for public inspection about 8 weeks after the meeting, in Room 1220, Main Interior Building, 18th and C Streets NW., Washington, DC.

Carol F. Aten,

Chief, Office of Policy, National Park Service.

[FR Doc. 90-6933 Filed 3-27-90; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 17, 1990 Pursuant to § 60 13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by April 12, 1990.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

New London County

Civic Institutions Historic District, 156-158, 171, 173-175 Garfield Ave., 179 Colman St., 32 Wald Ave., New London, 90000602

United States Housing Corporation Historic District, Roughly bounded by Colman, Fuller, and W. Pleasant Sts., and Jefferson Ave., New London, 90000603

MARYLAND

Charles County

Lindens, The, SR 488, Bryantown vicinity, 90000607

Harford County

Sion Hill, 2026 Level Rd., Havre de Grace vicinity, 90000608

MICHIGAN

Benzie County

Platte River Campground, E bank of Platte R. in Sleeping Bear Dunes National Seashore, Empire vicinity, 90000605

MISSOURI

Shannon County

Shawnee Creek Site, ADDRESS RESTRICTED, Eminence vicinity, 90000604

NEW YORK

New York County

Church of St. Mary the Virgin Complex, 145 W. 46th St., New York, 90000606

WYOMING

Teton County

4 Lazy F Dude Ranch (Grand Teton National Park MPS), Off Teton Park Rd., Moose vincinity, 90000611

AMK Ranch (Grand Teton National Park MPS), Off US 89/27, Moran vicinity, 90000615

Administrative Area Historic District, Old (Grand Teton National Park MPS), Off Teton Park Rd., Moose vicinity, 90000621

Bar B C Dude Ranch (Grand Teton National Park MPS), Off Teton Park Rd., Moose vicinity, 90000624

Brinkerhoff, The (Grand Teton National Park MPS), Teton Park Rd., Moose vicinity, 90000622

Chambers, Andy Ranch Historic District (Grand Teton National Park MPS), Mormon Row E of Moose, Moose vicinity, 90000623

Jackson Lake Ranger Station (Grand Teton National Park MPS), Off Teton Park Rd., Moose vicinity, 90000620

Jenny Lake Ranger Station Historic District (Grand Teton National Park MPS), Jenny Lake Rd., Moose vicinity, 90000610

Kimmel Kabins (Grand Teton National Park MPS), Off Teton Park Rd., Moose vicinity, 90000612

Leigh Lake Ranger Patrol Cabin (Grand Teton National Park MPS), Off Teton Park Rd. at Lehigh Lake, Moose vicinity, 90000618

Moose Entrance Kiosk (Grand Teton National Park MPS), Off Teton Park Rd., Moose vicinity, 90000619

Murie Residence (Grand Teton National Park MPS), Off Moose Wilson Rd., Moose vicinity, 90000616

String Lake Comfort Station (Grand Teton National Park MPS), Off Teton Park Rd. at Spring Lake, Moose vicinity, 90000617

White Grass Dude Ranch (Grand Teton National Park MPS), Off Moose Wilson Rd., Moose vicinity, 90000613

White Grass Ranger Station Historic District (Grand Teton National Park MPS), Off Moose Wilson Rd., Moose vicinity, 90000614

The following properties were erroneously listed as pending on the list dated March 6, 1990:

KENTUCKY

Ballard County

Twin Mounds Site (15BA2), Address Restriced, Barlow vicinity, 90000477

MASSACHUSETTS

Middlesex County

Boyden Hall, (Newton MRA), 2366—2370 Washington St., Newton, 86003904

MINNESOTA

St. Louis County

Saari, Andrew and Hedvig, Historic Farmstead, (Rural Finnish Log Buildings of St. Louis County, Minnesota, 1890-1930s MPS), Off Townshp Rd. 367, Tower vicinity, 90000496

The Keeper of the National Register has reduced the comment period to 10 days on the followin nomination:

WISCONSIN

Milwaukee County

Prospect Avenue Mansions Historic District, N. Prospect Ave. between E. Ogden Ave. and E. Brady St., Milwaukee, 90000478

[FR Doc. 90-6932 Filed 3-27-90; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-456 (Preliminary)]

Phototypesetting and Imagesetting Machines and Subassemblies Thereof From Federal Republic of Germany

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-

456 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Federal Republic of Germany of phototypesetting and imagesetting machines and subassemblies thereof, [1] provided for in subheadings 8442.10.00 and 8442.40.00 of the Harmonized Tariff Schedule of the United States (previously reported under items 668.2520 and 668.2540 of the former Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by May 4, 1990.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 201).

EFFECTIVE DATE: March 20, 1990.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–252–1182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted in response to a petition filed on March 20, 1990 by Varityper, Inc., East Hanover, NJ, and Tegra, Inc., Billerica, MA.

Participation in the investigation. Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list. Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on April 10, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Olympia DeRosa Hand (202–252–1182) not later than April 4, 1990, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions. Any person may submit to the Commission on or before April 12, 1990, a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than April 16, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: March 23, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–7139 Filed 3–27–90; 8:45 am]

BILLING CODE 7020–02–M

[1] For purposes of this investigation, the term "phototypesetting and imagesetting machines" refers to phototypesetting and imagesetting equipment, consisting of hardware and dedicated software designed to output high-resolution (600 or more dots per inch) type and/or images on a photographic medium, either film or paper, and subassemblies thereof. Included in the hardware are image controllers, image recorders, imagesetters and phototypesetters. Sub-assemblies include dedicated general and specialized circuit board configurations, raster image processor assemblies, and laser image and optical assemblies.

[Inv. Nos. TA–503(a)–20 and 332–290]

President's List of Articles Which May Be Designated or Modified as Eligible Articles for Purposes of the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: On March 2, 1990, the Commission received a request from the U.S. Trade Representative (USTR) requesting certain Commission advice under sections 131, 503, and 504 of the Trade Act of 1974 and section 332(g) of the Tariff Act of 1930. Following receipt of that request, the Commission instituted investigation No. TA-503(a)-20 and 332-290 in order to:

(1) Provide advice, pursuant to sections 131(a) and 503(a) of the Trade Act of 1974 (19 U.S.C. 2151(b) and 2463(a)), with respect to each article listed in Part A of the attached Annex, as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties under the Generalized System of Preferences (GSP);

(2) Pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g))—

(a) Provide advice in accordance with section 504(c)(3)(A)(i) of the Trade Act of 1974 as to the probable economic effect on domestic industries producing like or directly competitive articles and on consumers of waiving the competitive need limits for Peru with respect to the article in Part B of the attached Annex; and

(b) Provide advice in accordance with section 504(d) of the Trade Act of 1974, which exempts from one of the competitive need limits in section 504(c) of the Trade Act of 1974 articles for which no like or directly competitive article was being produced in the United States on January 3, 1985, with respect to whether products like or directly competitive with the articles in Part A of the attached Annex were being produced in the United States on January 3, 1985.

In providing its advice under (1), the Commission will assume, as requested by USTR, that the benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of the competitive need limits specified in section 504(c)(1) of the Trade Act of 1974.

As requested by USTR, the Commission will seek to provide its advice not later than June 1, 1990.

EFFECTIVE DATE: March 16, 1990.

FOR FURTHER INFORMATION CONTACT:

(1) Agricultural products, Mr. C.B. Stahmer (202-252-1321).

(2) Textiles and apparel, Ms. Linda Shelton (202-252-1467).

(3) Chemical products, Mr. Robert Randall (202-252-1366).

(4) Minerals and metals, Mr. James Lukes (202-252-1426).

(5) Machinery and equipment, Mr. John Cutchin (202-252-1396).

(6) General manufactures, Mr. Ruben Moller (202-252-1495).

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact, Mr. William Gearhart of the Commission's Office of the General Counsel at 202-252-1091.

Background

The letter from the USTR provided the following by way of background:

The Trade Policy Staff Committee (TPSC) announced in the **Federal Register** on November 14, 1989, the initiation, at the direction of the President, of a special review to consider requests from the Governments of Bolivia, Colombia, Ecuador and Peru to add products to the list of articles eligible for duty-free treatment under the Generalized System of Preferences (GSP). Modifications to the GSP which may result from this review will be announced on or about July 14, 1990, and become effective on or about August 1, 1990.

Public Hearing

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC 20436, beginning at 9:30 a.m. on April 17, 1990, and continuing as required on April 18 and 19. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, not later than the close of business on April 11, 1990. Posthearing briefs must be filed by April 26, 1990.

Written Submissions:

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on April 16, 1990. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252-1810.

By order of the Commission.

Issued: March 19, 1990.

Kenneth R. Mason,

Secretary.

Annex I (HTS Item Subheadings) [1]

A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences.

0304.10.20(pt)	2005.20.00	7013.29.10
0304.20.40(pt)	2005.60.00	7013.29.20
0306.14.20	2008.30.37	7013.29.30
0306.24.20	2008.99.45	7013.29.40
0603.10.60	2008.99.80	7013.29.50
0709.10.00	2009.11.00	7013.29.60
0709.20.10	2009.30.1020	7013.39.20
0709.20.90	2009.30.1040	7013.39.30
0710.22.30	2009.30.2020	7013.39.40
0710.80.9510	2009.30.2040	7013.39.50
0710.80.9550	2103.20.40	7013.39.60
0710.90.90	2208.10.30	7013.99.40
0711.20.15	2208.10.60	7013.99.50
0711.20.25	2208.10.90	7013.99.60
0714.10.00	2208.40.10	7013.99.70
0804.30.40	2208.40.60(pt)	7013.99.80
0804.50.60	2936.28.00	7013.99.90
0807.20.00	3004.50.30	7209.11.00
0810.10.20	3005.10.50	7209.12.00
0810.10.40	3005.90.50	7209.13.00
0811.20.40	3302.10.20	7209.14.00
0811.90.50	3808.20.20	7209.32.00
0811.90.6080	3921.12.19	7318.12.00
1102.90.40	4412.11.20	7801.91.00
1104.22.00	4412.11.50	7901.20.00
1104.23.00	4412.12.20	8211.91.20
1212.92.00	4412.12.50	8211.91.25
1507.90.40	4412.29.30	8211.91.30
1516.10.00	4412.29.40	8211.91.40
1604.13.40	4412.99.50	8215.20.00
1604.13.50	4421.90.50	8215.99.01
1605.10.20	4421.90.60	8215.99.05
2001.90.25	5702.99.20	8215.99.10
2002.10.00	5903.10.10	8215.99.15
2002.10.0020	5903.90.10	8215.99.30
2002.10.0050	6406.10.7530	8215.99.35
2002.10.0090	6406.10.8015	8301.10.60
2002.90.00	6907.90.00	8712.00.20
2002.90.0010	6908.10.50	8714.91.10
2002.90.0030	6908.90.00	8714.91.90
2002.90.0040	7004.90.25	9505.10.40
2004.90.9040	7004.90.30	9502.10.80
2004.90.9080	7004.90.40	

B. Petitions for wavier of competitive need limit for a product on the list of eligible products for the Generalized System of Preference.

7413.00.10 (Peru)

[FR Doc. 90-7074 Filed 3-27-90; 8:45 am]

BILLING CODE 7020-02-M

[1] See USTR **Federal Register** notice of March 7, 1990. (55 FR 8248) for article descriptions.

[Inv. No. 337-TA-304]

Certain Pressure Transmitters; Designation of Additional Commission Investigative Attorney

Before Janet D. Saxon, Administrative Law Judge.

Notice is hereby given that, as of this date, George C. Summerfield, Esq., of the Office of Unfair Import Investigations will be the Commission Investigative Attorney in the above-captioned investigation in addition to Deborah J. Kline, Esq.

The Secretary is requested to publish this notice in the **Federal Register.**

Dated: March 20, 1990.

Respectfully submitted,

Lynn I. Levine,

Director, U.S. International Trade Commission, Office of Unfair Import Investigations.

[FR Doc. 90-7072 Filed 3-27-90; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 337-TA-304]

Certain Pressure Transmitters; Commission Decision to Deny Motion for Temporary Relief

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to deny the complainant's motion for temporary relief and vacate-in-part the presiding administrative law judge's (ALJ's) initial determination (ID) on temporary relief. The Commission adopted the findings of fact contained in the ID and the analysis on the issue of patent validity. The remainder of the ID was vacated.

ADDRESSES: Copies of the nonconfidential version 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: Jean Jackson, ESq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1104. 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 September 15, 1989, Rosemount, Inc. (Rosemount) filed a complaint and a motion for temporary relief with the Commission alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation and sale of certain pressure transmitters covered by claims 1-4 of U.S. Letters Patent 3,800,413, owned by Rosemount. Pressure transmitters are devices use to measure flow rates in industrial processes.

Pursuant to Commission interim rule 210.24(e)(8) (19 CFR 210.24(e)(8)), the Commission provisionally accepted Rosemount's motion for temporary relief at the Commission meeting October 15, 1989. The Commission also instituted an investigation of Rosemount's complaint. A notice of investigation was published in the **Federal Register** on October 20, 1989. 54 FR 43145. The notice named SMAR Equipment of Sao Paulo, Brazil and SMAR International of Ronkonkoma, New York as respondents.

The presiding ALJ held an evidentiary hearing from November 27-November 30, 1989. Respondents actively participated in the hearing. On December 19, 1989 all parties filed written submissions on the issues of remedy, the public interest, and respondent's bond, as provided for in Commission interim rule § 210.24(e)(18)(ii) (19 CFR 210.24(e)(18)(ii).

On December 29, 1989, the ALJ issued an ID granting Rosemount's motion for temporary relief. On January 8, 1990, all parties filed written comments concerning the ID as provided for by Commission interim rule § 210.24(e)(17)(iii) (19 CFR 210.24(e)(17)(iii). Responses to the comments were filed on January 11, 1990. No government agency comments were filed. On January 17, 1990, the Commission designated the temporary relief proceedings more complicated, thereby extending the deadline for completion of the temporary relief proceedings until March 19, 1990. 54 FR 2422-3 (Jan. 24, 1990). The Commission also requested submissions from interested person addressing certain questions relating to the standard to be applied in temporary relief proceedings. *Id.* On February 16, 1990, the Commission received submissions from the parties, the American Intellectual Property Association, the ITC Trial Lawyers Association, and Motorola, Inc.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 210.24(e)(17)(ii) of the Commission's interim rules (19 CFR 210.24(e)(17)(ii)).

By order of the Commission.

Issued: March 19, 1990.

Kenneth R. Mason

Secretary.

[FR Doc. 90-7073 Filed 3-27-90; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 486]

Railroad Cost of Capital, 1989

AGENCY: Interstate Commerce Commission.

ACTION: Suspension of procedural schedule in cost of capital proceeding.

SUMMARY: In the **Federal Register** of December 19, 1989 (54 (FR 51955), the due date for the submission of comments from non-railroad parties was established to be March 9, 1990, and was later extended until March 30, 1990 at the request of IMC Fertilizer, Inc. IMC now asks that the procedural schedule be suspended pending a ruling on discovery matters. The petition shall be granted. A new procedural schedule will be set after discovery matters are resolved.

EFFECTIVE DATE: March 26, 1990.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275-7489. (TDD for the hearing impaired: (202) 275-1721).

Dated: March 23, 1990.

By the Commission, Edward J. Philbin, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 90-7193 Filed 3-27-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31599 (Sub-No. 1)]

Burlington Northern Railroad Co.—Operation Exemption—Connector Track in Jefferson County, IL; Exemption

Burlington Northern Railroad Company (BN) has filed a notice of exemption to operate over a 1,586-foot connector track that it has constructed between its main line and the line of the Illinois Central Railroad Company (IC) in Jefferson County, IL.[1]

[1] The notice of exemption to operate is over a line that was constructed without prior Commission approval or exemption authority. BN filed for construction authorization on March 20, 1990. Publication of this notice is not to be construed as conferring such construction authorization, nor as authorizing the procedure BN has used.

Concurrently with the filing of this notice, BN filed a notice of exemption in Finance Docket No. 31599, *Burlington Northern Railroad Company—Trackage Rights Exemption—Illinois Central Railroad Company* for trackage rights over a 1.7-mile line of IC to serve a mine located near Waltonville, IL. BN will operate over the connector track as part of that movement.

Comments must be filed with the Commission and served on: Betty Jo Christian, Steptoe & Johnson, 1330 Connecticut Avenue, NW., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exeption is void *ad initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 21, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-6886 filed 3-27-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Clean Water Act; United States v. CR Industries, Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on March 19, 1990, a proposed consent decree in *United States* v. *CR Industries, Inc.*, Civil Action No. 89-4006, was lodged with the United States District Court for the District of South Dakota. The proposed consent decree resolves a judicial enforcement action brought by the United States against CR Industries, Inc. ("CR") under section 309(b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. 1319 (b) and (d).

In this action filed on January 17, 1989, the United States sought injunctive relief and civil penalties against CR for violations of the reporting requirements and discharge limits in the CWA pretreatment regulations at 40 CFR parts 403 and 433. The proposed decree requires CR to institute a liquid waste pretreatment program, which includes construction and operation of a new waste treatment facility by July 1, 1990, and to pay a civil penalty of $200,000 within 30 days of entry of the decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *CR Industries, Inc.*, D.J. Ref. 90-5-1-1-3257.

The proposed consent decree may be examined at the office of the United States Attorney, 135 Federal Bldg. & U.S. Courthouse, 400 S. Phillips Avenue, Sioux Falls, South Dakota, 57102 and at the Region VIII office of the United States Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202-2405. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-6967 Filed 3-27-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; United States v. Hitco Inc.

Notice is hereby given that a proposed Consent Decree in *United States* v. *Hitco, Inc.*, Civil Action No. 89-C-0845 (N.D. Ill.) between the United States, on behalf of the Environmental Protection Agency ("EPA"), and Hitco, Inc. has been lodged on February 20, 1990 with the United States District Court for the Northern District of Illinois. The Consent Decree resolves claims of the United States againt Hitco, Inc. under the Solid Waste Disposal Act, *as amended*, 42 U.S.C. 6901 *et seq.* (also referred to as the Resource Conservation and Recovery Act "RCRA"). The United States' Complaint alleged various RCRA violations against Hitco Inc. relating to its facility located at 333 North Sixth Street, St. Charles, Illinois, including the unauthorized storage and treatment of hazardous wastes at the facility. Under the settlement reflected in the Consent Decree, Hitco, Inc. will pay a civil penalty of $126,000 to the United States and agrees to comply with RCRA's requirements.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Hitco, Inc.*, D.J. Ref. 90-5-1-1-3293. The proposed Consent Decree may be examined at the office of the United States Attorney for the Northern District of Illinois, U.S. Courthouse, 1500 South, Everett McKinley Dirksen Bldg., 219 South Dearborn St., Chicago, IL 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, room 6317, Tenth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.20 (10 cents per page reproduction costs), payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-6969 Filed 3-27-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; United States v. Monterey Investment et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on 5 March, 1990, a proposed Consent Decree in *United States* v. *Monterey Investment and Glenn Williams*, Civil Action No. C-88-4222-RFP was lodged with the United States District Court for the Northern District of California. The Complaint, brought pursuant to the Clean Air Act ("CAA"), 42 U.S.C. 7401 *et seq.*, sought penalties and injunctive relief for violations of work practice standards under the National Emissions Standards for Hazardous Air Pollutants (NESHAP) regulations for asbestos, 40 CFR part 61, subpart M. The violations included failure to submit to the Administrator written notice of the intention to renovate the property; failure to properly remove friable asbestos material before renovation of a building; failure to adequately wet friable asbestos materials being removed from facility components; failure to maintain adequate wetting of asbestos-containing materials removed from the facility until

disposal; failure to dispose the removed asbestos-containing material in an approved disposal site and failure to prevent the emissions from friable asbestos during the collection, processing and disposal of the asbestos-containing material removed during the renovation.

In relief and compromise of the government's claims, the proposed Consent Decree imposes a permanent injunction against future violations of the CAA by the defendants for the life of the Consent Decree with provisions for stipulated penalties for any such violations, and imposes a civil penalty of $33,000 against the defendants for the violations cited in the complaint ($23,000 against Monterey Investments and $10,000 against Glenn Williams).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to *United States* v. *Monterey Investments and Glenn Williams*, D.J. Ref. 90-5-2-1-1201.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102 and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, room 1732(R), Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy by mail, please enclose a check in the amount of $2.00 (10 cents per page reproduction cost) payable to the "Treasurer of the United States".

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-6968 Filed 3-27-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-90-41-C]

Mettiki Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Mettiki Coal Corporation, Route 3, Box 124A, Deer Park, Maryland 21550 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Mettiki Mine (I.D. No. 18-00621) located in Garrett County, Maryland. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use air for the belt haulage entry to ventilate active working places.

3. In support of this request, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide (CO) detection system in all belt entries used as intake aircourses and at each belt drive and tailpiece located in intale aircourses. The monitoring devices would be capable of giving warning of a fire for four hours should the power fail; a visual alert signal would be activated when the CO level is 10 part per million (ppm) above ambient air and an audible signal would sound at 15 ppm above ambient air. All persons would be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal would be activated at an attended surface location where there is two-way communciation. The CO system would be capable of identifying any activated sensor, monitoring electrical continuity and detecting electrical malfunctions.

4. The CO system would be visually examines at least once each coal-producing shift and tested weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor would continue to operate and qualified persons would patrol and monitor the belt conveyor using handheld CO detecting devices.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room, 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1990. Copies of the petition are available for inspection at that address.

Dated: March 21, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-7024 Filed 3-27-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-44-C]

R.S. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

R.S. Coal Company, RD No. 1, Box 21, Dornsife, Pennsylvania 17832 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 1 Slope Mine (I.D. No. 36-07108) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Effective safety catches or other devices are not available for the conveyances used on the steeply pitching and undulating slopes with numerous curves and knuckles in the main haulage slopes of this anthracite mine.

3. If "makeshift" safety devices were installed they would activate on knuckles and curves when no emergency exists and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These

comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 27, 1990. Copies of the petition are available for inspection at that address.

Dated: March 21, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-7025 Filed 3-27-90; 8:45 am]

BILLING CODE 4510-43-M

Wage and Hour Division

[Administrative Order No. 660]

Special Industry Committee for All Industry in American Samoa; Appointment; Convention; Hearing

1. Pursuant to sections 5 and 6(a)(3) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 205, 206(a)(3)), and Reorganization Plan No. 6 of 1950 (3 CFR, 1949–53 Comp., p. 1004) and 29 CFR part 511, I hereby appoint special Industry Committee No. 19 for American Samoa.

2. Pursuant to sections 5, 6(a)(3), and 8 of the Act, as amended (29 U.S.C. 205, 206(a)(3), 208), Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and 29 CFR part 511, I hereby:

(a) Convene the above-appointed industry committee.

(b) Refer to the industry committee the question of the minimum rate or rates for all industry in American Samoa to be paid under section 6(a)(3) of the Act, as amended.

(c) Give notice of the hearing to be held by the committee at the time and place indicated.

The industry committee shall investigate conditions in such industry, and the committee, or any authorized subcommittee thereof, shall hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under the Act.

The committee shall meet in executive session to commence its investigation at 9 a.m. and begin its public hearing at 11 a.m. on June 4, 1990, in the Senate Chambers, Fono Building, Pago Pago, American Samoa.

3. The rate or rates recommended by the committee shall not exceed the rates prescribed by sections 6(a) and 6(b) of the Act, as amended by the Fair Labor Standards Amendments of 1989, $3.80 an hour effective April 1, 1990, and $4.25 an hour effective April 1, 1991.

The committee shall recommend to the Administrator of the Wage and Hour Division of the Department of Labor the highest minimum rate or rates of wages for such industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in such industry, and will not give any industry in American Samoa a competitive advantage over any industry in the United States outside of American Samoa.

4. Where the committee finds that a higher minimum wage may be determined for employees engaged in certain activities or in the manufacture of certain products in such industry that may be determined for other employees in such industry, the committee shall recommend such reasonable classifications within such industry as it determines to be necessary for the purpose of fixing for each classification the hightest minimum wage rate that can be determined for it under the principles set forth herein and in 29 CFR part 511.10, which will not substantially curtail employment in such classification and will not give a competitive advantage to any group in the industry. No classification shall be made, however, and no minimum wage rate shall be fixed solely on a regional basis or on the basis of age or sex. In determining whether there should be classifications within an industry, in making such classifications, and in determining the minimum wage rates for such classifications, the committee shall consider, among other relevant factors, the following: (a) Competitive conditions as affected by transportation, living, and production costs; (b) wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and (c) wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

5. Prior to the hearing, the Administrator of the Wage and Hour Division, U.S. Department of Labor, shall prepare an economic report containing the information which has been assembled pertinent to the matters referred to the committee. Copies of this report may be obtained at the Office of the Governor, Pago Pago, American Samoa, and the National Office of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210, as soon as it is comleted. Upon request, the Wage and Hour Division will mail copies to interested persons. To facilitate mailing, such persons should make advance, written request to the Wage and Hour Division. The committee will take official notice of the facts stated in this report. Parties, however, shall be afforded an opportunity to refute such facts by evidence received at the hearing.

6. The procedure of this industry committee will be governed by the provisions of Title 29, Code of Federal Regulations, part 511. Copies of this part of the regulations will be available at the Office of the Governor, Pago Pago, American Samoa, and at the National Office of the Wage and Hour Division. The proceedings will be conducted in English but in the event a witness should wish to testify in Samoan, an interpreter will be provided. As a prerequisite to participation as a party, interested persons shall file six copies of a prehearing statement at the aforementioned Office of the Governor of American Samoa and six copies at the National Office of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. Each prehearing statement shall contain the data specified in 29 CFR 511.8 of the regulations and shall be filed not later than May 25, 1990. If such statements are sent by airmail between American Samoa and the mainland, such filing shall be deemed timely if postmarked within the time provided.

Signed at Washington, DC this 22nd day of March 1990.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 90-7026 Filed 3-27-90; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 90-23]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Advanced Cockpit Technology.

DATES: April 26, 1990, 8:30 a.m. to 5 p.m. (to be held at Airbus Service Company, Inc.); and April 27, 1990, 8:30 a.m. to 4:30

p.m. (to be held at Miami Viscount Hotel).

ADDRESSES: Airbus Service Company, Inc., Training Center, 5600 Northwest 36th Street, Miami, FL 33122; and Miami Viscount Hotel, Gainesville Room, 5301 Northwest 36th Street, Miami, FL 33122.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Hood, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2745.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics, Exploration and Technology (OAET) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Advanced Cockpit Technology, chaired by Dr. John K. Lauber, is comprised of eight members.

The meeting will be open to the public up to the seating capacity of the room (approximately 20 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

April 26, 1990
- 8:30 a.m.—Opening Remarks.
- 9 a.m.—Welcome to Airbus Presentation.
- 9:45 a.m.—Facility Tour and Demonstration.
- 12:30 p.m.—Flight Simulator Demonstration.
- 1:15 p.m.—Fix Bay Simulator Demonstration.
- 3:45 p.m.—Group Discussion.
- 5 p.m.—Adjourn.

April 27, 1990
- 8:30 a.m.—Report Preparation.
- 4:30 p.m.—Adjourn.

Dated: March 22, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90-7033 Filed 3-27-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On February 15, 1990, the National Science Foundation published a notice in the Federal Register of permit applications received. A permit was issued to the following individual on March 20, 1990: David H. Baron.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 90-7030 Filed 3-27-90; 8:45 am]

BILLING CODE 7555-01-M

Committee Management; Establishment; Engineering and Technology Management Panel

The Assistant Director for Engineering has determined that the establishment of the Engineering and Technology Management Panel is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 USC 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of committee: Advisory Panel for Engineering and Technology Management

Purpose: Primarily, to advise on the merit of proposals for research and research-related purposes submitted to NSF for financial support. The proposals were submitted in response to NSF 89-56 "Research Thrust on Engineering and Technology Management: With a Focus on Management of Engineering Design Systems." The Panel will also provide general advice and policy guidance to the Division.

Balanced membership plan: The Panel roster will consist of about 20 members. Effort will be made to maintain a balanced membership across a number of key dimensions. First and foremost will be scientific balance across the research areas subsumed by the program. Balance will also be maintained with regard to geographical, gender, relative seniority and institutional dimensions. Although substantial scientific accomplishment is a prerequisite, efforts will be made to involve appropriate minority and female scientists and engineers from predominantly undergraduate institutions in the peer review process.

Responsible NSF official: Dr. Louis Martin-Vega, Program Officer, Operations Research and Production Systems, Division of Design and Manufacturing Systems, National Science Foundation, Room 1128, 1800 G Street, NW. Washington, DC 20550, (202) 357-5167.

Dated: March 23, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-7059 Filed 3-27-90; 8:45 am]

BILLING CODE 7555-01-M

Committee Management; Renewals; Animal Learning and Behavior Advisory Panel et al.

The Assistant Directors having responsibility for the Advisory Committees listed below have determined that renewal of these groups is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 USC 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Authority for these Advisory Committees will expire on March 31, 1992, unless they are renewed.

Biological, Behavioral, and Social Sciences Directorate

Division of Behavioral, and Neural Sciences

1. Advisory Panel for Animal Learning and Behavior.
2. Advisory Panel for Archaeometry.
3. Advisory Panel for Cellular Neuroscience.
4. Advisory Panel for Cultural Anthropology.
5. Advisory Panel for Developmental Neuroscience.
6. Advisory Panel for Human Cognition and Perception.
7. Advisory Panel for Linguistics.
8. Advisory Panel for Neural Mechanisms of Behavior.
9. Advisory Panel for Sensory Systems.
10. Advisory Panel for Social Psychology.
11. Advisory Panel for Systematic Anthropological Collections.

Division of Biotic Systems and Resources

12. Advisory Panel for Ecology.
13. Advisory Panel for Ecosystem Studies.
14. Advisory Panel for Population Biology and Physiological Ecology.
15. Advisory Panel for Systematic Biology.

Division of Cellular Biosciences

16. Advisory Panel for Cell Biology.
17. Advisory Panel for Developmental Biology.
18. Advisory Panel for Cellular Biochemistry.
19. Advisory Panel for Physiological Processes.

Division of Instrumentation and Resources

20. Advisory Panel for Ethics and Values Studies.
21. Advisory Panel for History and Philosophy of Science.
22. Advisory Panel for Instrumentation and Instrument Development.

Division of Molecular Biosciences

23. Advisory Panel for Biochemistry.
24. Advisory Panel for Biophysics.
25. Advisory Panel for Genetic Biology.

Division of Social and Economic Science

26. Advisory Panel for Decision, Risk, and Management Science.
27. Advisory Panel for Economics.
28. Advisory Panel for Geography and Regional Science.
29. Advisory Panel for Law and Social Sciences.
30. Advisory Panel for Measurement Methods & Data Improvement.
31. Advisory Panel for Political Science.
32. Advisory Panel for Sociology.

Computer and Information Science and Engineering Directorate

Advisory Committee for Computer and Computation Research.

Engineering Directorate

Advisory Committee for Engineering.

Geosciences Directorate

1. Advisory Committee for Atmospheric Sciences.
2. Advisory Committee for Earth Sciences.
3. Advisory Committee for Ocean Sciences.
4. Advisory Committee for Polar Programs.
5. Advisory Panel for Ocean Sciences Research.
6. Earth Sciences Proposal Review Panel.

Mathematical and Physical Sciences Directorate

1. Advisory Committee for Astronomical Sciences.
2. Advisory Committee for Chemistry.
3. Advisory Committee for Materials Research.
4. Advisory Committee for Mathematical Sciences.
5. Advisory Committee for Physics.

Scientific, Technological, and International Affairs Directorate

1. Advisory Committee for Industrial Science and Technologial Innovation.
2. Advisory Committee for International Programs.

Dated: March 23, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–7060 Filed 3–27–90; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision or extension: Revision.
2. The title of the information collection: 10 CFR Part 50, "Stabilization and Decontamination Priority and Trusteeship Provisions" [Final Rule, 50.54(w)(4)(i)(ii)].
3. The form number if applicable: N/A.
4. How often the collection is required: Contingent on the occurrence of an accident causing over $100 million in damage.
5. Who will be required or asked to report: A power reactor licensee suffering an accident.
6. An estimate of the number of annual responses: Less than 1 pursuant to item 4 above.
7. An estimate of the average burden hours per response: 2,000 hours.
8. An estimate of the total number of hours needed annually to complete the requirement: N/A.
9. An indication of whether Section 3504(h), P.L. 96–511 applies: N/A.
10. Abstract: Section 10 CFR 50.54(w)(4) final rule provides that a licensee suffering an accident is required to submit a cleanup plan outlining the steps needed to complete decontamination and cleanup and to allow release of the remaining insurance proceeds for non-cleanup purposes. The final rule amends section 50.54(w) by adding (4)(i) which provides that, in the event of an accident at the licensee's reactor, whenever the estimated costs of stabilizing the licensed reactor and of decontaminating reactor and the reactor station site exceed $100 million, the proceeds of the insurance required by 10 CFR 50.54(w) must be dedicated to and used, first, to ensure that the licensed reactor is in, or is returned to, and can be maintained in, a safe and stable condition so as to prevent any significant risk to the public health and safety and, second, to decontaminate the reactor and the reactor station site in accordance with the licensee's cleanup plan. This rule also adds (4)(ii) which requires licensees to inform NRC in writing when the reactor is and can be maintained in a safe and stable condition so as to prevent any significant risk to the public health and safety. Within 30 days after the licensee informs the NRC that the reactor is in this condition, the licensee shall prepare and submit a cleanup plan for approval. The cleanup plan must identify and contain an estimate of the cost of each cleanup operation that will be required to decontaminate the reactor sufficiently to permit the licensee either to resume operation of the reactor or to apply to the NRC for authority to decommission the reactor and to surrender the operating license voluntarily.

ADDRESSES: Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC 20555.

FOR FURTHER INFORMATION: Comments and questions should be directed to the OMB reviewer Nicolas B. Garcia, Paperwork Reduction Project (3150–0011), Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by calling (202) 395–3084.

NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 21st day of March 1990.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 90–7083 Filed 3–27–90; 8:45 am]

BILLING CODE 7590–01–M

Low-Level Radioactive Waste Policy Amendments Act of 1985; January 1, 1990 Milestone for Governors' Certifications

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Publication of Governor's Certification and Related Correspondence.

SUMMARY: Notice is hereby given of the receipt of a Governor's Certification for the Commonwealth of Puerto Rico; supplementary information to the Governor's Certification for the Commonwealth of Massachusetts; and a submittal from the State of Vermont concerning the State's status for the 1990 milestone. These documents were received and processed by NRC subsequent to the publication of 31 Governors' Certifications in the February 13, 1990, **Federal Register** (55 FR 5090).

Section 5(e)(1)(E) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA or Pub. L. 99–240) requires NRC to publish these documents. Concurrently, NRC has dispatched copies of the documents to Congress. NRC provided the Department of Energy (DOE) and cited states with copies of the documents in order to conduct their reviews as required by the LLRWPAA. These actions fulfill NRC's statutory obligations under the Act.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Operations Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–0579.

SUPPLEMENTARY INFORMATION: Complete supplementary information was set forth in the February 13, 1990, **Federal Register** Notice, "Low-Level Radioactive Waste Policy Amendments Act of 1985 (Public Law 99–240); January 1, 1990 Milestone for Governors' Certifications."

The text of the 3 documents is published below. The complete text of all certifications including any appendices or supporting information are available for public inspection in the Public Document Room, U.S. Nuclear Regulatory Commission, 2120 L Street, NW., Washington, DC 20036.

Dated at Rockville, Maryland, this 13th day of March 1990.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Chief, Operations Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

Commonwealth of Puerto Rico Certification

January 29, 1990.

Mr. Kenneth Carr, Chairman
Nuclear Regulatory Commission,
Washington, DC 20555.

Dear Mr. Carr: In compliance with section 5 (d)(1)(c) of the Low Level Radioactive Waste Policy Amendments Act of 1985 we hereby submit our certification that the Commonwealth of Puerto Rico will provide for the safe storage, disposal and management of low level radioactive waste generated within its territory.

As has been previously stated in our past communications, Puerto Rico is not a significant generator of low level radioactive waste. Recent surveys conducted by the Environmental Quality Board (EQB) have shown that almost no low level radioactive waste is generated in our jurisdiction. Our only sources for this type of waste are university laboratories and health care institutions. The low level radioactive waste generated by these are of very short halflives, so they are currently being stored to be rendered harmless by the delay and decay method. After delay and decay the resulting waste can be disposed of as any other non hazardous solid waste.

Another important fact is that there are no nuclear energy power plants or any nuclear reactors in Puerto Rico, nor do we have plans to establish such facilities in our island. Our energy needs are satisfied adequately by our electrical energy power plants and future demand can be addressed by improving on this system.

The Environmental Quality Board was commissioned by us to explore the possibility of Puerto Rico becoming a compact member through an interstate compact agreement. EQB attended meetings with the Texas Low Level Radioactive Waste Authority and the South East Compact Commission and gathered very valuable information which led to our decision that there is no actual need for the Commonwealth to develop a low level radioactive waste disposal site or becoming a compact member. There is no cost effective reason to do so, considering that we are such a small generator of extremely low level radioactive waste.

What we foresee is that before the December 31, 1993 milestone established by the Low Level Radioactive Waste Policy Amendments Act of 1985, the Commonwealth of Puerto Rico will be pursuing the contracting alternative which seems to be the most reasonable and cost effective alternative, according to our present circumstances. We will be contacting different compact regions to negotiate with them the terms and conditions of contract alternatives.

Mr. Santos Rohena, Chairman of the Environmental Quality Board is the appointed Commonwealth liaison with the United States Nuclear Regulatory Commission. Should you have any doubt regarding this matter do not hesitate to call him at (809) 767–8056.

Sincerely,

Antonio J. Colorado Laguna,

Acting Governor.

January 31, 1990.

Mr. Robert M. Bernero, Director
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission,
Washington, DC 20555.

Dear Mr. Bernero: Massachusetts submits the enclosed material to clarify and supplement the 1990 milestone certification submitted on December 22, 1989.

This information is sent in response to questions and concerns raised during the meeting with the Low-Level Radioactive Waste Management Board's executive director, Carol Amick, in San Francisco on Thursday, January 25, 1990.

This certification information is a reconfirmation of our intent to manage low-level radioactive waste within our state boundaries.

Massachusetts can and will satisfy the storage, treatment and disposal needs of the over-400 radioactive materials licensees in our state, and this work has begun. In 1987, I signed into law M.G.L. c.111H, the Low-Level Radioactive Waste Management Act. This law required me to appoint a Management Board to be responsible for all LLW issues in the Commonwealth.

The Management Board assumed responsibility in 1988. Its authority and responsibilities are described in Appendix B of the December 22, 1989 certification document. The timetables established and the actions being completed under the law coincide with the Milestone deadlines of the Federal Low-Level Radioactive Waste Policy Act. Pursuant to Chapter 111H, it is the policy of this administration that a facility will be available for waste from Massachusetts before January, 1996.

For the interim period 1993–1995, when access to the existing LLW disposal sites in Nevada, South Carolina and Washington will have ended, Massachusetts is taking the following actions:

(A) Requiring on-site storage for all waste; and, only if necessary

(B) Establishing an interim centralized storage facility for certain small generators, to avoid triggering the emergency access provisions of federal law.

I submit this additional certification information, with the enclosed attachments, under the provisions of subpart (ii) of section 5(e)(1)(c) of the Federal Low-Level Radioactive Waste Policy Amendments Act of 1985.

I certify that the State of Massachusetts will be capable of providing for, and will provide for, the storage, disposal or management of any low-level radioactive waste generated within the state and requiring disposal after December 31, 1992. The accompanying material provides additional information on the actions which are being taken to ensure that such capacity

exists in Massachusetts. All these actions are within existing legal authorities.

If you have further questions about this Massachusetts certification, please address them to Carol C. Amick, Executive Director, Low-Level Radioactive Waste Management Board, c/o State House, Room 373, Boston, MA 02133 or (617) 727-2040.

Sincerely,

Michael S. Dukakis,

Governor.

Projection of Waste Volumes, Class and Generator Types for 1993–1995

Volumes, Classification

Massachusetts volume of LLW shipped for disposal to the three existing sites has dropped significantly, from 300,000 cubic feet in 1981 to 49,399 through November, 1989.

Class A waste comprised 95 percent of all waste produced in 1989, and is estimated to total over 99 percent of all waste in 1990.

Based upon results of a generator survey conducted by the Management Board in November, 1989, estimates of waste generation by Volume and Class between 1993 and 1995 are as follows:

	1993	1994	1995
Class A	39,753	37,014	35,244
Class B	396	423	453
Class C	27	111	252
Other [1]	584	612	641
Total	40,760	38,160	36,590

[1] The category "Other" refers to wastes that are not shipped either directly or indirectly to a disposal facility and that do not fall into NRC classes A, B, C because they do not satisfy the minimal requirements of 10 CFR 61.55 and 61.56.

These figures are estimates. The actual volumes generated by each licensee will be required to be stored on-site during the 1993–1995 period.

Mixed Waste

Massachusetts is one of the few states which has an EPA-authorized program to regulate mixed waste. The Department of Environmental Protection's regulations, as well as the low-level radioactive waste management law, subject mixed waste to strict hazardous waste management standards. Mixed waste comprised about 5,000 cubic feet of the total 1989 LLW generated. Survey estimates indicate that mixed waste production will remain relatively constant through the mid 1990s.

Generator Type

In Massachusetts, 76 percent of the LLW comes from industrial, hospital and university generators. This waste is produced as a result of the medical research, diagnostic and treatment activities and the manufacturing operations which produce radiopharmaceuticals used in the field world-wide. The remaining 24 percent of waste comes from commercial nuclear reactors.

The table below shows Massachusetts LLW by generator type for the years 1993 through 1995, based on survey results:

	1993	1994	1995
Health	10,280	9,770	9,490
Industrial/ Commercial	17,190	15,150	13,660
Educational/ Research	4,550	4,660	4,830
Utilities	8,740	8,580	8,610
Total	40,760	38,160	36,590

The estimates of volumes by waste class and generator type for the 1993–1995 period are based upon current levels of LLW production and existing activities to reduce both source materials and waste volumes. However, our LLW could drop even more, as it did between 1981 and 1990 when we moved from a ranking as the largest generator nationally to number 12. The Management Board and the Department of Public Health (DPH) is using the source and volume minimization requirements of state law [M.G.L. c.111H ss.12(b)(9) and 13] to require generators to reduce sources and volumes to the greatest extent feasible so that the least amount of waste possible will be subject to storage for decay during the 1993–1995 period.

Massachusetts Actions for 1993–1995

A. On-Site Storage for Decay

The Management Board will require all generators to store on-site during the 1993–1995 period prior to the availability of a permanent disposal facility in late 1995. This decision was made on the basis of the results from the Board's November, 1989 generator survey, which reported that 99 percent of the waste generated in Massachusetts is produced by 10 licensees.

The following actions will accomplish the on-site storage objective:

1. Notice of Loss of Access; Licensees were formally notified of the impending loss of access at a Management Board-sponsored meeting in October, 1989. Subsequent notices will be issued through meetings and written communications on April 1, 1990, September 1, 1990, and April 1, 1992. The next meeting is scheduled for February.

2. Mandatory Generator Reporting; By October 1, 1990 and every six months thereafter, the Management Board will require each generator to report progress in providing for required on-site capability, including any necessary license amendments.

3. Verification of License Information and Conditions; In order to verify licensees' ability to carry out these responsibilities, the Management Board, with the assistance of DPH, has initiated a program to review all licenses and conditions to operate. This information will be used to confirm the reports submitted to the Management Board in 1989.

4. Additional Communications; The Management Board has established mechanisms to keep generators apprised of its activities and the generators' responsibilities relating to the short-term 1993–1995 actions, and long-term facility development. These include:

- Continued direct contact established in November, 1989, through the Management Board generator survey, with the individual in each generating company or institution responsible for meeting the state's on-site storage requirements.
- Newsletters to generators, environmentalists and other public interest organizations from the Management Board and from Nelrad, the generators' association.
- The Management Board will provide technical assistance to generators working together to consolidate on-site storage.

5. Progress Reports of the Management Board; Chapter 111H requires the Management Board to issue to the Governor an Annual Report of its activities. That report, which will be forwarded to the three sited states, will summarize progress each generator has made relative to license modifications and expanding on-site storage space. This portion of the Annual Report will be updated every six months.

6. Other Actions; Chapter 111H requires additional actions which are also being undertaken by the Management Board in connection with the short-term 1993–1995 plan. The Board's deadlines for the completion of these activities are:

- Source, volume minimization program, (06/30/90).
- Management Plan, (06/30/90).

B. Emergency Centralized Storage Facility

Based upon data collected from the generator survey and subsequent conversations with major generators, the Management Board has determined that 99 percent of Massachusetts waste can be stored on-site. The measures

outlined in A, above, will ensure that those objectives will be achieved.

At the same time, the Management Board is working with licensees generating the remaining one percent of waste to ensure storage on-site. This will be done through a combination of the provisions in A, above, and through the development of an emergency centralized storage facility.

The Management Board will complete the following actions to establish an emergency interim storage facility for certain small generators:

1. Severe penalties to use emergency centralized storage facility.

By August 1, 1990, certain small generators will be advised that the state is considering an emergency interim storage facility, to be available to generators facing acute capacity shortages. A severe emergency storage surcharge will be assessed for the shortage services.

2. By January 1, 1991, determine need for emergency interim storage facility.

3. By March 1, 1991, negotiate site at current licensed facility.

4. By April 1, 1991, apply to NRC for materials license.

5. By April 1, 1991, approve waste acceptance criteria, execute development contract.

6. By June 30, 1992, negotiate operating contract, and in cooperation with DPH, establish monitoring program.

7. By December 31, 1992, complete facility preparations, set fees.

Statutory Authority, Verification

The two state agencies responsible to the Governor to implement the 1993–1995 action plan are the Commonwealth's Low-Level Radioactive Waste Management Board and the Department of Public Health, Radiation Control Program. They are fully authorized under M.G.L. c.111H to institute on-site storage, to establish an interim storage facility, and to ensure necessary enforcement by taking the following actions:

1. Regulate on-site storage to ensure compliance by all generators pusuant to Emergency Storage Plan. [M.G.L. c.111H, ss.12(b)(10) and 38(b)—Management Board]

2. Require source minimization and volume reduction to the volume and curies of waste to the maximum extent feasible. [M.G.L. c.111H, s.13—DPH and s.12(b)(9)—Management Board]

3. Issue notices of violations and orders directing generators to take corrective actions if a determination is made that radioactive waste threatens the public's health, safety or the environment. [M.G.L. c.111H, s.8—DPH]

4. Assess civil penalties up to $100,000 per violation. [M.G.L. c.111H, s.8—DPH]

5. Request the Attorney General to bring a criminal action in superior court to "restrict, prevent or enjoin" any prohibited conduct, or to "compel action" to comply with orders of the department. [M.G.L. c.111H, s.8—DPH]

6. Monitor and inspect all licensees at any reasonable time to ensure compliance with the Low-Level Radioactive Waste Management Act, regulations, and orders. [M.G.L. c.111H, s.7—DPH and Management Board]

7. Establish criteria for acceptance of waste at emergency interim storage facility. [M.G.L. c.111H, s.38(b)—Management Board]

8. Purchase or lease site for emergency interim storage facility. [M.G.L. c.111H, s.23(g)—Management Board]

9. Execute emergency interim storage facility development contract. [M.G.L. c.111H, s.28—Management Board]

10. Negotiate operating contract. [M.G.L. c.111H, s.33—Management Board]

11. Establish environmental monitoring program for emergency interim storage facility. [M.G.L. c.111H, s.36—DPH]

Continuing Negotiations Towards Consolidation

The Management Board will continue to pursue the possibility of contracting for waste disposal out-of-state or regional compacting in order to consolidate the number of LLW facilities under development. However, the Board's communications with other states and compact regions will have no dilatory effect on its activities to establish on-site storage and, if necessary, an emergency interim storage facility, for the 1993–1995 period.

Resource Allocation

The Governor will support funding necessary to ensure the continued efforts toward management of low-level radioactive waste within Massachusetts state boundaries for both the interim period of 1993–1995 and the long-term. The Governor's FY91 Capital budget establishes priority of the low-level waste program, with an authorization of $3.75 million in FY91.

Legislation to permit generator fees is being prepared for the 1990 session by legal counsel to the Management Board.

This particular supplement addresses the interim period of 1993–1995. At the same time, the Management Board will continue their responsibilities toward management and disposal of low-level radioactive waste from Massachusetts fully described in the certification submission dated December 22, 1989. (See Table 11)

January 21, 1990.

Robert M. Bernero

Director, Office of Nuclear Material Safety and Safeguards, United States Nuclear Regulatory Commission, Washington, DC 20555

Dear Mr. Bernero: This letter is to confirm that the State of Vermont has not submitted a certification with regards to storage, disposal and management of low-level radioactive waste at this time.

The Vermont legislature is currently considering two pieces of legislation that will help bring the state into compliance with the Low-Level Radioactive Waste Policy Amendments of 1985. If passed, the first bill will allow Vermont to have a contract for disposal of low-level waste with the Rocky Mountain Low-level Radioactive Waste Board until 1993. The second piece of legislation will establish a mechanism for Vermont to handle the long term generation of low-level waste.

Sincerely yours,

Madeleine M. Kunin,

Governor.

[FR Doc. 90–7084 Filed 3–27–90; 8:45 am]

BILLING CODE 7590–27–M

State of Illinois; Staff Assessment of Proposed Amendment Number One to the Agreement Between the Nuclear Regulatory Commission and the State of Illinois

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Proposed Amended Agreement with State of Illinois.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is publishing for public comment the NRC staff assessment of a proposed amendent to the existing section 274b agreement between the NRC and the State of Illinois which became effective June 1, 1987. The request dated April 11, 1989 from Governor James R. Thompson of the State of Illinois, if approved, would permit Illinois to regulate byproduct materials as defined in section 11e.(2) of the Atomic Energy Act, as amended, (uranium or thorium mill tailings) in conformance with the requirements of section 274O of the Atomic Energy Act of 1954, as amended (the Act).

A staff assessment of the State's proposed radiation control program to implement the amended ageement is set forth below as supplementary information ot this notice. A copy of the complete program description submitted by Illinois, including a program statement prepared by the State

describing the State's proposed program for control over byproduct materials as defined in section 11e.(2) of the Act, State legislation, and Illinois regulations, is available for public inspection at the Commission's Public Document Room at 2120 L Street, NW, Washington, DC, the Commission's Region III Office at 799 Roosevelt Road, Building No. 4, Glen Ellyn, Illinois, and the Illinois Department of Nuclear Safety at 1035 Outer Park Drive, Springfield, Illinois. Exemptions from and reservations of the Commission's regulatory authority, which would implement this proposed amendment to the existing 274b agreement, have been published in the **Federal Register** and codified as Part 150 of the Commission's regulations in Title 10 of the Code of Federal Regulations.

DATES: Comments must be received on or before April 27, 1990.

ADDRESSES: Submit written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Services Branch. Comments may also be delivered to 11555 Rockville Pike, Rockville, Maryland from 7:45 a.m. to 4:15 p.m. Monday through Friday. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vandy L. Miller, Assistant Director for State Agreements Program, U.S. Nuclear Regulatory Commission, Washington, DC. Telephone: 301–492–0326.

SUPPLEMENTARY INFORMATION: Assessment of proposed amended Illinois Program to regulate certain radioactive materials pursuant to section 274 of the Atomic Energy Act of 1954, as amended (the Act).

The Commission has received a proposal from the Governor of Illinois for the State to amend its agreement with the NRC whereby the NRC would relinquish and the State would assume regulatory authority for byproduct material, as defined in section 11e.(2) of the Act, pursuant to section 274 of the Act.

Section 274e of the Act requires that the terms of the proposed agreement be published for public comment once each week for four consecutive weeks. Accordingly, this notice will be published four times in the **Federal Register**.

I. Background

A. Section 274 of the Act provides a mechanism whereby the NRC may transfer to the State certain regulatory authority over agreement materials [1] when a State desires to assume this authority and the Governor certifies that the State has an adequate regulatory program, and when the Commission finds that the State's program is compatible with that of the NRC and is adequate to protect the public health and safety. Section 274g directs the Commission to cooperate with the States in the formulation of standards for protection against radiation hazards to assure that State and Commission programs for radiation protection will be coordinated and compatible. Further, section 274j provides that the Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

The Uranium Mill Tailings Radiation Control Act of 1978 amended the requirements of section 274 of the Atomic Energy Act, by adding section 274o which imposed certain requirements that must be met by Agreement States in order to regulate uranium and thorium mill tailings after November 8, 1981.

B. On May 18, 1987, the Governor of Illinois signed an agreement with the NRC for the assumption of regulatory authority for byproduct material as defined in section 11e.(1) of the Act, source material, special nuclear material in quantities not sufficient to form a critical mass, and the land disposal of source, byproduct, and special nuclear material received from other persons. This agreement became effective on June 1, 1987. In a letter dated April 11, 1989, Governor James R. Thompson of the State of Illinois requested that the Commission entered into an amended agreement with the State pursuant to section 274 of the Act under which the State would assume responsibility for regulating uranium and thorium mill tailings (11e.(2) byproduct material) and the operations that generate such material. The Governor certified that the State of Illinois has a program for control of radiation hazards which is adequate to protect the public health and safety with respect to the materials within the State covered by the proposed amendment to the agreement, and that the State of Illinois desires to assume regulatory responsibility for such materials. The text of the proposed amendment to the agreement is shown in Appendix A.

The specific authority requested is for source material recovery activities including the uranium and thorium mill tailing (byproduct material as defined in section 11e.(2) of the Act). The proposed amemdment to the agreement covers the following areas:

1. Amending Article I of the Agreement of May 18, 1987 to add the extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting by product material as defined in section 11e.(2) of the Act to the list of materials covered by the agreement.

2. Amending Article II of the Agreement of May 18, 1987 by inserting "A." before "This Agreement," by redesignation paragraphs A. thorugh D. as subparagraphs 1. through 4., by deleting paragraph E. releating to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and by adding a new paragraph B. relating to authorities pertaining to byproduct as defined in section 11e.(2) of the Act that will by retained by the Commission.

3. Amending Article IX by redesignating it Article X and by inserting a new Article IX which requires compliance with 274o of the Act and specifies certain financial surety requirements in subparagraphs A. and B.

4. States that the Agreement of May 18, 1987 remains in effect except as modified by the above amendments.

5. Specifies the effective date of Amendment Number One.

The State has no active uranium or thorium mills processing ore for its source material content. However, one facility exists under an NRC license at West Chicago, Illinois. This mill began operation in 1931 to process ore containing thorium and rate earth metals.

Kerr-McGee Chemical Corporation (Kerr-McGee) acquired the facility in 1967 and operated it until closing the plant in 1973. In 1979 Kerr-McGee submitted a plan to the NRC for decommissioning the West Chicago site and stabilizing the accumulated waste and tailings. The plan was modified and the most recent version submitted to NRC in 1986. Besides onsite wastes and ore residuals, wastes are known to exist offsite as well. On August 5, 1988, the Commission issued a decision on the regulatory aspects of the radiologically contaminated material on and offsite. The Commission held: (1) The radiologically contaminated material in and along Kress Creek and the West

[1] A. Byproduct materials as defined in 11e.(1).
B. Byproduct materials as defined in 11e.(2).
C. Source materials; and
D. Special nuclear materials in quantities not sufficient to form a critical mass.

Branch of the DuPage River was 11e.(2) byproduct material and, therefore, not within the scope of the section 274b agreement into which the Commission entered with Illinois in 1987, and remained within the regulatory authority of the Commission; and (2) the radiologically contaminated material in Reed-Keppler Park and certain residential areas of DuPage County, and the radiologically contaminated material returned from the West Chicago Sewage Treatment Pland and residential areas within the City of West Chicago to the West Chicago Rare Earths Facility Site, was source material that is within the scope of the agreement and was, therefore, under the regulatory authority of the State of Illinois.

In rendering this decision, the Commission upheld the position that the thorium-contaminated materials described in (2) above should be classified as source material. It further held that the thorium-contaminated material in Kress Creek should be classified as 113.(2) byproduct material. Consequently, in order for the State of Illinois to regulate the latter, the State of Illinois would need to have its existing Agreement amended to demonstrate compliance with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. Details relating to the Rare Earths Facility are contained in the Final Environmental Statement (NUREG–0904, 1983) and the Supplement to the Final Envionmental Statement (NUREG–0904, Supplement No. 1, 1989) related to the decommissioning of the Rare Earths Facility, West Chicago, Illinois.

On February 13, 1990, the Atomic Safety and Licensing Board (Licensing Board) issued a decision directing the staff to issue a license amendment authorizing Kerr-McGee to dispose of the 11.e(2) byproduct material as proposed by Kerr-McGee in its application. The staff issued the amendment on February 23, 1990. The State of Illinois and the City of West Chicago each filed a Notice of Appeal before the Atomic Safety and Licensing Appeal Board (Appeal Board). The State of Illinois and the City of West Chicago also requested the Appeal Board to stay the Licensing Board's decision. The Appeal Board issued an Order on March 13, 1990 denying the State's and the City's requests for a stay.

C. Ill. Rev. Stat. 1985, ch. 127, par. 63b17, the enabling statute for the Illinois Department of Nuclear Safety (IDNS) and Ill. Rev. Stat. 1987, ch. 111½, par. 211–229, the Illinois Radiation Protection Act authorize the Department to issue licenses to, and perform inspections of, users of radioactive materials under the Agreement and otherwise carry out a total radiation control. Illinois regulations for radiation protection were adopted on September 25, 1986 under authority of the enabling statute and provide standards, licensing, inspection, enforcement and administrative procedures for agreement and non-agreement materials. These standards and procedures became effective on June 1, 1987, the effective date of the Agreement. As amended by P.A. 85–1160, effective August 5, 1988, the Illinois Radiation Protection Act authorizes the IDNS to regulate byproduct material as defined in section 11e.(2) of the Act. To provide for licensing of 11e.(2) byproduct material and source material recovery facilities which generate 11e.(2) byproduct material, a new Part 332 has been added to the Illinois Administrative Code (32 Ill. Adm. Code 332). These regulations were finalized on January 4, 1990 and will become effective when the Amendment Number One becomes effective. On February 6, 1990, Kerr-McGee sought judicial review of the final regulations in the Illinois courts (Kerr-McGee Chemical Corp. v. IDNS, No. 90MR49; Ill. Cir. Ct., Sangmon County). This proceeding is still pending.

On January 10, 1990, the Illinois General Assembly Joint Committee on Administrative Rules (JCAR) met and issued 13 objections to the final regulations for source material recovery and 1e.(2) byproduct material (32 Ill. Adm. Code 332). These objections were published in the Illinois Register on February 2, 1990. In accordance with Section 7.07 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1987, ch. 127, par. 1007.07), IDNS has 90 days to respond to the objections and, if IDNS does not respond within 90 days, the lack of response will constitute a refusal to amend or repeal this rule. Unless the JCAR drafts and introduces legislation requiring IDNS to implement the recommendations, no futher actions are required of IDNS.

D. On June 1, 1987, Illinois assumed regulatory authority for (1) byproduct material as defined in section 11e.(1) of the Act, (2) source material, (3) special nuclear material in quantities not sufficient to form a critical mass, and (4) permanent disposal of low-level radioactive waste containing one or more of the foregoing materials but not containing uranium and thorium mill tailings (byproduct material as defined in section 11e.(a) of the Act). The program audits conducted since that time have resulted in NRC findings that the Illinois radiation control program is compatible with that of the NRC and is adequate to protect public health and safety.

Illinois is one of two States with a cabinet-level agency devoted exclusively to radiation safety and control. Illinois' role in radiation safety is traceable to 1955 when the Illinois General Assembly created the Atomic Power Investigating Commission. The Illinois Department of Nuclear Safety Program provides a comprehensive program encompassing radiation protection regulations for radioactive materials and machine produced radiation, lasers, low-level radioactive waste management, surveillance of transportation of radioactive materials and environmental radiation, coordination of State government functions concerning nuclear power and emergency preparedness.

E. The proposed amendment to the Illinois agreement will cover the regulation of source material extraction from ores processed primarily for their source material content and the management and disposal of the resulting tailings and other wastes (byproduct material as defined in section 11e.(2) of the Act). The State's proposed program for the regulation of source material extraction and 11e.(2) byproduct material is assessed under Criteria 29 through 36 of the guidelines published by NRC, Criteria for Guidance of States and NRC is Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.[2] These criteria are specifically identified as "Additional Criteria for States Regulating Uranium or Thorium Processors and Wastes Resulting Therefrom After November 8, 1981" and addressed the Statutes, Regulations, Organizational Relationships Within the States, Personnel, Functions To Be Covered, and Instrumentation. Prior evaluation of the Illinois program in accordance with Criteria 1 through 28, was addressed in the staff assessment of the original Illinois proposed agreement published in the Federal Register on January 21, 1987 (52 FR 2309–2324).

II. NRC Staff Assessment of the Proposed Illinois' Radiation Control Program for Control of Uranium and Thorium Processors and the Waste Resulting Therefrom

Reference: Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and

Assumption Thereof by States Through Agreement.[2]

A. Statutes

29. State statutes or duly promulgated regulations should be enacted, if not already in place, to make clear State authority to carry out the requirements of Public Law 95–604, Uranium Mill Tailings Radiation Control Act, as amended (UMTRCA).

Based on the analysis of the State's revised statutes, regulations, and the State's program statement, the staff concludes that the Illinois Radiation Protection Act and the State's implementing regulations provide adequate authority for Illinois to regulate section 11e.(2) byproduct material in accordance with the requirements of the Uranium Mill Tailings Radiation Control Act, as amended. The Radiation Protection Act requires the IDNS to provide, by rule or regulation, standards for the protection of the public health and safety and the environment that are equivalent, to the extent practicable, or more stringent than, the standards adopted and enforced by NRC for 11e.(2) byproduct material, including standards issued by the Environmental Protection Agency (EPA). The Illinois Radiation Protection Act also authorizes IDNS to require licensees to provide adequate financial surety to assure that all of the IDNS requirements for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in connection with the generation or disposal of section 11e(2) byproduct material have been met. Authority is also provided to transfer to the Federal government funds which have been collected by the State for long-term surveillance and maintenance if custody of the byproduct material and its disposal site is transferred to the Federal government. Provisions of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, par. 1005) and Illinois regulations (32 Ill. Adm. Code Parts 200 and 332) implement the procedural requirements for the issuance of licenses and rules prescribed in sections 274o(3) (A) and (B) of the Act, and identified in Criterion 29d., e., and g. These requirements relate to such matters as opportunity for written comments, public hearings, cross examination, and judicial review.

Reference: Ill. Rev. Stat. 1985, ch. 127, par. 63b17 and 1005; Ill. Reve. Stat. 1987, ch. 111½, par. 211–229, as amended by P.A. 85–1160; 32 Ill. Adm. Code Parts 200 and 332.

30. In the enactment of any supporting legislation, the State should take into account the reservations of authority to the Commission UMTRCA as stated in 10 CFR 150.15a.

The staff has reviewed the Illinois Radiation Protection Act, as amended, and has determined that these reservations of authority to the Commission are incorporated in the Illinois statute and are adequately discussed in the program statement.

References: Ill. Rev. Stat. 1987, ch. 111½, par. 211–229, as amended; Illinois Program Statement: Application to Amend the Agreement Between Illinois and the U.S. Nuclear Regulatory Commission.

31. Section 274o(3)(C) of the Act requires that in the licensing and regulation of ores processed primarily for their source material content and for the disposal of the resulting byproduct material, States shall establish procedures which provide a written analysis of the impact on the environment of the licensing activity. This analysis shall be available to the public before commencement of hearings and shall include:

a. An assessment of the radiological and nonradiological public health impacts;

b. An assessment of any impact on any body of water or groundwater;

c. Consideration of alternatives to the licensed activities; and,

d. Consideration of long-term impacts of licensed activities.

The State's statutes and its implementing regulations provide sufficient authority for the IDNS to comply with the environmental assessment procedures required by UMTRCA. Part 332 of Illinois regulations (section 332.100) addresses the procedural requirements for environmental assessments and defines the scope of assessments and associated administrative procedures. In accordance with Criterion 29f., section 332.100 of the Illinois regulations bans major construction prior to completion of the environmental analysis.

References: Illinois Program Statement, Application to Amend the Agreement Between Illinois and the U.S. Nuclear Regulatory Commission; Ill. Rev. Stat. 1987, ch. 111½, par. 211–229, as amended by P.A.85–1160; 32 Ill. Adm. Code Part 332.

B. Regulations

32. State regulations should be reviewed for regulatory requirements, and where necessary incorporate regulatory language which is equivalent, to the extent practicable, or more stringent than regulations and standards adopted and enforced by the Commission, as required by section 274o (see 10 CFR 40, Appendix A, and 10 CFR 150.31(b)).

On January 10, 1990 (effective date: January 4, 1990), final Illinois regulations (32 Ill. Adm. Code Part 332) were submitted to NRC completing the Governor's package submitted April 11, 1989. These final regulations establish State regulations that are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including requirements and standards promulgated by the Environmental Protection Agency. It is the staff's opinion that these rules have, to the maximum extent practicable, achieved the same objective as the NRC's Part 40 regulations except that certain parts of the State regulations are more stringent than the NRC regulations and are, therefore, more restrictive than NRC regulations. The staff has identified State requirements which NRC does not address in its regulations that may also be considered to be more stringent than NRC requirements. The sections are identified below. The staff is proposing to find the following sections more stringent and in accord with section 274o of the Act only for the purpose of finding the Illinois program adequate, compatible and in compliance with statutory requirements so that authority may be relinquished lawfully to the State. The staff offers no opinion whether, as applied to any particular site, the findings required by the last paragraph of section 274o can be made.

Criteria which are more stringent than 10 CFR part 40:

1. Part 332—This part of the Illinois regulations is considered more stringent in that it does not contain a specific exemption provision such as 10 CFR 40.14(a.) or a provision for approving alternatives to these regulations such as provided for in the Introduction of appendix A to 10 CFR part 40.

2. Section 332.70—This section is considered more stringent in that the NRC performance standards have been written as technical criteria thereby eliminating the flexibility inherent in NRC regulations.

3. Section 332.170c)—This section is considered more stringent in that the annual average total radon release rate of 2 picocurie per square meter per second flux limit is more stringent than the 20 picocurie per meter square per second limit in criterion 6 of appendix A to 10 CFR part 40.

[2] NRC Statement of Policy published in the **Federal Register** January 23, 1961 (46 FR 7540–7546), a correction was published July 16, 1981 (46 FR 36969) and a revision of Criterion 9 published in the **Federal Register** July 21, 1983 (48 FR 33376).

4. Subsection 332.210b)1)—This subsection banning disposal sites within a distance of 2.5 km of any municipality without the consent of the municipality is more stringent than NRC's performance objective of locating disposal sites in remote areas.

5. Section 332.220b)1)—This section is considered more stringent in that it does not allow slopes steeper than 10h:1v.

6. Section 332.240—This section is considered more stringent in that the licensee must defend its design as a 1000 year design. This section does not have the flexibility of criterion 6 of appendix A to 10 CFR part 40 that states following the 1000-year criterion, "to the extent reasonably achievable, and, in any case, for at least 200 years."

7. Section 332.250 b) and c)—subsection b) is considered more stringent in that it requires chemical treatment of the tailings which is not required in Appendix A to 10 CFR Part 40. Subsection c) is considered more stringent in that it requires groundwater restoration to levels consistent with those before operations. NRC Criterion 5B(5)(b) and (c) allows concentration values up to EPA drinking limits.

Criteria which are not in NRC's 10 CFR part 40 regulations:

1. *Section 332.20*—Definition of Buffer Zone.

2. *Section 332.20*—Definition of Minor Custodial Activities.

3. *Section 332.20*—Definition of Postclosure.

4. *Section 332.20*—Definition of Reclamation. This term is used in 10 CFR Part 40; however, this definition is not in NRC's regulations.

5. *Section 332.140*—This criterion is not in 10 CFR part 40; however, it is generally consistent with NRC's licensing practice.

6. *Section 332.170 b)*—This criterion is not in 10 CFR part 50; however, it is consistent with 10 CFR 20.106(a).

7. *Section 332.180*—This criterion is not in 10 CFR part 40.

8. *Section 332.210*—The siting criteria in subparts (b) (1), (2), (3), (6), and (7) are not contained in 10 CFR part 40.

9. *Section 332.250 (a)*—Such a ban of release of liquids is not in NRC's regulations.

10. *Section 332.290 (e)*—No annual financial report is required by NRC.

Reference: 32 Ill. Adm. Code part 332.

C. Organizational Relationships Within the State

33. Organizational relationships should be established which will provide for an effective regulatory program for uranium mills and mill tailings. Charts should be developed which show the management organization and lines of authority. These charts should define the specific lines of supervision from program management within the radiation control group and any other department within the State responsible for contributing to the regulation of source material processing and disposal of the resulting tailings. When other State agencies or regional offices are utilized, the lines of communication and administrative control between other agencies and/or regions and the program director should be clearly drawn.

Organizational charts outlining the IDNS structure have been included in the application. From these organizational charts, it has been determined that the IDNS has a structure capable of regulating all phases of source material milling activities including the preparation of environmental assessments. This conclusion is based on the following findings: (1) The Office of Radiation Safety has been designated as the lead office within IDNS for regulating uranium and thorium processing and the resulting 11e.(2) byproduct material; and (2) the administrative, technical, legal and emergency support functions will be provided from other offices within IDNS, i.e., Office of Legal Counsel, Office of Environmental Safety, Office of Nuclear Facility Safety, and Office of Administrative Services.

Internal responsibilities have been described by the IDNS to be as follows: (1) overall program management will be implemented by the Director; (2) the Office of Radiation Safety is responsible for the licensing of radioactive materials and will be the lead office for processing all license applications and preparation of environmental assessments; (3) the Office of Environmental Safety is to assist in the evaluation of environmental impacts and to provide support for all laboratory analysis and environmental monitoring; (4) the Office of Nuclear Facility Safety will assist in the evaluation of potential radiological accidents; (5) the Office of Legal Counsel will provide assistance in all legal matters; and (6) the Office of Administrative Services will assist in budgeting and personnel management. IDNS has further stated that for those areas of environmental assessments that IDNS believes consultation to be appropriate, other State agencies or private consultants will be contracted to help in the environmental assessment. IDNS has indicated that assistance from the Illinois Department of Energy and Natural Resources and the State Water Survey Division may be sought for hydrologic assessments. NRC staff notes that the IDNS did not provide any formal agreements, such as MOUs with any of these other organizations that, if put in place, would assure their availability in a timely manner. However, IDNS has previously executed contracts with other State agencies. As an example, IDNS has executed an MOU with the Illinois Environmental Protection Agency regarding the disposal of water treatment wastes. Although the program statement did not specifically identify the source or amount of funds, it did state that IDNS will provide for funding if consultants are deemed necessary and the Office of Administrative Services will assist in contract preparation and fiscal management. For those situations where consultants are used, IDNS stated that they will seek assistance from their legal counsel to avoid conflicts of interest. IDNS has not provided any specific information about the budget or proposed budget for the portion of the radiation control program allocated to the regulation of uranium and thorium mills and 11e.(2) byproduct material. However, the IDNS has committed to the allocation of sufficient staff time to handle the uranium and thorium mills and 11e.(2) byproduct material currently in the State.

The program statement reveals that IDNS has not identified any specific medical consultants that would be available for medical questions that may be encountered with the uranium or thorium milling industry and its 11e.(2) byproduct material. The program statement states that, should medical assistance be needed, IDNS will seek assistance from a national laboratory such as Argonne National Laboratory. Such assistance has been requested and provided in the past.

Experience has shown that a scoping document is a valuable tool for bringing an environmental assessment to a satisfactory conclusion. IDNS indicated that if assistance is requested through contracts or MOUs adequate guidance such as a scoping document will be prepared by the IDNS. This document will delineate areas and scope of work to be performed within a given time constraint by each participating agency or contractor.

Reference: Illinois Program Statement, Section III.

D. Personnel

34. Personnel needed in the processing of the license application can be identified or grouped according to the following skills: Technical, Administrative, and Support.

In order to meet the requirements of UMTRCA, it is estimated that on the order of 2 to 2.75 total professional person-years' effort is necessary to process and evaluate a new conventional mill license, in-situ license, or major license renewal. A complete review of in-plant safety, completion of an environmental assessment, and use of consultants in these assessments are primary considerations in the the total professional effort for each licensing case. With respect to clerical support, one secretary is usually required to process two conventional milling applications. Legal support is also an essential element of the mill program, and the effort is believed to be a minimum of one-half staff year. In addition, consideration must be given to such post-licensing activities as issuance of monor amendments, mill inspection, and environmental monitoring. Professional staff effort for these activities is estimated at 0.5 to 1.0 person-years for each year of post-licensing activities.

Currently there are no active uranium or thorium mills processing ore for its source material content in the State of Illinois. However, as identified in the introduction, one facility located at West Chicago has been identified as a closed facility which has associated with it radiologically contaminated material on and offsite. As stated earlier, the radiologically contaminated material in and along Kress Creek and the West Branch of the DuPage River is 11e.(2) byproduct material in addition to the material on the West Chicago site. This material would come under the regulatory authority of the IDNS upon consummation of Illinois request for an amended agreement. The regulatory activities assumed by the IDNS upon execution of the amended agreement would center mainly around decommissioning and reclamation of the West Chicago site and its associated wastes.

In the application for amendment of the agreement as updated March 14, 1990, the IDNS had identified 11 key technical personel for use in regulation uranium and thorium processing facilities and their associated 11e.(2) byproduct material. A review of these staff resumes shows that they have the necessary education, training, and experience to ensure effective implementation of a regulatory program.

Seven key administrative personnel have been identified by the IDNS who will provide the necessary management guidance and policy direction necessary to assure completion of the licensing action. The positions of the seven personnel in the IDNS structure are the director, four office managers, one assistant office manager, and one division chief.

Four key persons have been identified as providing operational support, legal support, and laboratory services. The positions of these four people are one chief legal counsel, one senior staff attorney, one section chief of radioecology, and one division chief of radiochemistry.

The NRC staff has concluded that the total professional staff-years effort which is available within the IDNS and will be directly responsible for regulating uranium and thorium mills and 11e.(2) byproduct material is within the guidelines and consists of the necessary specialities for evaluating license applications. Additionally, IDNS has states that consultants will be utilized, if necessary.

Abridged versions of the curricula vitae for key IDNS personnel involved in the regulation of source material milling facilities and 11e.(2) byproduct material are as follows (as updated by IDNS on March 14, 1990):

Administrative Personnel:

T.L. Lash, Ph.D.—Director, IDNS: Ph.D. Molecular Biophysics and Biochemistry, Yale University; M.Ph. Molecular Biophysics and Biochemistry, Yale University; B.A. Physics, Reed College. Work Experinece, 1970 to present, held positions as Postdoctoral Fellow, Yale University; Staff Scientist, NRDC; Director, Science and Public Policy, the Keystone Center; Science Director, Scientists' Institute for Public Information; Deputy Director, IDNS, and Director, IDNS.

P.D. Eastvold—Manager, Office of Radiation Safety; B.S. General Science/Nuclear Medical Technology, University of Iowa. Work Experience, 1970 to present, held positions in the Radiation Protection Office, University of Iowa; Illinois Department of Public Health; and as Manager, Office of Radiation Safety, IDNS.

G.W. Kerr, CHP—Assistant Office Manager, Office of Radiation Safety; M.A. Economics, Trinity College; B.A. Biology, Peru State College. Work Experience, 1956 to present, held positions as Senior Industrial Hygienist, Pratt and Whitney Aircraft; Technical staff positions, Atomic Energy Commission; Manager and Assistant Director for State Agreements, USNRC; Director, Office of State Programs, USNRC; Independent Consultant; and Assistant Office Manager, Office of Radiation Safety, IDNS.

C.W. Miller, Ph.D—Manager, Office of Environmental Safety; Ph.D. Bionucleonics/Health Physics, Purdue University; M.S. Meteorology, University of Michigan; B.S. Physics/Math, Ball State University. Work Experience, 1967 to present, held positions in Anderson College in Physics; Health and Safety Research Division, Oak Ridge National Laboratory; and as Nuclear Safety Scientist, Office of Nuclear Facility Safety; and Manager, Office of Environmental Safety, IDNS.

R.R. Wright—Manager, Office of Nuclear Facility Safety; Master of Public Administration, American University; B.S. Engineering, U.S. Naval Academy; Undergraduate Studies, Geology, Oklahoma University. Work Experience, 1954 to present, held positions in U.S. Navy, Nuclear Propulsion plants, Nuclear Submarines and Nuclear Weapons; Advance Science and Technology Associates Inc.; and as Manager, Office of Nuclear Facility Safety, IDNS.

D.A. Joswiak—Manager, Office of Administrative Services; M.S. Business Public Management, University of Wisconsin; M.A. Public Policy and Administration, University of Wisconsin; B.A. Political Science and Economics, University of Wisconsin. Work Experience, 1973 to present, held positions as Research Assistant, Public Expenditure Survey of Wisconsin, Inc.; Budget Analyst and Management Systems Specialist, Illinois Department of Transportation; Chief Fiscal Officer, Illinois Department of Financial Institutions; Associate Director for Administration, Illinois Emergency Services and Disaster Agency; and Manager, Office of Administrative Services, IDNS.

S.C. Collins—Chief, Division of Radioactive Materials; M.S. Radiation Science (health physics), Unversity of Arkansas School of Medical Sciences; B.A. Mathematics/Chemistry, Arkansas Tech University. Work Experience, 1967 to present, held positions as laboratory assistant and instructor, Arkansas Tech University; Health Physicist II, Arkansas State Department of Health; Nuclear Medical Science Office, U.S. Army Reserve; Public Health Physicist II, Florida Division of Health; Radiation Specialist IV, Louisiana Nuclear Energy Division; Environmental Program Manager, Louisiana Nuclear Energy Division; Nuclear Medical Science Instructor, U.S. Army Academy of Health Sciences; Radiation Protection Program Manager, Louisiana Nuclear Energy Division; and Chief, Division of Radioactive Materials, IDNS.

Administrative Support Personnel:

S.J. England—Chief Legal Counsel, Office of Legal Counsel; J.D. Boston

University School of Law; B.A. University of Illinois. Work Experience, 1976 to present, held positions in City of Joliet, Illinois; Illinois Attorney General's office; Illinois Department of Transportation; and as Chief Legal Counsel, Office of Legal Counsel, IDNS.

B.P. Salus—Senior Staff Attorney, Office of Legal Counsel; J.D. Washington University School of Law; B.S. Vanderbilt University. Work Experience, 1984 to present, positions as Research Assistant, Washington University School of Law; Law Clerk to Chief Judge, U.S. District Court; and Staff Attorney, Office of Legal Counsel, IDNS.

R.A. Allen—Office of Environmental Safety; B.A. Biological Sciences, Rutgers University. Work experience, 1976 to present, held positions as Health Physicist and R.S.O., Roche Medi+Physics; Environmental Protection Group Leader, Fermi National Accelerator Laboratory; and Radioecology Section Head, Office of Environmental Safety, IDNS.

Lih-Ching Chu, Ph.D.—Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety; Ph.D, Chemistry, Washington University; M.A. Chemistry, Washington University; M.S. Chemistry, East Texas State University; B.S. Chemistry, Tankang College of Arts and Sciences. Work Experience, 1971 to present, held positions in Taiwan Military, ROC; Young-Ho Middle School, Taiwan; East Texas State University; Washington University, St. Louis; Illinois Department of Energy and Natural Resources; and as Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety, IDNS.

Technical Personnel:

J.G. Klinger—Head, Licensing Section, IDNS: M.S. Health Care Management and Public Administration, Southwest Texas State University; B.A. Microbiology and Chemistry, University of Texas; A.A. Glendale Community College. Work Experience, 1966 to present, held positions in U.S. Marine Corps and U.S. Naval Reserve Medical Service Corps; Algebra Tutor, Glendale; Laboratory Assistant, University of Texas; Food and Drug Inspector, Texas Department of Health; Regional Food and Drug Supervisor, Texas Department of Health; Chief of Food Control, Division of Food and Drugs, Texas Department of Health; Special Assistant to the Commissioner for Board of Health Affairs, Texas Department of Health; Administrator, Licensing Branch, Bureau of Radiation Control, Texas Department of Health; and Head, Licensing Section, IDNS.

D.F. Harmon—Licensing, Office of Radiation Safety, IDNS; M.S. Physics, Vanderbilt University; B.S. Physics, Tennessee Technological University. Work Experience, 1954 to present, held positions in Military Service, U.S. Army; Ballistics Research Laboratory, Aberdeen Proving Ground, Maryland and Camp Mercury, Nevada Test Site; Chemistry Department, Vanderbilt University; Radiation Safety Branch, Division of Licensing and Regulations, U.S. NRC; Source and Special Nuclear Materials Branch, Division of Materials Licensing, U.S. NRC; Materials Branch, Division of Materials Licensing, U.S NRC; Fuels and Materials Standards Branch, Directorate of Regulatory Standards, U.S. NRC; Fuels Process System Standards Branch, Office of Standards Development, U.S. NRC; Waste Management Branch, Office of Nuclear Regulatory Research, U.S. NRC; Health Effects Branch, Office of Nuclear Regulatory Research, U.S. NRC; and Licensing, Office of Radiation Safety, IDNS.

M.H. Momeni, Ph.D.—Office of Radiation Safety, IDNS; Ph.D., Biophysics/Radiation Biology, University of Iowa; M.S. Nuclear Physics, University of Iowa; B.A. Physics/Mathematics, Luther College. Work Experience, 1962 to present, held positions as Science Teacher, Urbana Consolidated Schools; Biophysicist-Lecturer, University of California, Davis; Senior Scientist, Argonne National Laboratory; Professor and Director of Health Physics Program, San Diego State University; Scientist, Oak Ridge Associated Universities; and Health Physicists, Office of Radiation Safety, IDNS.

D.J. Scherer—Licensing, Office of Radiation Safety; M.S. Physics, Virginia Polytechnic Institute and State University; B.S. Physics, Virginia Military Institute. Work Experience, 1980 to present, held positions as graduate Teaching Assistant, VPISU; Graduate Research Assistant, Stanford Linear Accelerator Center; Nuclear Medical Science Officer, U.S. Environmental Hygiene Agency; Medical Plans Officer, Officer of the Surgeon, XVIII Airborne Corps; Chief, Health Physics Section, Womback Army Community Hospital; Assistant Health Physicist, Princeton University; Senior Health Physicist and Radiation Safety Officer, Albany Medical Center; and Health Physicist, Office of Radiation Safety, IDNS.

D.A. Huckaba, P.E.— Office of Radiation Safety; B.S. Civil Engineering, University of Missouri. Work Experience, 1969 to present, held positions as Highway Engineer, Missouri Department of Transportation; Chief Highway Engineer, MTA, Inc.; and Engineer, Office of Radiation Safety, IDNS.

G.N. Wright, P.E.—Office of Nuclear Facility Safety; Degree Work in Public Administration, Sangamon State University; M.S. Nuclear Engineering, University of Illinois; B.S. Physics/Mathematics, Milliken University. Work experience, 1965 to present, held positions in Westinghouse Electric Company; Sangamo-Weston Electronics Company; Illinois Department of Public Health; and as Senior Nuclar Engineer, Office of Radiation Safety, IDNS.

D.D. Ed—Office of Environmental Safety; B.S. Chemistry, University of Illinois. Work experience, 1972 to present, held positions in Illinois Environmental Protection Agency, Illinois Department of Public Health; and as Nuclear Safety Scientist, Office of Environmental Safety, IDNS.

T.A. Kerr—Chief, Division of Low-Level Waste Management, Office of Environmental Safety; Business Administration, University of North Carolina. Work Experience 1973 to present, held positions in U.S. Navy, Electronics Technician-Reactor operator; Supervisor Solidification Services, Chem-Nuclear Systems, Inc.; Associate Instructor, Duke Power Co.; and as Chief, Division of Low-Level Waste Management, IDNS.

M.E. Klebe, P.E.—Office of Environmental Safety; M.S. Mining Engineering, Montana College of Mineral Science and Technology; B.S. Mining Engineering, Montana College of Mineral Science and Technology. Work Experience, 1982 to present, held positions as Mining Engineer, Shell Mining Co; and Nuclear Safety Engineer, Office of Environmental Safety, IDNS.

C.G. Vinson—Office of Radiation Safety: B.S. Biology, Furman University. Work Experience, 1983 to present, held positions as Industrial Hygiene Technician, J.P. Stevens Textile Company; Environmental Engineering Specialist, Union Camp Corporation; Health Physicist and Section Manager, Bureau of Radiological Health, South Carolina Department of Health and Enironmental Control; and Health Physicist, Office of Radiation Safety, IDNS.

M. Walle—Office of Radiation Safety; B.S. Earth Sciences, Unviversity of New Orleans; ARRT, Mercy Hospital School of X-Ray Technology. Work Experience, 1965 to present, held positions as Radiological Technologist, Mercy Hospital; Nuclear Medicine Technologist, Pathology Medical Services, PC; Engineering-Geologist, U.S.

Army Corps of Engineers; Civil Materials Technican, Geo, International; Civil Construction Inspector, Minority Engineers of Louisiana; Project Manager, Nuclear Gauge Radiation Safety Officer, U.S. Testing Co., Inc.; and Health Physicist, Office of Radiation Safety, IDNS.

IDNS recognizes that a skilled and experienced staff is essential to accomplishing its mission. Consequently, technical training is a high priority for the IDNS. The IDNS training coordinator is developing a comprehensive technical and managerial training program, using a wide variety of professional seminars and courses. Courses may be sponsored by either government or private sector organizations. In addition, in-house courses to supplement outside training are arranged as necessary. These in-house courses are presented either by IDNS staff or outside contractors.

The IDNS has stated that for active extraction and concentration facilities it will allocate from 2.5 to 5.75 person-years for each major licensing action. This time will be apportioned as follows: 2 to 2.75 staff years effort for technical and administrative activities; 0.5 to 1 staff year effort for legal support; and 2 staff years effort for clerical support.

Following initial licensure, IDNS plans to assign an annual average of from 0.5 to 1 full-time equivalent staffing for each license. This allocation is for inspections, environmental assessments, minor amendments and environmental surveillance. IDNS anticipates that less time might be required to administer a license authorizing only decontamination, decommissioning, disposal, or post-closure monitoring. This appears to be a reasonable assumption on the part of IDNS.

Many of these key personnel have complementary training to their profession and several have been identified as having training in uranium mill related topics. Some of these individuals have written or published articles on uranium mill topics. The IDNS has stated that it will consult with other State agencies. Two State agencies have been identified by the IDNS at this time as providing the IDNS assistance in reviewing the impact of byproduct material on the environment. They are the Illinois Department of Energy and Natural Resources and the Illinois Environmental Protection Agency. However, the scope and depth of work to be completed by these agencies has not been identified. Because there are no indications that any uranium milling facilities are planning to operate in Illinois at this time, and because much environmental assessment work has been completed for the Kerr-McGee site, the lack of MOUs with other State agencies is not considered a matter of paramount importance at this time. The IDNS can pursue this matter at some point in the future upon first indication that such MOUs will be necessary.

References: Illinois Program Statement, Section IV, "Personnel," Section VI, "Implementation of the Regulatory Program," and Appendices F. and G.

E. Functions to be Covered

35. The State should develop procedures for licensing, inspection, preparation of environmental assessments, and operational data review.

The IDNS has stated that regulation of recovery and processing of uranium and thorium and management of 11e.(2) byproduct material may be divided into four stages: licensing, environmental assessments, inspection and enforcement, and review of operational data.

a. Licensing

The licensing evaluation or assessment should include in-plant radiological safety aspects in occupational or restricted areas and environmental impacts to populations in unrestricted areas from the facility. It is expected that the State will review, evaluate and provide documentation of these evaluations.

The IDNS has stated in its program statement that the IDNS licensing evaluations or assessments will include radiological safety aspects in occupational or restricted areas and environmental impacts to population in unrestricted areas surrounding the facilities. IDNS has stated that they will review and evaluate license applications and prepare documentation of the evaluations. The IDNS evaluation will include, as necessary, pre-licensing visits to obtain relevant information directly. Items to be evaluated include, but are not limited to, the following: general statement of proposed activities; scope of the proposed action; specific activities to be conducted; administrative procedures; facility organization and radiological safety responsibilities, authorities, and personnel qualifications; licensee audits and inspections, radiation safety program, control and monitoring; radiation safety training programs for workers; restricted area markings and access control; at existing mills, review of monitoring data, exposure records, licensee audit and inspection records, and other records applicable to existing mills; environmental monitoring; radiological emergency procedures; product transportation; tailings management facilities and procedures; site and physcial plant decommissioning procedures other than tailings; and employee exposure date and bioassay programs.

b. Environmental Assessments

The environmental evaluation should consist of a detailed and documented evaluation of the items listed in subsection 274o of the Act.

IDNS regulations, part 332, establish requirements for environmental assessments that define the scope of the assessments and specify associated administrative procedures. Part 332 requires that the following topics be included in the environmental assessment: an analysis of the radiological and nonradiological public health impacts; an analysis of any impact on surface water or groundwater; consideration of alternatives to the licensed activities; and consideration of long-term impacts of licensed activities. The IDNS has stated in their program statement that environmental assessments will consist, at a minimum, of detailed and documented evaluations of the following items: Topography; Geology; Hydrology and water quality; Meteorology; Background radiation; Tailings retention system; Interim stabilization, Reclamation; Site decommissioning programs; Radiological dose assessment which addresses source terms, exposure pathways, dose commitment to individuals, dose commitment to the population, evaluation of radiological impacts to the public to include a determination of compliance with State and Federal regulations and comparisions with background values, occupational dose, and radiological impact to biota other than man; Radiological monitoring programs to include pre-operational, operational, and post-operational monitoring; Impacts to quality and quantity of surface and groundwater; Environmental effects of accidents; and Evaluation of tailings management alternatives in terms of Illinois Regulations, part 332.

IDNS has also stated in their program statement that they will also examine the following items during preparation of environmental assessments: Ecology; Environmental effects of site preparation and facility construction; Environmental effects or use and discharge of chemicals and fuels; and Economic and social effects.

Although the IDNS regulations do not explicitly request the licensee to prepare a document called an Environmental Report, the regulations do require the licensee to provide the information in and to perform the anlayses normally done in an Environmental Report.

c. Inspection and Enforcement

As a minimum, items which should be covered during the inspection of a uranium or thorium mill should be those items evaluated in the in-plant safety review, the environmental monitoring programs, and the byproduct material management plan. In addition, the inspector should perform independent surveys and sampling. A complete inspection should be performed at least once per year.

The IDNS has stated items examined during inspections will be consistent with items evaluated during licensing. IDNS will use appropriate NRC regulatory and inspection guides for guidance. A complete inspection is to be performed at least annually. As part of the IDNS inspection program, the inspectors will perform independent surveys and sampling in addition to examining aspects of licensee performance in: Administration; Mill processes including any additions, deletions, or operational changes; Accidents/incidents; Notices, instructions, and reports to workers in accordance with 32 Ill. Adm. Code 400; Action taken on previous findings; A tour of the facilities at the mill including tailings and waste management to determine compliance with regulations and license conditions; Records; Respiratory protection and bioassay to determine compliance with license conditions and 32 Ill. Adm. Code 340; Effluent and environmental monitoring; Training programs; Transportation and shipping; and Internal review and audit by management. Following each inspection, the inspector will confer with licensee representatives to inform them of the inspection results. The inspectors will submit a comprehensive written report to the Springfield headquarters describing inspection findings and detailing any apparent violations.

The IDNS enforcement policy is described as follows: The IDNS states that the purpose of the enforcement program is to: ensure compliance with Departmental regulations and license conditions; obtain prompt correction of violations and adverse conditions that may affect safety; deter future violations and occurrences of conditions inimical to safety; and encourage improvement of licensee performance, including prompt identification and reporting of potential safety problems.

The IDNS enforcement procedures have been described as follows: If IDNS discovers any deficiencies during an inspection, IDNS will send the licensee a written notice itemizing the area(s) of deficiency and will require the licensee to submit within 30 days of the date of the notice a written response which will state the corrective steps that have been taken by the licensee and the results achieved; the corrective steps that will be taken; and the date when full compliance will be achieved. If the licensee fails to provide an adequate response to the written notice, the IDNS normally holds a management conference with the licensee prior to taking enforcement action. The purpose of these conferences is to discuss items of deficiency or nonconformance, their significance and causes, and the licensee's corrective action. If compliance cannot be achieved through these informal conferences, IDNS will take more formal enforcement action. All non-emergency enforcement actions will be initiated by the issuance of a Preliminary Order and Notice of Opportunity for Hearing as afforded by Code 200 of the Illinois' regulations. The Order will itemize the alleged violations and direct the licensee to remedy these violations within a given time unless a hearing is requested within 10 days of the date of the Preliminary Order. In addition, the licensee may request an informal conference prior to or during the hearing. In cases where there is an imminent threat to public health and safety, IDNS has stated it is prepared to take immediate action in accordance with State law. State law provides that, if the IDNS finds that a condition exists which constitutes an immediate threat to public health due to the violation of any provisions of the Radiation Protection Act or any code, rule, regulation or order promulgated under the Radiation Protection Act and requires immediate action to protect the public health or welfare, IDNS may issue an order reciting the existence of such an immediate threat and the findings of the IDNS pertaining to the threat. The IDNS may summarily cause the abatement of such violation or may direct the Attorney General to obtain an injunction against such violator. An abatement order will be effective immediately, but will include notice of the time and place of a public hearing before the IDNS to be held within 30 days of the date of such order to assure the justification of such order. The IDNS has exercised this authority on two occasions since becoming an Agreement State. The first was in response to widespread facility contamination from leaking static eliminators, and the second was to remediate a health and safety hazard caused by inadequate radiation safety practices of a licensee.

Other remedial actions available to IDNS include orders to modify, suspend, or revoke licenses, assessment of civil penalties, and impoundment of radiation sources. Also, licenses may be modified, suspended or revoked to remove a threat to public health and safety and the environment and for any reason for which license modification, suspension, or revocation is legally authorized.

No order of the IDNS, except an order to abate an immediate threat to health, will take effect until the IDNS has found upon conclusion of such hearing that a condition exists which constitutes a violation of any provision of the Radiation Protection Act or any code, rule or regulation promulgated under the Radiation Protection Act except in the event that the right to public hearing has been waived by the licensee, in which case the order shall take effect immediately. Follow-up inspections are to be conducted as necessary by IDNS staff to verify compliance with IDNS rules and enforcement orders and to rule out willful or flagrant violations, repeated poor performance in areas of concern, and serious breakdown in management controls. All previous areas of deficiency will also be given special attention by the inspector during the following routine inspection of the facility.

As a result of program reviews conducted on December 7–18, 1987 and January 29 through February 9, 1990, the NRC staff concluded that the IDNS has an acceptable licensing program which is capable of determining whether a licensee or applicant can operate safely and in compliance with the regulations and license conditions. Likewise, during these program reviews, the NRC staff concluded that the IDNS has an acceptable compliance program which assures that licensee activities are being conducted in compliance with regulatory requirements and consistent with good safety practices.

d. Operational Data Review

To enhance radiological assessment capability and to confirm doses to receptors in unrestricted areas, States should require the semiannual reports, preferably within 60 days after January 1, and July 1, of each year, specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous six months of

operation. This data shall be reported in a manner that will permit the regulatory agency to confirm the potential annual radiation does to the public. Additionally, all data from the radiological and non-radiological environmental monitoring program will also be submitted for the same time periods and frequency. The data will be reported in a manner that will allow the regulatory agency to confirm the dose to receptors.

IDNS has stated that according to 32 I11. Adm. Code 332, IDNS will require licensees to submit written reports at least semiannualy that identify quantities of redionuclides released to unrestricted areas in liquid, gaseous, and particulate effluents during specified periods of operation. IDNS will also require submission of data from licensee environmental monitoring programs. Written reports and data must be for identical periods and frequencies and in a form permitting confirmation of potential annual radiation doses to the public.

Section 332.290f of 32 Ill. Adm. Code 332 requires semiannual reports to be filed within 60 days after January 1 and July 1 of each year covering the previous six months.

References: Illinois Program Statement, Section VI, "Implementation of the Regulatory Program" and 32 Ill. Adm. Code Parts 200, 332, and 340.

F. Instrumentation

36. The State should have available both field and laboratory instrumentation sufficient to ensure the licensee's control of materials and to validate the licensee's measurements.

IDNS has available an extensive inventory of field and laboratory instrumentation for radiation detection and measurment. A fully equipped radiochemistry facility has been established for performing radiochemical analysis of radioactive samples. Additionally, the IDNS has a well equipped mobile field laboratory which can be used for routine sample analysis while in a standby mode for emergency response. IDNS has also reported that they have twenty-two portable instrumentation kits available for use. Appendix H to the program statement provides an overview of the laboratory and instrument capabilities and lists the instrumentation available to the State.

IDNS has participated in a cross-comparison study on analysis of radionuclides in drinking water. The study has been completed and IDNS is expecting certification at time of this analysis.

Athough IDNS did not provide any information on Equipment Calibration procedures, the program reviews conducted December 7–19, 1987 and January 29 through February 8, 1990 found that the State had adequate instrumentation for surveying licensee operations and satisfied the requirements for calibrating its radiation detection equipment.

References: Illinois Program Statement, Section V, "Instrumentation," and Appendix H.

III. Staff Conclusion

Section 274d of the Atomic Energy of 1954, as amended, states:

The Commission shall enter into an agreement under subsection b of this section with any State if—

(1) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) the Commission finds that the State program is in accordance with the requirements of subsection 0, and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

The amendment to the State of Illinois agreement is for source material milling activities including the resulting 11e.(2) byproduct material to which section 274o of the Act applies. Section 274o provides that the State may adopt standards for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose. The staff has identified some sections of the State's regulations that are considered to be more stringent than NRC's regulations. The NRC staff has concluded that the program of the State of Illinois is in accordance with the requirements of section 274o of the Act and meets the NRC criteria for an amended agreement. The State's statutes, regulations, personnel, and licensing, inspection, and administrative procedures are compatible with, or more stringent than, those of the Commission and are adequate to protect the public health and safety with respect to the materials covered by the proposed amendment to the Agreement.

Dated at Rockville, Maryland, this 23d day of March 1990.

For the U.S. Nuclear Regulatory Commission.

Fred Combs,

Acting Director, State Programs, Office of Governmental and Public Affairs.

Appendix A—Proposed Amendment Number One to the Agreement Between the United States Nuclear Regulatory Commission and the State of Illinois for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, the Governor of the State of Illinois is authorized under Illinois Revised Statutes, 1987, ch. 111½, par. 216b and ch. 111½; par., 241–19 to enter into this Agreement with the Commission; and,

Whereas, on June 1, 1987, an Agreement between the Commission and the State of Illinois became effective which transferred regulatory authority over byproduct material as defined in section 11.e(1) of the act, source materials, special nuclear materials in quantities not sufficient to form a critical mass, and the land disposal of source, byproduct, and spcial nuclear material received from other persons; and,

Whereas, Article III of that Agreement provides that the Agreement may be amended, upon application by the State and approval by the Commission, to include the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material; and,

Whereas, Governor of the State of Illinois certified on _____ that the State of Illonois (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, the Commission found on _____ that the program of the State for the regulation of the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and,

Whereas, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, the Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to Amendment Number One to the Agreement; and,

Whereas, Amendment Number One to the Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, Therefore, it is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

1) Article I of the Agreement is hereby amended to expand the scope of the Agreement to include the extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in Section 11e.(2) of the Act. As amended, Article I now reads as follows:

Article I

Subject to the exceptions provided in Articles II, IV and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following:

A. Byproduct material as defined in Section 11e.(1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass; and,

D. The land disposal of source, byproduct, and special nuclear material received from other persons.

Pursuant to Article III, and subject to the exceptions provided in Articles II, IV and V, the Commission shall discontinue, as of the effective date of this Amendment Number One to this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following:

E. The extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in section 11e.(2) of the Act.

2) Article II of the Agreement is hereby amended by inserting "A." before "This Agreement," by redesignating paragraphs A. through D. as subparagraphs 1. through 4., by deleting paragraph E., relating to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and by adding a new paragraph B., relating to authorities that will be retained by the Commission. As amended, Article II now reads as follows:

Article II

A. This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

1. The construction and operation of any production or utilization facility;

2. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

3. The disposal into the ocean or sea of byproduct, source, or special nuclear waster materials as defined in regulations or orders of the Commission; and,

4. The disposal of such other byproduct, source, or special nuclear materials as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct materials as defined in section 11e.(2) of the Atomic Energy Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance, and ownership of such byproduct material and of land used as a disposal stie for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the license shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to paragraph 2.b. of this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger the public health, safety, welfare, or the environment;

d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. of this section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or a State;

e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety, and other actions as the Commission deems necessary; and,

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance of such disposal sites on land held in trust by the United States for any Indian tribe or land owned by an Indian tribe and subject to a restriction against alienation imposed by the United States.

3) Article IX of the Agreement is hereby amended by redesignating it Article X and by inserting a new Article IX. As amended, Articles IX and X now read as follows:

Article IX

In the licensing and regulation of byproduct material as defined in section 11e.(2) of the Act, or of any activity which results in the production of such material, the State shall comply with the provisions of section 274o of the Act. If, in such licensing and regulation, the State requires financial surety arrangements for the reclamation or long-term surveillance of such material,

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custory of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and,

B. Such State surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term surveillance of such byproduct material and its disposal site.

Article X

This Agreement shall become effective on June 1, 1987, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

4) The Agreement effective June 1, 1987 remains in effect except as modified by amendments contained in Paragraphs 1), 2), and 3) of this Amendment Number One.

5) This Amendment Number one to the June 1, 1987 Agreement shall become effective on _____, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland, in triplicate, this ___ day of _____.

For the United States Nuclear Regulatory Commission.

Chairman.

Done at Springfield, Illinois, in triplicate, this ____ day of _____.

For the State of Illinois.

Governor.

[FR Doc. 90-7198 Filed 3-27-90; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549. Extension, Rule 7d-1, File No. 270-176.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission (the "Commission") has submitted for extension of OMB approval Rule 7d-1 under the Investment Company Act of 1940 (15 U.S.C. 8a-1 *et seq.*) ("1940 Act").

Rule 7d-1 specifies conditions and arrangements pursuant to which Canadian management companies may request an order from the Commission permitting them to register under the 1940 Act. The rule imposes an estimated annual reporting burden of 50 hours on 2 respondents.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-6004, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (Paperwork Reduction Project 3235-0311), room 3208 NEOB, Washington, 20503.

Jonathan G. Katz,

Secretary.

March 14, 1990.

[FR Doc. 90-7809 Filed 3-27-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27824; File No. SR-NSCC-90-03]

Self-Regulatory Organizations; National Securities Clearing Corporation; Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Fees for Duplicate Microfiche of Daily Production Reports and Basket Composition Reports

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 27, 1990, the National Securities Clearing Corporation ("NSCC") 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 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

Amend addendum A of NSCC's Rules and Procedures as follows:

Italics Indicate additions

[Brackets] Indicate deletions

*	* * * *	
B. Special Service Fees:	* * * *	
5. Output Fees:	* * *	
e. Archival Microfiche.		*$ .40 per fiche plus. $ .40 per 1000 lines; and $ .20 per fiche for each duplicate fiche obtained at the same time.*
*	* * * *	
10. Basket Data	.....	*$125.00 per month per file.*

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

(a) Currently, members receive daily processing reports in paper format, tape, or machine readable output. NSCC has determined to offer members the opportunity to obtain duplicates of these reports in microfiche format. Members who choose to receive this output will be charged $.40 per microfiche, plus $.40 per 1,000 lines. Additional duplicate copies of microfiche requested by the member at the time the original microfiche is requested will cost $.20 per microfiche, with no line charge.

NSCC offers a comparison service for the basket product traded on the New York Stock Exchange. Members have the option of receiving from NSCC a daily file which details the composition of the basket. The fee for such basket composition report will be $125.00 per month.

(b) Since the proposed rule change provides for the equitable allocation of fees among NSCC members, it is consistent with the requirements of the Securities Exchange Act of 1934 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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Rule 19b-4 thereunder because it establishes a fee for reports provided by NSCC. 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 Securities Exchange Act of 1934.

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 the above-mentioned self-regulatory organization. All submissions should refer to the file number SR-NSCC-90-03 and should be submitted by April 18, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 20, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-7092 Filed 3-27-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27837; File No. SR-NYSE-90-02]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Rule 351 Threshold Reporting Requirements

I. Introduction

On January 4, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change designed to increase the threshold for reporting certain awards or claims under NYSE Rule 351 from $5,000 to $15,000 for individuals and from $5,000 to $25,000 for member organizations. Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 27651, January 29, 1990), and by publication in the **Federal Register** (55 FR 3783, February 5, 1990). The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

NYSE Rule 351 requires Exchange members and member organizations to report promptly to the Exchange certain specified matters or occurrences involving regulatory problems.[3] The report is usually made to the Exchange on a Form RE-3. Paragraphs (a) (7) and (8) of Rule 351 require reports to be made whenever a member, member organization or associated person is a defendant or respondent in securities or commodities-related litigation or arbitration resulting in a judgment, award or settlement exceeding $5,000 or is the subject of any claim for damages by a customer, broker or dealer exceeding $5,000.

The proposed amendments would create a two-tier reporting requirement that would increase the $5,000 threshold figure under paragraphs (a) (7) and (8) to $15,000 for reportable occurrences involving individuals and to $25,000 for reportable occurrences involving member organizations. The Exchange states that the purpose of the proposed amendments is to increase the threshold figure for reporting certain awards or claims under Rule 351(a) so as to more accurately reflect the realities of the current economic environment, without hindering the Exchange's ability to enforce compliance with its Constitution and rules and Federal securities laws. Additionally, the Exchange believes $15,000 and $25,000 are more meaningful figures in terms of their financial impact on individuals and member organizations, respectively.

The Exchange believes the proposed amendments are consistent with the requirements of the Act in that they are designed, in accordance with section 6(b)(5) of the Act,[4] to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest by requiring the reporting of matters indicative of improprieties. The Exchange believes the proposed amendments to Rule 351 also are consistent with sections 6(b)(1)[5] of the Act in that they enhance the Exchange's capacity to carry out the purposes of the Act and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder and the rules of the Exchange, and section 6(b)(6) of the Act[6] in that they provide that members and persons associated with members shall be appropriately disciplined for violations of the provisions of the Act, the rules or regulations thereunder or the rules of the Exchange.

Finally, the Exchange believes the proposed amendments to Rule 351 are consistent with the requirements set forth in section 17(a)(1)[7] of the Act in that the Exchange will be better able to make records, as required therein, as necessary and appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

III. Discussion and Conclusion

The Commission has considered carefully the Exchange's proposed rule change, and finds, for the following reasons, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, the requirements of sections 6 and 17.[8] The Commission believes the proposal to increase the threshold for reporting certain awards or claims under NYSE Rule 351 from $5,000 to $15,000 for individuals and from $5,000 to $25,000 for member organizations continues to provide adequate notice to the NYSE of member compliance problems while reducing the administrative burden on member firms.

The Commission agrees with the Exchange that the proposed two-tier reporting system under paragraphs (a) (7) and (8) of NYSE rule 351 that would increase the $5,000 threshold figure to $15,000 for reportable occurrences involving individuals and to $25,000 for reportable occurrences involving member organizations is justifiable by the economics of current market conditions.[9] Furthermore, the Exchange

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 U.S.C. 240.19b-4 (1989).

[3] For example, Rule 351(a) requires members and member organizations to report to the Exchange major complaints, governmental investigations, allegations of violations of any securities law or regulation, and allegations of violations of the rules of any self-regulatory organization, including allegations of engaging in conduct inconsistent with just and equitable principles of trade.

[4] 15 U.S.C. 78f(b)(5) (1982).

[5] 15 U.S.C. 78f(b)(1) (1982).

[6] 15 U.S.C. 78f(b)(6) (1982).

[7] 15 U.S.C. 78p(a)(1) (1982).

[8] 15 U.S.C. 78f and 78p (1982).

[9] In a telephone conversation on March 7, 1990 between George Scargle, staff attorney, SEC, and Patricia Dorilio, senior special counsel, NYSE, the Exchange reported that 63% of all matters currently covered by the Rule 351(a)(7) and (8) reporting requirements would exceed the reporting thresholds established by the proposed rule change.

will continue to receive information concerning all customer complaints under the reporting requirements of Rule 351(d). That section requires members and member organizations to report to the Exchange, on a quarterly basis, statistical information regarding customer complaints using certain product and problem codes established by the Exchange for such reporting. Rule 351(d) encompasses all relevant customer complaints, without regard to any dollar threshold amount. These filings are collated in an automated environment by the Exchange and used for such purposes as targeting its member firms or their branch offices for examination when a concentration of complaints is observed. The increase in the level of awards or claims that need to be reported is the first since the adoption of the Rule 351(a) (7) and (8) reporting thresholds in 1979. The increase should reduce the burden of reporting relatively minor claims or awards to the NYSE.

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of sections 6 and 17 of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10]

In particular, the Commission finds that the proposed rule change is consistent with sections 6(b) (1), (5), and (6) and 17(a)(1) of the Act,[11] in that it is designed, respectively, to: Enhance the Exchange's capacity to enforce compliance with the Act by its members and persons associated with its members; promote just and equitable principles of trade, and further investors protection and the public interest in fair and orderly auction markets on national securities exchanges; provide that members and persons associated with members shall be appropriately disciplined for violations of the provisions of the Act, the rules or regulations thereunder, or the rules of the Exchange: and, finally, assist the Exchange in its efforts to maintain records, as necessary and appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes and requirements of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–90–02), be, and hereby is, approved.

[10] 15 U.S.C. 78f and 78p (1982).

[11] 15 U.S.C. 78f(b)(1), (5), and (6) and 78p(a)(1) (1982).

[12] 15 U.S.C. 78s(b)(2) (1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Dated: March 22, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–7093 Filed 3–27–90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27836; File No. SR-BSE-90-3]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Inc., Relating to Constitutional Amendments Changing Composition of Its Board of Governors

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 March 6, 1990, the Boston Stock Exchange, Inc. ("BSE" 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 on the Terms of Substance of the Proposed Rule Change

The Exchange has filed proposed amendments to Articles II and VIII of its Constitution which would change the composition of the Board of Governors to provide for equal representation between representatives of the securities industry and of the public in the administration of the affairs of the Exchange.

As amended, the Constitution would provide that the Board of Governors shall be composed of the Chairman, Vice Chairman, and twenty other individuals. Ten of the twenty members would be representatives of the public, and ten would be representatives of the securities industry. The Constitution would also provide that no governor, other than the Chairman and Vice Chairman, may serve more than four consecutive terms on the Board. Finally, the Constitution would provide that the Vice Chairman shall be a representative from a member organization, thereby eliminating the requirement that the Vice Chairman be a member of the Exchange.

[13] See 17 CFR 200.30–3(a)(12) (1989).

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 amendment is to revise the composition of the Board of Governors to provide for more representation from the public sector, to limit the length of service of Board members, and to eliminate the requirement that the Vice Chairman be a member of the Exchange. The BSE anticipates that implementation of this proposal to restructure the Board of Governors will be done over a period of time so as to not disrupt the functioning of the Board during the transition.

The statutory basis for the proposed amendments is Section 6(b)(3) of the Act which provides that the rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed amendments impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive comments on this proposal.[1]

[1] Article XXIV, Sec. 1 of the BSE Constitution provides that any amendment to the Constitution which is adopted by the Board of Governors shall be submitted to Exchange members. If the amendment is not protested by fifteen Exchange members prior to the expiration of the seventh business day after the date of delivery or mailing of

Continued

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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 persons, 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 the BSE. All submissions should refer to File No. SR-BSE-90-03 and should be submitted by April 18, 1990.

For the Commission, by the Division of Market Regulaton, pursuant to delegated authority.

Dated: March 22, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-7090 Filed 3-27-90; 8:45 am]

BILLING CODE 8010-01-M

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the proposed amendment, then the amendment is deemed approved.

On March 14, 1990, the Exchange submitted a letter to the Commission stating that its membership raised no objections to the proposed amendments to the Constitution. *See* letter from Joseph P. Raftery, Vice President and Corporate Secretary, to Diana Luaka, Division of Market Regulation, Commission, dated March 13, 1990.

[Rel. No. 34-27833; File No. SR-CSE-90-05]

Self-Regulatory Organizations; Proposed Rule Change by Cincinnati Stock Exchange Relating to Obligations of Contributing Dealers

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 1, 1990, The Cincinnati Stock Exchange (the "CSE") filed with the Securities and Exchange 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. The Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

The Cincinnati Stock Exchange proposes to add an Interpretation .01 to Exchange Rule 11.9 (a)(4) and (d) to more clearly define the market making obligations of Contributing Dealers.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change.

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 codify an interpretation of the CSE Rule 11.9 (a)(4) and (d) that more fully describes the market making responsibilities of Contributing Dealers, a secondary category of market maker that was created in order to expand the depth and liquidity of the Exchange's market. The proposed interpretation was developed in 1987 as a means of addressing access concerns of the other ITS Participants with respect to the CSE's implementation of an electronic linkage between ITS and the Exchange's National Securities Trading System. In spite of general agreement by the other ITS Participants that the interpretation was sufficient to categorize Contributing Dealers as market makers for the purposes of the Securities Exchange Act of 1934, the ITS Operating Committee rejected the CSE's request to exclude Contributing Dealer activity from the "formula", an operational parameter in the ITS Plan which restricts the amount of "agency" business which the CSE can transmit through its electronic linkage to the other ITS markets. While the CSE continues to have significant competitive concerns with the categorization of Contributing Dealer activity as "agency" business for purposes of the formula and the consequent restriction on Contributing Dealer interaction within ITS, the CSE believes that it is appropriate at this time to follow through on its commitment to more completely describe the market making obligations of Contributing Dealers.

The affirmative and negative obligations of Contributing Dealers are set out in proposed Rule 11.9 Interpretations .01(a)-(g), and are based on similar competitive market making rules of the Midwest Stock Exchange, the Philadelphia Stock Exchange, the American Stock Exchange and the Pacific Stock Exchange. However, the CSE has imposed slightly more onerous obligations on Contributing Dealers than the other exchanges.

Interpretations .01(c) and .01(d) set forth the definition of "regular" bids and offers as (1) two-sided quotations with reasonable spread parameters and size each trading day; and (2) a guarantee of up to 500 shares after the Designated Dealer of the Day has executed 2099 shares. Both of these obligations are substantially greater than the other exchanges that require a 100 share bid and offer upon the request of a floor broker or floor official.

In addition, proposed Interpretations .01 (a), (b) and (e) set out the general competency requirements and affirmative and negative responsibilities of those Proprietary members who wish to be registered and act as Contributing Dealers. Interpretation .01(f) is intended to protect the Contributing Dealer from unusual market, operational or financial circumstances which might be detrimental to its own viability or the market as a whole. Finally, Interpretation .01(g) provides that a Contributing Dealer is a specialist for the purposes of the Securities Exchange Act of 1934 and as such is entitled to obtain exempt credit for the financing of market transactions.

The proposed rule change is consistent with the provisions of section 6(b) of the Act in general and, in particular, furthers the objective of section 6(b)(5) because it will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition.

The Exchange believes that the proposed rule change will not impose any burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others.

The Exchange solicited comments on the proposed rule change from other ITS participants but received none.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such Proposed Rule Change, or

(B) Institute proceedings to determine whether the Proposed Rule Change should be disapproved.

IV. Solicitation of Comments.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 5th Street NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 28, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 22, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-7091 Filed 3-27-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17389; File No. 812-7449]

American General Life Insurance Co. of Delaware, et al.; Application

March 20, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: American General Life Insurance Company of Delaware ("AGLife") and American General Life Insurance Company of Delaware Separate Account D ("Separate Account"), referred to collectively herein as "Applicants."

RELEVANT 1940 ACT SECTIONS: Order requested under section 26(b), approving the substitution of shares of American Capital Comstock Fund, Inc. for shares of American Capital Growth Fund, Inc. and, under section 17(b) or, alternatively, under section 6(c) of the Act, granting exemptions from sections 17(a)(1) and 17(a)(2) of the Act to the extent necessary to permit the consolidation of Division 1 into Division 2 of the Separate Account.

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of shares of American Capital Comstock Fund, Inc. for shares of American Capital Growth Fund, Inc. and the consolidation of Division 1 into Division 2 of the Separate Account.

FILING DATE: The Application was filed on December 22, 1989 and amended on March 13, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on April 16, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 2727 Allen Parkway, Houston, Texas 77019.

FOR FURTHER INFORMATION CONTACT: Joyce Pickholz, Staff Attorney at (202) 272-3046 or Heidi Stam, Special Counsel at (202) 272-2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier (800) 231-3282 (in Maryland (301) 253-4300)).

Applicants' Representations

1. AGLife is a stock life insurance company. The Separate Account is registered, under the Act, as a unit investment trust. The Separate Account invests in eight open-end management investment companies ("funds"). Currently, the Separate Account has eight divisions ("Divisions") corresponding to the eight funds. The Divisions of the Separate Account and the corresponding underlying funds are as follows: Division 1—American Capital Growth Fund, Inc. ("Growth Fund"); Division 2—American Capital Comstock Fund, Inc. ("Comstock Fund"); Division 3—American Capital Corporate Bond Fund, Inc.; Division 4—American Capital Reserve Fund, Inc.; Division 5—American Capital High Yield Investments, Inc.; Division 6—American General Money Market Accumulation Fund, Inc.; Division 7—American General High Yield Accumulation Fund, Inc.; Division 8—American General Equity Accumulation Fund, Inc. American Capital Asset Management, Inc. ("ACAM") is the investment adviser for all of the funds.

2. The Separate Account serves as a funding medium for certain variable annuity contracts formerly issued and currently administered by AGLife. The contracts include single payment immediate, single payment deferred, and flexible payment deferred individual variable annuity contracts (the "Contracts"). Each of the Contracts was available on either a tax-qualified or non-tax-qualified basis. A deduction is made from purchase payments to cover sales expenses under a Contract. The maximum deduction that may be made from purchase payments is 6.75%. No additional sales load is deducted either as a contingent deferred surrender charge or an asset-based charge. However, a surrender fee of $5.00 is deducted upon each partial or total surrender of accumulation value under a Contract. AGLife discontinued the offer of the Contracts after September 25, 1981, in response to Revenue Ruling 81-225. Also after that date, AGLife discouraged additional purchase payments under non-tax-qualified Contracts. Purchase payments under the Contract ("purchase payments") made through September 25, 1981, were

originally invested in Divisions 1 through 5. Purchase payments made after September 25, 1981, under non-tax-qualified or tax-qualified contracts are invested in Divisions 1 through 8.

3. During the accumulation period under the Contracts, a Contract owner may transfer all of his or her accumulation value to another Division or, for Contracts issued prior to May 1, 1980, to AGLife's general account once every seven days. A $5.00 charge is made for each transfer. However, once a Division within Divisions 6 through 8 has been selected, the Contract Owner may not transfer his or her accumulation value back to Divisions 1 through 5.

4. The Board of Directors of Growth Fund, on March 10, 1989, adopted a resolution approving the merger of Growth Fund into American Capital Enterprise Fund, Inc. ("Enterprise Fund"). Enterprise Fund is a registered open-end diversified management investment company. Enterprise Fund offers its shares to the public.

5. Growth Fund has advised AGLife that the Board of Directors of Growth Fund, in March 1990, expects to reaffirm such approval and expects to schedule a vote of shareholders on the merger proposal for June 1990. Applicants state that shares of Enterprise Fund could not be made available as an investment for the Separate Account under AGLife's current administrative systems and procedures for the Contracts, unless such systems and procedures are extensively redesigned. In view of the small number of Contract owners that have historically owned units of interest in Division 1 of the Separate Account (currently 45 Contracts), AGLife has determined that the cost of effecting such redesign outweighs the benefit of making shares of Enterprise Fund available as an investment for the Separate Account. In any event, AGLife would be unable to redesign its systems and procedures to make shares of Enterprise Fund available as an investment for the Separate Account prior to the proposed merger of Growth Fund. Applicants state that AGLife has no effective control over the decision of Growth Fund's management to pursue a merger with another fund, the shares of which could not be made available as an investment to the Separate Account. Furthermore, although Applicants could vote against the proposed merger, their interest in Growth Fund constitutes only about 6.3% of the outstanding Growth Fund shares. Therefore, Applicants assert that they are faced with a situation, outside their control, that, in effect, requires the substitution of shares of another investment company for those of Growth Fund.

6. AGLife proposes to substitute the shares of Comstock Fund for shares of Growth Fund currently held in Division 1 of the Separate Account (the "Substitution"). AGLife proposes to effect the Substitution as soon as feasible, but, in any event, by May 1, 1990, prior to the proxy solicitation in connection with the merger of Growth Fund. Immediately following the Substitution, AGLife will treat, as a single Division of its Separate Account, the pre-existing Division 2 invested in shares of Comstock Fund and the former Growth Fund Division 1 then invested in shares of Comstock Fund. AGLife will reflect this treatment in disclosure documents for the Separate Account, the financial statements of the Separate Account and the Form N–SAR annual reports filed by the Separate Account.

7. Although Applicants have no effective control over Growth Fund and its management, Applicants, based in part on consultation with management of Growth Fund, do not oppose the proposed merger. Indeed, AGLife has determined that, even if the proposed merger is not consummated, substitution would be in the interests of Contract owners, for the followings reasons.

8. According to the application, Growth Fund and Comstock Fund have similar primary investment objectives of capital growth and similar secondary investment objectives of income. The funds also have similar investment policies and practices and similar or identical attributes of organization and operation. The investment performance of Comstock Fund compares favorably with that of Growth Fund over extended periods. Management fees and other expense levels of Comstock Fund are lower than those of Growth Fund. As a result, the Substitution will not cause the management fees and other expenses currently being paid by Contract owners to be greater after the Substitution than before the Substitution. Also, both funds sell shares to the Separate Account and redeem such shares at net asset value without sales charge.

9. AGLife has reserved the right, without Contract owners' consent, to invest the assets of a Division of the Separate Account in securities other than a particular fund's shares as a substitute for fund shares already purchased or to be purchased in the future. The reservation of right has been disclosed in the Separate Account prospectus. The reservation of right is subject to compliance with applicable law, including prior approval by the insurance authorities of Delaware and Texas, and any required Commission approval. AGLife will not consummate the Substitution prior to receiving such approvals.

10. AGLife believes, based on its review of existing federal income tax laws and regulations, that the Substitution will not give rise to any tax liability or to any adverse tax consequences for Contract owners, annuitants or beneficiaries. This conclusion is based on AGLife's long-held view that there is no tax effect for Contract owners, annuitants, or beneficiaries of a transfer from Division 1 to Division 2 and a current opinion from outside tax counsel that the tax effect of the Substitution will be the same as the tax effect of a transfer from Division 1 to Division 2.

11. Prior to the date the Substitution is consummated, Contract owners may transfer accumulation values and reallocate purchase payments to any other Division of the Separate Account or, for Contracts issued prior to May 1, 1980, the general account pursuant to transfer rights under the Contracts (subject to the customary $5.00 transfer charge). Following the Substitution and prior to June 30, 1990, Contract owners that are invested in Division 2 under a Contract as a result of the Substitution may transfer accumulation values to any other Division of the Separate Account without incurring the customary $5.00 transfer charge. After June 30, 1990, any transfer of accumulation values under a Contract from Division 2 to another Division of the Separate Account or, for Contracts issued prior to May 1, 1980, to the general account will be subject to the customary $5.00 transfer charge.

12. AGLife will effect the Substitution by simultaneously placing an order to redeem its shares of Growth Fund and an order to purchase shares of Comstock Fund. The net asset value of shares of Growth Fund that are redeemed and of shares of Comstock Fund that are purchased will be calculated based on values determined as of the close of business on the business day immediately preceding the date on which such orders are placed. Such business day shall be within 24 hours of the date on which such orders are placed.[1] Within five days after the Substitution, AGLife will mail to each Contract owner participating in Division 1: (i) A notice of the Substitution,

[1] Applicants intend to comply with section 22(c) of the Act and Rule 22c–1 thereunder, consistent with the Commission staff's no-action position in *Varied Industry Plan, Inc.* (March 23, 1978), [1978 Transfer Binder] Fed. Sec. L. Rep. (CCH) par. 81,692

including an identification of the Growth Fund shares eliminated and the Comstock Fund shares substituted, and (ii) a specification of the shares indirectly owned by each Contract owner affected by the Substitution. AGLife will also include a notice to each Contract owner of the consolidation of Division 1 into Division 2. AGLife will bear the expenses directly attributable to the Substitution, including the cost of prospectus supplements, this application, and the notices to Contract owners.

13. Applicants submit that the Comstock Fund compares favorably with the Growth Fund in terms of protection of Contract owners. Applicants also point out that the Substitution involves a security that is otherwise available to Contract owners under their Contracts. Therefore, Contract owners are themselves in a position to judge the merits of the substituted security. Also, Contract owners are free to transfer among the funds available under the Contracts, both before and after the Substitution, depending upon their judgment of the merits of the shares of the funds. Although a sales load is imposed under the Contracts, a surrender will not be subject to an additional sales load.

14. Applicants state that the consolidation could be said to be a transfer by AGLife of accumulation values from Division 1 to Division 2 and this transaction could be viewed as purchase and sale transactions between Divisions 1 and 2 that come within the purview of sections 17(a)(1) and 17(a)(2) of the Act. Applicants request exemption from Section 17(a) of the Act, pursuant to section 17(b), or, alternatively, pursuant to section 6(c), in the event that the Commission determines that it cannot grant the requested exemption under section 17(b). Applicants believe the Commission's authority to grant exemption from section 17(a) is broader under section 6(c) than under section 17(b).

15. Applicants assert that the transactions will be effected based on the net asset value of the shares of Comstock Fund owned by Division 1 and the value of the accumulation units of Division 2. AGLife believes, based on its review of existing federal income tax laws and regulations, that the sale and purchase transactions in connection with the consolidation will not have any tax effect for Contract owners, *i.e.*, will not give rise to any tax liability or to any adverse tax consequences for Contract owners. This conclusion is based on a current opinion from outside tax counsel to this effect, in light of the intracompany nature of the consolidation. Applicants believe that, in all respects, interests of Contract owners participating in Division 1 will be no different, in economic reality, after the sale and purchase transactions than before such transactions. Applicants believe that existing and future Contract owners investing in Comstock Fund will benefit from the economies of scale and administration of the operation of a single Division, rather than two Divisions investing in the same underlying fund. Based on the foregoing, Applicants submit that the terms of the sale and purchase transactions, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants submit that the sale and purchase transactions are consistent with the investment policy of Divisions 1 and 2, to the extent applicable, as recited in the registration statement for the Separate Account and in the reports filed by the Separate Account under the Act, as required by section 17(b)(2) of the Act. The sale and purchase transactions are themselves consistent with the general purposes of the Act, as enumerated in the Findings and Declaration of Policy in Section 1 of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-7094 Filed 3-27-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17394; File No. 812-7479]

John Hancock Mutual Life Insurance Co., et al.; Application

March 21, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: John Hancock Mutual Life Insurance Company ("John Hancock") and John Hancock Variable Annuity Account U ("Account U").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit John Hancock to deduct from Account U the mortality and expense risk charges imposed under individual combination fixed/variable annuity contracts issued by John Hancock (the "Contracts").

FILING DATE: The application was filed on February 16, 1990 and amended on March 14, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on April 16, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549; John Hancock, c/o Sandra M. Molley, John Hancock Place, Boston, Massachusetts 02117.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272-2026, or Heidi Stam, Special Counsel, at (202) 272-2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations:

1. Account U, a registered unit investment trust under the 1940 Act, was established by John Hancock pursuant to Massachusetts law to fund the Contracts. Purchase payments received under the Contracts will be allocated to any one or more of the subaccounts of Account U and a fixed annuity account. Account U presently consists of seven subaccounts, each of which invests solely in the shares of one of the portfolios of John Hancock Variable Series Trust I. John Hancock, a registered broker/dealer, is the principal underwriter for the Contracts.

2. Prior to a Contract's maturity, John Hancock assesses on Contracts of less than $10,000 a Contract fee of $30 (with the right reserved to increase the charge to $50) at the beginning of each Contract year after the first and at full surrender during a Contract year. In addition, for certain administrative services, John Hancock makes a daily charge to the

Account equal to .50% on an annual basis of the current value of its assets.

3. An owner may withdraw in any one Contract year up to 10% of the accumulated value of the Contract as of the begining of the Contract year without assessment of any charges. If the owner withdraws an amount in excess of 10% of accumulated value as of the beginning of the Contract year, the excess amount withdrawn subjects the Contract to a withdrawal charge ("Withdrawal Charge") to the extent that the excess is attributable to purchase payments made within seven years of the date of withdrawal or surrender.

4. Withdrawal Charges are based upon a percentage of the purchase payments made to date less any partial withdrawals, Contract fees, and Withdrawal Charges to date and are assessed as follows:

Years from date of deposit to date of withdrawal	Withdrawal charge (percent)
Less than 1	8
1 but less than 2	8
2 but less than 3	8
3 but less than 4	7
4 but less than 5	7
5 but less than 6	6
6 but less than 7	6
7 or more	0

In no event will the Withdrawal Charges assessed against a Contract ever exceed 8% of the purchase payments received.

5. For assuming certain risks under the Contracts, John Hancock imposes a daily mortality and expense risk charge of .90% of the net asset value of each subaccount of Account U. Of that charge, .45% is attributable to John Hancock's assumption of mortality risks and .45% is attributable to John Hancock's assumption of administrative expense risks. Applicants represent that the level of this charge is guaranteed and will not change. Applicants submit that the mortality and expense risk charge compensate John Hancock for the risk that annuitants under the Contracts will live longer as a group than has been anticipated in setting the rates guaranteed in the Contracts; that an annuitant's death benefit could exceed the value of the account; and for the risk that John Hancock's expenses may be higher than the maximum deductions for such expenses permitted under the Contracts.

6. Applicants submit that the charge of .90% for mortality and expense risks is consistent with the protection of investors because it is a reasonable and proper insurance charge. Applicants further represent that the charge is within the range of industry practice with respect to comparable annuity products. This representation is based upon John Hancock's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. John Hancock will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

7. Applicants acknowledge that the Withdrawal Charge may be insufficient to cover all costs relating to the distribution of the Contracts. To the extent distribution costs are not recovered by sales charges, John Hancock will recover them from its general account assets, which may include gains from mortality and expense risk charges.

8. Applicants represent that there is a reasonable likelihood that Account U's proposed distribution financing arrangement will benefit Account U and the owners of the Contracts. The basis for such conclusion is set forth in a memorandum that John Hancock will maintain at its administrative offices and make available to the Commission.

9. Applicants also represent that Account U will only invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b–1 to finance distribution expenses, to have a board of trustees (or directors), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b–1.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–7095 Filed 3–27–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–17390; File No. 811–3743]

March 20, 1990.

KILICO Equity Separate Account; Application

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

Applicant: KILICO Equity Separate Account ("Applicant").

Relevent 1940 Act Sections: Order requested under Section 8(f).

Summary of Application: Applicant seeks an order under Section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

FILING DATE: The Application was filed on December 15, 1989 and amended on February 12, 1990.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or asked to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on April 16, 1990. You may request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by Affidavit, or for lawyers, by certificate. Request notification of the date of the hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, Kemper Investors Life Insurance Company, 120 S. LaSalle Street, Chicago, Illinois 60603.

FOR FURTHER INFORMATION CONTACT: Thomas Bisset, Staff Attorney, at (202) 272–2058 or Heidi Stam, Special Counsel, at (202) 272–2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commerical copier which may be contacted at (800) 231–3292 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Applicant is an insurance company separate account which was organized under the laws of Illinois on April 15, 1983. The Applicant, an open-end diversified management company, filed a Notification of Registration on Form N–8A and a registration statement pursuant to Section 8(b) of the 1940 Act on May 20, 1983. Applicant also filed a registration statement under the Securities Act of 1933 on Form N–1A which registration statement became effective on December 9, 1983.

2. On October 11, 1988, the Board of Managers of Applicant adopted resolutions authorizing the reorganization and all other actions necessary to restructure and combine

the Applicant into a subaccount of a separate account organized as a unit investment trust.

3. A prospectus/proxy/voting instruction statement was distributed to all contractowners regarding the reorganization. These materials were filed with the Commission on Form N–14 on August 8, 1989, were declared effective on September 12, 1989.

4. On October 13, 1989 the Commission issued an order granting exemptive relief to the Applicant from Section 17(d) and Rule 17d–1 thereunder (Investment Company Act Release No. 17164).

5. On November 2, 1989, Applicant's contractowners voted to approve the reorganization.

6. No assets remain in the Applicant as of the date of the filing of this application.

7. All expenses incurred in connection with the reorganization of the Applicant were borne entirely by Kemper Investors Life Insurance Company, the investment adviser to the Applicant.

8. Applicant has no debts or other liabilities outstanding. There are no contractowners having an interest in Applicant at the time of filing of this Application. Applicant is not a party to any current or pending litigation or administrative proceedings. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–7096 Filed 3–27–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–17392; File No. 811–3198] 3198]

KILICO Income Separate Account; Application

March 20, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1930 ("1940 Act").

APPLICANT: KILICO Income Separate Account ("Applicant").

RELEVANT 1940 ACT SECTIONS: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

FILING DATE: The Application was filed on December 15, 1989 and amended on February 12, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or asked to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on April 16, 1990. You may request a hearing in Writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of the hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Kemper Investers Life Insurance Company, 120 S. LaSalle Street, Chicago, Illinois 60603.

FOR FURTHER INFORMATION CONTACT: Thomas Bisset, Staff Attorney, at (202) 272–2058 or Heidi Stam, Special Counsel, at (202) 272–2060 (Division of Investment Mangement.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3292 (in Maryland (301) 253–4300).

Applicant's Representations

1. The Applicant is an insurance company separate account which was organized under the laws of Illinois on May 29, 1981. The Applicant, an open-end diversified management company, filed a Notification of Registration on Form N–8A and a registration statement pursuant to Section 8(b) of the 1940 Act on June 5, 1981. Applicant also filed a registration statement under the Securities Act of 1933 on Form N–1A which registration statement became effective on March 12, 1982.

2. On October 11, 1988, the Board of Managers of Applicant adopted resolutions authorizing the reorganization and all other actions necessary to restructure and combine the Applicant into a subaccount of a separate account organized as a unit investment trust

3. A prospectus/proxy/voting instruction statement was distributed to all contractowners regarding the reorganization. These materials were filed with the Commission on Form N–14 on Agust 8, 1989, were declared effective on September 12, 1989 and were mailed to contractowners on September 18, 1989.

4. On October 13, 1989 the Commission issued an order granting exemptive relief to the Applicant from section 17(d) and Rule 17d–1 thereunder (Investment Company Act Release No. 17164).

5. On November 2, 1989, Applicant's contractowners voted to approve the reorganization.

6. No assets remain in the Applicant as of the date of the filing of this application.

7. All expenses incurred in connection with the reorganization of the Applicant were borne entirely by Kemper Investors Life Insurance Company, the investment adviser to the Applicant.

8. Applicant has no debts or other liabilities outstanding. There are no contractowners having an interest in Applicant at the time of filing of this Application. Applicant is not a party to any current or pending litigation or administrative proceedings. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–7097 Filed 3–27–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–17395; 812–7452]

United Financial Group, Inc.; Application

March 21, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

Applicant: United Financial Group Inc.

Relevant Act Sections: Exemption pursuant to section 6(c) from all provisions of the Act until December 30, 1990.

Summary of Application: Applicant seeks an order exempting it from the registration, and all other, requirements of the Act because it is a transient investment company that can no longer rely on the safe-harbor exclusion from the definition of investment company provided in Rule 3a-2.

FILING DATE: The application was filed on December 29, 1989 and amended on March 9, 1990.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 17, 1990, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicant, 5718 Westheimer, Suite 2200, Houston, Texas 77057.

FOR FURTHER INFORMATION CONTACT: Stuart Horwich, Staff Attorney, at (202) 272–3035 or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee by going to the SEC's Public Reference Branch or contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. From the time of its incorporation in 1970 until December 30, 1988, applicant operated as a savings and loan holding company. Applicant originally conducted its savings and loan operations through several subsidiaries. In 1977, applicant merged these subsidiaries to form the United Savings Association of Texas ("USAT"). This wholly owned subsidiary was applicant's principal asset and generated substantially all of applicant's revenues. In 1986, USAT's financial position began to deteriorate. By December 1988, USAT's capital had dropped to approximately negative $309 million. On December 30, 1988, the Federal Savings and Loan Insurance Corporation ("FSLIC") placed USAT into receivership and was subsequently appointed as its receiver. Substantially all of USAT's assets, including its subsidiaries, were purchased by an unaffiliated third party. As of December 31, 1988, applicant no longer conducted savings and loan operations through any subsidiary. On that date, applicant's remaining assets consisted of $8.3 million encumbered as collateral for the debts of a wholly owned subsidiary, $10 million held in various money market accounts, $1.2 million in real estate owned by applicant, $3.3 million in marketable securities, and $1.6 million in loans and notes receivable.[1]

2. As a consequence of the FSLIC placing USAT into receivership, applicant incurred a capital loss, equal to its basis in the USAT stock, of approximately $234 million. In light of the existence of the capital loss, applicant's board of directors concluded that the interests of its creditors and shareholders would be served best by a reorganization of applicant involving the acquisition of a new operating business that could utilize all or part of the capital loss. Since that time, applicant has been seeking to acquire an operating business.

3. In January of 1989, counsel for the FSLIC informed applicant that, in the FSLIC's view, applicant had caused monetary damages to the FSLIC resulting from applicant's breach of a contractual obligation undertaken in 1983 to maintain USAT's net worth at the prescribed regulatory minimum. The FSLIC subsequently asserted a claim against applicant for approximately $500 million. In connection with this claim, the FSLIC notified applicant that it might seek commencement of an involuntary liquidation proceeding against applicant unless applicant's assets were preserved pending the resolution of the claim. Faced with the possibility of an involuntary bankruptcy proceeding, applicant entered into a standstill agreement with the FSLIC. Pursuant to this agreement, applicant was prohibited from making any investments, except in "marketable securities, cash or cash equivalents" unless notice was first given to the FSLIC to allow the FSLIC an opportunity to object and to seek enforcement of its claim. Although applicant believed that it had substantial defenses to the FSLIC's claim, the FSLIC claim constituted a substantial contingent liability to applicant's assets and has severely hindered its ability to acquire an operating business and utilize its capital loss.

4. Applicant believes that it has essentially reached an agreement with the staff of the Federal Deposit Insurance Corporation ("FDIC") (the successor to the FSLIC under the Fiancial Institutions Reform, Recovery and Enforcement Act of 1989) on the terms of settlement, although minor drafting issues remain outstanding. The settlement will be contingent on the approval of a voluntary reorganization plan (the "Plan") under Chapter 11 of the Bankruptcy Code. Applicant believes that the Plan is necessary to settle the outstanding claims against it and to provide a proper structure for its acquisition of a new operating business.

5. Under the Plan, the holders of all of applicant's outstanding common stock will have their shares cancelled in exchange for six-year noninterest bearing notes ("Notes") with a principal amount that will vary from nothing to $1.00 for each share of common stock held, depending on applicant's use of its capital loss. Applicant also has outstanding 9 percent Secured Sinking Fund Debentures due in 1993 (the "Debentures") and several series of perferred stock. Each Debenture holder will be permitted to elect either (a) to be paid by applicant in accordance with the terms of the Debentures or (b) to redeem the Debentures for a cash payment of 50 percent of the face value. Each holder of applicant's preferred stock will receive a cash payment, with the exception of MAXXAM, Inc. ("MAXXAM"). MAXXAM is the holder of the majority of applicant's Series E Preferred Stock, and will be issued all of applicant's new common stock in exchange for its preferred shares.

6. If the Plan is confirmed by applicant's impaired creditors and impaired shareholders, applicant will become a wholly-owned subsidiary of MAXXAM. MAXXAM would be able to provide capital for applicant to engage in one or more operating businesses, and would also be in a position to effectively use applicant's capital loss. Since the capital loss will expire by the end of 1993, MAXXAM must act quickly to cause applicant to acquire an operating business or other assets.

7. Applicant has taken a number of other steps to acquire an operating business, in addition to the formulation of the above-described Plan. Applicant has reviewed proposed alternatives for the utilization of its assets, and has retained tax counsel to assist in formulating business plans and procedures for the execution of these alternatives. Applicant has employed, on a best efforts basis, the investment banking firm of Bateman Eichler, Hill Richards Incorporated, to assist applicant in identifying operating businesses with the potential for acquisition. Applicant has also engaged in ongoing conversation with other investment banking firms such as

[1] The subsidiary mentioned above is inactive as are applicants three other subsidiaries. None of these subsidiaries has any assets beyond nominal capital.

Shearson Lehman Hutton Inc., Bear Stearns & Co., Rotan Mosle and Co., and Rauscher Pierce & Co. concerning its available alternatives.

8. From December 30, 1988 to December 30, 1989, applicant asserts it was excluded from the definition of an investment company in reliance on Rule 3a–2. Applicant may presently fall within one of the Act's definitions of an investment company, and the safe harbor period under Rule 3a–2 for applicant to acquire an operating company expired on December 30, 1989. Applicant contends that an extension of the one-year safe harbor period provided by Rule 3a–2 of the Act is appropriate in instances where: (a) the failure of the company to become primarily engaged in a noninvestment business within one year was due to factors beyond its control, (b) the company's officers and employees during that period tried in good faith to effect the company's investment of its assets in a noninvestment business, and (c) the company invested in securities solely to preserve the value of its assets.

9. Applicant contends that its failure to become primarily engaged in a noninvestment business within one year was due to a factor beyond its immediate control: the existence of the FDIC claim. Applicant states that the loss of USAT occurred despite its efforts to prevent USAT's placement into receivership. Applicant further states that it diligently endeavored to invest its assets in an operating business, but the FDIC claim has substantially impeded its efforts. Applicant has used its best efforts to settle the FDIC claim and now appears to have accomplished such settlement. Applicant has taken steps under Chapter 11 of the Bankruptcy Code which it believes will enable it to resume its role as an operating entity. Applicant's officers and directors have tried, in good faith, to effect applicant's investment of its assets in a noninvestment business.

10. Applicant asserts that its has invested in securities in order to preserve the value of its assets, and that its principal attribute at present is its capital loss. To preserve this asset and receive its maximum benefit, applicant has invested in securities to generate the revenues necessary to maintain its operations pending the acquisition of a new business. On January 31, 1990, applicant's assets consisted of $1.3 million in real estate, $4.7 million in interest earning deposits as collateral for the obligations of a wholly owned subsidiary, $9.0 million in cash and cash equivalents, $2.3 million in marketable securities, and $2.4 million in other assets. Applicant has committed to sell all of its equity securities in an orderly manner and thereafter limit its securities investments to "high quality securities," as that term is defined in Rule 2a–7(a)(2)(iv) under the Act.

Conditions to the Requested Order

Applicant has agreed that the requested exemptive order will be subject to the following conditions, each of which will apply to applicant until it acquires an operating business or otherwise falls outside the definition of an investment company:

1. Applicant will sell all of its equity securities within 45 days of the issuance of the requested exemptive order. Thereafter, applicant will limit its securities investments to securities that qualify as "high quality securities" as that term is defined in Rule 2a–7(a)(2)(iv).

2. Applicant will comply with sections 9, 17(e) and 36 of the Act as if it were a registered investment company.

3. Applicant will comply with sections 17(a) and 17(d) as if it were a registered investment company, subject to the following exceptions. As noted above, during a portion of the period in which the requested exemption will be effective, applicant will be subject to the jurisdiction of the federal bankruptcy court. It is understood that applicant need not comply with sections 17(a) or 17(d) with respect to any transaction, including without limitation the Plan, that is approved by the bankruptcy court. Since the bankruptcy court is charged with the obligation of protecting the interest of applicant's creditors and equity interest holders, it is unnecessary for applicant to comply with Section 17(a) or 17(d) with respect to transactions the bankruptcy court has approved. It is also understood that applicant would not be required to comply with section 17(a) or 17(d) with respect to any transactions or series of transactions that result in its ceasing to fall within the definition of an "investment company" provided that (i) no cash payments will be made to any "affiliated person" (as defined in the Act) of applicant as part of such transaction or series of transactions and (ii) no debt securities are issued to an affiliated person of applicant as part of such transaction or series of transactions unless such debt securities are expressly subordinated upon liquidation to the claims of the Debenture holders.[2]

4. Applicant will comply with the provisions of section 17(f) of the Act as provided in Rule 17f–2 as if it were a registered management investment company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–7098 Filed 3–27–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–17391; File No. 811–3197]

Application; KILICO Total Return Separate Account

March 20, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: KILICO Total Return Separate Account ("applicant").

RELEVANT 1940 ACT SECTIONS: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

FILING DATE: The Application was filed on December 15, 1989 and amended on February 12, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or asked to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on April 16, 1990. You may request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of the hearing by writing to the Secretary of the SEC.

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[2] As noted above, the interests of the Noteholders and MAXXAM will have value, and (because the applicant is currently unable to pay the Debentures) the interest of its Debenture holders will have significant value, only if an operating business or other assets are acquired by applicant that permit it to utilize a substantial portion of the capital loss. Compliance with Section 17(a) or 17(d) in connection with such transaction would be burdensome and reduce applicant's prospects of success, thereby depriving its securities holders of value. To assure that no insider abuse will be present in any such transaction, applicant has agreed to the provisions recited above relating to cash payments or issuance of debt securities to affiliated persons.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, Kemper Investors Life Insurance Company, 120 S. LaSalle Street, Chicago, Illinois 60603.

FOR FURTHER INFORMATION CONTACT: Thomas Bisset, Staff Attorney, at (202) 272–2058 or Heidi Stam, Special Counsel, at (202) 272–2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Applicant is an insurance company separate account which was organized under the laws of Illinois on May 29, 1981. The applicant, an open-end diversified management company, filed a notification of registration on Form N–8A and a registration statement pursuant to section 8(b) of the 1940 Act on June 5, 1981. Applicant also filed a registration statement under the Securities Act of 1933 on Form N–1A which registration statement became effective on March 12, 1982.

2. On October 11, 1988, the board of managers of applicant adopted resolutions authorizing the reorganization and all other actions necessary to restructure and combine the applicant into a subaccount of a separate account organized as a unit investment trust.

3. A prospectus/proxy/voting instruction statement was distributed to all contractowners regarding the reorganization. These materials were filed with the Commission on Form N–14 on August 8, 1989, were declared effective on September 12, 1989 and were mailed to contract owners on September 18, 1989.

4. On October 13, 1989 the Commission issued an order granting exemptive relief to the applicant from section 17(d) and Rule 17d–1 thereunder (Investment Company Act Release No. 17164).

5. On November 2, 1989, applicant's contractowners voted to approve the reorganization.

6. No assets remain in the applicant as of the date of the filing of this application.

7. All expenses incurred in connection with the reorganization of the applicant were borne entirely by Kemper Investors Life Insurance Company, the investment adviser to the applicant.

8. Applicant has no debts or other liabilities outstanding. There are no contractowners having an interest in applicant at the time of filing of this application. Applicant is not a party to any current or pending litigation or administrative proceedings. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–7004 Filed 3–27–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on March 16, 1990

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on March 16, 1990, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, telephone, (202) 366–4735, or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "**FOR FURTHER INFORMATION CONTACT**" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "**FOR FURTHER INFORMATION CONTACT**" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on March 16, 1990.

DOT No.: 3313.
OMB No.: 2120–0535.
Administration: Federal Aviation Administration.
Title: Anti-Drug Program for Personnel Engaged in Specified Aviation Activities.
Need for Information: The FAA needs the information in order to issue guidance and exercise oversight over the establishment and implementation of individual industry-wide drug programs.
Proposed Use of Information: The data gathered will be used by the FAA to exercise oversight, summarize trends, and determine if additional actions or changes may be required to combat drug use and abuse in aviation.
Frequency: One-time plan submission, and semi-annual and annual reporting.
Burden Estimate: 2,313,356 hours.
Respondents: Businesses.
Form(s): DOT form 3900–1.
Average Burden Hours Per Respondent: The burden hours are as follows:
Plan: 154 hours.
Periodic Reporting: 24 hours.
Recordkeeping: 3 minutes and 30 seconds.

DOT No.: 3314.
OMB No.: 2127–0512.
Administration: National Highway Traffic Safety Administration.
Title: Consolidated Labeling Requirements for Motor Vehicles (Except The VIN Numbers), 49 CFR 571.105, 205, 209 and part 567.

Need for Information: To show performance requirements for the protection of vehicle occupants in crashes.
Proposed Use of Information: Motor vehicles and motor vehicle equipment must be properly labeled to provide for safe operation by users and to ensure prompt identification of such equipment in the event of safety related defects.
Frequency: On occasion.
Burden Estimate: 76,746 hours.
Respondents: Manufacturers.
Form(s): None.
Average Burden Hours Per Respondent: 3 minutes.
DOT No: 3315.
OMB No: New.
Administration: Federal Aviation Administration.
Title: Pilots Convicted of Alcohol- or Drug-Related Motor Vehicle Offenses or Subject to State Motor Vehicle Administrative Procedures.
Need for Information: The information is needed to mitigate potential hazards presented by airmen using alcohol or drugs in flight.
Proposed Use of Information: The information is used to identify persons possibly unsuitable for pilot certification.
Frequency: On occasion.
Burden Estimate: 2,899 hours.
Respondents: Pilots.
Form(s): None.
Average Burden Hours Per Respondent: 10 minutes.
DOT No: 3316.
OMB No: New.
Administration: National Highway Traffic Safety Administration.
Title: A Survey of Passenger Car, Light Truck, and Van Tire Buyers.
Need for Information: To educate consumers when purchasing vehicle tires.
Proposed Use of Information: This data will allow NHTSA to determine if the mandated tire labelling standards assist consumers in making informed choices when purchasing tires. The data will also aid NHTSA in ascertaining how to convey information the public deems to be useful.
Frequency: One time.
Total Estimated Burden: 125 hours.
Respondents: Individuals.
Form(s): None.
Average Burden Hours Per Response: 15 minutes.
DOT No: 3317.
OMB No: 2120–0005.
Administration: Federal Aviation Administration.
Title: General Operating and Flight Rules—FAR 91.
Need for Information: The information is needed to determine compliance with the regulations governing the general operation and flight of aircraft.
Proposed Use of Information: The information collected is used by the FAA for certification, compliance and enforcement, and when accidents, incidents, reports of noncompliance, safety programs, or other circumstances require reference to records.
Frequency: On occasion.
Total Estimated Burden: 231,064 hours.
Respondents: Individuals, State or local governments, businesses.
Form(s): None.
Average Burden Hours Per Respondent: 30 minutes for reporting and 16 minutes for recordkeeping.
DOT No: 3318.
OMB No: 2127–0021.
Administration: National Highway Traffic Safety Administration.
Title: National Accident Sampling System (NASS) Crashworthiness Data System—Interview Forms: Accident and Injury Factors.
Need for Information: Data will be used to support NHTSA's motor vehicle safety standard evaluations.
Proposed Use of Information: NASS will collect crashworthiness data on vehicle accidents to support NHTSA's motor vehicle safety standard evaluations. Information collected will include vehicle damage, occupant injury and vehicle dynamics.
Frequency: On occasion.
Total Estimated Burden: 7,190 hours.
Respondents: Individuals/State or local governments.
Form(s): HS–433A and 433B.
Average Burden Hours Per Respondent: 20 minutes.
DOT No: 3319.
OMB No: 2127–0521.
Administration: National Highway Traffic Safety Administration.
Title: 49 CFR 571.116, Motor Vehicle Brake Fluids.
Need for Information: To furnish information to buyers and packagers on the types of fluids used to match the vehicle brake system.
Proposed Use of Information: This standard requires manufacturers and packagers of brake fluids to furnish certain information along with the brake fluids.
Frequency: On occasion.
Total Estimated Burden: 140,000 hours.
Respondents: Manufacturers, packagers.
Form(s): None.
Average Burden Hours Per Respondent: 1 minute.
DOT No: 3320.
OMB No: New.
Administration: National Highway Traffic Safety Administration.
Title: 49 CFR part 538, Minimum Driving Range for Dual Energy and Natural Gas Dual Energy Passenger Automobiles.
Need for Information: To establish minimum driving range standard for the operation of dual energy and natural gas dual energy passenger automobiles.
Proposed Use of Information: The Agency is setting driving ranges for dual energy and natural gas dual energy passenger cars when operating on alternative fuel. The rule will include a format for manufacturers to petition for a lower range than established by the general rule.
Frequency: On occasion.
Burden Estimate: 800 hours.
Respondents: Manufacturers.
Form(s): None.
Average Burden Hours Per Respondent: 1 hour and 20 minutes.
DOT No: 3321.
OMB No: 2120–0536.
Administration: Federal Aviation Administration.
Title: Security Programs for Foreign Air Carriers.
Need for Information: This amendment, which requires foreign air carriers to submit a written security program to the FAA for the Administrator's approval, will ensure that adequate security measures are being implemented by foreign air carriers that land or take off in the United States. The purpose of the amendment is to reduce fatalities and property damage attributable to acts of criminal violence and air piracy.
Proposed Use of Information: To ensure that adequate security measures are being implemented by foreign air carriers that land or take off in the United States.
Frequency: One time.
Burden Estimate: 24,480 hours.
Respondents: Foreign air carriers.
Form(s): None.
Average Burden Hours Per Respondent: 180 hours.
DOT No: 3322.
OMB No: 2120–0507.
Administration: Federal Aviation Administration.
Title: SFAR–36 Development of Major Repair Data.
Need for Information: The information is needed by the FAA to approve an application allowing the certificate holder to use major repair data it develops for approving an aircraft, airframe, aircraft engine, propeller, or

appliance for return to service after a major repair.
Frequency: On occasion.
Burden Estimate: 630 hours.
Respondents: Repair stations, air carriers, air taxis, and commercial operators.
Form(s): None.
Average Burden Hours Per Respondent: 43 hours.

DOT No: 3323.
OMB No: New.
Administration: Federal Aviation Administration.
Title: Exit Row Seating.
Need for Information: The information on procedures on exit row seating, and the revision of passenger information cards in exit rows, and the dissemination of the procedures at airports served by the affected certificate holders is necessary to ensure that only passengers who appear capable of performing emergency evacuation functions in exit rows are seated therein.
Proposed Use of Information: The information is used to inform the FAA of the procedures proposed by part 121 and 135 carriers on exit row seating, and to inform the public of the responsibilities of exit row seating.
Frequency: On occasion.
Burden Estimate: 2592 hours.
Respondents: Air carriers.
Form(s): None.
Average Burden Hours Per Respondent: 9 hours.

DOT No: 3324.
OMB No: 2132–0542.
Administration: Urban Mass Transportation Administration.
Title: Section 19 (EEO) as it Applies to UMTA Grant Programs.
Need for Information: The data is needed to ensure that minorities and women have equitable access to employment opportunities and that recipients of Federal funds do not discriminate against any employee or applicant.
Proposed Use of Information: The data will be used by the UMTA Office of Civil Rights in monitoring the transit properties' compliance with applicable EEO laws, rules, regulations, and statutes.
Frequency: On occasion, annually, triennially.
Burden Estimate: 6,000 hours.
Respondents: State and local governments.
Form(s): None.
Average Burden Hours Per Respondent: 39 hours.

DOT No: 3325.
OMB No: 2132–0540.
Administration: Urban Mass Transportation Administration.
Title: Title VI as it Applies to UMTA Grant Programs.
Need for Information: It is needed to enable UMTA to determine grantees' compliance with title VI.
Proposed Use of Information: The data will be used to ensure that beneficiaries are not discriminated against in the distribution of transportation services and related benefits.
Frequency: On occasion, annually, triennially.
Burden Estimate: 2,998 hours.
Respondents: State or local governments.
Form(s): None.
Average Burden Hours Per Respondent: 7.1.

DOT No: 3326.
OMB No: 2115–0092.
Administration: U.S. Coast Guard.
Title: Barge Fleeting Facility Records.
Need for Information: This information collection requirement is needed to ensure regulatory compliance with 33 CFR 165.80 Persons in charge of a barge fleeting facility must keep records or barge mooring activities and hazardous cargo movement.
Proposed Use of Information: Coast Guard uses this information as documentary evidence to ensure that proper mooring and surveillance procedures are being followed.
Frequency: On occasion.
Burden Estimate: 12,848 hours.
Respondents: Barge facility owners in New Orleans, LA. vicinity.
Form(s): None.
Average Burden Hours Per Respondent: 321 hours per recordkeeper.

DOT No: 3327.
OMB No: 2115–0548.
Administration: U.S. Coast Guard.
Title: Vital System Automation.
Need for Information: This information collection requirement is needed to ensure (1) safety of life at sea, and (2) that U.S. flag vessels conform to the regulations.
Proposed Use of Information: Coast Guard uses this information to determine compliance with the safety regulations and to evaluate the necessary manning consistent with the safe operation of automated vessels.
Frequency: On occasion.
Burden Estimate: 630 hours.
Respondents: Vessel designers, shipyards, manufacturers, and owners.
Form(s): None.
Average Burden Hours Per Respondent: 58 hours for reporting and 1 hour for recordkeeping.

DOT No: 3328.
OMB No: 2115–0105.
Administration: U.S. Coast Guard.
Title: Evidence of Competency; Person-in-charge.
Need for Information: This information collection requirement is needed to reduce the risk of accidents due to personnel error.
Proposed Use of Information: Coast Guard uses this information to ensure that persons-in-charge of bulk liquid dangerous cargo transfer operations are properly qualified.
Frequency: On occasion.
Burden Estimate: 2.5 hours.
Respondents: Operators of waterfront facilities which transfer dangerous cargo to or from vessels.
Form(s): None.
Average Burden Hours Per Respondent: 30 minutes.

DOT No: 3329.
OMB No: 2115–0539.
Administration: U.S. Coast Guard.
Title: Special Requirements for Cargo Lightering Operations.
Need for Information: This information collection requirement is needed to comply with the requirements of the Port and Tanker Safety Act of 1978 regarding lightering of oil and hazardous materials in navigable waters of the U.S. or the high seas.
Proposed Use of Information: Coast Guard uses this information to monitor lightering activities and conduct inspection, enforcement and casualty or pollution response activities.
Frequency: On occasion.
Burden Estimate: 630 hours.
Respondents: Owners, agents and masters of tank vessels.
Form(s): None.
Average Burden Hours Per Respondent: 9 minutes.

DOT No: 3330.
OMB No: 2115–0089.
Administration: U.S. Coast Guard.
Title: Recordkeeping and Reporting Requirements for Ships Carrying Bulk Hazardous Liquids.
Need for Information: This information collection requirement is needed to aid in controlling safety and pollution hazards arising from bulk liquid cargo shipments.
Proposed Use of Information: Coast Guard uses this information to evaluate the design, equipment and operation of the ships and to ensure compliance with the regulations. The crewmembers use this information for safe operation of the vessels.
Frequency: On occasion.
Burden Estimate: 10,857 hours.

Respondents: Chemical tanker operations and ship's officer.
Form(s): CG-4602B.
Average Burden Hours Per Respondent: Reporting burden is 9 minutes and recordkeeping burden is 30 minutes.
DOT No: 3331.
OMB No: 2115-0100.
Administration: U.S. Coast Guard.
Title: Shipment of Hazardous Bulk Solids.
Need for Information: This information collection requirement is needed to ensure safe transportation and stowage of hazardous solid bulk cargoes.
Proposed Use of Information: This information collection requirement is used in controlling the conditions under which shipments of hazardous materials can be made and to allow greater flexibility to the shipping industry. It is also used in emergency situations to identify the material being transported.
Frequency: On occasion.
Burden Estimate: 676 hours.
Respondents: Solid bulk cargo vessel/barge owners or operators.
Form(s): None.
Average Burden Hours Per Respondent: 10 minutes.
DOT No: 3332.
OMB No: 2115-0541.
Administration: U.S. Coast Guard.
Title: Barges Carrying Bulk Hazardous Materials.
Need for Information: This information collection requirement is needed to determine that a barge carrying bulk hazardous materials meets prescribed safety standards and to ensure that crewmembers have information necessary for safe operation the barge.
Proposed Use of Information: Coast Guard uses this information to evaluate the design, equipment and operation of barges and to ensure compliance with the regulations. The recordkeeping information is used by the crewmembers for safe operation procedures.
Frequency: On occasion.
Burden Estimate: 22,880 hours.
Respondents: Barge operators.
Form(s): None.
Average Burden Hours Per Respondent: Reporting burden is 1 hour and 45 minutes; recordkeeping burden is 13 hours.
DOT No: 3333.
OMB No: 2115-0108.
Administration: U.S. Coast Guard.
Title: Plan Approval and Records for Access Openings (Watertight Doors).
Need for Information: This information collection requirement is needed to ensure that passenger vessels meet design standards for watertight doors in watertight bulkheads.
Proposed Use of Information: Coast Guard uses this information to determine if the access openings meet the standards mandated by the International Convention for the Safety of Life at Sea as promulgated in the regulation.
Frequency: On occasion.
Burden Estimate: 32 hours.
Respondents: Shipbuilders and Door Manufacturers or Operators.
Form(s): None.
Average Burden Hours Per Respondent: 4 hours.
DOT No: 3334.
OMB No: 2120-0505.
Administration: Federal Aviation Administration.
Title: Indirect Air Carrier Security, FAR 109.
Need for Information: The FAA needs the information to ensure that the property received by an air carrier from an indirect air carrier does not contain bombs or other explosive or incendiary devices.
Proposed Use of Information: The FAA uses the security programs to identify the procedures to be used by indirect air carriers in carrying out their responsibilities with regard to the protection of persons and property against acts of criminal violence and aircraft piracy.
Frequency: On occasion.
Burden Estimate: 473 hours.
Respondents: Indirect air carriers/businesses.
Form(s): None.
Average Burden Hours Per Respondent: 3 hours for reporting and 10 minutes for recordkeeping.
DOT No: 3335.
OMB No: 2127-0511.
Administration: National Highway Traffic Safety Administration.
Title: 49 CFR 571.213, Child Restraint System.
Need for Information: To inform the consumer of the different models of child safety seats and how they are to be installed in passenger cars/aircrafts.
Proposed Use of Information: Manufacturers are required to provide each child with a permanently attached label and an instruction brochure giving the model, manufacturer's name, date of manufacture and certifying that the seat conforms with the applicable standard.
Frequency: On occasion.
Burden Estimate: 6,300 hours.
Respondents: Manufacturers.
Form(s): None.
Average Burden Hours Per Respondent: 3.5 seconds.

Issued in Washington, DC on March 16, 1990.

Robert J. Woods,

Director of Information Resource Management.

[FR Doc. 90-7019 Filed 3-27-90; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

Automotive Fuel Economy Program Report to Congress

The Attached document, *Automotive Fuel Economy Program, Fourteenth Annual Report to the Congress*, has been prepared pursuant to section 502(a)(2) of the Motor Vehicle Information and Cost Savings Act (Pub. L. 92-513), as amended by the Energy Policy and Conservation Act (Pub. L. 94-163) which requires in pertinent part that "each year beginning 1977, the Secretary shall transmit to each House of Congress, and publish in the **Federal Register**, a review of average fuel economy standards under this part."

Barry Felrice,

Associate Administrator for Rulemaking.

Automotive Fuel Economy Program

Fourteenth Annual Report to the Congress

January 1990

Table of Contents

Section I: Introduction
Section II: Fuel Economy Improvement by Manufacturers
Section III: 1989 Activities
Section IV: Use of Advanced Technology

Section I: Introduction

This Fourteenth Annual Report to the Congress summarizes the activities of the National Highway Traffic Safety Administration (NHTSA) during 1989 regarding implementation of applicable sections of title V: "Improving Automotive Fuel Efficiency," of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*), as amended (the Act). Section 502(a)(2) of the Act requires submission of a report each year. Included in this report are sections summarizing rulemaking activities during 1989 and a discussion of the use of advanced automotive technology by the industry as required by section 305, Title III of the Department of Energy Act of 1978 (Pub. L. 95-238).

Title V of the Act requires the Secretary of Transportation to administer a program for regulating the fuel economy of new passenger cars and light trucks in the United States (U.S.) market. The authority to administer the program has been delegated by the Secretary the Administrator of NHTSA, 49 CFR 1.50(f).

NHTSA's responsibilities in the fuel economy area include: (1) Establishing and amending average fuel economy standards for manufacturers of passenger cars and light trucks, as necessary; (2) promulgating regulations concerning procedures, definitions, and reports necessary to support the fuel economy standards; (3) considering petitions for exemption from established fuel economy standards by low manufacturers (those producing fewer than 10,000 passenger cars annually worldwide) and establishing alternative standards for them; (4) preparing reports to Congress annually on the fuel economy program; (5) enforcing fuel economy standards and regulations; and (6) responding to petitions concerning domestic production by foreign manufacturers and other matters.

To date, passenger car fuel economy standards have been established by Congress for Model Years (MY's) 1978 through 1980 and 1985 and thereafter, and by NHTSA for MY's 1981 through 1984. In addition, from 1985 to 1988, NHTSA amended passenger car standards for MY's 1986 through 1989. Standards for light trucks have been established by NHTSA for MY's 1979 through 1991. All current standards are listed in Table I–1.

On June 12, 1989, the President proposed revisions to the Clean Air Act. The President's proposal is designed to curb three major threats to the nation's environment and the health of millions of Americans: Acid rain, urban air pollution, and toxic air emissions. The urban air quality section of the proposed revisions highlights "new initiatives to promote alternative fuels to reduce pollution from cars, buses, trucks and motor fuels, and to harness the power of the marketplace to ensure cost-effective reductions."

Included in the Alternative Motor Fuels Act of 1988, (Pub. Law 100–494; October 14, 1988), which amended the Motor Vehicle Information and Cost Savings Act, is special CAFE treatment for vehicles capable of using non-petroleum fuels in MY 1993 and thereafter. The intent of this provision is to encourage manufacturers to produce vehicles that can operate on alternative fuels by providing CAFE credit incentives for those vehicles.

T4Table I–1.—Fuel Economy Standards for Passenger Cars and Light Trucks Model Years 1978 Through 1991 (in MPG)

Model year	Passenger cars	Two-wheel drive	Light trucks [1] four-wheel drive	Composite [2, 3]
1978	[4] 18.0			
1979	[4] 19.0	17.2	15.8	17.2
1980	[4] 20.0	16.0	14.0	([5])
1981	22.0	[6] 16.7	15.0	([5])
1982	24.0	18.0	16.0	17.5
1983	26.0	19.5	17.5	19.9
1984	27.0	20.3	18.5	20.0
1985	[4] 27.5	[7] 19.7	[7] 18.9	[7] 19.5
1986	[8] 26.0	20.5	19.5	20.0
1987	[8] 26.0	21.0	19.5	20.5
1988	[8] 26.0	21.0	19.5	20.5
1989	[8] 26.5	21.5	19.0	20.5
1990	[4] 27.5	20.5	19.0	20.0
1991	[4] 27.5	20.7	19.1	20.2

[1] Standards for MY 1979 light trucks were established for vehicles with a gross vehicle weight rating (GVWR) of 6,000 lbs. or less. Standards for MY's 1980–1991 are for light trucks with a GVWR of 8,500 lbs. or less.

[2] For MY 1979, light truck manufacturers could comply separately with standards for four-wheel drive, general utility vehicles and all other light trucks, or combine their trucks into a single fleet and comply with the 17.2 mpg standard.

[3] For My's 1982–1991, manufacturers could comply with the two-wheel and four-wheel drive standards or could combine their two-wheel and four-wheel drive light trucks and comply with the composite standard.

[4] Established by Congress in title V of the Act.

[5] Manufacturers whose light truck fleet was powered exclusively by basic engines which were not also used in passenger automobiles were to meet standards of 14 mpg and 14.5 mpg in MY's 1980 and 1981, respectively.

[6] Revised in June 1979 from 18.0 mpg.

[7] Revised in October 1984 from 21.6 mpg for two-wheel drive, 19.0 mpg for four-wheel drive, and 21.0 mpg for composite.

[8] Title V provided the Department of Transportation with the authority to amend the standard 27.5 mpg for 1985 and subsequent model years. NHTSA lowered the standard to 26.0 for MY 1986 in October 1985, to 26.0 mpg for MY's 1987 and 1988 in October 1986, and to 26.5 mpg for MY 1989 in September 1988.

Section II: Fuel Economy Improvement by Manufacturers

The fuel economy achievements for domestic and foreign manufacturers in MY 1988 have been updated to include final Environmental Protection Agency (EPA) calculations, where available, since the publication of the *Thirteenth Annual Report to the Congress* and, together with current data for MY 1989, are listed in Tables II–1 and II–2.

Overall fleet fuel economy decreased for passenger cars from 28.7 mpg in MY 1988 to 28.3 mpg in MY 1989, due primarily to increase market demand for heavier and higher performance passenger cars. For MY 1989, CAFE values increased over MY 1988 levels for only 9 of 27 passenger car manufacturers. (See Table II–1.) These nine companies accounted for about 25 percent of the total MY 1989 production. However, manufacturers did continue to introduce new technologies and more fuel-efficient models. For MY 1989, one domestic manufacturer raised its passenger car CAFE 0.1 mpg from its MY 1988 level, while two fell 0.4 and 0.5 mpg below their MY 1988 CAFE levels. Overall, the three domestic manufacturers combined CAFE decreased by 0.2 mpg.

The average CAFE for imported cars decreased 0.8 mpg in MY 1989 from the MY 1988 CAFE level. Thirteen of the 24 import fleets decreased in CAFE between MY's 1988 and 1989. And six of the ten Asian importers experienced declining values. Graph II–1 illustrates the increase in total fleet CAFE from MY 1978 to MY 1989 for passenger cars.

TABLE II-1—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER[1] MODEL YEARS 1988 AND 1989

Manufacturer	Model Year Cafe (MPG)	
	1988	1989
Domestic		
Chrysler	28.4	27.9
Ford	26.4	26.5
GM	27.6	27.2
Sales Weighted Average	27.3	27.1
Imported		
Alfa Romeo	25.7	26.9
BMW	21.7	22.1
Chrysler Imports	30.3	30.3
Daihatsu	46.5	44.2
Ford Imports	35.6	31.5
GM Imports	37.6	37.1
Honda	32.0	31.5
Hyundai	35.0	33.1

TABLE II-1—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER[1] MODEL YEARS 1988 AND 1989 —Continued

Manufacturer	Model Year Cafe (MPG)	
	1988	1989
Isuzu	34.9	37.3
Jaguar	22.0	20.4
Mazda	28.7	29.8
Mercedes-Benz	21.3	21.4
Mitsubishi	31.2	31.0
Nissan	30.4	30.4
Peugeot	23.4	25.2
Porsche	24.7	23.0
Saab	26.5	26.6
Sterling	23.6	23.6
Subaru	31.9	32.1
Suzuki	50.3	36.9
Toyota	32.6	31.9
Volvo	26.0	25.0

TABLE II-1—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER[1] MODEL YEARS 1988 AND 1989 —Continued

Manufacturer	Model Year Cafe (MPG)	
	1988	1989
VW[2]	30.5	30.2
Yugo	34.2	33.6
Sales Weighted Average	31.4	30.6
Total Fleet Average	28.7	28.3
Fuel Economy Standards	26.0	26.5

[1] Manufacturers of fewer than 10,000 passenger cars annually that have requested alternative fuel economy standards are not listed.

[2] Includes VW domestic production for MY 1988 and VW and Audi imports for both years.

Note: Some MY 1988 CAFE values differ from those used in the *Thirteenth Annual Report to the Congress* due to inclusion of final EPA calculations.

TABLE II-2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER

[Model Years 1988 AND 1989]

Manufacturer	Model year cafe (MPG)					
	Two-wheel drive		Four-wheel drive		Composite [1]	
	1988	1989	1988	1989	1988	1989
Domestic:						
Chrysler					21.6	20.8
Ford					20.4	20.0
GM					20.2	20.4
Sales weighted average					20.6	20.4
Imported:						
Chrysler imports					22.8	21.6
GM imports				32.1		
Isuzu					21.5	21.7
Mazda					26.4	25.1
Mitsubishi					25.8	24.3
Nissan					22.6	23.5
Range Rover			16.7	15.4		
Subaru			30.9	28.2		
Suzuki			33.3	31.7		
Toyota					24.4	23.2
VW					19.9	20.8
Sales weighted average			31.5	29.2	23.7	23.1
Total Fleet Average			31.5	29.2	21.1	20.9
Fuel Economy Standard	21.0	21.5	19.5	19.0	20.5	20.5

[1] In MY's 1988 and 1989, manufacturers could comply with the two-wheel and four-wheel drive standards or could combine their two-wheel and four-wheel drive trucks and comply with the composite standards.

Note: Some MY 1988 CAFE values differ from those used in the Thirteenth Annual Report to the Congress due to the use of final EPA calculations.

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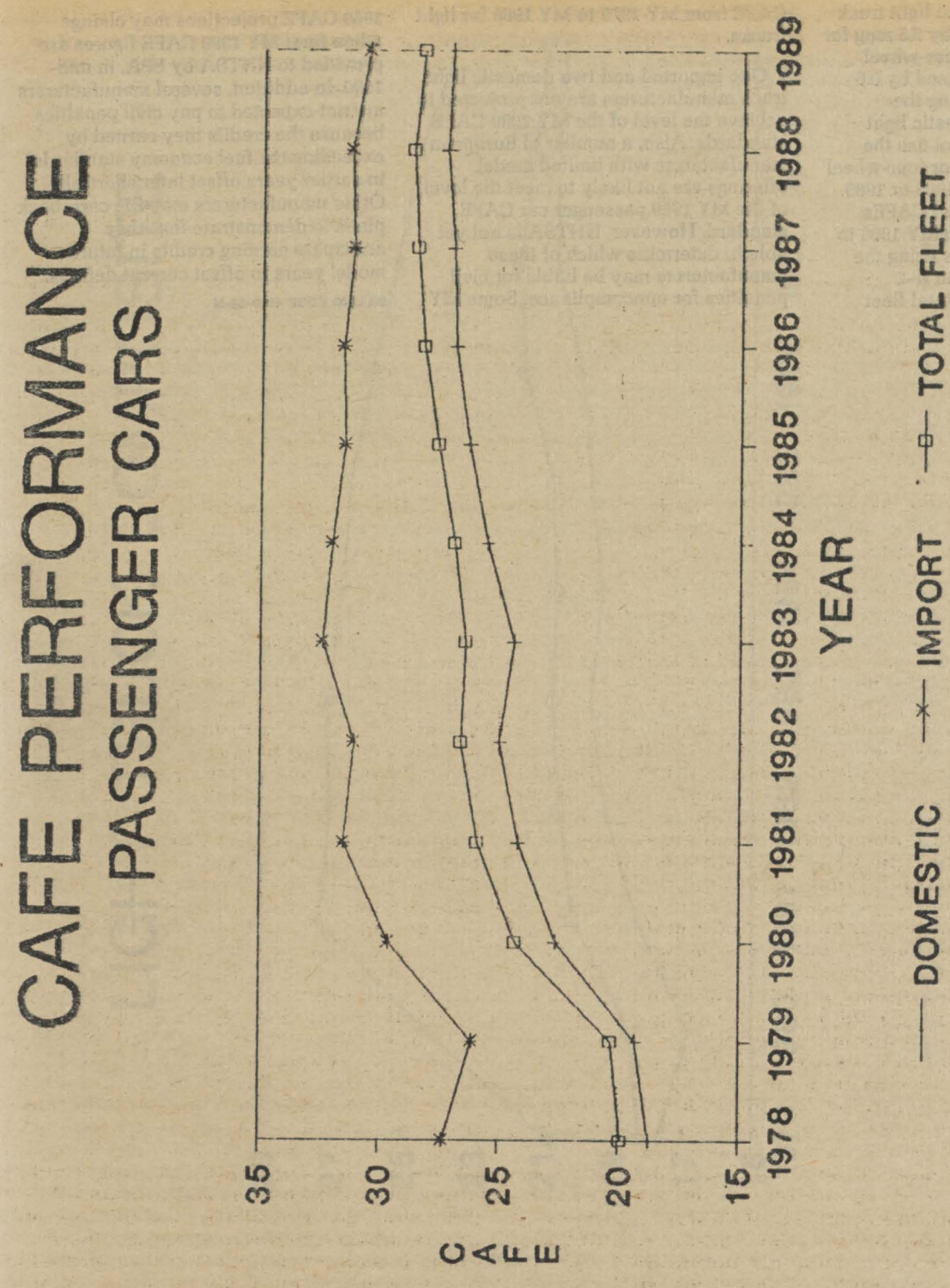

GRAPH II-1

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CAFE levels for imported light truck manufacturers decreased by 2.3 mpg for manufacturers using the four-wheel drive standard and decreased by 0.6 mpg for manufacturers using the composite standard. Domestic light truck manufacturers did not use the separate two-wheel drive or four-wheel drive standards for MY's 1988 or 1989. The domestic and total fleet CAFEs decreased by 0.2 mpg from MY 1988 to MY 1989 for manufacturers using the combined standards. Graph II–2 illustrates the progress in total fleet CAFE from MY 1979 to MY 1989 for light trucks.

One imported and two domestic light truck manufacturers are not projected to achieve the level of the MY 1989 CAFE standards. Also, a number of European manufacturers with limited model offerings are not likely to meet the level of the MY 1989 passenger car CAFE standard. However, NHTSA is not yet able to determine which of these manufacturers may be liable for civil penalties for noncompliance. Some MY 1989 CAFE projections may change when final MY 1989 CAFE figures are provided to NHTSA by EPA, in mid-1990. In addition, several manufacturers are not expected to pay civil penalties because the credits they earned by exceeding the fuel economy standards in earlier years offset later shortfalls. Other manufacturers may file carryback plans to demonstrate that they anticipate earning credits in future model years to offset current deficits.

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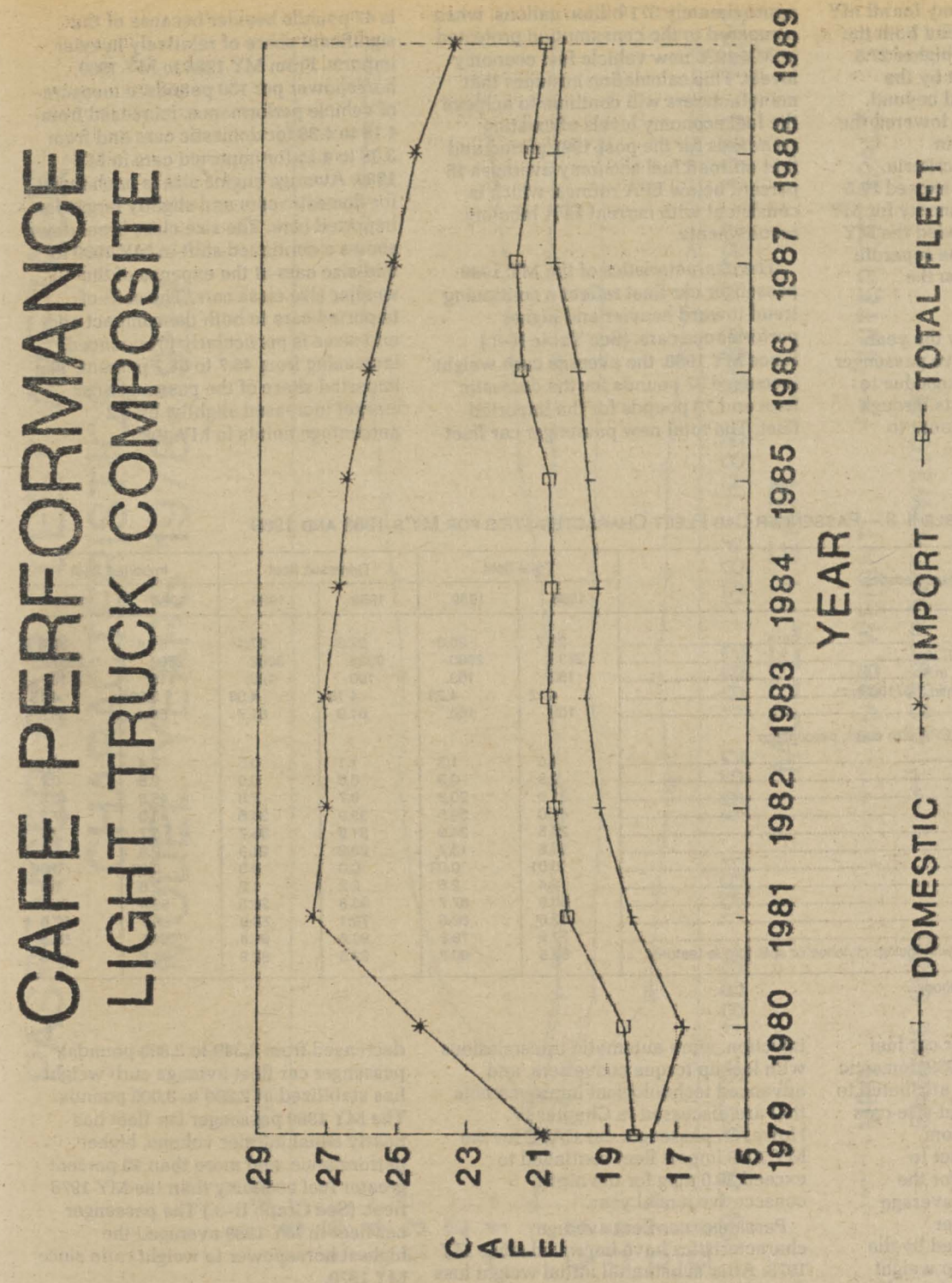

GRAPH II-2

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Fleet average fuel economy for all MY 1989 passenger cars exceeded both the MY 1989 standard and the higher 27.5 mpg standard originally set by the Congress for MY's 1985 and beyond. Thus, even though NHTSA lowered the original MY 1989 standard in accordance with statutory criteria, overall CAFE continued to exceed 27.5 mpg. Fleet average fuel economy for MY 1989 light trucks also exceeded the MY 1989 standards for either the separate four-wheel drive fleets or on the composite basis.

NHTSA estimates that by the year 2000 the projected cumulative passenger car and light truck fuel savings due to manufacturers' achievements through Calendar Year 1989 will amount to approximately 571 billion gallons, when compared to the consumption projected at MY 1976 new vehicle fuel economy levels. This calculation assumes that manufacturers will continue to achieve the fuel economy levels of existing standards for the post-1991 period and that on-road fuel economy averages 15 percent below EPA ratings, which is consistent with current EPA labeling requirements.

The characteristics of the MY 1989 passenger car fleet reflect a continuing trend toward heavier and higher performance cars. (See Table II–3.) Since MY 1988, the average curb weight increased 37 pounds for the domestic fleet and 79 pounds for the imported fleet. The total new passenger car fleet is 47 pounds heavier because of the significant share of relatively heavier imports. From MY 1988 to MY 1989, horsepower per 100 pounds, a measure of vehicle performance, increased from 4.18 to 4.38 for domestic cars and from 3.99 to 4.15 for imported cars in MY 1989. Average engine size is unchanged for domestic cars and slightly larger for imported cars. The size class breakdown shows a continued shift in MY 1989 to mid-size cars at the expense of the smaller size class cars. The shift of imported cars to both the compact and mid-sizes is particularly pronounced, increasing from 46.7 to 54.7 percent. The imported share of the passenger car market increased slightly, by 0.2 percentage points in MY 1989.

TABLE II–3.—PASSENGER CAR FLEET CHARACTERISTICS FOR MY'S 1988 AND 1989

Characteristics	Total fleet		Domestic fleet		Imported fleet	
	1988	1989	1988	1989	1988	1989
Fleet average fuel economy, mpg	28.7	28.3	27.3	27.1	31.4	30.6
Fleet average curb weight, lbs.	2833.	2880.	3025.	3062.	2508.	2587.
Fleet average engine displacement, in.³	162.	163.	190.	190.	115.	119.
Fleet average horsepower/weight ratio, hp/100 lbs.	4.12	4.29	4.18	4.38	3.99	4.15
Percent of fleet	100.	100.	61.9	61.7	38.1	38.3
Segmentation by EPA size class, percentage						
Two-seater	1.5	1.3	1.1	0.5	2.4	3.4
Minicompact	0.9	0.3	0.0	0.0	2.5	0.7
Subcompact*	21.0	20.3	6.7	7.8	45.5	40.6
Compact*	41.0	39.5	39.9	34.6	43.0	47.2
Mid-size*	21.5	24.9	31.9	35.7	3.7	7.5
Large*	13.8	13.7	20.2	21.3	2.8	1.4
Diesel engines percent	0.01	0.03	0.0	0.0	0.02	0.08
Turbocharged engines percent	2.4	2.5	2.2	1.6	2.8	3.9
Fuel injection percent	80.9	87.7	93.6	96.5	59.0	73.4
Front-wheel drive percent	82.6	82.6	79.1	80.0	88.7	87.0
Automatic transmissions	77.2	78.8	90.6	91.4	54.5	58.5
Percent of automatic transmissions with lockup clutches or split torque features	88.5	90.3	93.5	92.9	74.9	84.0

*Includes associated station wagons.

The 0.2–0.8 mpg passenger car fuel economy declines for MY 1989 domestic and imported fleets may be attributed to the shift from compart to mid-size cars for the domestic fleet and from minicompact and subcompact to compact and mid-size cars for the imported fleet, increases in average weight, and the shift to higher performance cars as indicated by the higher ratio of horsepower to weight ratios. These changes more than offset gains due to increased use of fuel injection, more automatic transmissions with lockup torque converters, and advanced technological improvements that are discussed in Chapter IV. However, passenger car CAFE for the MY 1989 import fleet continued to exceed 30.0 mpg for the ninth consecutive model year.

Passenger car fleet average characteristics have improved since MY 1978. After substantial initial weight loss (from MY 1978 to MY 1982, average passenger car fleet curb weight decreased from 3,349 to 2,806 pounds), passenger car fleet average curb weight has stabilized at 2,800 to 3,000 pounds. The MY 1989 passenger car fleet has nearly equal interior volume, higher performance, and more than 40 percent greater fuel economy than the MY 1978 fleet. (See Graph II–3.) The passenger car fleet in MY 1989 averaged the highest horsepower to weight ratio since MY 1970.

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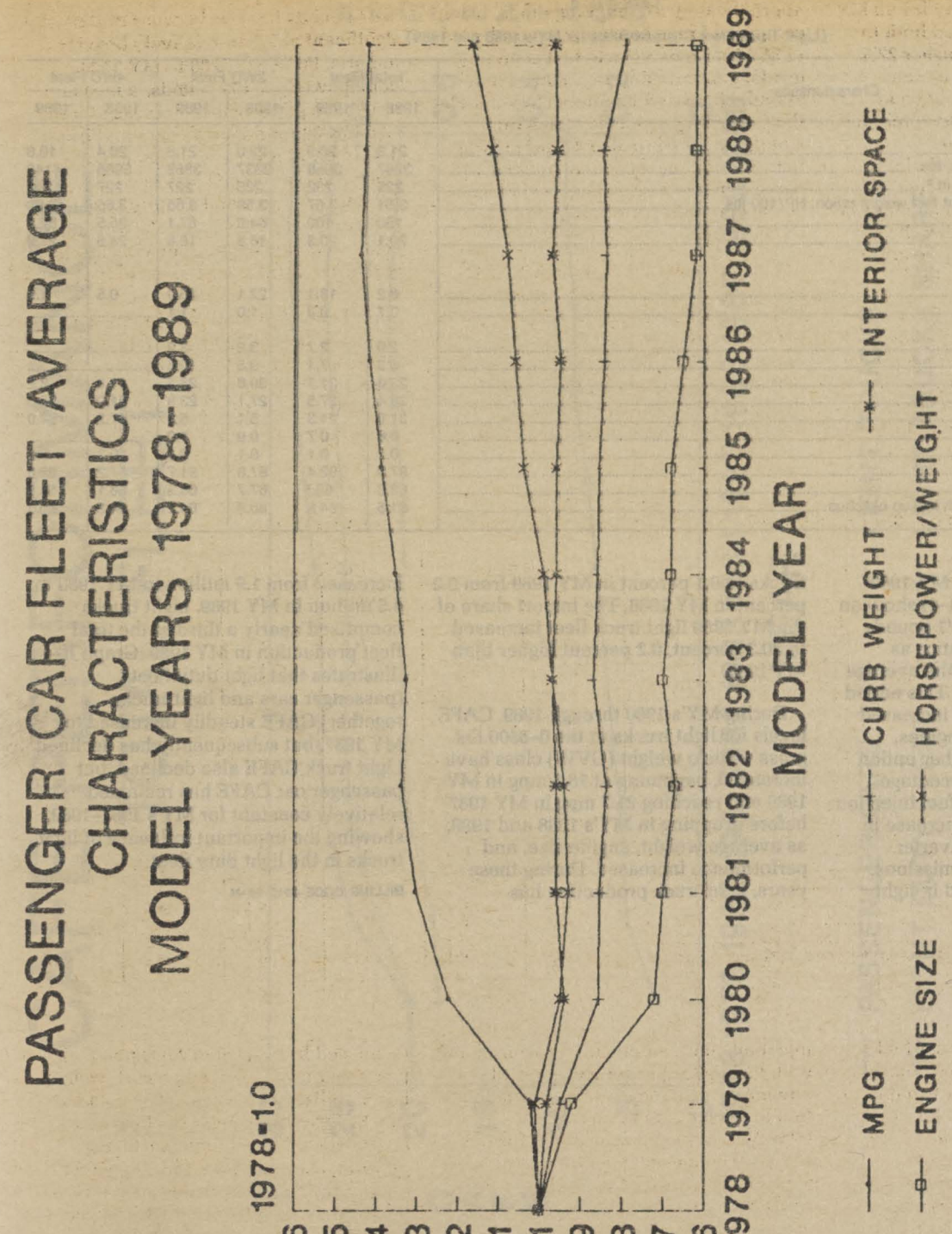

GRAPH II-3

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TABLE II–4

[Light Truck Fleet Characteristics for MY's 1988 and 1989]

Characteristics	Total Fleet		2WD Fleet		4WD Fleet	
	1988	1989	1988	1989	1988	1989
Fleet average fuel economy, mpg	21.3	20.9	22.0	21.6	20.4	19.6
Fleet average equivalent test weight, lbs.	3887	3958	3837	3868	3986	4143
Fleet average engine displacement, in.^{3}	225	232	225	227	227	242
Fleet average horsepower/equivalent test weight ration, HP/100 lbs.	3.61	3.67	3.58	3.65	3.65	3.69
Percent of Fleet	100	100	64.2	67.1	35.5	32.9
Import Share, percent	20.1	20.3	18.8	16.6	28.6	27.9
Segmentation by Type, percent:						
Passenger Van						
Compact	6.2	18.1	22.1	26.0	0.5	1.9
Large	0.7	0.9	1.0	1.1	.....	.....
Cargo Van						
Compact	2.0	2.7	3.2	3.9	.....	.....
Large	6.3	7.1	9.8	10.6	.....	.....
Small Pickup	23.8	21.7	30.8	28.2	11.3	8.2
Large Pickup	28.4	27.5	27.1	23.9	31.0	35.0
Special Purpose	31.8	21.3	5.1	5.3	57.2	54.9
Cab Chassis	0.6	0.7	0.9	1.0	.....	.....
Percent diesel engines	0.2	0.1	0.1	0.1	0.3	0.2
Percent Fuel Injection	87.3	92.4	87.8	91.7	87.2	93.8
Percent automatic transmissions	63.6	65.1	67.7	68.5	56.1	58.3
Percent Automatic transmissions with lockup clutches	81.5	84.8	80.9	84.2	84.2	86.3

The characteristics of the MY 1989 light truck fleet (see Table II–4) show an average weight increase of 71 pounds and slightly higher performance as reflected by the increase in the average horsepower-to-weight ratio. This added weight may be attributed to increased market demand for larger engines, higher performance, and higher option content. There was a 5.1 percentage point increase in the use of fuel injection and a 3.3 percentage point increase in the use of lockup torque converter clutches on automatic transmissions. Diesel engine usage declined in light trucks to 0.1 percent in MY 1989 from 0.2 percent in MY 1988. The import share of the MY 1989 light truck fleet increased to 20.3 percent, 0.2 percent higher than MY 1988.

During MY's 1980 through 1989, CAFE levels for light trucks in the 0–8500 lbs. gross vehicle weight (GVW) class have increased, beginning at 18.5 mpg in MY 1980 and reaching 21.7 mpg in MY 1987 before dropping in MY's 1988 and 1989, as average weight, engine size, and performance increased. During these years, light truck production has increased from 1.9 million in MY 1980 to 4.5 million in MY 1989. Light trucks comprised nearly a third of the total fleet production in MY 1989. Graph II–4 illustrates that light duty fleet (passenger cars and light trucks together) CAFE steadily increased to MY 1987, but subsequently has declined. Light truck CAFE also declined, but passenger car CAFE has remained relatively constant for MY's 1987–1989, showing the important influence of light trucks in the light duty fleet.

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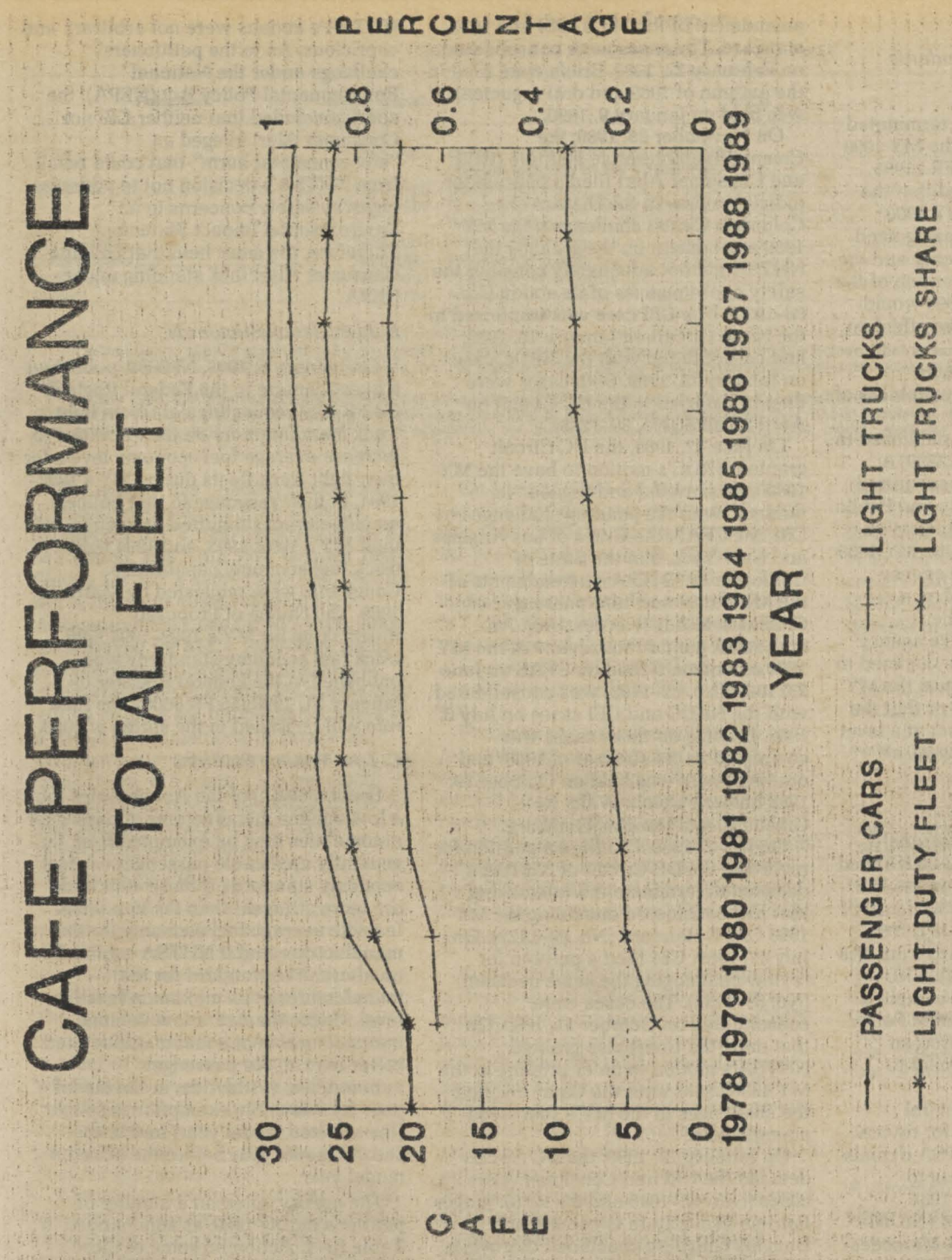

GRAPH II-4

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Section III: 1989 Activities

A. Passenger Car CAFE Standards

1. Rulemaking

On May 16, 1989, NHTSA terminated rulemaking with respect to the MY 1990 passenger car standard (54 FR 21985, May 22, 1989). NHTSA stated that the decision not to reduce the MY 1990 standard reflected the increasing need of the nation to conserve energy and the agency's conclusion that retention of the 27.5 mpg standard for MY 1990 would not have a significant adverse effect on U.S. employment or on the competitiveness of the U.S. auto industry due to part to the availability of credits from past years.

On May 30, 1989, NHTSA published in the Federal Register (54 FR 22899) a denial of the petition jointly submitted by the Center for Auto Safety and Public Citizen (CFAS/PC) for administrative reconsideration of lowering the MY 1989 standard to 26.5 mpg. As the agency explained, it based its denial on a determination that none of the petitioners's arguments led the agency to believe that it should have declined to exercise its discretion to reduce the MY 1989 passenger car standard or that the standard should have been set at a level other than 26.5 mpg (54 FR 22899, at 22903, May 30, 1989).

2. Litigation

On October 27, 1988, the National Resources Defense Council (NRDC) filed a petition for judicial review in the U.S. Court of Appeals for the Ninth Circuit of NHTSA's amendment of the MY 1989 passenger care CAFE standard from 27.5 mpg to 26.5 mpg (No. 88-7434). NRDC alleged that NHTSA had not complied with the National Environmental Policy Act because it had not prepared an Environmental Impact Statement to accompany this rulemaking.

On November 22, 1988, General Motors (GM) filed a petition for review in the DC Circuit of two NHTSA denials of GM petitions for rulemaking to retroactively amend the MY 1985 passenger car CAFE standard (No. 88-1816). On November 28, 1988, Mercedes-Benz of North America, Inc. (MBNA) filed a similar petition for review challening the same denials (No. 88-1831). MBNA had sought retroactive amendment of the MY's 1984 and 1985 standard. The cases were consolidated on February 22, 1989. Briefs were filed in the autumn of 1989 and oral argument was held on January 9, 1990.

On November 28, 1988, the Competitive Enterprise Institute (CEI) and Consumer Alert filed a petition for judicial review in the District of Columbia Circuit challenging the MY 1989 amendment on the grounds that NHTSA did not adequately consider the safety consequences of its action (No. 88-1830). The CEI case was tranferred to the Ninth Circuit on January 10, 1989, and consolidated with the NRDC case on January 24, 1989. Both cases were then transferred to the DC Circuit on April 27, 1989 (No. 89-1278).

On June 12, 1989, the DC Circuit granted NRDC's motion to have the MY 1989 cases briefed and argued "in tandem" with the pending challenges by CEI, the CFAS, the Cities of Los Angeles and New York, and the State of California to NHTSA's amendments of the MY's 1987 and 1988 passenger car CAFE standards (No. 86-1646). An additional petition for review of the MY 1989 amendment filed by CFAS on June 23, 1989, (No. 89-1403) was consolidated with the NRDC and CEI cases on July 6, 1989. Briefing on these cases was completed in the summer of 1989, and oral argument was held on October 19, 1989 before Patricia Wald, Ruth Ginsburg, and Douglas Ginsburg.

On July 7, 1989, CEI filed a petition for review in the DC Circuit of NHTSA's decision to terminate the rulemaking that had considered amending the MY 1990 CAFE standard (No. 89-1422). On July 17, 1989, GM filed a petition for review challenging the same decision (No. 89-1432). The cases were consolidated on October 31, 1989. On that date, the Court also granted NHTSA's motion to defer briefing in the MY 1990 cases until the Court decided the challenges to the MY's 1987-1989 amendments.

On January 19, 1990, the DC Circuit decided the CEI and Consumer Alert cases (Nos. 86-1646 and 89-1278). Judges Patricia Wald, Ruth Ginsburg, and Douglas Ginsburg concluded that while CEI and Consumer Alert had standing under the Energy Policy and Conservation Act to challenge NHTSA's decisions on the CAFE standards, NHTSA's actions were not arbitrary and capricious. As to the petitioners' challenge under the National Environmental Policy Act (NEPA), the court concluded that neither CEI nor Consumer Alert alleged an "environmental harm" that could result from NHTSA's decision not to address highway safety concerns in an Environmental Impact Statement. Therefore, the court held that CEI and Consumer Alert lack standing under NEPA.

B. Light Truck Standards

On January 6, 1989, NHTSA published a questionnaire in the Federal Register (54 FR 436) requesting data from light truck manufacturers on their abilities to increase average fuel economy levels for their light truck fleets during MY's 1992-1994. In their response to that notice, manufacturers submitted projections of their MY's 1992, 1993, and 1994 light truck fuel economy capabilities. Comments were requested by March 7, 1989. The Notice of Proposed Rulemaking for MY's 1992-1994 light truck fuel economy standards was published in the Federal Register on January 31, 1990 (55 FR 3608); the final rule will be issued in the spring of 1990.

C. Low Volume Petitions

Section 502(c) of the Act provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable passenger car fuel economy standards if these standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactured fewer than 10,000 passenger automobiles, worldwide, in the model year for which the exemption is sought (the affected model year) and in the second model year before the affected model year.

The agency acted on a number of petitions during 1989, as summarized in Table III-1. Action on some of these petitions had been delayed while the agency considered the issue of timely filing and what constituted sufficient justification for late filing.

TABLE III-1

[Active Petitions for Alternative Fuel Economy Standards]

Petitioner	Model year(s)	Action	FEDERAL REGISTER notice
Ferrari	1987	Denied—ineligible [1]	54 FR 40665.
Bitter	1983-1986	Denied—not timely	54 FR 40665.

TABLE III–1—Continued

[Active Petitions for Alternative Fuel Economy Standards]

Petitioner	Model year(s)	Action	FEDERAL REGISTER notice
Lotus	1983–1987	Denied—not timely for MY's 1983–1985	54 FR 40665.
		Denied—ineligible for MY's 1986–1987 [2]	54 FR 40665.
Maserati	1982–1983	Denied—not timely	54 FR 40665.
	1984–1985	Proposed 17.9 mpg for MY 1984	54 FR 40689.
		Proposed 16.8 mpg for MY 1985	54 FR 40689.
Lamborghini	1983–1984	Proposed 13.7 mpg	54 FR 40689.
LondonCoach	1985–1987	Proposed 21.0 mpg	54 FR 40689.
Rolls Royce	1990–1991	Final rule—12.7 mpg	54 FR 42303.
Ferrari	1986, 1988	Proposed 16.0 mpg for MY 1986	51 FR 44492.
		Proposed 16.0 mpg for MY 1988	51 FR 44492.

[1] On January 1, 1987, Fiat, which owns 50 percent of Ferrari, acquired 100 percent ownership of Alfa Romeo. That acquisition rendered Ferrari ineligible under title V for an exemption for that model year because the U.S. imports of Alfa Romeos when combined with world production of Ferraris exceeded 10,000 units for MY 1987.

[2] In July 1986, GM acquired at least 93 percent of Lotus' shares. NHTSA concluded that GM's 93 percent interest in Lotus is a controlling interest under section 503(c) of the Act, and that GM's imported production must be added to that of Lotus. GM imported over 10,000 passenger automobiles in both the second model year preceding the model years for which the application for exemption was made and in those model years for which the exemption was sought.

The agency has pending petitions for alternative standards from Dutcher Motors for MY's 1988–1989, Maserati for MY's 1986, 1987, and 1989 through 1992, Shelby for MY's 1987–1989, ASC Inc. for MY's 1989 and 1990, Prototype Automotive Services for MY 1989, and Rolls Royce for MY's 1992–1994. Some manufacturers previously eligible for alternative fuel economy standards may not be eligible for future model years as a result of acquisitions or marketing arrangements with larger manufacturers. In addition, the agency has received inquiries concerning eligibility to file for low volume exemption by certain importers/manufacturers.

D. Carryback Plans

Section 502(l) of the Act allows an automobile manufacturer to earn fuel economy credits during any model year in which the manufacturer's fleet exceeds the established CAFE standard. The amount of credits a manufacturer earns is determined by multiplying the number of tenths of a mile per gallon by which the average fuel economy of the manufacturer's fleet in the model year exceeds the standard by the total number of vehicles in the manufacturer's fleet for the model year.

Already earned fuel economy credits are carried forward by the agency (with opportunity to comment by the manufacturer) and allocated to any of the three succeeding model years in which the manufacturer's fleet falls below the CAFE standard. For example, credits earned in MY 1983 have been used to offset deficiencies in MY 1986. A manufacturer also may submit to the agency a carryback plan, which demonstrates that it will earn sufficient credits within the following three model years which can be allocated to meet the CAFE standard in the model year involved.

On June 22, 1989, CxAuto submitted a carryback plan to respond to MY's 1987 and 1988 CAFE levels that were below the prescribed standards. CxAuto's carryback plan was approved. CxAuto intends to apply credits earned by its MY 1990 fleet, which includes a new midsize model that makes up 91 percent of its projected MY 1990 fleet, to satisfy penalties accrued from MY's 1987 and 1988.

Ford's carryback plan submitted in July 1988 has not been resolved. This carryback plan requests that credits earned by its MY 198 import passenger car fleet, which includes cars from its recently acquired Aston Martin Lagonda subsidiary, be carried back to satisfy penalties for either of the predecessor fleets that accrued from MY's 1985–1987.

E. Enforcement

Section 508(b)(1) of the Act imposes a civil penalty of $5 for each tenth of a mpg by which the manufacturer's CAFE level falls short of the standard, multiplied by the total number of cars produced by the manufacturer in the model year. As discussed above, credits that were earned for exceeding the standard in any of the three model years immediately prior to or subsequent to the model years in question can be used to offset the penalty.

With completion by EPA of final CAFE computations for MY 1986 for most passenger car fleets, the agency initiated appropriate enforcement actions for manufacturers that did not meet the CAFE standard. CxAuto and Ford submitted carryback plans as discussed above. Table III–2 shows those manufacturers who paid CAFE fines in 1989.

On November 22, 1989, NHTSA issued an order affirming the decision of an administrative law judge holding that Mercedes-Benz of North America (MBNA) violated the passenger cars CAFE standard for MY 1985 and, therefore, was liable for a civil penalty of $5,509,400, after considering available credits. Earlier, on December 29, 1988, MBNA paid this CAFE fine, but reserved its right to challenge the assessment.

TABLE III–2.—CAFE FINES PAID IN 1989

For model year	Manufacturer	Amount fined	Date paid
1986	Peugeot	$793,000	2/89
1986	Jaguar	8,040,550	2/89
1986	Porsche	823,440	2/89
1987	Sun International	45	5/89
1987	BMW	1,088,859	6/89
1987	Jaguar	5,320,135	6/89
1987	Mercedes Benz	20,526,490	6/89
1987	Peugeot	767,600	6/89
1987	Porsche	948,480	6/89
1987	Range Rover	272,955	6/89
1987	Sterling	2,056,625	8/89
1988	BMW	16,411,380	8/89
1988	Range Rover	553,980	7/89
1988	Sterling	1,248,120	8/89
1988	Mercedes Benz	18,295,455	12/89
	Total collected	77,147,114	

F. Alternative Motor Fuels Act (Pub. L. 100–94, October 14, 1988)

The Alternative Motor Fuels Act of 1988 (the Act) requires the Department of Transportation and other Federal agencies to conduct a number of studies and demonstration programs which foster the commercial application and consumer acceptance of alternative or dual fuel vehicles using alcohol or natural gas. The Act also amends the Motor Vehicle Information and Cost Savings Act to provide CAFE credits for the production of dual fuel passenger cars.

1. Minimum Driving Range for Dual Energy Passenger Automobiles

Section 6(a) of the Act requires that the Secretary of Transportation establish, within 18 months of enactment (i.e., by April 16, 1990), a minimum driving range of no less than 200 miles for dual energy automobiles when operating on alcohol and an unspecified minimum range for dual energy automobiles when operating on natural gas. The Act does not require that the automakers meet the established minimum driving range for dual energy passenger automobiles but, to obtain the full benefits of the Act in terms of CAFE credits and other incentives, they must achieve the range for the cited alternative fuels. This minimum range requirement pertains only to passenger cars and does not apply to light trucks. Automobile manufacturers have the right to petition for a lower range for special model types than that established by the general rule.

On June 15, 1989, NHTSA published a request for comments on the driving range determination for dual fuel passenger automobiles as required by the Alternative Motor Fuels Act of 1988 in the Federal Register (54 FR 25539).

The agency asked several questions on the use of dual energy passenger automobiles and natural gas dual energy passenger automobiles relative to the following criteria: Consumer acceptability, economic practicability, technology, environmental impact, safety, driveability, and performance.

The Notice of Proposed Rulemaking for the minimum driving range for dual energy passenger automobiles is under development and a final rule will be issued by April 16, 1990.

2. Report to the Congress on Electric Vehicles

Section 7(a) of the Act requires the Secretary of Transportation, in consultation with the Secretary of Energy, to conduct a comprehensive study and investigation regarding whether regulations in effect on the date of enactment of this Act should be amended or additional regulations should be promulgated to stimulate the production and introduction of electric vehicles into commerce. The Secretary of Transportation, in consultation with the Administrator of the Environmental Protection Agency, shall include as part of the comprehensive study, information regarding the effect of electric vehicles on air quality. The study shall also consider the feasibility and desirability of regulations to stimulate the production and introduction of solar powered vehicles into commerce. The Secretary of Transportation shall transmit the results of such study to the Committees on Commerce, Science, and Transportation and Government Affairs of the Senate, and the Committee on Energy and Commerce of the House of Representatives.

The Department of Energy and the Environmental Protection Agency were consulted in the preparation of the report, and the Environmental Protection Agency prepared section VI, "Air Pollutant Emissions from Electric Vehicle Use." The report was transmitted to the Congressional committees by the Secretary of Transportation on January 25, 1990.

Section IV: Use of Advanced Technology

This section fulfills the statutory requirement of section 305 of Title III of the Department of Energy Act of 1978 (Pub. L. 95-238) which directs the Secretary of Transportation to submit an annual report to Congress on the use of advanced technologies by the automotive industry to improve motor vehicle fuel economy. This report focuses on the introduction of new models, the application of materials to save weight, and the advances in electronic technology which improved fuel economy in MY 1989.

A. New Models

The domestic automakers introduced several all-new cars as well as updates and redesigns of previous cars. Ford redesigned the Cougar and Thunderbird with lower, sleeker body styling, new suspension, and engine updates. Chrysler introduced two all-new A-body mid-size vehicles for the 1989 model year, the Plymouth Acclaim and the Dodge Spirit. Chrysler also imported the all-new 3-door Colt and a 4-wheel drive wagon version. Jeep Eagle (division of Chrysler) introduced the imported Summit 4-door sedan for MY 1989. GM introduced the Geo Metro subcompact which replaces the Chevrolet Sprint imported from Suzuki. The Geo Prizm was also introduced, replacing the Chevrolet Nova produced by New United Motor Manufacturing, Inc., a joint venture of GM and Toyota Motor Corporation in California.

Automobile importers introduced a variety of new cars and updates of their previous models for 1989. Nissan redesigned the Maxima and introduced the aerodynamic styled 240SX that replaced the 200SX. Toyota redesigned the Cressida and added a 4-wheel drive option to the Corolla. Suzuki introduced a new subcompact called the Swift. Hyundia introduced the larger Sonata sedan to compete with the Honda Accord and Toyota Camry. Subaru introduced the Legacy, a 4-door mid-size car. Mitsubishi made an early introduction of its new front-wheel drive 1990 Eclipse produced at the Diamond Star Motors plant in Normal, Illinois. Peugeot introduced its first front-wheel drive sedan for the U.S. market, the 405. BMW replaced the 528e series with the new aerodynamic design of the 525i and 535i series.

In the domestic light truck area, Chrysler introduced the Cummins turbodiesel engine which is available in the Dodge D/W 250-350 full-size pickups. Ford offered extended length models of the Aerostar compact van. General Motors introduced the all-new Geo Tracker compact sport utility vehicle produced for GM by Suzuki.

In the import light truck area, Mazda introduced its first MPV mini-van which has a low 0.36 coefficient of drag. Suzuki introduced the all-new Sidekick compact sport utility vehicle.

B. Engine Technology

Some manufacturers made significant improvements in engine technology for model year 1989. Ford upgraded its 3.8L V-6 engine with roller tappets and a sequential multi-port electronic fuel injection system. Dual catalytic converters are used with the 3.8L engine in the Cougar and Thunderbird which eliminate the need for the air injection system and result in improved fuel economy. Ford's 2.3L light truck engine features dual spark plugs and a Distributorless Ignition System (DIS) which is new for Ford. The extra four plugs provide improved fuel burn rate control for improved engine efficiency and the DIS gives more precise spark timing. GM redesigned its 3L engine, enlarging it to 3.3L and reducing friction and reciprocating weight. The engine incorporates a poly-V belt to drive accessories and does not require exhaust gas recirculation for emission control. The 3.3L engine has improved performance and better fuel economy than its predecessor.

C. Transmissions

Chrysler introduced a new automatic transmission which uses electronically controlled lockup torque converter combined with an all new four speed electronic overdrive transaxle, code named A604. Subaru introduced an electronically controlled, continuously variable transmission (ECVT) that is available in the Justy model. ECVT enables this automatic transmission car to be nearly as fuel efficient as the 5-speed manual transmission version.

D. New Materials Applications

For the 1989 model year, automakers chose plastics, composites, aluminum, and stainless steel for a number of significant new component applications in their cars. The reduced weight of these components contributed to improved fuel economy of the models using them.

Cadillac is the second GM brand to employ thermoplastic fenders for regular production cars, using them on the DeVille and Fleetwood. Another significant new application for thermoplastics included the styled bodyside moldings on the Pontiac Grand Am and the Oldsmobile Calais cars. The Dodge Shelby Shadow utilizes the first styled plastic composite wheels on U.S. cars. A reaction injection molded (RIM) structural composite front bumper was new on the Chevrolet Corvette. RIM front and rear fascias were used on Chrysler's Plymouth Acclaim and Dodge Spirit cars, and RIM soft fascias were used on Ford's redesigned Thunderbird and Cougar.

GM's Beretta and Corsica feature two piece aluminum wheels. Aluminum wheels are also available on the Ford Thunderbird; Mercury Cougar XR7; Buick Century, Electra Ultra, and Regal; Oldsmobile Ciera; Plymouth Acclaim; and Dodge Spirit models. GM's Buick-Oldsmobile-Cadillac (BOC) Group uses a one piece aluminum intake manifold on its new 3.3L V-6 engine called the 3300. Ford uses an aluminum steering gear housing on the some of its 1989 cars.

Stainless steel is used in GM's BOC Group exhaust manifolds on the 3300 engine which are lighter and more efficient in scavenging spent gases than the conventional cast iron exhaust manifolds.

Composite metal disk brake rotors were used in the front brakes of all Ford Thunderbirds and Mercury Cougars, providing weight savings.

E. Summary

Due to the stabilization of oil prices and supply, consumer demand in MV 1989 has shifted somewhat to more powerful and roomier passenger cars and light trucks. The auto industry, responding to this shift, has increased the horsepower of its engines and shifted production mix to larger passenger cars. Still, there were some considerable technical gains, particularly in lightweight material usage, that contributed to improvements in fuel economy on some models in MV 1989.

[FR Doc. 90-7039 Filed 3-27-90; 8:45 am]
BILLING CODE 4910-59-M

[Docket No. 90-03-IP-NO1]

Cadillac Plastic and Chemical Co.; Receipt of Petition For Determination of Inconsequential Noncompliance

Cadillac Plastic and Chemical Company (Cadillac), of Mishawaka, Indiana, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.205, Federal Motor Vehicle Safety Standard (FMVSS) No. 205, "Glazing Materials" on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S6.4 specifies that each manufacturer or distributor who cuts a section of glazing material, to which Standard No. 205 applies, for use in a motor vehicle or camper shall mark that material in accordance with Section 6 of ANSI Z26.1.

Section 6 of the ANSI Z26.1 requires that safety glazing materials manufactured for use in accordance with this code shall be legibly and permanently marked in letters and numerals at least 0.070 inches (1.78mm) in height, with the words "American National Standard" or the characters "AS" and, in addition, with a model number that will identify the type of construction of the glazing material. They shall also be marked with the manufacturer's distinctive designation or trademark.

Cadillac produced and sold 96 pieces of glazing to Grumman Allied that were not in accordance with the above mentioned labeling requirements of ANSI Z26.1. These materials lacked the manufacturer designation, the AS designation and the model number. Fifty-four of the ninety-six noncompliant pieces were replaced with conforming parts before leaving Grumman Allied's facilities.

Therefore, the petition for inconsequential noncompliance applies to only the remaining forty-two pieces of glazing that were shipped.

Cadillac reported that it does not believe the deviation from Standard No. 205 is safety related and that except for marking, the windows meet the requirements. Also Cadillac reported that internal retraining has been undertaken to assure that all windows will be correctly marked in the future.

Interested persons are invited to submit written data views and arguments on the petition of Cadillac, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 27, 1990.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: March 22, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-7507 Filed 3-27-90; 8:45 am]
BILLING CODE 7510-59-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

First Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole conservator for First Federal Savings Association, Wichita Falls, Texas ("Association"), on March 16, 1990.

Dated: March 21, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-6960 Filed 3-27-90; 8:45 am]
BILLING CODE 6720-01-M

Great American Savings & Loan Association, F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989,

the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Great American Savings and Loan Association, F.A., Corinth, Mississippi ("Association"), on March 16, 1990.

Dated: March 21, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-6961 Filed 3-27-90; 8:45 am]

BILLING CODE 6720-01-M

Lakeland Savings Bank, F.S.B.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Lakeland Savings Bank, F.S.B., Detroit Lakes, Minnesota ("Savings Bank"), on March 16, 1990.

Dated: March 21, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-6962 Filed 3-27-90; 8:45 am]

BILLING CODE 6720-01-M

Sun Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (A) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Sun Federal Savings Association, Fort Dodge, Iowa ("Association"), on March 16, 1990.

Dated: March 21, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-6963 Filed 3-27-90; 8:45 am]

BILLING CODE 6720-01-M

Whitestone Federal Savings & Loan Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Whitestone Federal Savings and Loan Association, Whitestone, New York ("Association"), on March 16, 1990.

Dated: March 21, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-6964 Filed 3-27-90; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings & Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (A) and (B) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for the First Federal Savings and Loan Association, Wichita Falls, Texas ("Association"), on March 16, 1990.

Dated: March 21, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-6955 Filed 3-27-90; 8:45 am]

BILLING CODE 6720-01-M

Lakeland Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (A) and (B) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for the Lakeland Federal Savings Bank, Detroit Lakes, Minnesota ("Savings Bank"), Docket No. 2979, on March 16, 1990.

Dated: March 21, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-6956 Filed 3-27-90; 8:45 am]

BILLING CODE 6720-01-M

Great American Federal Savings & Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Great American Federal Savings and Loan Association, Corinth, Mississippi ("Association"), on March 16, 1990.

Dated: March 21, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-6957 Filed 3-27-90; 8:45 am]

BILLING CODE 6720-01-M

Sun Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (C) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Sun Savings Bank, Fort Dodge, Iowa ("Savings Bank") on March 16, 1990.

Dated: March 21, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-6958 Filed 3-27-90; 8:45 am]

BILLING CODE 6720-01-M

Whitestone Savings, F.A.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Whitestone Savings, F.A., Whitestone, New York ("Association"), on March 16, 1990.

Dated: March 21, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-6959 Filed 3-27-90; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Drawings of Jasper Johns" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art in Washington, DC, beginning on or about May 20, 1990, to on or about July 29, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: March 21, 1990.

Alberto J. Mora,

General Counsel.

[FR Doc. 90–7110 Filed 3–27–90; 8:45 am]

BILLING CODE 8230–01–M

American Studies Winter Institute; Bureau of Educational and Cultural Affairs; Grant Program; Winter Institute in American Studies

Overview

Contingent upon the availability of funds, the Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) is soliciting proposals for a graduate-level American studies institute to take place from January 3 to February 16, 1991. Due date for receipt of proposals is COB Tuesday, June 19, 1990. The institute is designed for approximately 30 highly motivated secondary school educators in English language, American literature, government, history, society and culture, and geography. Participants will come principally from countries in Latin America and Africa. USIA is asking for detailed proposals from institutions which have an acknowledged reputation in American Studies and related fields with special expertise in handling cross-cultural programs

Objectives

The objective of the institute is to support and encourage the efforts of other countries to improve the quality of teaching about American society and culture at the secondary level. The program should be designed for teacher trainers, curriculum developers, textbook writers and/or secondary-level classroom teachers with responsibilities in curriculum planning and materials development whose teaching assignments require a general up-to-date knowledge of American civilization and culture. Many of these educators will be involved in the teaching of English as a foreign language; however educators in the fields of American literature, government, history, society and culture, and geography also participate in this program.

Time Frame and General Description

The institute should be programmed to last approximately 45 days, beginning on or about Thursday, January 3 and ending on or about Saturday, February 16, 1991. The participants will arrive directly at the campus site from their home countries. The university program staff will be expected to make arrangements to have participants met upon arrival at the airport nearest the university campus. Few, if any, participants will have visited the United States previously. In view of this, an initial orientation to the U.S. and the campus should be considered an integral part of the institute and should be held on the first two or three days of the program. The applicant is asked to design a two-part program:

(a) A four-week academic program at the university and

(b) A two-week escorted tour of two or more different regions of the United States.

The tour segment should be planned, arranged, and conducted by the Program Director and principal university staff and should be seen as an integral part of the program, complementing and reinforcing the academic material. It should not be a whirlwind tour of the U.S. IN addition to two or three other cities, the tour should include a three-to-four-day visit to Washington, DC, toward the end of the tour before participants depart for their home countries. Programming in Washington should include a half-day briefing session at the U.S. Information Agency.

Program Description

The institute should be a graduate level academic program aimed at improving the participant's understanding of American society and institutions and contemporary national issues. For the purpose of the institute American studies is understood to include aspects of American history, literature, society and culture, geography and political science. The program should provide an intellectual framework and organizing principles for understanding and teaching about the U.S. The institute should address the diversity, complexity and unity of American contemporary life; provide a basic overview of American institutions such as government, education and religion; and discuss current national issues and the social and political response to these issues. The academic instruction should address a range of views of American values and character expressed through our social, economic and literary history, Technological development, and forms of creative expression.

The academic program should maintain a relative balance among plenary sessions, lectures, workshops and practicums. Academic activities should reinforce and provide opportuntities to clarify the central themes and objectives of the program. Lengthy lecture sessions should be avoided whenever possible, or associated with workshop or small group discussions periods. The proposal should include a detailed syllabus outlining the focus of the subject matter with specific required for each unit.

Activities should include an orientation to the U.S. and the university community, field trips to places of local interest, home stays with families in the area (other secondary educators if possible), and events which will bring the participants into contact with Americans from different walks of life. These encounters will give the participants a chance to experience American society, its institutions and language, and observe the variety of attitudes that constitute one of our country's most striking characteristics.

In addition to the substantive presentations and discussions about American society, the institute should focus upon pedagogical concerns, materials and curicular development in the context of teaching about the U.S. Samples of secondary school curricula, materials and topical bibliographies in American studies fields should be provided or developed during the program. It should be noted that these

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/485–7978, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

participants will not only come from several different disciplines but also from a variety of educational systems. Most systems have rigorous teacher training programs for certification, and classroom methods evaluated and approved by regional inspectors. Similarly, some systems require adherence to an assigned textbook while others allow significant flexibility to teachers in determining what materials they will use in presenting a lesson. The variety of approaches and experiences should provide the basis for interaction which will be both culturally and professionally stimulating to the entire group.

Program Administration

All programming and administrative logistics, management of the academic program and cultural tour will be the responsibility of the university. A project secretary and/or project assistant is required to carry out clerical and administrative duties required for the smooth operation of the institute during the program grant period, from the planning period to the completion of required reports to USIA. USIA will be responsible for all communications to and from the U.S. Information Agency posts abroad (USIS), which submit nominations to the Division for the Study of the U.S. and are responsible for all international travel arrangements for participants. The USIA Program Officer will be available to offer any advice or guidance the university might find useful. To assist the university with programming facilitative services during the tour, there is a possibility of utilizing the programming and hospitality services of volunteer community groups across the country that are affiliated with the National Council for International Visitors, a nation-wide network that provides hospitality and program assistance to foreign visitors.

If your university decides to submit a proposal, it should provide a detailed plan in response to the needs and priorities outlined above. Applicants should draw imaginatively on the full range of resources offered by their universities but may involve outstanding professionals from other universities and organizations. The proposal must clearly demonstrate quality on-site management capabilities for both the residential and the tour programs. The overall effectiveness of the institute hinges in part upon good administrative and organizational capabilities to manage the interactions between foreign educators and Americans. The university should indicate the tour sites, not to exceed three cities in addition to Washington, DC.

Budget Guidelines

For your guidance, our experience with similar institutes indicates that the cost to organize and administer the 45-day academic and group tour segment of this Institute would range from $1,700–1,800 per person based on a group of 30 participants, excluding participant costs such as international and domestic air travel expenses, cultural allowance, cost for room and board on campus, and hotel and meals on tour.

The proposal should provide a detailed line-item budget outlining specific expenditures and source(s) from which funds are anticipated. The budget should include any in-kind and cash contributions to the program from universities, contributions, cost-sharing, or the private sector. Included in the budget worksheet for each budget line-item should be an explanation detailing how costs were computed (in parentheses), *i.e.*, each salary line-item should include position title, annual salary, and per cent of effort used for this program.

The budget should include and elaborate on the following information with derivational cost figures such as unit costs and number per unit whenever possible in parentheses:

I. University Costs

Administrative

(1) Salaries, benefits, and services (including support staff) for the program.

(2) Administrative costs, office expenses, and any other costs covering the academic activities during the four-week university program.

Program

(1) Miscellaneous costs, such as honoraria, film rental, and educational support material on campus, etc.

(2) Group admission costs for all cultural and tour activities during the course of the on-site university institute and weekend tour(s).

(3) Escort tour costs: university ecort travel and expenses such as per diem, ground transportation costs for group activities, admission to cultural and tour activities (excluding domestic air travel costs).

(4) Group ground transportation, including meeting participants at the airport upon arrival on campus, airport transfer buses to and from airports and other education group program costs on campus and during the tour (excluding domestic air travel costs).

(5) A one-day visit to Washington for a program briefing of university escorts for first-time university applicants only. Per diem for one full day in Washington at a rate of $127 is allowable (excluding round-trip air fare which should be included in the domestic air travel section of the budget).

Indirect Costs

Indirect costs should be held to a minimum. Universities which were awarded grants to conduct the American studies summer institutes in the past have accepted a level of 8% indirect cost. Universities have considered cost-sharing the amount in excess of 8%. A copy of the indirect cost rate of the cognizant agency should be included.

Domestic air travel for escorts only

Cost of the domestic program tour and return to campus at the end of the program for the escorts only and, if applicable, rount-trip air fare to Washington for program directors(s).

II. Per Capita Participant Costs (included as an addendum to the main budget)

(1) Lodging and Meals: Each foreign participant will receive a per diem for the 45-day program. This should cover the costs of room, board and incidentials while on campus and during the tour which should be based on government allowable rates. (Meals and incidental expenses on tour should not exceed $33/day. Campus housing and meals should be shown as separate items and should include a $10/day incidental allowance.

(2) Required books;

(3) Ground transportation for individual or smalll group special events on campus and during the tour (such as a train or bus fares) not included in the main budget as a group project, only if applicable;

(4) Program and tour admission costs and other incidental costs for group activities on tour not included in the university program budget.

(5) Departure travel allowance not to exceed $70;

(6) A modest cultural allowance, not to exceed $100 per participant; and

(7) Estimated domestic program air fare.

Note: Total participant living costs and domestic air travel should be shown on a per capita breakdown multiplied by the number of participants, estimated at 30.

Summary Budget Sheet

The budget summary should include totals of the following budget categories in the order listed below:

Administrative Costs
Program Costs (university program and tour program)
Total Administrative and Program Costs

Indirect Costs
Domestic Air Fares for escorts only
Total University Costs
Participant Living Costs based on 30 participants
Total Institute Costs

Domestic Air Travel

The university is required to book all domestic program tour plights through a U.S. carrier. If domestic air tickets are issued in the U.S., they should be booked and purchased through the Agency-approved Travel Management Center or a private travel agency using Government Transportation Requests, which allow access to government discount air fares. This applies to all domestic travel for university escorts and participants. Since these funds are withheld by the Agency, they are not subject to indirect costs.

For Institutional Recipients of Previous Grants Only

If your university was funded for a similar program last year, the budget should include last year's detailed line-item budget. Significant differences for each item must be noted and justified.

Funding Arrangements

A USIA grant will be issued to the university selected to conduct the institute covering university administrative and program costs in item I. The university will disburse particpant living costs and other authorized allowances approved by the program for particpants selected and funded by USIA directly. These costs will be added to the grant through an amendment, when the number of grants are determined.

International Travel

Round-trip international travel arrangements from home country to the campus and return from the last tour city (which may be Washington, DC) will be made and paid by USIA posts abroad. Participants will be given a modest travel allowance and warm clothing allowance to participants coming from warm climates before departure from their home country. If a USIA post cannot issue U.S. dollars, the contracting institution may be requested to provide these allowances. The grant will be amended to cover such authorized costs.

Selection Criteria

A panel of senior USIA officers experienced in American studies, the exchange of international educators, and foreign affairs will use the following criteria when evaluating proposals for selection:

(1) Quality and imaginative design of the institute;

(2) Quality, rigor, and appropriateness of proposed syllabus to goals of the institute;

(3) Clear evidence of the ability to deliver a substantive academic and pedagogical American studies program;

(4) Demonstrated high quality American studies programs—experience with foreign teachers is desirable;

(5) Provision for a useful evaluation at the conclusion of the institute;

(6) Evidence of strong on-site administrative and managerial capabilities for international visitors with specific discussion of how managerial and logistical arrangements will be undertaken;

(7) The experience of professionals and staff assigned to the program;

(8) The availability of local and state resources for the orientation and institute;

(9) A well-thought out and comprehensive cultural tour to complement the academic program;

(10) Cost-effectiveness.

Agreement Dates

The agreement period should begin two to two and-a-half months prior to the beginning of the project date, January 3, for which period only minimal administrative assistance costs will be allowed. The termination date should be 60 to 90 days after the end of the project date of February 16, to cover the required end-of-project report. Approximate time period for the activity on the USIA cover sheet should then be from October 15 to May 16, 1991.

Mailing of the Proposal

Applicants should submit *ten copies each* of a 500-word summary statement and a detailed proposal not to exceed 20 typed, double-spaced pages addressing the points outlined above and following the detailed budget guidelines. Interested institutions should request a USIA grant cover sheet; an Assurance of Compliance form; Certification Regarding Debarment, Suspension, and Other Responsibility Matters; and Certification for Contracts, Grants and Cooperative Agreements at the address below.

Final proposals along with the forms requested must be received in the Agency by COB Tuesday, June 19, 1990.

The proposal package should be submitted to: U.S. Information Agency, American Studies Branch, E/AAS Attn: Katherine Passias, Rm. 256, 301 4th St., SW., Washington DC 20547, Phone (202) 485-2568.

Dated: March 21, 1990.

Guy Story Brown,

Director, Office of Academic Programs.

[FR Doc. 90-7020 Filed 3-27-90; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: March 15, 1990.

By direction of the Secretary.

Frank E. Lalley,

Acting Director, Office of Information Resources Policies.

Revision

1. Veterans Benefits Administration.

2. Nonsupervised Lender's Nomination and Recommendation of Credit Underwriter.
3. VA Form 26–8736a.
4. The use of this form will allow the gathering of information necessary to determine the qualifications of credit underwriters nominated by nonsupervised lenders to evaluate loans proposed for guaranteed financing.
5. On occasion.
6. Businesses or other for-profit and Small businesses or organizations.
7. 3,000 responses.
8. ⅓ hour.
9. Not applicable.

[FR Doc. 90–7105 Filed 3–27–90; 8:45 am]
BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: March 15, 1990.

By direction of the Secretary.

Frank E. Lalley,

Acting Director, Office of Information Resources Policies.

Reinstatement

1. Veterans Benefits Administration.
2. Statement of Termination of Marital Relationship.
3. VA Form 21–8796.
4. This form is used to reestablish entitlement whenever a claimant wishes eligibility as a surviving spouse or for an unmarried child following termination of a marital relationship which precluded such benefit.
5. On occasion.
6. Individuals or households.
7. 2,900 responses.
8. ½ hour.
9. Not applicable.

[FR Doc. 90–7104 Filed 3–27–90; 8:45 am]
BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: March 16, 1990.

By direction of the Secretary.

Frank E. Lalley,

Acting Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration.
2. Financial Statement.
3. VA Form 26–6807.
4. This form is used to determine the financial condition of original veteran obligors for release from personal liability arising from original guaranty of their home loans or the making of a direct loan; to determine a borrower's financial condition in connection with efforts to reinstate a seriously defaulted guaranteed, insured, or portfolio loan; and to determine the eligibility of homeowners for aid under the Homeowners Assistance Program.
5. On occasion.
6. Individuals or households.
7. 40,000 responses.
8. ¾ hour.
9. Not applicable.

[FR Doc. 90–7106 Filed 3–27–90; 8:45 am]
BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of

Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: March 16, 1990.

By direction of the Secretary.

Frank E. Lalley,

Acting Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration.
2. Request for Postponement of Offsite or Exterior Onsite Improvements - Home Loan.
3. VA Form 26–1847.
4. This form serves as the lender's and veteran's request for guaranty of home loan for which offsite or exterior onsite improvements are incomplete to permit the veteran's occupancy of the property.
5. On occasion.
6. Individuals or households; Businesses or other for-profit; and Small businesses or organizations.
7. 5,000 responses.
8. ½ hour.
9. Not applicable.

[FR Doc. 90–7107 Filed 3–27–90; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: March 12, 1990.

By direction of the Secretary.

Frank E. Lalley,

Acting Director, Office of Information Resources Policies.

Reinstatement

1. Veterans Benefits Administration.
2. Supporting Statement Regarding Marriage.
3. VA Form 21–4171.
4. The use of this form will allow the gathering of information necessary to determine if a marital relationship is established and whether VA benefits are payable based on the relationship.
5. On occasion.
6. Individuals or households.
7. 2,400 responses.
8. ⅓ hour.
9. Not applicable.

[FR Doc. 90–7108 Filed 3–27–90; 8:45 am]

BILLING CODE 8320–01–M

Advisory Commission on the Future Structure of Veterans Health Care; Establishment

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409) and Office of Management and Budget Circular A–63, as revised, and after consultation with the General Services Administration, the Secretary, VA (Department of Veterans Affairs) has determined that establishment of the Advisory Commission on the Future Structure of Veterans Health Care is necessary and in the public interest in connection with the performance of duties imposed on VA by law.

The Commission has been established to undertake an exhaustive examination of the entire VA health care system. The Commission's goals will be to ascertain whether location, size, and mission of medical centers can continue to offer veterans the most favorable and efficient distribution of health care resources to assure high quality care today and in the year 2010 and beyond. The Commission's charter provides for no fewer than nine and no more than fifteen members who will reflect the many interests concerned with VA health care—our patients, hospital management, medical practice, geriatrics, nursing, quality assurance, academic medicine and research, health policy and economics, and multi-system health care management. The Commission will bring together the best minds in the health care and medical administration fields, both public and private, to review the missions and programs of every VA medical center. Its focus will be on planning for the future to create a better VA to do a better job for veterans.

Specifically, the Commission will reexamine existing VA health care delivery processes, standards, structures, and outcomes, as well as staffing and technological requirements. It will obtain the best, most up-to-date population, demographic, and epidemiological data available to discern current needs and project the future requirements of the aging veteran population. The Commission will convene in the Spring of 1990 and will meet regularly to review detailed information compiled by its staff on each VA medical facility. It will hold meetings both in Washington and in the field, and it will visit facilities which may become candidates for possible mission or program changes. In making its recommendations, the commission will consult with local community leaders, members of Congress, veterans service organization (VSO) representatives, personnel of individual facilities, and private-sector health care providers.

Comments of interested persons concerning the establishment of the commission or for information, please contact Miss Marjorie R. Quandt, Executive Director, VA Commission on the Future Structure of Veterans Health Care, VA Central Office (00RC) Washington, DC 20420, telephone (202) 233–2706.

Dated: March 21, 1990.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 90–7109 Filed 3–27–90; 8:45 am]

BILLING CODE 8320–01–M

Cooperative Studies Evaluation Committee; Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92–463 (Federal Advisory Committeee Act) as amended by section 5(c) of Pub. L. 94–409 that a meeting of the Cooperative Studies Evaluation Committee will be held at the Radisson Park Terrace Hotel, 1515 Rhode Island Avenue, Washington, DC 20005 on April 23 and 24, 1990. The session on April 23 is scheduled to begin at 7:30 a.m. and end at 5:20 p.m. and on April 24 from 7:30 a.m. to 4:20 p.m. The meeting will be for the purpose of reviewing three new clinical trials, one in anesthesia, one in grafts in by-pass surgery and one in immunotherapy for AIDS and the progress of six on-going cooperative studies in stroke prevention, heart failure, coronary angioplasty, alcoholic hepatitis, cochlear implants and treatment of AIDS related complex. The Committee advises the Director, Medical Research Service, through the chief of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public up to the seating capacity of the room from 7:30 a.m. to 8 a.m. on both days to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. Ping Huang, Coordinator, Cooperative Studies Evaluation Committee, Department of Veterans Affairs Central Office, Washington, DC (202–233–2861), prior to April 6, 1990.

The meeting will be closed from 8 a.m. to 5:20 p.m. on April 23 and 8 a.m. to 4:20 p.m. on April 24, for consideration of specific proposals in accordance with provisions set forth in section 10(d) of Pub. L. 92–463, (the Federal Advisory Committee Act) as amended by section 5(c) of Pub. L. 94–409, and 5 U.S.C. 552b (c)(6). During this portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research protocols, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute clearly unwarranted invasion of personal privacy.

Dated: March 15, 1990.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 90–7028 Filed 3–27–90; 8:45 am]

BILLING CODE 8320–01–M

federal register

Wednesday
March 28, 1990

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1005

Milk in the Carolina Marketing Area; Recommended Decision and Opportunity to File Written Exceptions on Proposed Tentative Marketing Agreement and Order

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1005

[Docket Nos. AO-388-A1; DA-88-123 and AO-388-A1-RO1; DA-88-123

RIN 0581-AA28

Milk in the Carolina Marketing Area; Recommended Decision and Opportunity to File Written Exceptions on Proposed Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts a Federal milk order for the Carolina marketing area, which includes all the territory in the States of North Carolina and South Carolina. Ten dairy farmer organizations representing about 90 percent of the dairy farmers who are expected to have their milk priced under the milk order proposed the new milk order. The proposed order was considered at public hearings held April 17–20, April 24–25, and August 22, 1989. On the basis of evidence obtained at the hearings, the Department has concluded that a Federal milk order is needed to provide stable and orderly conditions for the marketing of milk in the proposed area.

DATES: Comments are due on or before April 27, 1990.

ADDRESSES: Comments (four copies) should be filed with the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The proposed rule would promote orderly marketing of milk by producers and regulated handlers.

Paperwork Reduction Act

Information collection requirements contained in this regulation (§§ 1005.1 through 1005.94) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0581–0032.

Prior documents in this proceeding:

Notice of Hearing: Issued March 13, 1989; published March 17, 1989 (54 FR 11206).

Notice of Reopened Hearing: Issued August 10, 1989; published August 16, 1989 (54 FR 33709).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed tentative marketing agreement and order regulating the handling of milk in the Carolina marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC, 20250, by the 30th day after publication of this decision in the Federal Register. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed tentative marketing agreement and order set forth below are based on the record of two public hearings. One was held at Charlotte, North Carolina, on April 17–20 and April 24–25, 1989, pursuant to a notice of hearing issued March 13, 1989 (54 FR 11206). The second hearing was a reopening of the first hearing for the limited purpose of considering proposals that would change the manner in which the Class II milk price is determined and announced under the proposed Carolina order. The hearing was held at Alexandria, Virginia, on August 22, 1989, pursuant to a notice of reopened hearing issued August 16, 1989 (54 FR 33709).

The material issues on the record of the hearing relate to:

1. Whether the handling of milk produced for sale in the proposed marketing area is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether marketing conditions show the need for issuance of a milk marketing agreement or order which will tend to effectuate the policy of the Act; and

3. If an order is issued what its provisions should be with respect to:

(a) Handlers to be regulated and milk to be priced and pooled;

(b) Classification of milk and assignment of receipts to classes of utilization;

(c) Pricing of milk;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Description of the market. The population of North Carolina and South Carolina as of April 1, 1980, was 5,882,000 and 3,122,000, respectively (U.S. Department of Commerce, Bureau of the Census, "Current Population Reports: Population Estimates and Projections." Series P–26, No. 1017, U.S. Government Printing Office, October 1988). The projected population, as of July 1, 1988, for North Carolina was 6,512,000 and 3,464,000 for South Carolina, for a total population of 9,976,000 persons.

The three metropolitan statistical areas (MSA's) of North Carolina are (1) Raleigh-Durham, (2) Greensboro, High Point, Winston-Salem, and (3) Charlotte. These three MSA's contain approximately 40 percent of the population of North Carolina and are linked by Interstate Highway 85.

The five MSA's of South Carolina are (1) Anderson, (2) Charleston, (3) Columbia, (4) Florence, and (5) Greenville-Spartanburg. These five MSA's plus Buford and Horry Counties contain approximately 65 percent of the population of South Carolina.

While milk production for North Carolina and South Carolina is virtually unchanged from 10 years ago, the population of North Carolina increased by 10 percent during the last 8 years and South Carolina increased by 11 percent during the same period. To supply the fluid milk needs of this increase in population, bulk and packaged milk have been imported into the two-State area to meet the increased demand.

Proponents of the order estimate that the milk of 1,600 dairy farmers will be pooled under the two-State order. They estimate that these dairy farmers produce about 203 million pounds of milk per month.

Milk production data from 1978 to date for North Carolina shows that total milk production currently is about the same as it was in 1978. Although the number of dairy herds declined from 1,349 in 1978 to 913 in December 1988, the average daily deliveries per farm increased by 55 percent.

Milk production in North Carolina is concentrated in the central part of the State. The average size herd had about 112 cows and 71 of the 100 North Carolina counties contain one or more herds. Dairy farms are located reasonably close to the main population centers except in the northwest corner of the State where the Grade B dairy farmers are located. There are a few dairy farmers located in the extreme western counties whose milk is pooled in the Georgia Federal milk order.

In South Carolina, as of December 1988, there were 242 Grade A dairy farmers who produced about 456 million pounds of milk in 1988. Milk production in this State is concentrated in 6 of the 46 counties (Newberry, Saluda, Anderson, Orangeburg, Bamberg and Greenville). These six counties account for about half of the dairy farms and production in the State. Approximately one-third of the State's milk production is located along the coastal plain.

Milk production by South Carolina producers increased during the early 1980's and fell sharply during the mid-1980's due to droughts, the Federal milk diversion and dairy termination programs, and because of a decline in the economy. South Carolina has long been a milk deficit State that imports substantial quantities of milk.

There are 16 fluid milk processing plants located in North Carolina, which include the plant associated with the University of North Carolina at Raleigh. These plants, excluding the plant associated with the University, received approximately 136 million pounds of milk in January 1989.

There are 10 fluid milk plants located in South Carolina, which include the milk plants associated with Clemson University and the State prison and a plant at Greenville which is a fully regulated plant under the Georgia milk order. These plants, excluding the plants associated with Clemson University, the State prison and the Georgia milk order, received approximately 66 million pounds of milk in January 1989.

The record shows that receipts of milk during 1988 by fluid milk plants located in these two States ranged from a low of 188 million pounds in July to a high of 221 million pounds in March. Class I utilization ranged from a low of 80 percent in March to 86 percent in September.

In North Carolina, the Milk Commission continues to regulate many aspects of the dairy industry, such as the individual handler pools, base plans and the pricing of milk produced, processed and distributed within that State. At the time of the hearing, authority for marketwide pooling was scheduled to become effective August 1, 1989.

In South Carolina, the Dairy Commission was rendered powerless by a court decision to impose prices on producer milk and bulk or packaged milk moving into or out of South Carolina. The Department of Agriculture for the State of South Carolina continues to operate individual handler pools and administer base plans.

1. *Character of commerce.* The proposed Carolina marketing area includes the entire States of North Carolina and South Carolina.

There are 22 milk distributing plants located within the two States that are expected to be fully regulated plants under the proposed order. These 22 plants received approximately 202 million pounds of milk in January 1989. In addition, it is expected that a plant located at Lynchburg, Virginia, will be a fully regulated plant under this proposed order. A fluid milk plant located at Greenville, South Carolina, is expected to be fully regulated under the Georgia order.

There is a substantial amount of bulk milk and packaged milk moving between North Carolina and South Carolina. Milk from farms located in the two States is received by plants located in other states.

Milk plants located in South Carolina sell substantial amounts of packaged milk into Georgia. Fluid milk plants located in North Carolina sell packaged milk in Tennessee and Virginia. Fluid milk plants located in Virginia sell substantial quantities of milk into North Carolina.

The Agricultural Marketing Agreement Act of 1937, as amended, provides in section 608(c)(1) that milk orders issued by the Secretary shall regulate such agricultural commodity or product thereof, as is in the current of interstate commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce in such commodity or product thereof. On the basis of the record evidence summarized in the preceding paragraphs, it is concluded that the handling of milk in the proposed marketing area is in the current of interstate commerce. Accordingly, the Department has the authority to establish a Federal milk order for this area.

2. *Need for an order.* A Federal milk marketing order for North Carolina and South Carolina was proposed by ten cooperative associations. Proponents of the order were Coble Dairy Cooperative, Inc. (Coble), Edisto Milk Producers Association (Edisto), Dairymen, Inc. (DI), Palmetto Milk Producers Association (Palmetto), Carolina-Virginia Milk Producers Association (Carolina-Virginia), Capital Area Milk Producers Association (Capital), Sumter Dairies, Inc., East Carolina Milk Producers, Dairy Farmers, Inc., and Southern Milk Sales (SMS).

At the hearing, an officer of DI testified on behalf of nine cooperative associations that included all of the above organizations except for East Carolina Milk Producers and Dairy Farmers, Inc. The ninth cooperative association was Maryland and Virginia Milk Producers Cooperative Association (Md-Va). Sumter Dairies, Inc., named above, at the time of the hearing was called Midlands Jersey Milk Producers Association (Midlands).

Proponents' witness stated that these nine cooperative associations represent about 173 million pounds of milk that will be pooled each month on the order. He said that the nine associations represent about 1,485 dairy farmers out of a total of 1,600 dairy farmers that are expected to be producers associated with the proposed order. These 1,485 producers, he said, represent about 85 percent of the milk volume and about 90 percent of the producers.

Witnesses for the following organizations testified in favor of the proposed order without any modifications:

1. North Carolina Farm Bureau.
2. South Carolina Farm Bureau.
3. Milkco, Inc. (proprietary handler).
4. Hunter Jersey Farms (proprietary handler).
5. Dairy Fresh, Inc. (proprietary handler).
6. Kroger Company (proprietary handler).

Witnesses for the following organizations testified in favor of an order with modifications that are discussed later in this decision:

1. Piedmont Milk Sales.
2. Carolina Jersey Milk Producers Association.
3. Land-O-Sun Dairies.
4. Edisto.

The proposed order was supported by the Commissioner of Agriculture for South Carolina and the Milk Commission for the State of Virginia. The proposed order was opposed by the North Carolina Milk Commission and the Carolina Guernsey Producers

Association. A representative of Coburg Dairy, Charleston, South Carolina, indicated that the company disagreed in principle with Federal order regulation.

Testimony by the nine proponents of the order was presented by (1) an officer of DI, (2) an associate professor who is an extension economist at North Carolina University, and (3) a professor at Clemson University.

The DI officer testified about the operations of proponents. During the month of January 1989, Coble shipped 13.5 million pounds of milk (152 members) to their three fluid milk plants that will be fully regulated under the proposed order. The cooperative operates fluid milk processing plants located at Lexington and Goldsboro, North Carolina, and Florence, South Carolina. It also supplies a small volume of milk to a plant at High Point, North Carolina.

Edisto in January 1989 shipped 12.5 million pounds of milk (68 members) to Coburg Dairy in Charleston, South Carolina, a plant that will be fully regulated by the proposed order.

DI in January delivered 60.7 million pounds of milk (669 members) to eight fluid milk plants expected to be regulated by the proposed order. Three of the eight plants are their own plants and are located at Greensboro and Wilkesboro, North Carolina, and Florence, South Carolina. DI delivers milk to five other plants, two of which are located in High Point, North Carolina, and the other three plants are at Lynchburg, Virginia; Charleston, South Carolina, and Fayetteville, North Carolina.

Palmetto in January 1989 delivered 20.2 million pounds of milk (91 members) to three fluid milk plants expected to be regulated by the proposed order. The plants are in Charlotte, North Carolina, and Spartanburg and Gafney, South Carolina.

Carolina-Virginia in January delivered 40.9 million pounds of milk (281 members) to three fluid milk plants expected to be regulated by the proposed order. The plants are in Winston-Salem, Asheville, and Charlotte, North Carolina.

Capital in January delivered 8 million pounds of milk (48 members) to their one plant at Raleigh, North Carolina.

Midlands in January delivered 2.4 million pounds of milk (20 members) to Sumter Dairies, Inc., at Sumter, South Carolina.

SMS in January delivered 6.5 million pounds of milk (81 members) to two fluid milk plants expected to be regulated by the proposed order. The plants are located at High Point and Asheville, North Carolina.

Maryland-Virginia in January 1989 delivered 7.75 million pounds of milk (55 to 60 members) to six fluid milk plants expected to be regulated by the proposed order. The plants are located at High Point, Winston-Salem, Charlotte, Asheville and New Bern, North Carolina and at Lynchburg, Virginia.

The two professors from the University of North Carolina and Clemson University, in addition to testifying about the interstate commerce of the milk industry and marketing conditions in the two States, outlined the need and reasons for a milk order that would cover both States. The major reasons advanced by these two witnesses for the order are briefly summarized as follows:

1. Population patterns in the two States have resulted in changed marketing conditions.

2. The dairy processing industry has changed from one of intrastate commerce to interstate commerce. Also, the industry has changed from a local industry to a regional type of industry and to a large extent to the use of chain store operations.

3. Equity among handlers has deteriorated. Fluid milk handlers located within the proposed marketing area that are regulated under the neighboring Federal orders have a significant difference in their cost of bulk milk (skim and butterfat pricing) than competing unregulated fluid milk plants. Unregulated fluid milk plants located in North Carolina have the opportunity to purchase milk from out-of-state, process that milk within their plant and dispose of that milk outside of the State and not be subject to any minimum pricing regulations.

4. The individual handler pools that exist in both States result in varying pay prices (difference in Class I utilization among plants and base plans) among producers. Pay prices among producers become more confusing because some cooperative associations are able to pool returns from several handler pools.

5. There is no uniform audit program throughout the area. South Carolina has a limited auditing program and North Carolina does not have the statutory authority to audit sales of packaged milk coming into North Carolina from fluid milk plants outside the State.

6. The North Carolina Milk Commission cannot effectively price milk sold into the State by out-of-state plants. Also, the Commission cannot effectively price milk sold out of the State by plants located within the State.

7. There is much disparity in producer pay prices as the result of the inability of the North Carolina Milk Commission to price all fluid milk sales and because of the operation of individual handler pools in both States. Producers delivering to the same plant do not always receive the same pay price nor do producers delivering to different plants in the same area receive the same price.

8. Individual handler pools create inequity among producers in the balancing of the necessary reserve and the seasonal surplus of the market. The lack of surplus manufacturing plants in the Carolinas or nearby results in an inequitable distribution among producers of the costs of balancing the fluid market. A Federal order with marketwide pooling would provide better equity in the cost of disposing of surplus milk.

9. At the present time, there is a lack of equity among processors selling into this two-State area because the source of supply determines the cost of bulk milk. A Federal order would assure each fluid milk plant that its competitor is paying at least the minimum Federal order prices.

The Vice Chairman of the North Carolina Milk Commission testified that in the Commission's view, there is no justification for a Federal order at the present time. He indicated that if it is decided that a Federal order should be issued for this area, the Commission should be able to continue to operate in certain areas of milk regulation. In his opinion, this would be in the best interest of the consuming public, producers and processors.

The spokesman for the Carolina Guernsey Producers Association testified very briefly that their organization was opposed to a Federal order. However, if a Federal order is to be issued, he contended that the order should provide for component pricing. The subject of component pricing is discussed in a later section of this decision.

The proponent cooperative associations overwhelmingly agree that the two State programs are not providing marketing stability. They have stated that only a Federal order for this area that provides for marketwide pooling, minimum pricing and complete accounting can restore market stability to this area.

The main reason for instability of milk marketing in North Carolina and South Carolina is that both States lack the ability to price both bulk and packaged milk moving into or out of their respective State.

In 1985, the Circuit Court of South Carolina declared that the South Carolina Milk Commission's pricing authority was unconstitutional under the

Commerce Clause of the United States Constitution. The Commission, as a result of this decision, decided that it was impractical to regulate in-State milk because milk becomes indistinguishable when commingled with milk flowing interstate. The Commission ceased to exist and milk bases are now being calculated by the South Carolina Department of Agriculture. That Department continues to perform monthly audits of fluid milk plants located in South Carolina and disposing of milk in South Carolina only.

In North Carolina, a Milk Commission regulates many aspects of the milk industry. In 1988, however, as the result of a consent decree, the Milk Commission's authority to establish Class I prices for sales made by North Carolina handlers outside North Carolina was terminated.

A federation of cooperative associations (Carolinas Federation) that represents about 90 percent of the dairy farmers in both States sets or announces Class I and Class II prices in South Carolina. Prices in North Carolina, although set by the Milk Commission, are significantly influenced by the prices set by the Carolinas Federation. The announced Class I price in North Carolina is based on the Minnesota-Wisconsin price series (used in all Federal milk orders for setting Class I prices) plus six dollars. The Milk Commission will adjust prices downward whenever North Carolina handlers have to meet competition by outside handlers selling into North Carolina who are able to purchase milk below this formula price.

For sales made by North Carolina handlers into Virginia, the North Carolina Milk Commission requires that dairy farmers be paid the Class I price announced by the Virginia Milk Commission. For sales made by North Carolina handlers into South Carolina or Federal order marketing areas, dairy farmers supplying these plants are paid the prevailing prices paid by the milk plants located outside the State and selling in those markets.

North Carolina fluid milk plants selling into Virginia are required by the Virginia Milk Commission to buy enough Virginia base-holder milk to cover these sales. The North Carolina handler can buy from a Virginia cooperative association that has base-holder milk or the North Carolina handler can acquire his own dairy farmers who hold Virginia milk base.

Handlers located in Virginia who are subject to the Virginia Dairy Commission regulations are accountable for fluid milk sales into North Carolina at the Virginia Class II price. These sales can affect the Class I price in North Carolina because the North Carolina Dairy Commission cannot regulate the price of milk entering North Carolina. The record shows that this volume is substantial.

South Carolina has long been a milk deficit State. The record shows that while exports of South Carolina producer milk increased from 66 million pounds in 1983 to 152 million pounds in 1988, or 130 percent, imports of bulk milk increased from 56 million pounds to 527 million pounds for the same period, or 841 percent. Packaged fluid milk sales by South Carolina plants outside the State increased from 235 million pounds in 1983 to 319 million pounds in 1988, or 36 percent. Packaged milk received at South Carolina plants increased from 6 million pounds in 1983 to 26 million pounds in 1988, or 333 percent. Packaged fluid milk sales into South Carolina (other than to South Carolina plants) increased from 112 million pounds in 1983 to 137 million pounds in 1988, or 13 percent.

For North Carolina, the record does not contain these same data that were made available for South Carolina. However, the record does show that milk production by North Carolina dairy farmers increased from 1.40 billion pounds in 1987 to 1.42 billion pounds in 1988, or 1.4 percent. Bulk imports into North Carolina decreased from 6.7 billion pounds in 1987 to 1.8 billion pounds in 1988, or 27 percent of the 1987 volume. Total fluid milk sales by North Carolina processors increased from 1.25 billion pounds in 1987 to 1.30 billion pounds in 1988, or 4 percent. Fluid milk sales outside the State by North Carolina processors increased from 242.6 million pounds in 1987 to 258.5 million pounds in 1988, or 6.6 percent. Fluid milk sales into North Carolina from outside processors decreased from 227.9 million pounds in 1987 to 209.8 million pounds in 1988, or 8 percent.

It is clear from these data that South Carolina relies substantially on imported bulk and packaged milk. North Carolina, on the other hand, is relatively self-sufficient. The substantial amount of milk moving into South Carolina which cannot be regulated by the State contributes significantly to disorderly marketing in that State.

Historically, Class I prices in South Carolina have been higher than Class I prices in North Carolina. The record shows for the period of October 1987 through March 1988, the Carolinas Federation's announced Class I price for South Carolina was slightly higher than for North Carolina. In April 1988, the two prices were the same and for the period of May 1988 through March 1989, the North Carolina announced Class I price was higher than for South Carolina. As a consequence of this price differential during the period of May 1988 through March 1989, a substantial amount of packaged milk was shipped from South Carolina processors into North Carolina.

Historically, the Georgia Federal order Class I price has been 70 to 80 cents lower than the announced South Carolina Class I price. The record shows that in January 1988, this price difference was $1.58 ($16.00 less $14.42). For the months of February through April 1989, this price difference was $.90 for all three months, which is closer to the historical relationship between the two States. A price difference of $1.58 versus $.90 can result in some shifting of packaged milk sales between these markets, contributing to disorderly marketing in South Carolina.

At the hearing, the two witnesses associated with the two universities testified about the disparity in pay prices received by dairy farmers delivering milk to the same fluid milk plant or to different plants located in the same general area. They testified (survey conducted for both States) that for January 1989, the pay prices received by six cooperative associations doing business in South Carolina ranged from a high of $15.36 to a low of $13.73, a difference of $1.63. In North Carolina, for January 1989, pay prices ranged from a high of $15.38 to a low of $13.99, a difference of $1.39.

Although the record shows that there has been considerable shifting of producers between handlers in North Carolina, this situation is even more prevalent in South Carolina. The disparity in pay prices caused by the individual handler pools and the individual base plans has contributed to disorderly marketing in North Carolina and South Carolina.

Another factor contributing to disorderly marketing in this two-State area is the butterfat differential used in paying producers. In both States, the butterfat differential is based on a factor of .1 of the Chicago 92-score butter price. In surrounding Federal order markets, the butterfat differential is based on a factor of .115 of the Chicago 92-score butter price. The witness testifying about marketing conditions in South Carolina estimated that the difference in the computation of the butterfat differential cost South Carolina dairy farmers about $400,000 per year. The witness testifying about marketing conditions in North Carolina estimated that the use of a factor of .115 would add

4 to 6 cents per hundredweight to producer pay prices.

From the foregoing, it is clear that the two State programs cannot assure dairy farmers associated with this marketing area of payments for their milk in accordance with its use and at minimum prices that are uniformly applicable throughout the market. These State programs, if allowed to continue, could lead to even a further dependence on outside milk supplies to meet the needs of the area. A Federal milk order providing for classified pricing at reasonable levels and marketwide pooling for distributing the returns uniformly among all producers will help provide the needed market stability. A Federal order will provide an environment of stable and orderly marketing throughout this area through the adoption of a classified pricing plan based on audited utilization of all Grade A milk purchased by handlers from producers and an equitable division among all producers of the proceeds obtained from the sale of their milk in the respective classes, including the lower-priced uses of reserve milk supplies not needed for fluid uses.

A Federal order will assure handlers that their competitors will pay not less than the minimum prices set by the order for milk and such prices will apply whether the milk comes from farms located in North Carolina or South Carolina, or other states, and without regard to whether the milk is disposed of inside or outside the marketing area.

This record shows that the dairy industry in the two-State area, particularly in South Carolina, does not have available detailed information regarding milk procurement and milk uses. A Federal order would provide such information on a continuing basis and would contribute to the development and maintenance of stable and orderly marketing conditions. The lack of such data, by itself, does not necessarily demonstrate the need for an order. Complete and accurate market information would, howaver, provide a substantial benefit to producers, cooperatives and handlers alike.

It is concluded that a Federal order for North Carolina and South Carolina as herein proposed will stabilize and improve milk marketing conditions in the area. The order is in the public interest in that it will establish orderly marketing conditions for producers and handlers relative to milk distributed in the proposed marketing area and will assure a continuing and adequate supply of high quality milk for consumers. Furthermore, the order will effectuate the declared policy of the Act by providing for:

1. The establishment of uniform minimum prices to handlers for milk received from producers according to a classified plan based upon the utilization made of the milk;

2. Uniform returns to producers supplying the market based upon an equal sharing among all such producers of the returns from the order prices for both the higher-valued Class I milk and the lower returns from the sale of reserve milk that cannot be marketed for fluid use;

3. An impartial audit of handlers' records to verify the payment of required prices;

4. A system for verifying the accuracy of the weight and butterfat content of milk purchased;

5. Marketwide information on receipts, sales, prices, and other related data concerning milk marketing; and

6. A regular and dependable procedure that affords all interested parties the opportunity to participate, through public hearings, in the determination of changes that may be required in the marketing plan in order to insure an orderly market.

3(a). *Handlers to be regulated and milk to be priced and pooled.* It is necessary to designate clearly what milk and which persons would be subject to the various provisions of the order. This is accomplished by providing specific definitions to describe the marketing area, route disposition, the types of plants, the various categories of regulated persons (handlers), and the persons (producers) whose milk will be subject to the uniform prices.

Marketing area. The Carolina marketing area, as proposed, should include all the counties within North Carolina and South Carolina. The defined marketing area should include all piers, docks, and wharves connected therewith and all craft moored at such facilities. The marketing area should include, as well, all territory occupied by municipal, State or Federal Government reservations, installations, institutions, or other similar establishments if any part is within the boundaries specified above unless such territory is within the marketing area of any other Federal order. The marketing area should not include the Great Smoky Mountains National Park, which lies in North Carolina and in Tennessee. Such area is currently included in the Tennessee Valley marketing area. This is because some of the park is located in the Tennessee counties that are a part of the Tennessee Valley marketing area, and the Tennessee Valley order includes all of a Federal government establishment if any part is within the marketing area.

Proponents' witness testified that in analyzing the area to be included in the proposed marketing area and the proposed four pricing zones, consideration was given to (1) The location of population within the area, (2) the location of plants selling in the area, (3) the location of the milk supply for plants that are expected to be fully regulated under the proposed order, (4) the area of regulation covered by nearby and adjacent Federal milk marketing orders, and (5) the pricing zones established by such orders. Proponents' spokesman indicated that a Federal order should be applicable to all counties in both States and that no useful purpose would be served by excluding any of the territory of the two States or by attaching some part of the proposed marketing area to some adjacent Federal order.

The witness for the proponents stated that the inclusion of all counties within the States of North Carolina and South Carolina in the proposed marketing area will not result in the regulation of any plant that has not been subject to State regulation. He said that the proposed marketing area would not cause a fluid milk plant to shift regulation from another Federal order to the proposed Carolina Federal order. Furthermore, he said, including all the counties within the two States will simplify both the reporting requirements by handlers and the administration of the order.

The proposed marketing area covering North Carolina and South Carolina is bordered on the east by the Atlantic Ocean and on the west and southwest by the Federally regulated areas of the Tennessee Valley and Georgia milk orders, respectively. The northern border of the marketing area abuts the southern boundary of the State of Virginia. Milk marketing in the Virginia area immediately to the north of the marketing area is under the regulation of the Virginia Milk Commission. The major distribution areas of the plants physically located within the Carolina marketing area are within the proposed marketing area or in the marketing areas of the two adjoining Federal orders.

Only one of the 23 fluid milk plants that are expected to be fully regulated by the proposed order is located outside the Carolina marketing area. That plant is located at Lynchburg, Virginia, and is operated by the Kroger Company. A representative of the company testified in favor of Federal regulation for the two-State area and the provisions of the proposed order.

Of the remaining 22 fluid milk plants that would be fully regulated under the proposed order, 15 plants are located in

North Carolina and 7 plants are located in South Carolina. In addition to the 7 South Carolina plants, there is one additional fluid milk plant at Greenville, South Carolina. That plant is currently regulated under the Georgia order. Testimony at the hearing indicated that the plant's sales in the Georgia marketing area are greater than its sales in the proposed Carolina marketing area. Consequently, the plant is expected to continue as a pool plant under the Georgia order.

With the exception of the plant at Lynchburg, Virginia, other Virginia fluid milk plants, according to the Deputy Administrator for the Virginia Milk Commission, have less than 15 percent of their sales in the Carolina marketing area. As discussed in a further section, a plant with less than 15 percent of its Class I sales in the proposed marketing area would not be a pool plant.

On the basis of this record, it is concluded that the inclusion in the proposed marketing area of all the territory in the States of North Carolina and South Carolina is appropriate. Such marketing area, in conjunction with the proposed pool plant standards, would not result in the full regulation of any fluid milk plants located outside the Carolina marketing area other than a plant at Lynchburg, Virginia. As previously noted, the operator of such plant testified in favor of regulation for the two-State area.

The four pricing zones, indicated earlier, will be discussed in a subsequent section of this decision.

Route disposition. A definition for "route disposition" is a convenience for specifying the various kinds of fluid milk sales outlets that will be considered in determining whether a distributing plant would be regulated under the order. As proposed by the order proponents, and adopted herein, route disposition would mean any delivery of a fluid milk product classified as Class I milk to a retail or wholesale outlet (except to a plant), either directly or through any distribution facility or vendor, and including any disposition from a plant store or through a vending machine. It would not include the delivery of fluid milk products to a handler's distribution points. The distribution from such points would be considered a route disposition from the milk plant where the fluid milk products were processed and packaged.

Plant. The order should contain a "plant" definition for purposes of clarity, ease of order interpretation and reference. As proponents suggested and as adopted herein, "plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged.

Separate facilities used only as a distribution point for storing packaged fluid milk products in transit would not be a plant. Similarly, separate facilities at which milk is only reloaded from one tank truck to another would not be a plant as defined herein.

Distributing plant. The order should define a distributing plant as a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month. The definition for a distributing plant is provided to describe the activities conducted at such a plant and to distinguish this type of plant operation from others. It also is helpful in referring to this particular type of plant throughout the order.

In North Carolina, the Grade A milk sanitation regulations are enforced by the North Carolina Department of Human Resources, Division of Health Services. The sanitation rules and regulations for North Carolina adopt by reference the Pasteurized Milk Ordinance recommended by the U.S. Public Health Service, Food and Drug Administration. The North Carolina Department of Agriculture, Pure Food and Drug Division, is responsible for checking the accuracy of milk plant butterfat tests of producer milk.

In South Carolina, health and sanitary regulations for producers and plants are enforced by the South Carolina Department of Health and Environmental Control. South Carolina has reciprocal agreements with other states with respect to producer and plant inspections. Butterfat testing regulations and some bulk tank calibration checks are provided by the South Carolina Department of Agriculture Laboratory Division. The Division also certifies weighers and testers employed by the industry.

Supply plant. A "supply plant" also should be defined under the order. As adopted herein, "supply plant" means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk, and from which fluid milk products are transferred during the month to a pool distributing plant.

Although proponents' witness testified that DI does not anticipate pooling any milk on the proposed order through a supply plant or a balancing plant, the order should contain such provisions. The record shows that at this time, all milk received at fluid milk plants that are expected to be pool distributing plants are receiving only direct-shipped milk. Nevertheless, the order should contain such a provision because of the possibility that some time in the future, it may be in the best interest of some cooperative association or proprietary handler, as well as the market as a whole, to ship milk to this market through a distant supply plant.

Pool plant. Essential to the operation of a marketwide pool is the establishment of minimum performance requirements to distinguish between those plants engaged in serving the fluid needs of the regulated market and those that do not serve the market in a way or to a degree that warrants their sharing (by being included in the pool) in the Class I utilization of the market. Because of differences in marketing practices and functions between distributing plants, supply plants and cooperative "balancing" plants, separate performance standards for each type of operation are provided in the attached order.

The following discussion sets forth the pooling standards that should apply to the various types of pool plants. To facilitate the discussion, it is noted that the performance standards for pooling a distributing plant and a supply plant provide that the plant's required association with the market should be measured in terms of the proportion of its milk receipts that are disposed of in the market. It is intended that such receipts would include any producer milk that is diverted from the plant to nonpool plants. Although diverted milk is not physically received at the plant from which diverted, it is, nevertheless, an integral part of the plant's supply of milk and acquires producer milk status by virtue of its association with such plant. Therefore, diverted milk should be included in the total receipts of milk at the pool distributing plant or the pool supply plant from which the milk was diverted for the purpose of determining whether the plant qualifies as a pool plant.

Milk that a cooperative bulk tank handler diverts from a pool plant to a nonpool plant also should be included in such plant's receipts for purposes of determining the plant's pool status. Requiring all diverted milk to be included as a receipt at pool plants from which diverted in determining their pool status will ensure the integrity of the order by requiring all producer milk to be associated with pool plants.

Along that same line, milk diverted to a supply plant from another order plant should not be included as a receipt of milk at the supply plant for the purpose of determining whether the plant

qualifies as a pool plant. Since such milk would be considered a part of the total supply of milk at the plant from which diverted, it should not be included in the supply plant's receipts. This will permit milk to be diverted to a supply plant with manufacturing facilities for processing without affecting the pool status of the supply plant. A pool supply plant may represent the nearest available outlet for milk surplus to the fluid needs of another Federal order area.

No similar accommodation needs to be made when milk is diverted to a distributing plant. Since these plants are essentially fluid bottling plants, there really is no reason to divert milk to these plants for any reason other than for bottling purposes. Hence, all milk physically received (including milk diverted to such plant) at the plant should be considered in the plant's total receipts for the purpose of determining whether the distributing plant qualifies as a pool plant.

Provision also is made for a cooperative association to pool a balancing plant that is located in the marketing area or in the State of Virginia. The pooling standard for such a plant would be measured in terms of the cooperative's overall supply function for the market, i.e., the proportion of the cooperative's member producer milk that is delivered to pool distributing plants.

Proponents' witness testified that the Class I utilization of a pool distributing plant should not be less than 60 percent for the months of August through November and January and February. He said that for the remaining months, the Class I utilization should not be less than 40 percent.

As proposed and adopted, a pool distributing plant would be required each month to have route disposition in the marketing area of not less than 15 percent of its total route disposition to be fully regulated. This route disposition requirement would not include filled milk.

At the hearing, a witness for Land-O-Sun Dairies, Inc. (LOS), a handler that is expected to have two plants fully regulated by the Carolina order, testified that the in-area route disposition requirement should be lower than 15 percent. He proposed that the in-area route disposition be not less than 15 percent of the total route disposition (except filled milk) or an average of not less than 5,000 pounds per day (except filled milk).

The witness testified that LOS was concerned because there are fluid milk plants selling substantial volumes of milk in the proposed marketing area that would not be fully regulated plants under the proposed 15 percent in-area distribution requirement. In some cases, he said, this volume could be over 3 million pounds per month. The witness alleged that partially regulated distributing plants have a competitive advantage over fully regulated plants in competing for Class I sales. He said that partially regulated plants serving government installations in the marketing area can use surplus milk to supply these installations.

An in-area monthly route disposition requirement for a pool distributing plant averaging not less than 10,000 pounds per day (except filled milk) was supported at the hearing by a witness for Dairy Fresh, Inc. He said that Dairy Fresh, Inc., was concerned about a fluid milk plant located in Virginia that was selling packaged milk in North Carolina.

A witness for the Milk Commission of the State of Virginia testified that the 5,000 pounds per day modification proposed by LOS is not appropriate. He said that any limit less than 15 percent is too restrictive. The witness stated that a plant located in Virginia was a fully regulated plant under the Middle Atlantic marketing area and that order has a similar 15 percent provision. He said that he expects four fluid milk plants that are located in Virginia, including the one fully regulated under the Middle Atlantic order, to become fully regulated under the Carolina order if the proposed 5,000 pounds per day limitation is adopted.

None of the three nearby Federal milk orders provides for a specific pound limitation on the amount of milk that a distributing plant say sell on routes in the marketing area as one of the conditions for meeting the pooling provisions of such order. The Middle Atlantic order has a less restrictive in-area percentage limitation than the 15 percent total Class I disposition on routes proposed for the Carolina order. Although the Middle Atlantic order's percentage limitation is 15 percent, it is based upon a larger volume of milk than the plant's Class I disposition. It is based upon the plant's Grade A receipts physically received at the plant and diverted from the plant. The Georgia order, too, has a 15-percent limitation on in-area sales but it is based upon the plant's total Class I disposition, which would include packaged milk distribution on routes as well as bulk Class I sales to other plants. The Tennessee Valley order establishes an in-area sales limitation of 10 percent of the plant's Grade A receipts physically received at the plant as well as milk diverted from the plant. Thus, the pooling requirements on in-area sales under the Tennessae Valley order and the Carolina order are equivalent for a distributing plant that utilizes two-thirds of its total Grade A receipts as Class I milk. The 10-percent requirement applied to a plant's Grade A receipts are more restrictive than the 15-percent requirement applied to a plant's Class I disposition only when a plant's Class I utilization exceeds two-thirds of the plant's total receipts.

The 15 percent in-area route disposition requirements proposed for the Carolina order are similar to the requirements in surrounding Federal orders and are appropriate for the Carolina order. As previously noted, the in-area disposition requirements proposed for the Carolina order are somewhat more restrictive than the current requirements for the Middle Atlantic and Georgia orders. However, the 15 percent in-area requirement when applied to distributing plants that have route disposition in excess of two-thirds of their total receipts is less restrictive than the current requirements of the Tennessee Valley order. Furthermore, there was no opposition to the adoption of the proposed 15 percent requirement.

Several parties proposed, however, that in addition to the 15 percent requirement, an average daily limitation on in-area route disposition of either 5,000 or 10,000 pounds per day should apply. The proposed daily limitations, however, would regulate under the Carolina order four Virginia milk plants. One of the four plants is currently regulated by the Middle Atlantic milk order. Such plant's sales into the Carolinas market are unlikely to be a disruptive factor since the plant is already under Federal regulation. The volume of in-area sales and the total route sales of the other three plants were not presented at the hearing. Accordingly, there is no basis for concluding that in-area sales requirements other than a percentage limitation are needed. Furthermore, these three plants are regulated by the Virginia Milk Commission. It is concluded, therefore, that a sufficient basis does not exist for adopting a poundage limitation on in-area sales at this time.

The witness for proponents testified that a supply plant should qualify for pool status by transferring a certain percentage of its total receipts from dairy farmers to pool distributing plants. He said that for the months of August through November and January and February, 60 percent of the total quantity of milk that is physically received during the month at such plant or diverted therefrom and delivered to

pool distributing plants is an appropriate standard based on Class I utilization for this marketing area. During all other months, he said, the requirement for pooling a supply plant should be 40 percent.

The proposed pooling standards for a supply plant contained in the notice of hearing provided that the operator of such plant may include milk diverted from such plant to a pool distributing plant as qualifying shipments in meeting up to one-half of the required shipments. This provision is contained in the Tennessee Valley milk order, which is the basis for most of the regulatory provisions proposed for the Carolina order. Permitting up to one-half of the milk diverted from a supply plant to a pool distributing plant to be used as qualifying shipments would give the supply plant operator more flexibility in moving milk from the farm to a pool distributing plant. The provision will also allow for the more efficient movement of milk in those situations where there are producers associated with the supply plant who are located nearer to the distributing plant than to the supply plant. The proposed provisions appear to be appropriate for the Carolina order and should be adopted.

Proponents' spokesman testified that a cooperative association's plant should also be able to qualify for pooling as a "balancing plant." He testified that such a plant should be able to qualify by requesting pool plant status provided that 60 percent or more of the cooperative's member producer milk pooled on the proposed order is delivered to pool distributing plants.

Although proponents' witness testified that he did not expect any supply plants or balancing plants to be associated with this market, the order should contain such provisions. A supply plant would be expected to be located some distance from the consumption centers and perform the traditional functions of assembling milk and supplying distributing plants with supplemental milk supplies on heavy bottling days. Because of its distance from the market center, this type of plant would find it more efficient to receive milk from the farm at the plant and then transfer it into larger over-the-road tank trucks for transshipment to distributing plants. Therefore, a "supply plant" has been defined on the basis of transfers to pool distributing plants.

The Carolina marketing area, like most Federal marketing areas, does not have any supply plants. The use of farm bulk tanks, refrigerated trucks and a greatly improved highway system have eliminated the need for the services that supply plants provide.

Because South Carolina does not produce enough milk to furnish the needs of its handlers and because North Carolina does not produce much more milk than is needed by its handlers, it is necessary to import milk from sources beyond the two States. Therefore, specific pooling standards for supply plants need to be included in the order in the event such a plant in the future should supply milk for this market to such an extent that it should participate in the marketwide pool.

The record of this proceeding shows that Class I utilization for 1987 and 1988 was about 80 percent or more for all months of these two years. For 1987, the month having the lowest Class I utilization was May (80.6 percent) and the month having the highest Class I utilization was October (88.5 percent). For 1988, the month having the lowest Class I utilization was March (79.7 percent) and the month having the highest Class I utilization was September (85.9 percent).

In view of the high level of Class I utilization in this market, the proposed Class I utilization percentages for a distributing plant and the proposed shipping requirements for a supply plant (60 percent during the months of August through November and January and February and 40 percent in all other months) are appropriate. The neighboring Tennessee Valley marketing area contains the same standards.

A witness for LOS testified that supply plants should have the right to automatic pooling for the months of March through June if the supply plant was a pool plant during each of the preceding months of July through February. This, he said, would be conditioned on the plant continuing to meet the requirements of a duly constituted health authority. The plant operator, he said, by written application could request that the plant be designated as a nonpool plant.

The LOS witness stated that with the proposed base and excess pay period of March through June, there would be no need for a supply plant to meet a shipping requirement. He said that required shipments from supply plants to distributing plants located in the central markets during the spring months would not be economical or efficient.

Neither at the hearing nor in post-hearing briefs was there any other support for automatic pooling of supply plants.

Automatic pool plant status for supply plants for the months of seasonally higher milk production was not proposed by the proponents. The fluid requirements of distributing plants in this market are such that supply plants, if relied upon for milk for the future, should be required each month to transfer certain percentages of their receipts to distributing plants to participate in the order's marketwide pool. Supply plants likely would need to ship milk to distributing plants in this market even during the months when production tends to be heavier, because during the days of peak bottling demand, all of the milk supply available for this market will be needed to furnish the needs of distributing plants. Therefore, a supply plant's requirements for pool status should apply on a year-round basis.

Although this market, at the present time, receives only direct shipped milk, there could come a time when a balancing plant may be needed to make supplemental shipments. The amount of these shipments, however, may not be in sufficient amounts to qualify the plant as a supply plant. The plant, however, should qualify for pooling as long as the cooperative has demonstrated that it is providing the market as a whole with substantial quantities of milk.

With respect to a balancing plant, a cooperative should be able to move the milk in the least costly manner whether direct shipped or by plant transfer. In the interest of efficiency, the cooperative's deliveries from the farm and/or transfers from the plant should count as qualifying shipments in determining whether a balancing plant meets the minimum delivery requirement. This alternative should provide the cooperative flexibility in moving its milk supplies to customers.

Milk should not be permitted to be associated with the market merely for manufacturing purposes because this reduces returns to producers and discourages the production of an adequate supply of milk by those producers regularly supplying the fluid market. Therefore, it is necessary that the pooling standards for a balancing plant be structured to assure that milk pooled through a balancing plant is a part of the regular market supply. A requirement that the plant be located in the marketing area or in the State of Virginia, along with a requirement that 60 percent of the cooperative's total member producer milk be delivered to pool distributing plants, should assure that milk manufactured at the balancing plant represents reserve milk supplies for this market.

Proponents' witness was asked why the cooperative balancing plant

provision for the Carolina order, unlike most other provisions of the proposed order, was not patterned after the Tennessee Valley order. The Tennessee Valley order requires that a cooperative balancing plant must be located in the marketing area.

The witness indicated that such a provision would preclude the pooling of a cooperative balancing plant located in the State of Virginia. He stated that while he was unaware at this time of any cooperative balancing plant or supply plant that might qualify as a pool plant, he did not want to rule out the possibility that a Virginia plant might be needed to process reserve milk supplies for the Carolina market in the future. Proponents' concern in that regard has been overcome by providing that a cooperative balancing plant may be located in the marketing area or the State of Virginia.

As proposed and adopted, the order should provide for a temporary upward or downward adjustment in the total Class I utilization percentage that a pool distributing plant must meet each month. Also, the order should provide for a temporary upward or downward adjustment of the shipping percentages for supply plants. Such adjustments should be made only if the Director of the Dairy Division determines that additional supplies are needed at distributing plants or to prevent uneconomic shipments of milk to such plants. The adjustments should be limited to 10 percentage points. Under such an arrangement, the Director would investigate the need for the revision of the performance standards for distributing plants and/or supply plants.

There is always a possibility that temporary or emergency situations affecting the market's supply-demand conditions could develop for a short time that would warrant a timely adjustment in these performance standards. Absent the discretionary authority to respond, these changes could be accomplished only through an amendment proceeding or by a suspension action. Amendment proceedings normally take considerable time, and suspension actions often are limited in their effects. Inclusion of provisions to temporarily adjust these performance standards by up to 10 percentage points will provide more flexibility to respond to short-run or emergency marketing situations on a timely basis.

The performance standards adopted herein for the various types of pool plants should be adequate to insure that the milk pooled under the Carolina order is associated with the market's fluid use. They are sufficient to prevent the development of Grade A milk supplies and the association of such supplies with the order solely for the purpose of obtaining milk for other than Class I use. The provisions are adequate considering the proposed market's Class I needs and the historical utilization of producer milk in such area.

Certain plants should be excluded from "pool plant" status even though they meet the pooling standards of the order. A distributing plant that has route disposition in this marketing area as well as in another marketing area should be regulated in the market in which such plant has the greatest route sales.

A supply plant that meets the shipping requirements of this order and another Federal order but which has greater shipments to distributing plants regulated under the other order should be pooled under the other order. Also, a supply plant pooled under another Federal order on the basis of its automatic pool plant status would not be a pool plant under the Carolina order even if such plant meets the shipping requirement under this order.

The proposed and adopted order language in this respect complements the neighboring Tennessee Valley and Georgia orders.

In addition, certain types of plant operations that are exempt from the pooling provisions of the order should be specifically excluded from the order's pool plant definition. In that regard, the term "pool plant" should not apply to a producer-handler's plant or a governmental agency plant.

Nonpool plant. The new order should include a definition of "nonpool plant." Under the order, a nonpool plant would mean any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The "nonpool plant" definition sets forth five specific categories of plants that cannot be pool plants under the order. With the exception of the producer-handler definition, they are adopted essentially as proposed by the order proponents.

A definition of "nonpool plant" is provided in the new order to facilitate the formulation of the various order provisions as they apply to such a plant. The various types of nonpool plants are described further hereinafter.

An "other order plant" would be a plant that is fully regulated under another Federal order. As such, it cannot be a pool plant under this order.

A plant operated by a "producer-handler", as defined in this or any other Federal order, would be considered a nonpool plant. Due to the nature of the operation, as discussed later, such a plant is specifically exempt from pool status.

A "partially regulated distributing plant" also would be considered a nonpool plant. A partially regulated distributing plant would be a plant that does not qualify as a pool distributing plant, an other order plant, a producer-handler plant, or a governmental agency plant. Generally, such a plant would be a distributing plant that has route disposition in the defined marketing area, but not to an extent that would qualify it for pool status under the order.

An "unregulated supply plant" means a supply plant that does not qualify as a pool supply plant, an other order plant, a producer-handler plant, or a governmental agency plant. In essence, it is a plant that transfers milk to pool distributing plants, but not to an extent that would qualify it for pool status under the order (less than the specified percentage of its receipts from dairy farmers is transferred to pool distributing plants).

A distributing plant operated by a governmental agency (Federal, State, or local) would also be included among the nonpool plants specified in the order.

A governmental agency which operates its own dairy farm and processing plant and distributes such milk at a plant store, on a college campus, or to the inmates of a governmental institution should not be fully regulated under the order. Such operations are normally not a competitive factor in the overall market and for this reason should not be pooled.

Three governmental agencies whose dairy operations would qualify as nonpool plants under the order are North Carolina State University at Raleigh, Clemson University, and the South Carolina prison operation, which has 2 dairy herds and a processing plant at Wateree.

The proposed "exempt plant" definition is not adopted in this decision. This provision would have exempted a producer-handler plant that has monthly route disposition of 150,000 pounds or less.

Handler. The impact of regulation under an order is primarily on handlers. A handler definition is necessary to identify those persons from whom the market administrator must receive reports, or who have financial responsibility for payment for milk in accordance with its classified use value. As herein provided, the following persons are defined as handlers under the order:

(1) The operator of one or more pool plants;

(2) A cooperative association with respect to producer milk that is picked up at the farm and delivered to a nonpool plant as diverted milk for the cooperative's account;

(3) A cooperative association with respect to milk of a producer that is picked up at the farm and delivered to a pool plant of another handler for the cooperative's account;

(4) The operator of a partially regulated distributing plant;

(5) A producer-handler;

(6) The operator of an other order plant from which milk is disposed of in the area; and

(7) The operator of an unregulated supply plant.

All of the categories of handlers listed above, with the exception of the operator of an unregulated supply plant, were proposed by the order proponents and are common to most milk orders. Each person who may have a reporting requirement or may incur a financial obligation under the order should be designated a handler. This will assure that all information necessary to determine a person's status under the order can be readily determined by the market administrator. For this reason, the operator of an unregulated supply plant and the other persons listed above should be defined as handlers under the new order.

A pool plant operator who receives milk from producers should be the responsible handler for such milk. As the responsible handler, such person should report, in the detail prescribed by the market administrator, the quantities of milk received from each producer and each other source. Such operator also should be responsible for reporting certain other information deemed necessary by the market administrator in order to determine the utilization of producer milk. Such handlers should be responsible for making payments to producers, cooperative associations and the producer-settlement fund in accordance with the terms of the order.

A cooperative association should be a handler under the order for farm bulk tank milk moved by the cooperative to a pool plant or diverted to a nonpool plant. In the case of such movements to a pool plant, a cooperative should be the handler for milk received for its account from the farm of a producer that is delivered to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative. However, should there be a mutual agreement between the cooperative and the pool plant operator whereby such operator agrees to be the handler for the milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the cooperative need not be the handler for such milk.

Requiring a cooperative to be the handler on milk picked up for its account at the farm of a producer and delivered to a pool plant provides a practicable basis for the complete accounting of such milk. It also recognizes the current handling arrangements used by the cooperatives operating in the market in allocating their milk among distributing plants.

In the event a plant operator is receiving milk from a cooperative association, the cooperative is the only party that has the opportunity to measure and sample the milk of individual member producers that is received at the plant. Therefore, in the absence of any agreement by the plant operator to be the handler on such milk, the cooperative must be the responsible handler for the milk as it leaves the farm.

The pool plant operator's obligation on milk purchased from a cooperative as a "bulk tank handler" is the same as for producer milk received directly from the farm of an individual producer. The plant operator must account to the pool for the milk according to the classification assigned to the milk based on the plant's utilization. The pool plant operator, in turn, settles with the cooperative on the basis of the uniform price for the milk. Under this arrangement, the pool plant operator is obligated to the producer-settlement fund, the administrative fund and the cooperative on the quantity of milk the cooperative delivers to such handler's pool plant directly from the farms of producers. The cooperative, in turn, is obligated to the producer-settlement fund and administrative fund on only that portion of milk picked up for its account that exceeds the quantity delivered to pool plants.

This accounting and payment procedure for bulk tank milk received from a cooperative will simplify the accounting for such milk by the pool plant operator. It will facilitate the administration of the order with respect to such items as financial responsibility, enforcement, and subsequent audit adjustments that may arise. Since the actual use of milk reflects the receiving pool plant's operation, it is reasonable that the responsibility for the accounting and payment of such milk be placed directly on such pool plant operator.

The order provides that a cooperative could be a handler on the milk of a producer which it diverts for its account from a pool plant to a nonpool plant. This handling arrangement will facilitate the movement of milk not needed for fluid use to nonpool plants for manufacturing. It also will assist the principal cooperatives in balancing supplies among the several distributing plants serving the market.

Under this handling arrangement, the diverting cooperative would be obligated to the producer-settlement and administrative expense funds on the diverted milk. Conversely, the operator of the nonpool plant that received the milk from the diverting cooperative would not incur an obligation on such milk under the order.

This order should afford all cooperatives in the market flexibility in the arrangements under which they sell milk to pool plants or dispose of reserve supplies. If it so chooses, a cooperative should be able to pick up the milk of nonmember producers along with the milk of members for delivery to a pool plant or diversion to a nonpool plant. This procedure will enable the cooperative to act as the marketing agent for a nonmember producer who has contracted with the cooperative to market his or her milk. Nothing in the order would require a cooperative to pick up the milk of nonmember producers. It would provide, however, that when a cooperative does pick up milk of nonmember producers on trucks under its control, it must assume varying degrees of responsibility with regard to such milk, depending on the handling arrangements made.

The Capper-Volstead Act provides the criteria by which cooperative associations are determined to be qualified cooperatives under the Agricultural Marketing Agreement Act. With the adopted handler definition, the new order would be consistent with that provision of the Capper-Volstead Act which recognizes that cooperatives "may deal in the products of nonmembers" and which limits such dealings to amounts not greater in value than those "handled by it for members."

Producer-handler. The order should exempt "producer-handlers" from the pricing and pooling provisions of the order. The producer-handler definition of the Tennessee Valley milk order, with some modification in the quantity of fluid milk products that may be acquired from other sources, is typical of the producer-handler definition in Federal milk orders in the southeastern United States and should be adopted herein.

Under proponents' producer-handler proposal, operations disposing of more than 150,000 pounds per month of fluid milk products that had both production and processing facilities would be limited to disposing of fluid milk

products directly to consumers through home delivery retail routes or through a retail store located on the same property as the milk processing plant in order to qualify as a producer-handler. Any other type of distribution would result in a disqualification of producer-handler status, which proponents claimed would recognize those points in the marketing channel where a pricing advantage over regulated handlers contributes to disorderly marketing. In addition, the proposal would prohibit a producer-handler from having a financial interest in any other handler or dairy farm operation. It also would require that any producer-handler who loses such status meet all the conditions for such status for a period of one month before re-acquiring producer-handler status. The purpose of these conditions is to preclude a producer-handler from changing its regulatory status to fit sales conditions or change its organizational structure to gain benefits at the expense of others.

The proposed definition would limit a producer-handler's purchase of fluid milk products from pool plants to the lesser of five percent of Class I disposition or 5,000 pounds per month. In addition, the proposals would require that producer-handlers pay the administrative assessment that is applicable to handlers.

It was the position of proponents that since there are no producer-handlers located within the proposed marketing area, now is an appropriate time to incorporate the proposed producer-handler provision as part of the proposed order. As a part of the nonpool plant provision, proponents proposed an exempt plant definition that would exempt from the pricing and pooling provisions those producer-handlers with monthly route disposition of 150,000 pounds or less.

A significant proportion of proponent's testimony was centered on the legislative history of the Act as it relates to the authority to regulate handlers who sell fluid milk products derived solely from own-farm production. Proponents contended that it was the intent of Congress to fully regulate such type of handlers who are large enough to have an impact in the marketplace and that only relatively small operations were intended to be exempt from regulation. Proponents testified that the purpose of the Act, which they contend is to stabilize marketing conditions for producers, is primarily accomplished by establishing classified pricing and by the pooling of returns from the sale of milk among all producers. They further testified that, to the extent that unpriced milk is free to enter the regulatory scheme, the objective of the Act—to promote orderly marketing—is frustrated. Furthermore, they contend that a failure to regulate large producer-handlers results in nonuniform prices to handlers, which they claim also is contrary to the requirements of the Act. Thus, they conclude that inequities exist between fully regulated handlers and exempt producer-handlers, which they contend caused the very same market disruption that is intended to be rectified by Federal regulation.

Proponents maintain that the proposals are consistent with the intent of Congress in that relatively small operations would continue to be exempt from full regulation. Also, producer-handlers, however large they might be, would also be exempt from full regulation if their sales of fluid milk products were not in direct competition with those of regulated handlers. Proponents testified that disruptive competition would not result to the extent that sales of large producer-handlers are restricted to home delivery and to sales from a plant store on the same premises as the processing plant. Proponents contend, however, that to the extent that sales are made in the same commercial channels used by regulated handlers, the same regulatory provisions should apply to producer-handlers as to handlers. Otherwise, proponents contend, producer-handlers who have a significant pricing advantage can disrupt the marketing of milk to the detriment of regulated handlers and to the producers who supply the milk requirements of the market.

Proponents testified that it is necessary, as a result of changes in marketing conditions, to alleviate the potential for market disorder that may result because of unfair competition between regulated handlers and exempt producer-handlers. Proponents contend that with the trend towards fewer and larger producers and handlers, there is an increasing potential for the vertical integration of production and processing operations of sufficient size to be disruptive factors in Federal order markets.

Experience under Federal orders has demonstrated that effective regulation can be achieved without the full regulation of those persons who produce, process, and distribute essentially only the milk produced on their own farms and who buy no milk from other dairy farmers or plants other than pool plants and other order plants. Such operations are basically self-sufficient in that they rely primarily on their own farm production and assume the burden of maintaining the necessary reserve supply of milk associated with their fluid milk operations in disposing of any daily or seasonal surplus they may produce.

As adopted herein, a producer-handler is any person who operates a dairy farm and a processing plant and who receives no fluid milk products from sources other than such person's own farm production, pool plants, and other order plants. Any such receipts from pool plants and other order plants during the month may not exceed the lesser of five percent of Class I disposition or 5,000 pounds per month. A producer-handler may not dispose of any other source milk in the form of a fluid milk product except through the addition of nonfat milk solids to fortify fluid milk products received from such person's own farm, pool plants or other order plants.

To qualify as a producer-handler, such person must provide proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for such person's own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

As long as the producer-handler retains exempt status, the only obligation imposed on such person by the order is to keep records, to file reports with the market administrator and to permit their verification. The purpose of such reports is to permit the market administrator to verify that the operation continues to be one of a bona fide producer-handler. Such reports are necessary regardless of the size of the producer-handler operation.

Under the order, a producer-handler must provide milk for such person's processing operation essentially only from such person's own-farm production. The operations of processors with own-farm production who rely on other plants for substantial supplemental supplies either in bulk or packaged form are not significantly different from the operations conducted by pool handlers. In addition, such individuals do not assume the risk or cost of providing a full supply for their own needs. If such operations are not pooled, the pool does not receive the benefit of their Class I sales but acts as a supply balance by carrying their necessary reserve milk supplies.

Notwithstanding the above conclusion, it is appropriate that producer-handlers be permitted some tolerance for purchasing fluid milk

products from other plants. A limitation of the lesser of five percent of Class I disposition or 5,000 pounds per month on a producer-handler's purchases from pool plants and other order plants will insure against unintentional involvement in regulation of producer-handlers as a group while at the same time deterring larger handlers with own-farm production from evading the pooling of such production by seeking producer-handler status.

Except for the limited privilege of using receipts from other order plants as described above, the provisions of the order preclude a producer-handler from using other source milk for Class I, except nonfat dry milk used solely to increase the nonfat milk solids content of the fluid milk products the producer-handler processes. Such provisions are necessary since a producer-handler to gain that status for all practical purposes must carry on a self-contained operation. If such an individual were permitted to reconstitute or otherwise use other source milk as a source of supplemental supplies, there would be no basis for distinguishing the operations of such individuals from the operations conducted by pool handlers. Furthermore, since a producer-handler is not regulated, and therefore does not incur a pool obligation, it is not appropriate that such person have access to supplemental supplies other than from fully regulated sources. In the absence of such a requirement, a producer-handler could find it advantageous to reconstitute nonfat dry milk, for example, and sell it in fluid form to consumers. With nonfat dry milk carrying only a surplus milk value, competing regulated handlers would be at a disadvantage on their Class I sales.

As indicated, a producer-handler's exemption from the pooling and pricing provisions is predicated upon the basic self-sufficiency of the total operation. Accordingly, no other person should be permitted to share the risk involved with the operation of a producer-handler's farm or such person's plant. All resources necessary for such person's own farm production of milk must be such person's personal risk. Similarly, all risks associated with the operation of the processing plant must be that of the producer-handler.

Although producer-handlers have not been fully regulated as a general practice, the Act provides the authority to regulate handlers of milk to carry out the purposes of the Act. With respect to producer-handlers, guidelines from the legislative history indicate that there is authority to regulate such operations if they are so large as to disrupt the market for producers. However, on the basis of the overall history of the treatment of producer-handlers, a size consideration, in and of itself, is not particularly relevant to the issue. Even large operations in relation to the markets they serve have continued to be exempt from full regulation. Consequently, any decision to fully regulate a producer-handler type operation must be supported by substantial evidence of the existence of disorderly marketing that is a direct result of producer-handler activity.

In the Carolina market, there are no producer-handlers. Obviously, the disorderly marketing that exists in the Carolinas is not a result of producer-handler activity. Consequently, no basis exists for fully regulating a producer-handler operation on the basis of this record.

Producer. The term "producer" defines those dairy farmers who constitute the regular source of supply for the market. The producer definition adopted herein follows the one proposed and supported by the order proponents.

Producer status under the order should be provided for any dairy farmer who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is received at a pool plant directly from the producer's farm or is picked up at the farm by a cooperative as a bulk tank handler for delivery to a pool plant. Producer status also should be accorded to a dairy farmer who has established association with the market and whose milk is diverted from a pool plant to a nonpool plant by a cooperative association or a pool plant operator, either for fluid use or for surplus disposal.

To establish a producer's association with the market and to insure the marketability of such producer's milk, it is reasonable to require that a dairy farmer's milk be received at a pool plant each month to qualify such dairy farmer's milk for diversion to a nonpool plant. The "touch base" requirement is discussed more fully in the findings dealing with the definition of "producer milk."

The order would provide an exemption for producer-handler operations and for plants operated by a governmental agency. Since these operations are exempt from the order's pricing and pooling provisions, milk which is excess to the needs of such operators should not be treated as producer milk when it is moved directly from the farms of such operators to a pool plant. Accordingly, the producer definition adopted herein would specifically exclude producer-handlers and governmental agency plants. Any such milk delivered to a pool plant from such operations would be other source milk.

In addition, provision must be made to preclude the possibility of a dairy farmer being a producer under two orders with respect to the same milk. In this regard, the producer definition should exclude a dairy farmer with respect to milk which is received at a pool plant under this order by diversion from a pool plant under another order if the dairy farmer is a producer under the other order with respect to such milk and the milk is allocated to Class II or Class III use under this order. Also, the definition should exclude a dairy farmer with respect to milk which is diverted to a pool plant under another order from a pool plant under this order if any portion of such person's milk is assigned to Class I milk under the other order.

Producer milk. The "producer milk" definition is intended to define the milk that would be priced and pooled under the order. The definition adopted herein, except for the "touch base" provision, follows the one proposed and supported by the proponents.

"Producer milk" would include milk of a producer that is (1) received at a pool plant directly from such producer by the operator of the plant; (2) received by a cooperative association acting as a bulk tank handler; (3) diverted by a cooperative association or a pool plant operator from a pool plant to a nonpool plant that is not a producer-handler plant; or (4) diverted from a pool plant for the account of the handler operating such plant to another pool plant.

The order should provide for "diversions" to nonpool plants by pool plant operators and cooperative associations. When milk is not needed at a pool plant, it usually is diverted to a nonpool plant where it is used to produce manufactured milk products. Diversion limitations are necessary, however, to insure that the pool distributing plants in the market are adequately supplied first. A portion of an individual producer's milk would have to be received at a pool plant each month (touch base provision) to qualify the producer's milk for diversion to nonpool plants during the month. Also, pool plant operators and cooperative associations would be limited in the total quantity of milk that they can divert during the months of seasonally short milk production.

As proposed and adopted, pool plant operators and cooperative associations should be permitted to divert during the months of July through November and

January and February an amount equal to one-fourth of the milk that is physically received at or diverted from pool plants as producer milk of such handler during the month.

The order would require that each producer's milk be received at a pool plant each month. This "touch base" provision would require that each individual producer deliver to a pool plant at least 2 days' production in each of the months of March through June and 6 days' production in each of the other months of July through February.

Proponents' witness testified that each individual producer should be required to deliver to a pool plant at least 4 days' milk production in each of the months of March through June and 10 day's production in each of the other months of July through February. This requirement, he said, is necessary so as to have some direct association between the producer each month and a pool plant. The witness said that without a "touch-base" requirement milk of a producer could be pooled without ever having to come to a pool plant.

The spokesman for the proponent testified that 10 days' production is a reasonable minimum number of days for associating an individual producer's milk with the marketwide pool during the short production months. He said that the demand for milk at distributing plants is at its highest on Wednesday, Thursday and Friday of each week (12 days per month). Without a delivery requirement for individual producers, he said, a pool plant operator could associate enough milk with the Carolina pool so that the plant's utilization would always be at the minimum permitted under the order. He said that marketing conditions in the proposed area support 10 days of delivery during the months of short production. In his view, the small amount of inconvenience and cost that might be associated with bringing milk of producers who are normally associated with the proposed Carolina order on the number of days required would be minimal as compared to the cost (reduction in the blend price) of having milk associated with the order pool to the extent that the supply plants or distributing plants could pool milk to the maximum allowed and still meet the performance requirements.

Proponents' witness testified that the proposed diversion limits are appropriate for this market because Class I utilization is expected to exceed 80 percent during the months of July through November and January and February. He said that such a high utilization requires that the milk pooled on the order during this period be available for fluid use. Proponents' witness said that their proposed diversion limits will, however, permit the efficient disposition of milk that is not required at pool plants for fluid use.

The limits on total diversions of producer milk to nonpool plants by a handler should be established at a rate that will accommodate the market's need to efficiently dispose of milk not needed for fluid use. At the same time, it is necessary to assure that milk supplies will be available for fluid use.

Based on the record, it is concluded that handlers' diversions of milk to nonpool plants should not exceed an amount equal to one-fourth of the milk physically received at pool plants during the months of July through November and January and February.

A pool plant operator, other than a cooperative association, should be allowed to divert any milk that is not under the control of a cooperative that is diverting producer milk during the month. The total quantity of milk that such plant operator may divert during any month should be limited to one-fourth of the producer milk physically received at such plant during the month. Also, a cooperative association should be allowed to divert milk for its account. In this case, the percentage limit should be one-fourth of the cooperative association's producer milk that is delivered to and physically received at pool plants during the month.

The record indicates that the diversion allowance proposed and adopted is expected to accommodate the efficient movement of milk supplies in excess of the market's fluid needs by handlers. Having set that allowance at an appropriate level, the individual producer "touch-base" standard should be set at a minimal level in order to allow handlers the maximum flexibility to receive milk from producers in the least costly manner.

Handlers should be able to move producer supplies that are under their control in the most efficient manner. Producers supplying a particular pool plant can be widely dispersed. Because of the various farm locations, handlers may receive milk from several farm routes, some of which likely would be nearer to the plant than others. Therefore, it is more economical to receive the milk of those producers located closest to a handler's plant on a regular basis and to receive the milk of more distant producers only when their milk is needed. On the other hand, a handler wanting to dispose of reserve milk would want to divert to nonpool manufacturing plants the milk of the distant producers more often than the milk of those producers who are located closest to the pool plant, assuming that the manufacturing plant is located further from the metropolitan centers than distributing pool plants.

It is reasonable, however, that the order include a minimal "touch base" provision that would require each producer's milk to be received at a pool plant each month. As indicated previously, proponents proposed that each individual producer deliver his milk to a pool plant at least 4 days' production in each of the months of March through June and 10 days' production in each of the other months of July through February.

The witness for LOS proposed that each individual producer deliver to a pool plant at least 2 days' production in each of the months of March through June and 6 days' production in each of the other months of July through February. He said that the proposed marketing area is limited in the number of manufacturing plants that can handle surplus milk or balance the supply for fluid needs. The witness said that the additional milk that is needed for fluid use in this market from time to time is produced in Tennessee, Kentucky and Virginia. This, he said, should be considered in determining the appropriate "touch-base". In his view, proponents' 10 days and 4 days proposal, coupled with a limited diversion provision, would result in the moving of distant producers to the central market and at the same time moving other producers located closer to pool distributing plants back out to manufacturing plants just to comply with the "touch base" requirement.

It is concluded that a 6 days and 2 days "touch base" is more appropriate for this market. The neighboring Tennessee Valley order contains a 6 days and 2 days "touch base" provision. Such order also provides that the total quantity of milk that may be diverted by a cooperative association or proprietary handler may not exceed one-fourth of the milk that was received at or diverted from pool plants as producer milk of such handler during months of seasonally short production. Since the Carolina order would likewise apply a percentage limitation on the quantity of milk that may be diverted to nonpool plants as producer milk during the months when production is short relative to demand for milk for fluid use, there appears to be no reason to require other than a minimal producer "touch-base" requirement during such period. Therefore, a touch-base requirement of 6 days' production (three deliveries for producers whose milk is picked up every other day) each month of July through February is reasonable. Such a standard

is adequate to establish that a producer is eligible to have milk diverted to a nonpool plant during the months when production is short relative to the demand for milk for fluid use.

Only 2 days' production of each producer would have to be received at a pool plant during the months of March through June. This is the period when the market's fluid needs generally would require a lesser proportion of the available milk supply. Thus, the 2 days' production requirement should provide the flexibility needed during the months of March through June to dispose of reserve milk supplies that are not needed for fluid use.

The order should provide a procedure to be followed for determining pool status of the milk if a pool plant operator or cooperative association diverts milk in excess of the percentage allowance specified in the order. As adopted herein, the excess quantity of milk would not qualify as producer milk and would not be priced under the order. In such cases, the diverting handler would be required to designate the dairy farmer deliveries that should not be considered producer milk. Absent such designation, no milk diverted by the handler would be producer milk. The order proponents proposed this method of identifying over-diverted milk.

The order should also provide a method to determine which producers' milk should not be qualified as producer milk when a cooperative's diversions from a pool plant to nonpool plants would cause such plant to lose its pool status. In such cases, the cooperative should be responsible for identifying which dairy farmers' milk would not be producer milk. Because the cooperative is the accountable handler to the pool for the producers' milk, such handler is in the best position to identify those producer deliveries that would not be producer milk for purposes of assuring continued pool status for the plant involved.

If the cooperative fails to designate the dairy farmers' deliveries that are to be excluded as producer milk, no milk diverted by the cooperative to nonpool plants would be considered producer milk. This procedure is consistent with the method used to specify which dairy farmer deliveries should not be considered producer milk in excess of the percentage allowance specified in the order.

As proposed by proponents of the order, all diverted milk should be priced at the location of the plant to which the milk was diverted. Pricing diverted milk at the location of the plant where such milk is physically received removes the possibility of subsidizing distant producers when their milk is diverted to distant manufacturing plants. This would occur if such producers received a blend price f.o.b. the city plant (as if the milk had actually moved to the city) when in fact no transportation cost to the city had been incurred because the milk was diverted to a manufacturing plant located near the producer's farm.

Since the proposed order would allow limited quantities of milk that are diverted to count as qualifying shipments for the purposes of pooling a supply plant, the order also should provide for diversions between pool plants. This will provide the technical means under the order for milk to be delivered by supply plant operators directly from producers' farms to pool distributing plants and still count as shipments from the supply plant. Also, it will allow the operator of any pool plant to divert milk supplies to another pool plant and retain the producer milk status and payroll responsibility for such milk. Without this provision, a plant operator who wants to retain regular producers on the plant's payroll for the entire month would have to physically receive the milk of such producers into the plant (so that it will be considered "producer milk"), then pump it back into the truck and deliver it to the other pool plant. Such milk would then be considered a transfer from one plant to another with the transferor-handler accounting to the pool for the milk and paying those producers as well.

This practice is obviously uneconomic, resulting in unnecessary and costly movements of milk. In addition, the unnecessary pumping of milk is damaging to its quality. Permitting diversions of milk between pool plants will promote the efficient handling of milk.

In the case of diversions between pool plants, the question arises as to whether such diversions should be considered as a receipt at the divertor plant, the divertee plant, or both for the purpose of determining whether such plants have met the requirements for pooling under the order. As adopted herein, such diversions would be treated in the same manner as transfers between pool plants.

The order provides that milk which is transferred from one distributing plant to another shall be included in the receipts of both the transferor plant and the transferee plant. Diversions between pool distributing plants should be treated in the same way.

Milk that is transferred from a pool supply plant to a pool distributing plant is included in the receipts of both the supply plant and the distributing plant. Accordingly, diversions from a pool supply plant to a pool distributing plant should be considered in the receipts of both plants.

Fluid milk products that are transferred from a pool distributing plant to a pool supply plant are included in the receipts of the distributing plant but are excluded from the receipts of the supply plant. Diversions from a pool distributing plant to a pool supply plant should also be treated this way.

Other source milk. An other source milk definition should be adopted for the new Carolina order. In addition to milk received from producers, a regulated pool plant may receive milk or milk products from other sources. An "other source milk" definition will serve to specifically identify the various categories of such receipts.

The order proponent suggested that the "other source milk" definition that was adopted when a uniform milk classification plan was provided for 39 Federal order markets on August 1, 1974, be included in the new order. There was no opposition to this proposal, which is adopted.

As provided herein, "other source milk" would be all skim milk and butterfat in a handler's receipts of fluid milk products or bulk fluid cream products from any source other than producers, cooperative association handlers, or pool plants. It also would include a handler's receipts of fluid cream products in packaged form from other plants. In addition, any milk products (other than fluid milk products, fluid cream products and products produced at the plant in the same month) from any source which are reprocessed, converted into, or combined with another product in a handler's plant during the month would be considered a receipt of "other source milk." Receipts of milk products (other than fluid milk products or fluid cream products) for which the handler fails to establish a disposition also would be included under the "other source milk" definition.

Although fluid cream products would be Class II products and would not be included in the order's fluid milk product definition, bulk fluid cream products should be treated in the same manner as fluid milk products for purposes of applying the other source milk definition. This procedure will facilitate the application of the other provisions of the order.

Receipts of fluid cream products, eggnog or yogurt (or any filled product resembling such products) in packaged form from other plants would be considered other source milk. These products are Class II under the

classification plan provided for this market. Although no handler obligation would apply under the order provisions adopted herein with respect to such receipts, it is desirable for accounting purposes that receipts of packaged Class II products be defined as other source milk. This accounting technique will preclude the recordkeeping difficulties that might otherwise be experienced in accounting separately for inventories and sales of Class II products processed in the handler's plant versus those received at the plant in packaged form from other plants. As provided herein, such receipts of other source milk would be allocated directly to the handler's Class II utilization, rather than being allocated to the extent possible to the handler's lowest class of utilization as is provided in some cases for other types of other source milk.

The order should provide that manufactured products from any source that are reprocessed, converted into, or combined with another product in the plant be considered as other source milk. For accounting purposes, such manufactured products would include dry curd cottage cheese received at a pool plant to which cream is added before distribution to consumers. When used to produce cottage cheese or lowfat cottage cheese, the receipts of dry curd would be allocated under the provisions adopted herein directly to the handler's Class II utilization. No handler obligation would apply under the order to such receipts.

The order also should provide that products manufactured in a pool plant during the month and then reprocessed, converted into or combined with another product in the same plant during the same month not be defined as other source milk. For example, assume that a handler makes condensed skim milk from producer milk and then uses the condensed product in making ice cream. It is intended under this situation that the producer milk be considered as having been used to produce ice cream. The condensing operation is merely one of the steps performed by the handler in processing ice cream from raw milk.

Any disappearance of manufactured milk products for which the handler fails to establish a disposition would be considered other source milk. It is reasonable that each handler be required to account for all milk and milk products received or processed at the handler's regulated plant. Otherwise, a handler with inadequate records may have an opportunity to gain a competitive advantage over competitors who properly account for all of their receipts of milk and milk products. Specifying any unexplained disappearance of manufactured milk products as other source milk will contribute to a uniform application of the regulatory plan to all handlers.

Filled milk. Filled milk should be defined as any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

This definition and the treatment afforded such products under the order are consistent with the provisions and treatment of filled milk adopted in the Assistant Secretary's decision for all Federal orders issued October 13, 1969 (34 FR 16881). Official notice was taken of the 1969 decision at the hearing held April 17–20 and April 24–25, 1989, for this market. The record evidence indicates that the findings and conclusions of the 1969 decision are equally applicable under current marketing conditions in the proposed marketing area.

Cooperative association. A definition of "cooperative association" should be adopted as suggested by the order proponents.

As provided herein, a cooperative association means any cooperative marketing association of producers which the Secretary determines, after application by the cooperative association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of, or marketing milk or milk products for its members.

Defining such an organization of producers will facilitate the formulation of the various other order provisions as they apply to such an association of producers.

(b) Classification of milk.

The statutory authority for Federal milk orders specifies that an order shall classify milk in accordance with the form in which or the purpose for which the milk is used. As proposed by proponents, the order should provide for three classes of utilization.

The products included in Class I milk and sold in the proposed marketing area for fluid consumption are required to be produced in compliance with the inspection requirements of a duly constituted regulatory agency. This is in contrast to the absence of such requirements for manufactured dairy products such as butter and hard cheese. Because of the extra cost of getting high-quality milk produced and delivered to the market in the condition and quantities required, it is necessary to establish a separate class for such milk to which a price above the manufactured milk price may be applied. The higher price for Class I milk must be at a level which, together with the prices applicable to other classes, will yield a "uniform" price that will encourage production of milk to meet the fluid requirements of the market.

Class I milk should include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Class I milk should not include skim milk or butterfat disposed of in the form of evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, or whey.

Each product designated herein as a Class I product would be considered a "fluid milk product" as defined in the order. In addition to these fluid milk products, Class I milk would include any skim milk and butterfat not specifically accounted for in Class II or Class III, other than shrinkage permitted a Class III classification.

As provided, skim milk or butterfat disposed of as filled milk in fluid form shall be classified as Class I milk. This classification is identical to the treatment of filled milk in all Federal order markets. The basis for the uniform treatment of filled milk under this and all other Federal orders is set forth in

the earlier findings concerning the definition of filled milk.

Class III milk should include products which are made from surplus Grade A milk and which compete in a national market with similar products made from manufacturing grade milk. These products include cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese), butter, any milk product in dry form (such as nonfat dry milk), any concentrated milk product in bulk, fluid form that is used to produce a Class III product, and evaporated or condensed milk (plain or sweetened) and evaporated or condensed skim milk (plain or sweetened) in consumer-type packages. Class III milk also should include any product not specified in Class I or Class II.

An intermediate class, Class II, should apply to certain products which can command a higher value than Class III products, but which must be competitively priced below Class I in order to compete with non-dairy substitute products or manufactured dairy products that can be used in making Class II products. Class II milk should include skim milk and butterfat disposed of in the form of a "fluid cream product," eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles one of these products. As defined in the order, "fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

Class II milk should also include bulk fluid milk products disposed of to any commercial food processing establishment at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages. In addition, it should include milk used to produce cottage cheese, lowfat cottage cheese, dry curd cottage cheese, milkshake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, and certain other products as specified in the order.

The classification scheme adopted herein was proposed by the order proponents and is identical to the uniform classification plan contained in many of the other Federal order markets. The plan was based on exhaustive hearings held on this issue in 1971 for 39 markets. The final decision on the uniform classification plan was issued February 19, 1974 (39 FR 9012). Official notice was taken of this decision at the hearing held April 17–20 and April 24–25, 1989, for the Carolina market. It contains a detailed discussion of the classification issue. Official notice also was taken of the Assistant Secretary's decision issued July 17, 1975 (40 FR 30119), which modified certain provisions originally adopted in the 39-market decision.

Proponents testified that this classification system (as modified in 1975) would be fully appropriate for the proposed order. Adoption of the uniform classification plan in this new order will coordinate these essential provisions with the same provisions under most other orders.

The record evidence indicates that the findings and conclusions of the above-mentioned decisions are equally applicable under current marketing conditions in the proposed marketing area.

Classification of shrinkage. The Carolina order should contain provisions for classifying skim milk and butterfat in shrinkage. The shrinkage provisions adopted herein are similar to the shrinkage provisions now provided in most orders.

Total plant shrinkage should be prorated between (1) those kinds of receipts on which the Class III shrinkage limitations apply, and (2) other receipts, principally other source milk in the form of fluid milk products requested for Class II or Class III use. To the extent that the quantity of shrinkage prorated to the first category exceeds the established Class III limit, the excess should be classified in Class I.

The shrinkage provisions provided herein recognize that shrinkage normally varies with the type of handling involved. More loss is usually experienced in plant processing than in merely receiving milk for delivery to another handler. Thus, with respect to milk picked up at producers' farms and delivered to a plant, a Class III shrinkage allowance of 0.5 percent for such milk is provided.

A Class III shrinkage allowance of 1.5 percent to cover milk lost in processing is provided for the pool plant operator. This provides a total of 2 percent Class III shrinkage allowance for such milk from producers in the receiving and processing operations.

The total shrinkage allowance applicable to a pool plant operator depends upon whether the plant operator purchases the milk at farm weights and tests or at plant weights and tests. The provisions allow the plant operator up to 2 percent shrinkage in Class III if the milk is purchased on the basis of weights determined at the farm and butterfat tests determined from farm bulk tank samples. In this case, there is no shrinkage allowance for a cooperative association handler who may have delivered the milk from the farm to the pool plant.

As provided herein, when bulk milk is transferred to another plant, the shrinkage allowance to the transferor handler would be reduced at the rate of 1.5 percent of the quantity transferred. This is similar to provisions now applicable under most orders.

In the case of milk diverted from a pool plant to a nonpool plant, a shrinkage allowance in Class III of 0.5 percent would be provided the diverting handler if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights and tests determined at the plant. If the milk is purchased at farm weights and tests, no shrinkage allowance would apply for the diverting handler. This same procedure would apply to cooperative bulk tank deliveries to pool plants when similar handling is involved.

This division of the 2 percent shrinkage allowance, both in the case of deliveries from cooperative bulk tank handlers to plants and for transfers between plants, has been found practical and has been well accepted in Federal order markets where it now applies. Shrinkage should be accounted for on an individual plant basis in the case of a handler operating more than one pool plant under the order. This procedure will promote plant efficiency in the Carolina market.

Classification of milk transferred or diverted to other plants. Some fluid milk products or fluid cream products may be disposed of by regulated handlers to other plants. It is necessary, therefore, to provide specific rules so that the classification of such movements may be determined under this order.

Under the adopted classification plan, fluid cream products would be classified as Class II products. If such products are transferred to another plant in packaged form, the skim milk and butterfat contained therein should be classified as Class II milk since these items are moved in final form. The classification of fluid cream products when disposed of in bulk form, however, is determinable only by following the movement of the bulk product to its subsequent use. Thus, it is necessary that fluid cream products that are transferred in bulk from a pool plant to another plant be classified in a manner similar to that used in classifying transfers of bulk fluid milk products

Some skim milk or butterfat may be transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant. Such transfers should be classified as Class I milk unless both handlers request the same classification in another class in their monthly reports to the market administrator and sufficient Class II or Class III utilization is available at the transferee plant after the allocation of its receipts of other source milk. If the shipping plant received other source milk in the form of nonfat dry milk, for example, during the month, the skim milk and butterfat so transferred should be classified so as to allocate the least possible Class I utilization to the other source milk. If the shipping handler received other source milk from an unregulated supply plant or an other order plant, the transferred quantities, up to the total of such receipts, should not be Class I to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant.

Transfers from a cooperative bulk tank handler to the pool plant of another handler should be assigned classification pro rata with producer milk received at the plant.

The provisions governing transfers between pool plants described herein will contribute to obtaining the best possible utilization of producer milk. Such provisions will tend to insure that producer milk used in Class I will not be classified in a lower class when interplant shipments involve a pool plant with receipts of other source milk. Unless such safeguards are provided, a high-utilization plant could be used as a conduit for assigning milk obtained from nonpool sources for manufacturing purposes to a higher utilization (at the expense of producer milk) than it would receive by direct delivery to the plant at which it is actually utilized.

Skim milk or butterfat may be transferred or diverted from a pool plant or an other order plant in the form of a fluid milk product or transferred from a pool plant to an other order plant in the form of a bulk fluid cream product. The classification of such transfers or diversions should apply only to the skim milk and butterfat in excess of any receipts at the pool plant from the other order plant.

The order should provide for the diversion of milk to other order plants for Class II or Class III use. Such provisions will foster the efficient handling of surplus milk in the market by permitting the disposal of such milk directly from farms to manufacturing plants in other markets, rather than having such intermarket movements limited to the more expensive method of transferring milk from one plant to another. With the safeguards adopted herein, returns to producers in the market to which the milk is diverted will not be affected by the processing of this surplus milk in their market since the diverted milk will continue to be pooled in the Carolina market.

Fluid milk products transferred or diverted to other order plants and bulk fluid cream products transferred to such plants will be classified in accordance with the classes to which such milk is allocated under the other order. If information concerning the classification of transfers and diversions is not available to the market administrator in time to compute handler pool obligations, such transfers should be classified in Class I, subject to adjustments when the information is available. In addition, the order should provide that if the other order provides for a different number of classes than the Carolina order, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified in Class I and skim milk and butterfat allocated to other classes shall be classified as Class III milk. The order also provides that if a fluid milk product is transferred to an other order plant and such product is not defined as a fluid milk product under the other order, classification of such transfer shall be in accordance with the classification provisions of this order.

The order should prescribe a method for classifying the skim milk and butterfat in transfers from a pool plant to a producer-handler or in transfers or diversions from a pool plant to a governmental agency plant. If such skim milk and butterfat are in the form of a fluid milk product, such transfers should be classified as Class I milk. As described elsewhere in this decision, such a classification is necessary to assure that producers are not burdened with maintaining reserve supplies associated with the Class I sales of such operations.

Skim milk and butterfat in the form of bulk fluid cream products transferred from a pool plant to a producer-handler or a governmental agency plant should be assigned to the extent possible to the receiving plant's Class III use, and then to Class II use. If the producer-handler or governmental agency plant does not have enough utilization in these classes to cover such transfers, any remaining transfers should be classified as Class I milk.

The order also must prescribe a procedure for classifying transfers or diversions to a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant. Bulk fluid milk products transferred or diverted and bulk fluid cream products transferred should be classified as Class I milk unless a lower classification is requested and the operator of the nonpool plant makes available to the market administrator books and records for the purpose of verifying the receipts and utilization of milk and milk products at the nonpool plant. To determine such lower classification, the nonpool plant's utilization must be assigned to its receipts of milk from various sources.

Under the adopted assignment priorities, the first step is to assign the nonpool plant's Class I utilization to its receipts of packaged fluid milk products from all federally regulated plants. Such receipts should receive first priority on the nonpool plant's Class I use since all orders provide that such packaged transfers from a pool plant to an unregulated nonpool plant shall be classified as Class I milk. Thus, any Class I route disposition of the nonpool plant in the Carolina marketing area, and any transfers of packaged fluid milk products from the nonpool plant to Carolina pool plants, would be assigned, first, to the nonpool plant's receipts of packaged fluid milk products from plants fully regulated under the Carolina order and, second, to any such remaining packaged receipts from plants fully regulated under other Federal orders.

A similar assignment of any such remaining disposition (i.e., the aforesaid Class I route disposition and transfers of packaged fluid milk products) then would be made to the nonpool plant's receipts of bulk fluid milk products from pool plants and other order plants. Any other Class I disposition of packaged fluid milk products from the nonpool plant, such as route disposition in unregulated areas, would be assigned to any remaining unassigned receipts of packaged fluid milk products at the nonpool plant from plants fully regulated under any Federal order.

After these assignments, any Class I use at the nonpool plant that is attributable to the Class I allocation at a Federal order plant of fluid milk products transferred in bulk from the nonpool plant to the regulated plant would be assigned. Such use would be assigned first to the nonpool plant's remaining unassigned receipts of fluid milk products from plants fully regulated under the Carolina order and second to any such remaining receipts from plants fully regulated under other orders.

Any remaining unassigned Class I utilization at the nonpool plant then would be assigned to the plant's receipts

of Grade A milk from dairy farmers and unregulated nonpool plants that are determined to be regular sources of Grade A milk for the nonpool plant. Any remaining unassigned receipts of fluid milk products at the nonpool plant from plants fully regulated under any order would be assigned to any of the nonpool plant's remaining Class I utilization, then to its Class III utilization, and then to its Class II utilization.

Following these assignments, any receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants would be assigned to the nonpool plant's remaining unassigned utilization in each class. Such assignment would be made in sequence beginning with the lowest class.

In determining the classification of any transfers or diversions from a pool plant to a nonpool plant, the utilization of any transfers from the nonpool plant to another unregulated nonpool plant also must be established. In this case, the same assignment priorities just outlined should apply also at the second nonpool plant.

The method herein provided for classifying transfers and diversions to nonpool plants accords equitable treatment to order handlers and also gives appropriate recognition to handlers in other regulated markets in the classification of milk transferred to a common nonpool plant. Giving highest use priority to dairy farmers directly supplying a nonpool plant recognizes that they are the regular and dependable source of supply of milk for fluid use at such plant. The proposed method of classification will safeguard the primary functions of the transfer and diversion provisions of the order by promoting orderly disposal of reserve supplies and in assuring that shipments to nonpool plants will be classified in an equitable manner.

Allocation of receipts to utilization. Because the value of producer milk is based on its classification, the Carolina order must provide a procedure for assigning a handler's receipts from different sources to the handler's utilization for the purpose of establishing such classification.

The order proponents testified that the system of allocating handlers' receipts to the various classes should be the same as that adopted in the Assistant Secretary's decision dealing with the classification, allocation and pricing of other source milk issued July 7, 1964 (29 FR 9110), commonly known as the "compensatory payment" decision.

The "compensatory payment" decision dealt with the issue of integrating into each order's regulatory plan milk which is not subject to classified pricing under any order and receipts at pool plants from other order plants. The decision established a procedure for allocating over a pool plant's total utilization the receipts at the plant from all nonpool sources and for making payment into the producer-settlement fund on unregulated milk allocated to Class I.

Proponents' representative testified that the method developed for all Federal milk marketing orders as discussed in the 1964 decision is appropriate in the proposed marketing area and will coordinate these regulations with respect to the treatment of unregulated milk and other order milk with comparable regulations under other Federal orders.

The aforesaid decision sets forth the standards for dealing with unregulated milk under Federal orders and the system of allocation to be included in all orders. It describes the appropriate treatment of other order milk received at pool plants that is used for coordinating the applicable regulations on all movements of milk between Federal order markets. This record indicates that the findings and conclusions of the aforesaid decision are equally applicable under current conditions in the proposed marketing area.

The order also provides that handlers using certain types of other source milk (whether in the form received or in reconstituted form) in the processing of Class II products be permitted to have such other source milk allocated directly to their Class II uses. Under the classification plan provided herein, such other source milk to which direct allocation could apply would be limited to milk products (such as nonfat dry milk and condensed milk or skim milk) that are not fluid milk products or fluid cream products.

Handlers rely largely on producers for a regular supply of milk for the products herein included in Class II. The major use of other source milk in making these Class II products is the addition of nonfat dry milk to cream products, mainly half and half, and to skim milk being used for the manufacture of cottage cheese. On occasion, when producer supplies are short, handlers also may reconstitute nonfat dry milk for cottage cheese production. Condensed milk or skim milk may be similarly used. Handlers choosing to use such other source milk in this way should be permitted to have such milk allocated directly to their Class II utilization rather than allocated first to any Class III utilization they may have.

It is not intended that the Class II outlet for producer milk necessarily be reserved for local producers. This use class merely recognizes that some additional value attaches to producer milk used by regulated handlers in the Class II products. Pricing this milk at a level above the Class III price serves also to reduce the burden on the Class I price of attracting a supply of producer milk for the Class I market. It is not intended that producer returns be enhanced for the purpose of also attracting a full supply of producer milk for handlers' Class II uses. Accordingly, no obligation to the pool (commonly known as a compensatory payment) would be imposed on any other source milk which regulated handlers may use in Class II or in any Class II products that may be distributed in the market by nonpool plants, either directly on routes or through pool plants.

As long as the Class II price for producer milk remains in proper relationship with the cost of alternative supplies, it is not expected that this direct allocation of nonfluid other source milk to Class II will induce handlers to use other source milk in preference to producer milk for processing Class II products. Under the adopted Class II price, producers would represent in most circumstances the most economical source of milk for Class II use. As indicated elsewhere, this would be so with respect to the alternative use of nonfat dry milk, the type of other source milk most commonly used in Class II products.

Nonfat dry milk has certain advantages for handlers that producer milk cannot provide. It can be added easily to milk or milk products to increase their nonfat milk solids content. Also, its storability permits handlers to have a concentrated form of nonfat milk solids on hand at all times for emergency use. Nevertheless, the higher cost of nonfat dry milk relative to producer milk would tend to limit its use to only those situations where the nonfat dry milk has a distinct processing advantage for handlers.

No provision should be made for the direct allocation of a handler's Class II utilization of other source milk received in fluid form. Unlike the handling of nonfat dry milk, it would not be unusual for a handler to commingle receipts of fluid other source milk with receipts of producer milk. In this circumstance, it would not be possible to know just how much of the other source milk may have been used in the processing of a Class II product. The difficulty which a handler would have in demonstrating the actual use of fluid other source milk in a Class II product, and the administrative difficulty in verifying such claimed use,

warrants the allocation of such milk to Class III.

It should be noted that the order would provide for the specific allocation to a handler's Class II and Class III utilization of any receipts of bulk fluid milk products from any other order plant or an unregulated supply plant for which the handler requests a Class II or Class III classification. Such receipts would be allocated to the extent possible first to the handler's Class III utilization and then to his Class II utilization. This would be the case even if a Class II classification were requested by the handler.

The attached order provides that, in the case of a multiple-plant handler, each of the handler's pool plants shall be considered separately for purposes of allocating receipts to utilization. In accordance with the "compensatory payment" decision referred to earlier, however, certain receipts of milk from unregulated supply plants and other Federal order plants are to share in varying degrees with local producer milk in the receiving handler's Class I utilization at all of the handler's pool plants combined. The order, therefore, provides a procedure whereby the milk from unregulated supply plants and other order plants is classified on the basis of the handler's total system, but is assigned to classes at the pool plant of actual receipt. Under this procedure, the situation may arise where there is not enough utilization in a specific class at the plant of actual receipt to which such other source milk must be assigned (as determined from receipts and utilization of a handler's entire system). In this case, an accounting technique is used for increasing the utilization in such class at the plant of actual receipt and making a corresponding reduction in the same class at one or more of such handler's other pool plants in the system. This technique, however, does not change the amount of milk to be accounted for at each plant or the classification of milk within the handler's entire system.

One of the witnesses testifying for Coburg Dairy proposed that the provisions of the Carolina order be modified with respect to the charge imposed upon a handler that uses a non-fluid milk product to produce a fluid milk product. The charge proposed for the Carolina order is the difference between the Class I price and the Class III price.

Coburg's witness indicated that with the assignment of other source milk to Class III and the imposition of a rate of payment at the difference between the Class I and the Class III price, the total cost to a handler for a fluid milk product reconstituted from a non-fluid milk product will, under normal circumstances, exceed the price set under the Federal milk order. This occurs because the costs associated with the manufacture, marketing, and transporting of the non-fluid milk product also accrue to the handler.

The witness proposed two alternative methods of equating the cost of reconstituted milk with the cost of milk obtained from producers in the local market. One alternative would allow for the reclassification in the market of origin of the non-fluid milk product used to reconstitute the fluid milk product as an option for the handler who can establish the source of the non-fluid milk product as an other order plant. The second alternative would be to base the rate of payment on the difference between the market price of the nonfat milk solids and the Class I value of such solids in the market of origin.

Coburg's witness also indicated that recognition should be given to the likelihood that if reconstitution takes place today, it will be from concentrated milk manufactured by a reverse osmosis process. He noted that such concentrated milk product is classified as Class II milk in most Federal milk orders. He contended that if the concentrated milk product were reconstituted into a fluid milk product, a charge at the difference between the Class III price and the Class I price would not be appropriate.

The reconstitution charge adopted in the Carolina order is the same as the one applicable in most other Federal milk orders. Thus, if the reconstitution charge were modified in the Carolina order, there would not be uniformity of classification of the reconstituted milk product with other Federal milk orders. It is concluded, therefore, that a reconstitution charge at the difference between the Class III and the Class I price should apply in the Carolina order until such time that this issue can be reviewed on a national basis.

Classification of end-of-month inventory. The order should provide for the classification of inventory on hand at the end of the month. Fluid milk products in either packaged or bulk form that are in a handler's end-of-month inventory should be classified as Class III milk. Ending inventory of fluid cream products, eggnog, and yogurt, when held in bulk form, likewise should be classified in Class III. Such products held in packaged form at the end of the month should be classified as Class II milk.

Inventories classified in Class III should be subject in the following month to reclassification in a higher class, as determined through the allocation of receipts to utilization. A charge to the handler at the difference between the Class III price for the preceding month and the Class I or Class II price, as applicable, for the current month would apply to any reclassified inventory.

Because of the regulatory treatment being accorded certain other source milk, it is necessary that fluid cream products, yogurt and eggnog on hand in packaged form at the end of the month be classified in Class II, the class of expected ultimate use, rather than in Class III as would be the case for ending inventories of such products in bulk form. The higher classification will accommodate the treatment adopted herein whereby such products that are received at a pool plant in packaged form and disposed of in the same packages would be permitted to "pass through" the plant without any pool obligation or down-allocation. In this connection, the ending Class II inventory, as Class II inventory on hand at the beginning of the next month, would be allocated in such month directly to the handler's Class II utilization.

For the first month the order is in effect, a slightly different classification of inventory must apply. Beginning inventories of fluid cream products in packaged form normally would be allocated directly to a handler's Class II utilization. Such allocation assumes that the products were priced at the Class II price in the preceding month. Since this would not be the case for the first month under the new order, such inventories should be allocated in the first month to the extent possible to Class III, as in the case of inventories of fluid milk products and bulk fluid cream products. A reclassification charge should apply in the following month if a higher classification results.

(c) *Pricing of milk.* In order to promote and maintain orderly marketing conditions for the Carolina market, minimum class prices for producers should be established at levels that reflect economic conditions affecting the market supply and demand for milk. Such prices should result in returns to producers that will encourage a supply of milk sufficient to meet the fluid needs of the market, plus a reserve to provide for daily and seasonal fluctuations in demand.

The Class I price must not be so high as to attract unneeded supplies to the market. On the other hand, the price should be high enough to encourage the production of an adequate quantity of high-quality milk required for the

fluctuating daily and seasonal fluid needs of the market.

The Class II price should be high enough above the manufacturing milk price to compensate producers for at least a part of the cost of delivering Grade A milk to regulated handlers for cream products, cottage cheese, ice cream, and related items for which handlers want Grade A milk.

The Class III price must be fixed at a level that will insure that milk produced in excess of the Class I requirements of the market can be processed into Class III products and disposed of in competition with similar products from unregulated manufacturing plants.

The class prices and uniform producer prices for milk should be announced on a per hundredweight basis. Because the order would not establish different values for butterfat in each class, the class prices would not be announced for a particular butterfat content of milk. Uniform prices to producers, however, would be announced on a 3.5 percent butterfat basis, and handlers would be required to pay producers for their milk at the uniform price adjusted by a butterfat differential to reflect any variation from 3.5 percent in the butterfat content of their milk. These provisions are consistent with such provisions widely applicable throughout the Federal order system.

Class I price and in-area location adjustments. The Class I price for the Carolina market should be computed by adding a Class I differential of $3.08 to the "basic formula price" for the second preceding month. The Class I price applicable at specific locations within the marketing area should be determined by adjusting the announced Class I price by the location adjustment established for the zone in which a plant is located. The in-area zones and applicable location adjustments are defined as follows:

Northwestern Zone—Minus 15 cents ($2.93).

North Carolina Counties: Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Rockingham, Stokes, Surry, Swain, Transylvania, Wataugo, Wilkes, Yadkin and Yancey.

Base Zone—No Adjustment ($3.08).

North Carolina Counties: Alamance, Anson, Cabarrus, Caswell, Catawba, Chatham, Cleveland, Davidson, Davie, Durham, Forsyth, Franklin, Gaston, Granville, Guilford, Halifax, Iredell, Lee, Lincoln, Mecklenberg, Montgomery, Moore, Nash, Northampton, Orange, Person, Polk, Randolph, Richmond, Rowan, Rutherford, Stanly, Union, Vance, Wake and Warren.

South Carolina Counties: Abbeville, Anderson, Cherokee, Chester, Greenville, Greenwood, Lancaster, Laurens, McCormick, Oconee, Pickens, Spartanburg, Union and York.

Southeastern Zone—Plus 15 cents ($3.23).

North Carolina Counties: Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Scotland, Tyrrell, Washington, Wayne and Wilson.

South Carolina Counties: Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Chesterfield, Clarendon, Colleton, Darlington, Dorchester, Dillon, Edgefield, Fairfield, Florence, Georgetown, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Marlboro, Newberry, Orangeburg, Richland, Saluda, Sumter and Williamsburg.

The basic formula price should be the average pay price for manufacturing grade milk at plants in the States of Minnesota and Wisconsin. The price for milk used for fluid purposes in the market has a direct relationship to the prices paid for milk used for manufacturing purposes. The Minnesota-Wisconsin price, or "M–W" price, used in determining the price for Class I milk gives appropriate consideration to the economic factors underlying the general level of prices for milk and manufactured dairy products. It is used as the basic formula price in all Federal order markets and is equally appropriate for use in the Carolina order. The differential over manufacturing milk prices is necessary to reflect the added cost of meeting quality requirements in the production of milk for fluid use and the cost of moving it to market.

Proponents of the order proposed that the Minnesota-Wisconsin manufacturing milk price be the basic formula price each month. This price is an average of prices paid at a large number of manufacturing plants in the two States. Plant operators report the total pounds of manufacturing grade milk received from dairy farmers, the total butterfat content, and the total dollars paid to dairy farmers for such milk f.o.b. the plant. These prices are reported on a current basis. The "M–W" price is announced by the Dapartment for each month on or before the 5th day of the following month.

The proponents of the order proposed that the base zone include the metropolitan areas of Raleigh, Durham, Greensboro, Winston-Salem, and Charlotte, North Carolina, as well as Greenville, South Carolina, where no location adjustment would apply. The proposed in-area zone pricing system would have a minus 15-cent adjustment to the northwest, a plus 15-cent adjustment to the southeast, and a plus 30-cent adjustment in the southern zone. The southern zone would include the South Carolina counties of Allendale, Beaufort, Berkeley, Charleston, Colleton, Dorchester, Hampton and Jasper.

Proponents' witness testified that a $3.08 Class I differential should apply in the base zone, which is the major population corridor of the proposed marketing area. The $3.08 Class I differential, he said, is the same as contained in the Georgia Federal order for the Atlanta and Athens areas. He said that the $3.08 Class I differential is 31 cents higher than the differential for Bristol, Virginia, and Kingsport and Knoxville, Tennessee, under the Tennessee Valley Federal order. The witness said that the $3.08 Class I differential is 5 cents higher than the Class I differential applicable at Washington, D.C. under the Middle Atlantic Federal order.

The spokesman for proponents testified that the proposed graduated pricing system covers a marketing area of approximately 250 miles and reflects a location adjustment rate of about 2 cents per hundredweight per 10 miles. He said that the proposed pricing structure will provide the proper balance between adequate milk supplies and the necessary alignment of prices, not only with nearby and adjacent Federal order areas, but also among handlers located within the proposed Carolina marketing area.

At the hearing, opposition testimony to the proposed pricing zones was presented by the Commissioner of Agriculture for South Carolina, Regis Milk Company (Regis), Coburg Dairy (Coburg) and Edisto Milk Producers Association (Edisto).

The Commissioner of Agriculture for South Carolina expressed the view that only two pricing zones should apply to South Carolina and that the southern zone should be eliminated. The witness for Regis, which is located in Charleston, South Carolina, testified that there should be only one zone for South Carolina. He said that Regis sells about 90 percent of its packaged milk in the proposed southeastern and base zones. The proposed plus location adjustment for the southeastern zone, he said, would put their operation (in the southern zone) at about a one to two cent per gallon disadvantage with distributing plants located in the southeastern zone.

The President of Coburg testified that Coburg, which is in Charleston, South Carolina, distributes packaged milk throughout most of South Carolina and

into Savannah, Georgia. He said that if the Department believes that a location adjustment is necessary in South Carolina, the proposed southeastern and southern zones should be combined into one zone with no more than a 10-cent higher price than the base zone. The proposed northwestern zone, he said, should be combined with the base zone. The witness said that the proposed plus 30-cent location adjustment for the southern zone would be disruptive to Coburg. Milk distribution, he said, is dominated by large grocery chains with warehouses and some of these grocery chains have distributing plants located in the proposed lower-priced zones.

Another witness for Coburg testified that location adjustments have done little to move bulk milk from production areas to metropolitan centers in recent years, but continue to help align minimum prices among competitors regulated by different Federal milk orders. In his view, location adjustments for South Carolina would not be appropriate, in part, because South Carolina has been without zone pricing and competition with distributing plants to the south and east is minimal. He said that Coburg does not compete with any distributing plant to the east or south of Charleston. Charleston, he said, is the main distribution area for Coburg and that its nearest competitor under another Federal order is located about 200 miles southwest of Charleston and that they compete in the Savannah, Georgia, area. The witness said that the proposed southeastern and southern zones should be combined and that the price should be $3.18, which is the Class I price applicable to the central zone of the Georgia order. He said that Coburg receives about 75 percent of its milk supply from farms located within 75 miles of its plant. These farms, he said, are located within the proposed plus 15-cent location adjustment zone. The witness said that Coburg pays the same price to its supplier (Edisto) as is paid by other buyers of milk from producers located in the central South Carolina area.

The witness for Edisto testified in support of Coburg's position. He said that the order proponents' proposed zoning in the short-run may benefit Edisto. However, in the long-run he believes that Edisto's milk supply would not be as attractive to Coburg. He said Edisto then would have to incur higher hauling costs to move their milk production to more distant plants.

This decision provides for three pricing zones rather than the proposed four pricing zones. The proposed southeastern and southern zones are combined into one zone, the southeastern zone, with an applicable plus 15-cent location adjustment.

Proponents of a higher price for the southern zone have not made a case for the proposed pricing on the basis that a higher price is needed to obtain a milk supply for plants in the Charleston area or to align Class I prices in the southern zone with a neighboring Federal order market.

There is no indication on this record that handlers located in the proposed southern zone are paying any more for milk than their competitors who are located in the proposed plus 15-cent location adjustment zone. Furthermore, if supplemental milk supplies are needed by one of the plants at Charleston, South Carolina, the plants should be able to procure a milk supply at no greater cost than a plant located at Goldsboro, North Carolina, which is located within the proposed plus 15-cent location adjustment zone. In that regard, it is noted that the Charleston plants are located nearer to alternative milk supply locations in the Knoxville, Tennessee, area or Asheville, North Carolina, area than the Goldsboro plant. (The Household Goods Carrier Bureau, Guide No. 13, of which official notice is taken, indicates that the highway mileages from Knoxville to Charleston and Goldsboro are 362 and 384, respectively, and from Asheville to Charleston and Goldsboro are 257 and 279, respectively.)

A plus 15-cent location adjustment for plants in the southeastern zone (a $3.23 Class I differential) also provides reasonable alignment with the $3.38 Class I differential applicable at the Savannah, Georgia, plant that is regulated under the Georgia order. The distance between Charleston and Savannah according to the mileage guide officially noticed is 105 miles.

The pricing structure provided under the 3 zones should result in an adequate milk supply for the various population centers of the two States. The pricing zones increase from the northwest to the southeast in recognition that supplemental milk supplies for the Carolinas are obtained primarily from dairy farmers in Kentucky and Tennessee. The 15-cent incremental increases from zone to zone should result in an adequate milk supply for plants in the 3 zones. The proposed zone pricing should make dairy farmers in Kentucky and Tennessee indifferent as to whether their milk is delivered to plants in the northwestern zone, the base zone or the southeastern zone by providing additional compensation to them for the added cost of transporting their milk to the progressively more distant plants in the marketing area.

Out-of-area location adjustments. The Class I price at plant locations outside the marketing area should be the base zone price plus or minus the following location adjustments:

(1) For a plant located within the Tennessee Valley Federal order marketing area, except Kentucky and West Virginia counties, the adjustment should be minus 31 cents;

(2) For a plant located within the State of Florida, the adjustment should be a plus 50 cents;

(3) For a plant located outside the marketing area and the areas specified in paragraphs (1) and (2) above and south of a line extending through the southern boundary of the State of Tennessee and east of the Mississippi River, the adjustment should be the adjustment applicable at Anderson, North Augusta, or Hardeeville, South Carolina, whichever city is nearest;

(4) For a plant located outside the area specified in paragraph (1) above and in the State of Virginia, the adjustment should be the adjustment applicable at Reidsville, Roanoke Rapids, or Elizabeth City, North Carolina, whichever city is nearest; and

(5) For a plant located outside the marketing area and the areas specified in paragraphs (1), (2), (3), and (4) above, the adjustment should be minus 2.5 cents for each 10 miles or fraction thereof (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the city halls in Greenville, South Carolina, or Charlotte or Greensboro, North Carolina.

The out-of-area location adjustments provided herein should reasonably align any plant that might be pooled on the Carolina Federal order with nearby Federal orders. For a plant located in one of the Tennessee counties included in the marketing area of the Tennessee Valley Federal milk order, the out-of-area adjustment provided herein results in the same Class I price such plant would have if regulated under the Tennessee Valley order. A plant located in the State of Florida would have the same Class I differential under the Carolina order that a plant located in the Upper Florida marketing area would have under the Upper Florida order. For plants located in Georgia or Virginia (exclusive of the Virginia counties in the Tennessee Valley marketing area), the location adjustment applicable at such plants would be based upon the location adjustments at the nearer of certain selected cities in South Carolina and North Carolina, respectively. In general,

such pricing should result in a Class I price equivalent to the handler's nearest competitor located in the Carolina marketing area.

For plants located outside the State of Virginia and in areas north of the southern boundary of Tennessee (except the Tennessee counties in the Tennessee Valley marketing area) and west of the Mississippi River, the location adjustment rate should be 2.5 cents per hundredweight per 10 miles from the nearer of Greenville, South Carolina, or Charlotte or Greensboro, North Carolina. Such rate is the same as the rate used in the two adjoining Federal order markets for pricing milk received at plants located quite some distance from the marketing area. Accordingly, the 2.5-cent rate should be appropriate for this market.

Location adjustment credits. In conjunction with its pricing proposal, proponents of the order proposed that a pool plant transferring fluid milk products in bulk form for Class I use to a pool distributing plant at which a higher Class I price applies be accountable for such products at the higher price applicable at the transferee plant. Under the proposal, however, the transferor plant would receive a location adjustment credit against the higher price equal to the difference between the Class I differentials applicable at the two plants. This is intended to encourage the movement of milk to market center for Class I use.

When the operator of a supply plant located in an outlying area ships milk to a distributing plant where a higher Class I price is applicable, the supply plant operator cannot pay both the higher price and the transportation costs for hauling the milk to the distributing plant. Thus, a lower Class I price is needed at the supply plant location to reflect the cost of moving the milk to the distributing plant. Such price reductions, however, reduce the total value of the pool. In addition, if supply plant milk replaces local milk going to a distributing plant for Class I use, this further reduces the total pool value. Thus, shipments from outlying supply plants to distributing plants should be made only when such shipments are necessary to meet the fluid milk needs of distributing plants.

Therefore, the limitations on location adjustment credits proposed are adopted. These provisions limit the amount of location adjustment credit on the transferee plant's Class I sales that remain after subtracting receipts of milk from producers, cooperative bulk tank handlers and packaged fluid milk products from other pool plants. Unnecessary transfers are further discouraged by the provision which gives priority in receiving credits to transferor plants located nearest the transferee plant. The adopted location adjustment provisions complement the zone price structure as a means of encouraging the movement of bulk fluid milk products to centers of demand for Class I use. However, the provisions do not give price credits to cover unnecessary hauling of milk between pool plants for other than Class I use.

To accommodate the intent expressed by proponents, the location adjustment credit provisions that were set forth in the notice of hearing have been modified accordingly.

Class III price. The Class III price should be the basic formula price for the month, as proposed by the order proponents.

Reserve milk disposed of in manufactured product uses should be priced at a level that will result in the orderly disposition of the excess supplies. Establishment of a price too high to clear the market of milk excess to fluid requirements would interfere with the orderly marketing of milk for both processors and producers. Fixing a price too low would encourage handlers to associate additional supplies with the market simply to obtain low-cost milk for manufacturing uses.

The Minnesota-Wisconsin price is the best available indicator of the value of milk used in butter, nonfat dry milk and cheese, which are usually the last-resort uses for surplus milk. The M–W price is an average of the prices being paid by processors of these products who are meeting the competitive test of the unregulated marketplace. Use of the M–W pay price series for the Carolina market will provide consistency between this order and other Federal order markets which also use the M–W price series as the basic formula price for pricing Class III milk. In addition, it achieves parity between regulated and unregulated plants since it provides the regulated manufacturer with essentially the same margin for processing as is experienced in the unregulated market.

Class II price. The order should provide that the market administrator shall announce on or before the 15th of the month a Class II price that is to be effective the following month. The Class II price for the month should be the Minnesota-Wisconsin (M–W) price for the second preceding month, as adjusted by an "updating" formula, plus a Class II differential computed from a 12-month moving average of past Class II differentials. To the extent that the announced Class II price without adjustment for any prior month is less than the Class III price for such month, such difference would be included in computing subsequent months' Class II price.

For example, the Class II price for January would be announced on December 15th. On February 5, the January Class III price would be announced. If the January Class II price was less than the Class III price for January, that difference would be included in computing the Class II price for March, which would be announced on February 15. Thus, handlers would pay essentially a Class II price that would be floored by the Class III price. However, if the Class II price is less than the Class III price, the adjustment to reflect this difference would not be returned to producers until they receive payment for milk produced in the second succeeding month.

The procedures adopted are patterned after those that were provided for 29 markets in a final decision issued July 8, 1981, and published in the **Federal Register** on July 14, 1981 (46 FR 36151) and a 14-market final decision issued August 17, 1982, and published in the **Federal Register** on August 25, 1982 (47 FR 37187). In addition, the procedures adopted herein incorporate the modifications contained in an interim decision issued November 8, 1989, and published November 15, 1989. These changes are based upon a hearing held on August 23, 1989, at Alexandria, Virginia, to consider changing the manner in which the Class II milk price is determined and announced in 39 Federal milk orders and the proposed Carolina milk order.

To achieve the foregoing, the order should provide for a "basic Class II formula price" for the month, which would be the order's basic formula price (i.e., the M–W price) for the second preceding month plus or minus an amount computed from the "updating" formula. In essence, a tentative estimate of the M–W price for the preceding month would be derived from the mechanics of the updating formula. This would permit the Class II price to be based on selected dairy industry data for that month rather than for the second preceding month.

The updating formula would determine first the amounts by which the gross values of milk used to manufacture cheddar cheese and butter-nonfat dry milk for the first 15 days of the preceding month are greater than or less than the respective values of such milk for the first 15 days of the second preceding month using yield factors provided by the Dairy Price Support Program. Thus, the relative proportions of milk used in Minnesota and

Wisconsin combined in the manufacture of cheddar cheese and butter-nonfat dry milk would be determined from data reported by the Department. From the foregoing data, a weighted average of the changes in gross values per hundredweight of milk would be computed.

The Class II price for the month would be the basic Class II formula price for the month plus a differential that would be the amount by which a 12-month moving average of the basic formula price plus the 10-cent Class II differential of the order exceeds a 12-month moving average of the basic Class II formula price. This should result in a Class II price that on the average exceeds the Class III price by a 10-cent differential.

The basic Class II formula price and the Class II price would be computed by the Dairy Division, AMS, and transmitted to the market administrator on or before the 15th day of the preceding month, enabling the market administrator to announce by that time the Class II price for the following month. The adoption of the proposal for advance notice of the Class II price is a reasonable means of assisting handlers in the marketing of milk. Handler witnesses said that the dairy industry is somewhat unique in that regulated handlers process and sell products without knowing the cost of the raw milk. This practice makes it difficult, if not impossible, to adjust resale prices to changes in ingredient costs. To them, this is an unwarranted and unnecessary situation which creates undue business risks and other difficulties without any real benefit to others.

The provision for advance pricing under the Carolina order will contribute to more orderly marketing for the processors of Class II products. Handlers will be in a better position to plan their processing and marketing with advance knowledge of their raw milk costs. Also, the advance pricing procedure will enable handlers to establish and adjust resale prices of Class II products more currently relative to the changes in raw milk costs.

The procedure provided herein for announcing a Class II price for a month on or before the 15th day of the previous month is identical to the procedures adopted for the 29 markets in the final decision of July 8, 1982, and, with some exceptions, to a 14-market final decision issued August 25, 1982. The above procedures as modified by the interim decision on changing the manner in which the Class II milk price is determined and announced (54 FR 47527) are appropriate for the Carolina order. The market administrator would announce publicly on or before the 15th day of each month a Class II price for the following month. Such price would be provided to the administrator of the Carolina order by the Dairy Division and would be determined from the method of computation specified in the order.

As provided in the attached order, the announced Class II price for the month would be the sum of the following price components: (A) The basic Class II formula price; and (B) the Class II differential.

A. *Basic Class II formula price.* The basic Class II formula price, which would be used in computing the Class II price that is announced for the month, would be determined by the Dairy Division, AMS, on or before the 15th day of the preceding month. Under the formula provided herein, it would be computed by increasing or decreasing the M–W price of the second preceding month by an amount that reflects changes in the gross value of milk used to produce cheddar cheese (including returns from whey fat and whey solids-nonfat), butter, nonfat dry milk and edible whey powder during the first 15 days of the preceding month compared to the first 15 days of the second preceding month. The gross value of milk used to produce these products would be determined by multiplying the price of each product by a yield factor which represents the pounds of product that results from the manufacture of a hundredweight of milk. The yield factors used in the formula adopted herein would be those that are used under the Dairy Price Support Program for determining similar gross values. Whenever the yield factors are changed, the new yield factors would be used in the formula beginning with the effective date of the announced support price or announced purchase prices.

The yield factors used under the Price Support Program are for milk of average butterfat content of 3.67 percent, while prices under the Federal milk order program are announced for milk containing 3.5 percent butterfat. Milk containing higher proportions of butterfat yield more pounds of product per hundredweight of milk than does milk containing a lower butterfat content. However, using the price Support Program yield factors in the adopted formula should not appreciably affect the basic Class II formula prices. Only changes in gross values of milk from one month to another would raise or lower the basic Class II formula price. Those changes in gross values of milk should not be much different whether they are based on milk containing 3.67 percent butterfat or 3.5 percent butterfat.

The product prices that are used in the formula adopted herein would be those that are reported and published each week by the Dairy Division, AMS. The butter price would be that of the Chicago Mercantile Exchange for Grade A (92-score) butter. The cheddar cheese price would be that of the National Cheese Exchange for cheddar cheese in 40-pound blocks. The nonfat dry milk price would be the average price per pound (using the midpoint of any price range as one price) for high-heat, low-heat and Grade A nonfat dry milk for the Central States production area. If any of these nonfat dry milk prices are not reported at some future date, the price used in the formula would be the average of the remaining prices that are reported. The price for whey powder would be the average price per pound (using the midpoint of any price range as one price) reported for edible whey powder (nonhygroscopic) for the Central States production area.

Based on yield factors used currently under the Price Support Program, a hundredweight of milk used to produce cheddar cheese yields 10.1 pounds of cheddar cheese 0.25 pounds of butter and 5.5 pounds of whey powder. Prior to the Food Security Act of 1985, under the Price Support Program, the price of whey powder increased the gross value of milk used to produce cheddar cheese only to the extent of the portion of the price of powder that exceeded 12.5 cents per pound. This was because the processing cost of drying the whey into powder was 12.5 cents. If the price of whey powder were less than 12.5 cents per pound, the processing costs would be absorbed in the price of cheddar cheese. If the price exceeded 12.5 cents, only that portion of the price that exceeded 12.5 cents would contribute to the gross value of milk.

A **Federal Register** document published on July 22, 1986 (51 FR 26254), containing a determination of the current Class II price in 39 Federal orders is officially noticed. The document points out that because of recent changes in the Price Support Program, the processing cost and yield factor for edible or dry whey are no longer being determined under that program and thus are not available for use under the Federal orders. The changes stemmed from the Food Security Act of 1985, which precludes the use of any market value of whey in determining the purchase price for cheese under the Price Support Program. The document notes that the use of a whey value in computing the basic Class II formula price in the 39 orders is needed. The document also points out

that equivalent pricing factors were adopted for this purpose in a determination issued January 29, 1986, and published February 4, 1986 (51 FR 4374). The determination issued July 14, 1986, and published July 22, 1986 (51 FR 26254), states in part as follows:

> It is therefore ordered that a whey processing cost of 12.5 cents per pound and a yield factor of 5.5 pounds continue to be used as equivalent factors determining any positive whey value in computing the basic Class II formula price under the above-named orders, effective upon issuance of this determination.

Accordingly, in the formula adopted herein, the gross value of a hundredweight of milk used to produce cheddar cheese would be the sum of the following computations:

1. The average daily price per pound of cheddar cheese during the first 15 days of each respective month would be multiplied by 10.1. The National Cheese Exchange meets on Friday morning for trading in cheddar cheese. Generally, the prices reported for each session establish the prices of cheddar cheese sold by the dairy industry during the following week. When Friday is a holiday, the exchange meets on a Thursday morning. In the formula adopted herein, a price reported by Friday (or Thursday) would be applied to that day plus each workday of the following week prior to the day the Exchange meets. When there are workdays in a month that precede the first Friday of the month, the last price reported in the previous month would be applied to each such workday that precedes the first Friday. A workday would be each Monday through Friday, except national holidays. This definition of workday would apply also to the other product prices described in the following paragraphs. During a week that the Exchange does not meet, the prices applied for the following week would be the last Exchange price that was established.

2. The average daily price per pound of butter during the first day of each respective month would be multiplied by 0.25. The Chicago Mercantile Exchange also meets on Friday morning for trading in butter. When Friday is a holiday the Exchange meets on a Thursday morning. In the formula adopted herein, a price reported by Friday (or Thursday) would be applied to that day plus each workday of the following week prior to the day the Exchange meets. When there are workdays in a month that precede the first Friday of the month, the last price reported in the previous month would be applied to each such workday that precedes the first Friday. During a week that the Exchange does not meet, the price applied for the following week would be the last Exchange price that was established.

3. The average daily price per pound of edible whey powder during the first 15 days of each respective month would be reduced by 12.5 cents and any amount remaining would be multiplied by 5.5. The whey powder price is determined by the Department on Thursday of each week and reflects the selling price of whey powder during the preceding seven-day period. When Thursday is a holiday, the price is determined on Wednesday. In the formula adopted herein, a price determined on Thursday (or Wednesday) would be applied to that day plus each previous workday through the preceding Friday, or Thursday if the previous price reported had been on Wednesday.

The gross value of a hundredweight of milk used to produce butter and nonfat dry milk would be determined in the following manner. The yield factor presently used by the Price Support Program indicates that one hundredweight of milk yields 4.48 pounds of butter and 8.13 pounds of nonfat dry milk. Thus, the average daily butter price per pound during the first 15 days of each respective month, as determined by the method described in (2) above, would be multiplied by 4.48.

Added to this value would be the value of milk used to produce nonfat dry milk. This would be computed by multiplying the average of the daily prices per pound of high-heat, low-heat and Grade A nonfat dry milk during the first 15 days of each respective month by 8.13. As with the whey powder prices, the prices of nonfat dry milk are determined on Thursday of each week and reflect the selling prices of nonfat dry milk during the preceding seven-day period. When Thursday is a holiday, the price is determined on Wednesday. In the formula adopted herein, the average of the prices of the high-heat, low-heat and Grade A nonfat dry milk determined for Thursday (or Wednesday) would be applied to that day plus each previous workday through the preceding Friday, or Thursday if the previous price reported had been on Wednesday. As described previously, if any of these nonfat dry milk prices are not reported at some future date, the price used in the formula would be the average of the remaining prices that are reported.

The next computation in the formula adopted herein determines the amounts by which the gross values of milk used to produce cheddar cheese and used to produce butter-nonfat dry milk during the first 15 days of the preceding month exceed or are less than the respective gross values during the first 15 days of the second preceding month. This would be done by subtracting the respective gross values during the first 15 days of the second preceding month from the respective gross values during the first 15 days of the preceding month.

The quantity of milk used to produce cheddar cheese in the States of Minnesota and Wisconsin greatly exceeds the quantity used to produce butter-nonfat dry milk. Accordingly, the changes in gross values described in the previous paragraph should be weighted by the relative proportions of milk used to produce cheddar cheese and butter-nonfat dry milk in these two States. This would be done by converting the quantity of American cheese (cheddar cheese accounts for over 70 percent of all American cheese) and separately, the quantity of nonfat dry milk produced in the two States combined, as reported and published by the National Agricultural Statistics Service of the Department into the respective milk equivalents (i.e., dividing the two-State quantity of American cheese produced by the 10.1 yield factor for cheddar cheese and dividing the corresponding quantity of nonfat dry milk produced by its yield factor of 8.13). The percentage that the milk equivalent for each separate product is of the total for the two products combined would be multiplied by the respective change in gross values, as described in the previous paragraph, to determine a weighted change in gross values for milk used to produce cheddar cheese and used to produce butter-nonfat dry milk. The weighted changes in gross values would be combined and this combined value would be used to adjust the second preceding month's M–W price. If the combined value for the 15 days of the preceding month exceeds the corresponding value for the second preceding month, the adjusted M–W price would be increased. If it is lower, the adjusted M–W price would be the basic Class II formula price for the month.

B. *Class II differential.* In the formula adopted herein, the Class II differential would be an amount added to the basic Class II formula price for each month to yield a Class II price. It would be computed on or before the 15th day of the preceding month for use in determining the announced Class II price for the month. The differential would be the amount that the average M–W price during the most recent 12-month period plus the current Class II differential of the order exceeds the

average basic Class II formula price during the same 12-month period.

Butterfat differential. The order should have a producer butterfat differential equal to .115 times the average wholesale price for Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. This differential was proposed by the order proponents and is common to most other Federal milk orders.

At the hearing, a witness on behalf of Milkco, Inc., Hunter Jersey Farms and Dairy Fresh, Inc., testified in opposition to the proposed use of a factor of .115 in computing the butterfat differential. The spokesman said that for years in North Carolina and South Carolina, the butterfat differential has been based on the average wholesale price for Grade A (92-score) bulk butter per pound at Chicago times .1. He said that the proposed .115 factor would make it more costly for handlers to dispose of excess cream at various times during the year.

The witness testifying about marketing conditions in South Carolina estimated that the difference in the computation of the butterfat differential cost South Carolina dairy farmers about $400,000 per year. The witness testifying about marketing conditions in North Carolina estimated that the use of a factor of .115 would add 4 to 6 cents per hundredweight to producer pay prices.

A butterfat differential reflects the incremental value of milk containing more or less butterfat than the standard announced level. Weighted average and uniform prices under the order will be announced for milk containing 3.5 percent butterfat. Milk containing less than 3.5 percent butterfat will be worth less than the 3.5 percent price, while milk testing above 3.5 percent will be worth more than the announced price. This adjustment will insure equitable payments reflecting such variations in butterfat content of milk delivered by individual producers.

The butterfat differential adopted herein is the same as provided in two decisions to adopt uniform classification provisions in 39 markets. (These two decisions have previously been noticed.) Since the classification provisions of those decisions are adopted herein, it is appropriate to provide also for the same butterfat differential. This is clearly in line with order proponents' intent in this regard.

With regard to a proposal by a representative of 3 handlers that the butterfat differential be established by multiplying the Chicago butter price by a factor of .1, such modification is denied. If such modification were adopted, the value of butterfat and skim milk in the Carolina market would not be aligned with such values under neighboring Federal order markets. As previously noted, the proposed modification also conflicts with providing a classification for milk in the Carolina market that is consistent with the classification of milk in most other Federal milk orders.

Use of equivalent prices. If for any reason a price or pricing constituent needed by the market administrator in administering the order is not available, the market administrator is authorized by the order to use an equivalent price or pricing constituent as determined by the Secretary. Including such provision in the order will leave no uncertainty with respect to the procedure to be followed in the absence of any data customarily used and thereby will prevent interruption in the operation of the order.

(d) *Distribution of proceeds to producers.* Marketwide pooling of producer returns should be provided in the order as the means of distributing among producers the proceeds from the sale of their milk. Such pooling method will assure each producer supplying the market a proportionate share of the market's total Class I sales.

The record indicates that 23 fluid milk plants will most likely qualify for pooling under the new order. Most of these plants, if not all, are expected to have very high levels of Class I utilization. There are few Class III products produced in this market. Nevertheless, there will be some differences in utilization among the plants because of the production of Class II products such as ice cream and cottage cheese. A marketwide pool will facilitate the orderly marketing of producer milk by removing disruptive competition by producers for the high Class I use outlets. Under individual handler pooling, the type of operations conducted at a plant would be a determining factor in the price the plant could pay its producers compared to other plants.

A marketwide pool also will make it possible for producer associations and pool plant operators to divert any weekly or seasonal reserves of milk to nonpool plants and maintain continuous producer milk status for such dairy farmers if their milk is needed to fulfill the year-round requirements of the market. This pooling technique will assist further in apportioning among all producers the lower returns from reserve milk in excess of the market's fluid requirements. In the absence of marketwide pooling, this burden would vary by individual plants and groups of producers.

A marketwide pool thereby will contribute to market stability and the maintenance of an adequate and dependable supply of producer milk at reasonable prices.

Computation of uniform price. A key feature of marketwide pooling is the computation of prices to pay producers. Under the order adopted herein, which includes a seasonal base-excess plan, a weighted average price would be computed each month. During the months of July through February, the weighted average price would be the uniform price and would be used to pay producers. Essentially, such price is the weighted average value of all of the milk in the pool. It would be computed by adding together the classified use value (or total pool obligation) of all of the handlers in the market. This total value is then divided by the amount of milk in the pool to arrive at a "uniform price" for producers.

In the months of March through June, uniform prices for base and excess milk would be computed by the market administrator. During each of these months, each producer would be paid on the basis of the producer's deliveries of base and excess milk. The findings on the base-excess plan describing the computation of the uniform prices for base and excess milk and the computation of an individual producer's base are found in a subsequent section of this decision.

In order to compute the uniform price or prices, the market administrator must first receive a report of receipts and utilization from each of the handlers in the pool.

Under the proponent cooperatives' proposed order, handler reports of receipts and utilization would have to be received by the market administrator by the 6th day of each month. Proponents' witness said that a reporting date of the 6th was needed to provide the market administrator with sufficient lead time to receive all of the reports, compute the marketwide pool and announce the uniform price or prices by the 10th day of each month.

Two witnesses, representing several handlers who would be fully regulated under the proposed order, stated that the dates included in the proposed order would not provide handlers sufficient time to accumulate the data necessary to file their reports of receipts and utilization. They proposed that the 7th rather than the 6th day be used as the reporting date.

The order should provide that a handler's report of receipts and utilization is due on or before the 7th day after the end of each month. This

will provide the market administrator with sufficient time to receive the reports, review and correct them for obvious errors, compute each handler's value of milk and classified prices, compute the uniform price or prices and announce such price or prices by the 11th day of the month.

Also, each handler that is required by section 32 of the order to report the aggregate quantity of base milk during the months of March through June should do so on or before the 7th day after the end of the month rather than the 6th. All of the other dates (for reports, price announcements, and payments) specified in the order should be adopted as they were proposed by the proponents of the order.

It should be noted that the Georgia Federal milk order also provides that the report of receipts and utilization by handlers is due on the 7th day of the month and that the uniform price or prices are announced by the 11th day of the month. The Tennessee Valley Federal milk order, however, contains a reporting date of the 6th and a price announcement date of the 10th. Under the arrangements provided herein, handlers under the new order will be meeting about the same deadline with respect to these reporting functions as handlers under nearby orders. Also, producers supplying this market will receive their payments at about the same time as producers located in the same general area but who are supplying a nearby Federal order market.

Producer-settlement fund. Marketwide pooling requires the use of an equalization (producer-settlement) fund which enables all handlers in the market to pay the minimum uniform price or prices to their producers.

Payment into the producer-settlement fund would be made each month by each handler whose total classified use value of milk exceeds the value of the handler's milk at the uniform price or prices. Monthly payments out of the producer-settlement fund would be made to each handler whose use value is below the value of milk at the uniform price or prices for the market. This transfer of funds enables handlers with a use value below the average for the market to pay their producers the same uniform price or prices as handlers whose Class I utilization exceeds the market average.

As proposed and adopted herein, payments by handlers into the producer-settlement fund would be due by the 12th day of each month so that the market administrator could make payments out of the producer-settlement fund by the 13th day of each month.

Such timing will enable the market administrator to receive the money in the fund and make the payments out of the fund each month at the earliest feasible date. In the event that the balance in the producer-settlement fund on the 13th is insufficient to make the required payments out of the fund, the market administrator would reduce uniformly such payments. However, the market administrator would complete such payments to handlers as soon as the necessary funds become available.

The payment schedule adopted herein has no slack time for the announcement of the uniform price or prices. This time schedule recognizes the desire of producers that payment to them be as timely as possible. It provides, however, adequate transaction time as indicated earlier but, nevertheless, will require the cooperation of all handlers in the market to make it work as intended. Should any problems in this regard develop, they could be examined at a future hearing.

Payments to producers and cooperative associations. Each handler under the order should pay each producer for milk received from such producer, and for which payment is not made to a cooperative, at not less than the applicable uniform price or prices. Provision also should be made for partial payments for milk received during the first half of the month.

Under the payment provisions adopted herein, a handler would be required to make a partial payment to producers who had not discontinued delivery of milk to such handler prior to the 25th day of the month for their producer milk deliveries during the first 15 days of the month. Such payment would be by the last day of the month and would be at not less than the Class III price for the preceding month or 90 percent of the preceding month's weighted average price, whichever is higher. Proper deductions authorized in writing by the producer could be deducted from the partial payment due such dairy farmers.

Under the payment provisions adopted herein, handlers would be required to pay producers on or before the 15th day of the following month at the applicable uniform price or prices for milk received from such producers for the preceding month. Final settlement for all of the producer's milk in the preceding month at the uniform price or prices would recognize the partial payment and any other proper adjustments verifiable by the market administrator.

In the event a handler has not received from the market administrator the full producer-settlement fund payment by the date such handler is required to pay producers, the handler may reduce the payments to producers on a pro rata basis. Such reduction should not exceed the amount of the underpayment. The handler would be required to complete the producer payments on the next date for making such payments following the receipt of the balance due from the market administrator.

Provision also is made in the attached order for a cooperative association to receive payment from handlers for milk of producers who elect to market their milk through such association. Providing for a cooperative association to collect payments due individual producers who have authorized the cooperative to collect such payments on their behalf will permit the cooperative association to reblend the proceeds from the sale of such milk, as authorized by the Act. Also, it will facilitate the cooperative's movement of milk among pool plants and disposal of reserve milk supplies to other plants for manufacturing use.

As provided in the attached order, each handler upon request should pay cooperatives the full amount due for producers' milk in lieu of payments to individual producers. Both the partial and final payments to a cooperative association should be made at least 2 days prior to the date payments are due to individual producers. This will enable cooperative associations to pay the producers for whom they market milk on the same day other producers supplying the market are paid.

The proposed order would permit cooperatives to collect payment with respect to the milk of nonmember producers who have authorized the cooperative to collect such payments. Such a payment procedure is appropriate in that it complements the treatment afforded the milk of producers for which the cooperative may be the handler.

The proposed order requires payment to a cooperative association on milk delivered to a pool plant by a cooperative association acting as a bulk tank handler. If such milk is paid for by the plant operator at the uniform price or prices, accounting for the milk under the order will be simplified considerably. This method of payment will facilitate any adjustment required when audits by the market administrator disclose an error in classification.

Payments to and from the producer-settlement fund for milk delivered to a pool plant by a cooperative bulk tank handler will be made directly between the pool plant operator and the market administrator. This procedure will place

the responsibility for accounting for such milk and for its payments directly on the pool plant operator who processes the milk. If settlement were made through the cooperative association, i.e., when a pool plant operator settles with the cooperative at class prices and the cooperative pays into or collects from the producer-settlement fund, an unnecessary third party is entered into the transaction. By eliminating the cooperative as an intermediary between the pool plant operator and the market administrator with respect to transactions involving the producer-settlement fund, problems of financial responsibility, enforcement and subsequent audit adjustments will be greatly reduced.

For the foregoing reasons, the attached order would require a pool plant operator to pay the cooperative at least 2 days prior to the last day of the month for milk delivered to such plant during the first 15 days of the month by a cooperative bulk tank handler. The same partial payment rate that handlers pay individual producers would be used by handlers to make partial payments to cooperatives. By the 13th day of the following month, a pool plant operator would be required to make final settlement with the cooperative for the producer milk delivered to such plant in the preceding month by the cooperative as a bulk tank handler at not less than the appropriate uniform price or prices.

The attached proposed order provides that at the time final settlement is made for milk received from producers during the month, the handler is required to furnish each producer (or cooperative association) a supporting statement. This statement would indicate the month and identity of the producer, the daily and total pounds and average butterfat content of producer milk received from the producer, the minimum rate of payment required under the order, the rate used if it is other than the minimum rate, the amount and nature of any deductions, and the net amount of payment to such producer or cooperative.

Base and excess plan. A seasonal "base and excess" plan should be incorporated in the new order.

The purpose of a base-excess plan is to provide an incentive to producers to even out their milk production throughout the year, i.e., to encourage production in the months of seasonally low production and discourage excess production in the months of seasonally high production.

The spokesman for the order proponents testified that a seasonal base-excess plan should be used to distribute to producers the returns from the sale of their milk. He said that most producers who will be shipping milk to the plants that will be fully regulated under the Carolina Federal order have previously been paid on the basis of some form of base plan. The witness said that some of these producers have been on a base plan administered by the Tennessee Valley or Georgia Federal orders or have been paid under a base plan operated by either the States of North Carolina, South Carolina or Virginia.

There was no opposition to the use of a base-excess plan in the proposed Federal order although several parties objected to the proposed use of the months of August through November as the base-forming period. A representative for Piedmont Milk Sales and Southern Milk Sales and a representative for Edisto Milk Producers Association, Midlands Jersey Milk Producers Association and Carolina Jersey Milk Producers Association testified that their organizations preferred that the base-forming period be September through December.

The witness for the proponents of the August through November base-forming months said that the Class I demand for milk drops off sharply the last week in December; otherwise, there is little difference in the Class I demand between August and December. He said that for August, the demand for milk relative to the supply of milk is comparable to the Class I utilization for the months of September through November.

The representative for Edisto testified that many of their members are located in the low country or coastal plains of South Carolina where they experience very hot and humid weather in July and August. He said that these dairy farmers have found it very difficult to breed their herds to freshen in July for peak production in August and subsequent months. He indicated that most of the order proponents' members are located in the Piedmont and mountain areas of North Carolina, South Carolina, Georgia and Tennessee where the temperature and humidity are less severe.

The order should provide that the base-forming months be August through December. The record shows that Class I utilization for the period of August through November 1988 averaged 85 percent. Class I utilization for December 1988 was 83 percent. This slightly lower Class I utilization does not warrant excluding the month of December from the base-forming period. Furthermore, the addition of such month to the base-forming period should tend to alleviate some of the concerns expressed by Edisto concerning the inclusion of the month of August as a base-making month. In that regard, the use of a 5-month base-forming period will add an additional month having much cooler weather.

A base-excess plan for the proposed Carolina Federal order will provide a means of encouraging a level seasonal production pattern so that the milk production and fluid milk sales will be better coordinated during the year. For 1988, the record shows that for the two-State area, March had the lowest Class I utilization with about 80 percent while September had the highest Class I utilization with about 86 percent.

A low variation in milk production is beneficial to producers, handlers and consumers. This is because the cost of obtaining additional milk supplies in the months of short production is minimized. Also, the cost of disposing of excess milk production in the months of heavy milk production is also minimized.

The base-excess plan adopted in this decision, except for the base-forming months, is identical to that proposed by the order proponents. Each producer would be assigned a base computed by dividing the producer's total pounds of producer milk in August through December (the base-forming period) by the number of days' production represented in such producer milk deliveries or by 130, whichever is more. A single delivery by a producer on every-other-day delivery would be considered 2 days' production in computing a base.

The uniform (weighted average) price would be the minimum order price payable to producers for producer milk delivered during the base-forming months of August through December. Such price would also be payable to producers in the months of January, February and July, which would be neither base-forming nor base-paying months.

The base-paying months should be March through June, as proposed. These months form a period when milk production generally is high and Class I utilization of milk is low. Thus, it is a period when the base plan should discourage excessive production. This would occur because during the base-paying months, payments to producers would reflect a lower price for any excess producer milk delivered to the market. Thus, the operation of the base-excess plan should serve to maintain or perhaps improve, the seasonal production pattern of dairy farmers supplying the two-State area.

"Base milk" would be the producer milk of a producer in each month of

March through June that is not in excess of the producer's base multiplied by the number of days in the month. "Excess milk" would be the producer milk of a producer in each month of March through June in excess of the producer's base milk for the month. Excess milk would include all of a producer's milk deliveries during March through June if such dairy farmer has no base.

The market administrator each year would compute a new base for each producer and, by February 1, would notify each producer and the handler receiving the milk from such producer of the producer's base. The market administrator would also notify a cooperative, if requested, of the amount of base assigned to each producer-member.

In computing the uniform prices for base and excess milk, Class III production would be assigned to excess milk first. If Class III producer milk in the market exceeds the pounds of excess milk deliveries by producers, the uniform price for excess milk will be the Class III price. In such case, the additional value for the remaining Class III producer milk as well as the values for Class I and Class II producer milk will be reflected in the uniform price for base milk.

As proposed by producers, the uniform price for excess milk should not be subject to a location adjustment. Since excess milk would represent basically producer milk classified in Class III (milk for manufacturing uses) to which no location adjustment is applicable, the uniform price for excess milk should not be subject to a location adjustment. There is essentially no difference in the location value of milk for Class III uses. The Class III price under the Carolina order and other Federal milk orders is equal to the average price per hundredweight for the month of manufacturing grade milk f.o.b. plants in Minnesota and Wisconsin. If a location adjustment were applied to the uniform price for excess milk, it could result in applying an excess price to the producer milk at various plant locations that is less than the value of manufacturing grade milk delivered to those same plant locations.

A producer generally would deliver milk continuously throughout the base-forming period. However, because of various circumstances (e.g., storm damage at the farm or to roads, temporary suspension of a health permit or temporary loss of market when cut off by a buying handler), a producer may be off the market for a limited number of days during the base-forming period. In recognition of this, a producer who delivered at least 130 days' production during the base-forming period would have average daily deliveries computed on the same basis as a producer who delivered continuously throughout the entire period (by dividing the total producer milk deliveries by such dairy farmer during the 5-month period by the number of days' production represented in such deliveries).

The requirement that a producer supply the market in the base-forming months in order to earn a base provides an incentive to ship to the Carolina market instead of to other markets in the months when production is low relative to the demand for Class I milk. A producer who ships at least 130 days' production during the five-month base-forming period can reasonably be considered as being fully associated with the market. A producer who delivered less than 130 days' production should have a base determined by dividing total production in the base-forming period by 130. Thus, a producer who may have been supplying the Class I needs of another market for a substantisl part of the base-forming period would receive a base that reflects the producer's contribution toward supplying the fluid needs of the Carolina market in such period.

New producers coming on the market during the base-paying period would generally be dairy farmers who had supplied the fluid needs of another order market or an unregulated market during the base-forming period. Milk produced on their farms in the base-paying months would represent substantially milk that is surplus to the Class I needs of the market with which they had been previously associated. The deliveries of such producers during the base-paying months should be paid for at the excess milk price.

Also, persons who have not previously supplied a Class I market may become new producers on the new Carolina market. Included in this category would be dairy farmers who had previously been shipping manufacturing grade milk and persons starting new dairy farm operations. Before coming onto the market as a new producer, such a person would be expected to have anticipated in advance whether to begin shipping during the base-paying months of March through June or in any of the other eight months of the year. If the choice is to begin delivering as a new producer in one of the four base-paying months, presumably that decision would be made in recognition of the fact that the uniform price for excess milk would be received for milk delivered to the market in those months by producers without bases.

In some instances, a "natural disaster" may cause a producer to suffer a significantly reduced rate of production or force the producer to discontinue temporarily the production of milk on the farm. Unless provision is made in the order to give consideration to such occurrences in computing a producer's base, the producer would suffer an undue hardship. The order should specify the conditions under which relief may be granted to a producer whose production is adversely affected in the base-forming period as the result of an occurrence beyond the producer's control.

This can be achieved by providing that the base assigned to a person who was a producer within the preceding base-forming period may be increased to 90 percent of such person's daily average producer milk deliveries in the month immediately preceding the month during which such person's production was adversely affected by an allowable "hardship condition." Such relief would be granted only after the producer submitted to the market administrator by March a written statement that established to the satisfaction of the market administrator that the amount of milk produced on that farm in the preceding base-forming period was substantially reduced because of a condition beyond the producer's control which resulted from: (1) Loss by fire or windstorm of a farm building used in the production of milk on the producer's farm; (2) Brucellosis, bovine tuberculosis or other infectious diseases in the producer's milking herd, as certified by a licensed veterinarian; or (3) A quarantine by a Federal or State authority that prevents the dairy farmer from supplying milk from the farm of such producer to a plant.

The conditions under which we have proposed hardship relief encompass most natural disasters that could result in reduced production or in the temporary discontinuance of production on a dairy farm. Such a standard will provide the market administrator the guidance necessary for applying the provision in an objective manner.

Allowing hardship relief by assigning a producer a base of 90 percent of such producer's average daily producer milk deliveries in the month immediately preceding the month during which the hardship occurred provides an equitable standard for this purpose. Such a producer generally would not have shipped enough days' production in the base-forming period to have earned a base equal to such producer's average daily deliveries. To assign the producer a base equal to the producer's average

daily deliveries in a single month could result in giving the producer more base than would have been earned if the producer had not suffered the hardship throughout the full base-forming period.

Producers whose milk was delivered to a nonpool plant that became a pool plant after the beginning of the base-forming period should be assigned bases in the same manner as if they had been producers during the base-forming period. Their bases would be calculated from their deliveries to that plant in the preceding August through December period.

To acquire pool plant status under the order, a plant must dispose of a specified percentage of its route dispositions on routes in the marketing area or to other pool plants. It is expected that when such a plant becomes a pool plant, it will add Class I sales to the pool comparable to such sales in prior periods when it was a nonpool plant. It is appropriate, therefore, that those dairy farmers who have been supplying that plant have bases computed for them according to their deliveries to the plant in the base-forming period.

Bases assigned to producers who supplied a nonpool plant in the base-forming period that became a pool plant in the following base-paying period should not be transferable. If such a plant did not retain its pool plant status in the base-paying period and its producers had been permitted to transfer their bases, inequities could result. This is because the Class I milk in the pool would then be diminished by the plant's Class I sales in the month the plant lost its pool plant status while the aggregate producer bases for the month would be inflated by the bases that had been assigned its producers. This would have enabled these producers to sell their bases to producers still on the market and for the latter to obtain the benefit of a greater share of the market's Class I sales at the expense of other producers on the market.

The base earned by any producer who supplied the market in the preceding base-forming period should be transferable. This will facilitate the transfer of property when a baseholder dies or when the farm of a baseholder is sold. It will also facilitate adjustments by those producers desiring to expand or contract their operations. However, proper safeguards should be provided so that the transfer provisions may not be exploited at the expense of producers regularly supplying the market.

The amount of a base transferred could be in its entirety or in amounts of not less than 300 pounds. These limits, which were proposed at the hearing, are administratively practicable and should be adequate under conditions in the Carolina market.

The proposed order provisions did not specify that base may be transferred only to another dairy farmer. However, under the base plan provisions adopted herein, only a producer may establish base, and only producer milk could be base milk. Since a base is useful only to producers, only producers should be permitted to hold base. There was no testimony presented at the hearing to indicate an intent that other persons should be permitted to hold base. Accordingly, the order provides, in this regard, that base may be transferred only to a person who is or will be a producer by the end of the month that the transfer is to be effective.

Base transfers would be effective on the first day of the month following the date on which an application for transfer is received by the market administrator. Such application should be on a form approved by the market administrator, signed by the baseholder or the baseholder's heirs and the person to whom the base is to be transferred. If a base is held jointly, the application for transfer should be signed by all joint holders or their heirs. These provisions will insure that there is no misunderstanding between the parties involved concerning transfers.

The base established by a partnership may be divided between partners on any basis agreed on in writing by them if written notification of the agreed upon division, signed by each party, is received by the market administrator prior to the first day of the month in which the division is to be effective. This will facilitate the division of the assets of a partnership that is dissolved during the base-paying period. On the other hand, it will in no way affect the total quantity of base milk in the pool, irrespective of the manner in which the division of the base is made between the partners.

Likewise, two or more individual producers who establish bases separately and decide to form a partnership should be permitted to combine their bases. Although the proposed order would not have provided this, the new order is drafted to accommodate this situation. The combination of individual bases by producers forming a partnership would not affect the quantity of base milk in the pool.

A producer who transferred all or part of such producer's base on or after February 1 should not be permitted to receive other base by transfer that would be applicable within the March–June period of the same year. Further, a producer who receives base by transfer on or after February 1 should not be permitted to transfer a portion of such producer's base to be applicable within the March–June period of the same year, but should be permitted to transfer the entire base. These provisions will tend to insure that the exchange of bases between producers are bona fide transfers. Absent these provisions, the transferring of bases back and forth by two or more producers throughout the base-paying period could result in unwarrantedly increasing their share of the total payments under the order for producer milk at the expense of all of the other producers.

The first base-forming period under the proposed order is expected to be August 1990 through December 1990. Complete data would be available at the end of that period to compute bases. The first application of the base and excess payment provisions would then be for March 1991 deliveries.

Multiple component pricing. A plan for pricing milk on the basis of its nonfat solids and butterfat components should not be adopted on the basis of this record.

Proponents of a multiple component pricing (MCP) plan proposed that the differential value of milk used in Class I and Class II be pooled to determine producers' shares of the higher-valued uses, and the value of nonfat milk solids used in Class II and Class III be pooled with the value of skim milk used in Class I to determine the value of nonfat milk solids in producer milk.

Proponents of an MCP system were the Carolina Jersey Milk Producers Association, Midlands Jersey Milk Producers Association and Sumter Dairies, Inc. The two producer associations consist of 35 dairy farmers. The 15 members of the Carolina Jersey Milk Producers Association ship their milk to Hunter Jersey Farms. The 20 members of the Midlands Jersey Milk Producers Association ship their milk supply to Sumter Dairies.

The Carolina Guernsey Producers Association, while opposed to a Federal milk order for the Carolinas, indicated that it supported MCP in the event a Federal order was made effective. This dairy farmer association consists of 12 members who ship to Carolina Dairy.

Eight of the nine dairy farmer organizations who favored a Federal order for the Carolinas opposed the use of MCP. The eight organizations represent about 84 percent of the milk that is expected to be pooled under the order. Piedmont Milk Sales, a milk marketing organization, also opposed MCP.

Proponents of MCP expended a lot of time and effort in the preparation and presentation of their proposal. They brought in an expert witness from California to testify on the testing procedures used in California to determine the nonfat solids content of milk and on the cost of performing such tests. MCP proponents also brought in a professor from Cornell University to testify on the validity of milk testing methods and procedures. Proponents also brought in an Ohio University professor to rationalize why MCP would be appropriate in a market with a high Class I utilization.

The principal witness for MCP was an economist with 35 years of experience in the field of milk marketing and classified milk pricing programs. The witness testified at length on why he believed that MCP was superior to butterfat and skim milk pricing. He also explained in detail how the proposed pricing procedure would operate at the handler level and the producer level.

Another witness for the MCP procedure was the general manager of National All-Jersey, Inc. The witness indicated that his organization is promoting the nationwide adoption of MCP.

Proponents of MCP contended in their brief that the merits of MCP are well known. They indicated that the merits of such pricing have been recognized and agreed upon by scientists and others in this country and throughout the world.

Proponents' brief listed and countered the objections that are raised to the use of MCP. The objections which they noted and to which they responded were as follows:

(1) MCP is not appropriate in a market with a high Class I use.

(2) MCP will bring about an improper redistribution of money among producers.

(3) The cost of the additional testing if MCP is implemented would be 2 cents per hundredweight.

(4) Handlers' cost for milk in Class II and Class III uses would be increased due to additional testing required.

(5) MCP can serve no useful purpose but only redistributes among dairy farmers whatever money would be there anyway.

The spokesman for the 8 cooperative associations proposing the new order opposed the component pricing procedure for the following reasons:

1. The proposed pricing plan generally referred to as component pricing is not a true component pricing procedure. The pricing plan does not reflect a true market value for solids-not-fat because their value would be computed by a residual valuation approach.

2. The proposed plan would pay producers a solids-not-fat differential for all the solids-not-fat that producers deliver while charging handlers only for the solids-not-fat differential for milk used in the production of Class II and Class III products.

3. The proposed pricing plan would result in the following costs:

a. Producers would incur the added cost of testing their milk for solids-not-fat; and

b. Keeping records of solids-not-fat tests, posting the tests to producer payrolls, paying producers on the basis of solids-not-fat, auditing and verification by the market administrator would be more costly.

4. Adoption of component pricing would result in lower net returns to producers. The proposed pricing would not generate any new revenues and there would be an added cost of redividing the total returns to producers on the basis of the solids-not-fat in each producer's milk.

5. Marketing conditions in the proposed Carolina marketing area differ in many respects from the marketing conditions that prevailed in the Great Basin marketing area when an MCP plan was adopted for that order.

There was no testimony in support of MCP from handlers. Kraft, Land-O-Sun and Dairy Fresh opposed such pricing. A representative of Milkco and Hunter Jersey Farms indicated these two handlers were not opposed to component pricing but he offered no supporting testimony on their behalf.

Kraft's position seemed to be that if MCP is adopted, the protein content of milk should be the basis of pricing instead of the nonfat solids content of milk. In addition, Kraft's witness emphasized that such payment should be conditioned upon the somatic cell count of the milk. The witness indicated that increased cheese yields from milk containing higher levels of protein are conditioned upon the somatic cell count.

Kraft, Inc., set forth in its brief the following arguments regarding the use of MCP:

(1) Quality factors, such as somatic cell count, must be included in any protein payment schedule.

(2) The pricing adjustments proposed for the Carolina market exceed adjustments paid in the competitive marketplace.

(3) The proposed MCP scheme would result in non-uniform prices to handlers receiving milk for the same use classification.

(4) The proposed MCP scheme would result in non-uniformity and inequity between producers.

(5) The proposal for solids-not-fat pricing would result in undue costs and burdens upon fluid milk handlers.

(6) Conditions in the Carolinas are very different from those relied upon by the Secretary in adopting MCP pricing in the Great Basin market.

Kraft, Inc., also noted that there is virtually no use of MCP by handlers and producers in the Carolinas or elsewhere in the Southeast. With regard to the contention of the proponents of MCP that their proposal would send a signal encouraging more skim and less fat solids in milk, Kraft pointed out that there is a direct correlation between fat and nonfat solids in milk. Kraft also noted that MCP adjustments would apply to only 15 percent of the milk purchased by handlers while all of the producer milk in the market would need to be tested for nonfat solids content. As a consequence of the additional testing, Kraft indicated that the net returns to producers would decline since expenses would be added without any offsetting new revenues.

The proponents and opponents of MCP at the hearing were primarily representatives of dairy farmers. Handlers of milk were somewhat indifferent to whether milk was priced on the basis of skim milk and butterfat or MCP. The operators of primarily fluid milk operations would not be significantly affected even though MCP were adopted. The reason for their indifference is that Class I milk utilized in the plant would continue to be priced on the basis of skim milk and butterfat content. The Class I operators would incur added costs if they elected to purchase and operate new testing equipment to test for multiple components. These plant operators would incur additional costs to hire or train technicians to operate the new equipment.

Plant operators who utilize milk in Class II uses would be the ones who would be primarily impacted by the adoption of MCP. These operators would have to pay on the basis of the butterfat and the nonfat solids content of the milk.

Distributing plants that would be pooled are not utilizing milk in Class III products. Milk that is priced in Class III uses under the order would be milk that is surplus to the fluid milk needs of the market. For the most part, such milk would be milk that is diverted to nonpool plants.

One of the reasons advanced by proponents for using MCP in the Carolina market is that such pricing is a means by which handlers would reimburse producers for the added value

of milk with higher solids that is utilized in Class II and Class III uses. However, in this market no more that 15 percent to 20 percent of the producer milk is expected to be used for Class II or Class III purposes. At this level of Class II/Class III utilization, MCP would serve little purpose in compensating producers for higher solids milk. Furthermore, the use of MCP would require additional testing and record keeping at additional expense to handlers and producers while the returns from MCP would be very limited. Moreover, less than five percent of the producers who are expected to deliver their milk to the Carolina market favor MCP. In view of the limited returns that would accrue to producers, the additional record keeping that would be required for handlers, and the lack of support for such nonfat solids and butterfat pricing, it is concluded that MCP should not be adopted in this market at this time.

In lieu of incorporating MCP in the Carolina order, Kraft suggested that the section of the order dealing with butterfat differentials be modified to allow handlers to make equal deductions and additions to the uniform prices due producers on the basis of the protein and somatic cell content of each producer's milk. The suggestion would not result in the uniformity necessary to assure equitable pricing of milk between handlers and among producers. Such deductions and premiums would be voluntary and their rates could vary between handlers. Furthermore, there is no reason to believe that such a system would be used by all handlers. Accordingly, the proposed modifications should not be adopted.

(e) *Administrative provisions.*

Charges on overdue accounts. Late-payment charges should apply on all funds due the market administrator (sections 71, 76, 77, 85, and 86—Payments to the producer-settlement fund, payments by handlers operating a partially regulated distributing plant, adjustment of accounts, assessment for order administration and deductions for marketing services, respectively) and on payments due to producers and cooperative associations (section 73—Payments to producers and to cooperative associations). The charge for late payments should be one and one-fourth percent for each month or portion thereof that such payment is overdue. The order should also provide that the amounts payable on overdue accounts be computed monthly on each unpaid obligation, which should include any unpaid charges previously computed on such overdue accounts. Any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due should be considered to have been payable by the date it would have been due if the report had been filed when due. Also, all monies collected on overdue accounts should be paid to the administrative fund maintained by the market administrator.

Although the order proponents indicated in their testimony that a late-payment charge should apply to deductions for marketing services, their proposed order language did not include a reference to section 86. The order language adopted herein has been modified by including this section of the order.

The order proponents proposed that unpaid handler obligations to the market administrator and to producers and cooperative associations be increased one and one-fourth percent for each month or portion of a month that such obligation is overdue. The spokesman stated that the intent of the proposal was to encourage prompt payment of handler obligations to the market administrator. He testified that 1.5 percent per month was about the going annual rate for short-term (business) loans at the time of the hearing.

It is essential to the effective operation of the order that handler payments for obligations under the order be made promptly. Under the marketwide pooling arrangement, it is necessary that handlers with Class I utilization higher than the market average pay part of their total use value of milk to the producer-settlement fund. Through this means, money is made available to handlers with lower than average Class I utilization so that all handlers in the market, irrespective of the way they use the milk, can pay their producers the uniform price. The success of this arrangement depends on the solvency of the producer-settlement fund.

Also, the prompt payment of amounts due the administrative and marketing service funds is essential to the performance by the market administrator of the various administrative functions prescribed by the order. Delinquent payments to these funds could impair the ability of the market administrator to carry out his duties in a timely and efficient manner.

Payment delinquency also results in an inequity among handlers. Handlers who pay producers or cooperative associations late are, in effect, borrowing money from producers. In the absence of any late-payment charge that approximates the cost of borrowing money from commercial sources, handlers who are delinquent in their payments have a financial advantage relative to those handlers making timely payments.

It should be noted that late-payment charges are not a substitute for prompt payments by handlers. Those delinquent in their obligations would still be subject to legal enforcement action as authorized under the Act.

Under the provisions adopted herein, overdue handler obligations that are payable to the market administrator would be increased by one and one-fourth percent on the day after the due date. Any remaining unpaid portion of the original obligation would be further increased by one and one-fourth percent on the same date of each succeeding month until the obligation is paid. The late-payment charge would apply not only to the original obligation but also to any unpaid charges previously assessed. Also, the charge should apply whether the obligation is paid 1 day late or 10 days late, and should be applicable to both fully regulated and partially regulated handlers alike.

Late-payment charges on all overdue accounts should accrue to the administrative expense fund maintained by the market administrator. In the event a handler is delinquent in the payment of an obligation, money must be spent by the market administrator in determining the amount of the late-payment charges and in collecting such payments. The money to cover the cost of these activities comes from the administrative assessment fund. Thus, the competitors of the noncomplying handlers who pay assessments to this fund are bearing the administrative costs of dealing with the delinquent handler. Therefore, it is reasonable that late-payment charges assessed on noncomplying handlers be used to help defray the administrative costs.

If the order provided that charges on overdue amounts to producers and cooperatives be paid to the producer-settlement fund in this market where most of the milk received by handlers is from cooperatives, it would tend to reduce the incentive for cooperatives to insist on timely payments from handlers. This would detract from the basic intent of the late-payment charge. More importantly, as previously noted, money must be spent by the market administrator in determining the amount of the late-payment charges and in collecting such payments. The money to cover the cost of these activities comes from the administrative expense fund.

The order provides that a late-payment charge on delinquent report

obligations be based on the date that the obligations were due if the report had been filed timely. This proposed provision is contained in several Federal orders and is intended to insure that handlers do not obtain any economic gain by intentionally reporting late.

Marketing services. The new order should provide for furnishing marketing services to producers, such as verifying the tests and weights of producer milk and furnishing market information. These services should be provided by the market administrator, and the cost should be borne by producers for whom the services are rendered. However, any cooperative association, if approved for such activity by the Secretary, may perform such services for its producers in lieu of having the market administrator perform the services.

The order proponents proposed that a marketing services provision be included in the new order and that it be funded by an assessment of 5 cents per hundredweight of production to be paid by the producers for whom the market administrator performs the prescribed services. The spokesman testified that the 5-cent rate should provide adequate funds for the market administrator to provide marketing services to nonmembers, based on an analysis of the expense of such programs in other markets. Also, he noted that the rate provided in an order is a maximum rate that can be reduced by the Secretary if experience shows that the services can be provided for a lesser amount. He stated that a marketing services provision is needed because producers who are not members of a cooperative do not have such a program provided and that such producers would benefit from such services.

The spokesman for the order proponents testified that if a producer is a member of a cooperative association, these services are performed by the cooperative association and are paid for by the members of the cooperative association. The cooperative necessarily performs these services in an effort to assure their members of accurate butterfat tests and weights and reliable market information and other services.

The spokesman said that there is no need for the market administrator to duplicate the services which the cooperative association normally provides for its membership. The market administrator, he said, must rely on the cooperative's results in his auditing program insofar as it is involved with the full accounting of milk and butterfat. He said that it is essential that the performance of cooperative associations with respect to the performance of these marketing services be reviewed by the Secretary. The cooperative association, he said, will be entitled to perform these services only after application to the market administrator, and a demonstration that the cooperative is fully qualified and capable of performing the services.

Milk produced on a handler's own farm should be exempt from marketing service deductions, even though it is subject to other provisions of the order. There are no payments to other persons on such milk. Hence, there is no need to provide the same marketing services as are provided other producers.

The other service provided, that of furnishing market information, is designed to keep the producer informed of developments that might affect such producer's price or market outlet in order that the producer may better evaluate marketing conditions. The objective of the program is to aid producers to achieve and maintain orderly marketing conditions for their milk.

In the case of producers who market their milk through a cooperative association, the Act authorizes such cooperative to perform these marketing services, and the costs of these services normally are borne by such producers through membership dues.

Expense of administration. Each handler should be required to pay the market administrator a proportionate share of the cost of administering the order. For this purpose, a charge of 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, on producer milk (including milk of such handler's own production) and on other source milk allocated to Class I (except milk so assessed under another Federal order) is provided.

The market administrator must have sufficient funds to administer properly the terms of the order. The Act provides that the cost of administration shall be financed through an assessment on handlers. A principal function of the market administrator is to verify the receipts and dispositions of milk from all sources. Equity in sharing the cost of administration of the order among handlers will be achieved, therefore, by applying the administrative assessment on the basis of milk received from dairy farmers (including milk diverted to nonpool plants) and on other source milk allocated to Class I milk.

The proposed order provides that a cooperative shall be the handler on milk it delivers in tank trucks from producers' farms to pool plants of other handlers. The cooperative is the handler on such milk basically for the purpose of making payments to its individual members. For pricing purposes, however, the handlers that receive such milk at their plants would treat it the same as any other direct receipts from producers.

The market administrator must verify by audit the receipts and utilization at each pool plant whether the plant operator buys milk directly from producers or through a cooperative as a bulk tank handler. Thus, the pool plant operator receiving such milk should pay the administrative assessment on it on the same basis as for producer milk received at the plant. The cooperative bulk tank handler would be liable only for the administrative assessment on the quantity of milk picked up at producers' farms that is not received at the pool plant.

The order specifies minimum performance standards that must be met to obtain regulated status. The operator of a plant not meeting such standards (i.e., a partially regulated distributing plant) is required to either (1) make specified payments (discussed elsewhere in this decision) into the producer-settlement fund on route dispositions in the marketing area in excess of offsetting purchases of Federal order Class I milk, or (2) otherwise pay into such fund and/or to dairy farmers an amount not less than the classified use value of all receipts from dairy farmers computed as though such plant were a fully regulated plant.

In administering the order as it applies to partially regulated distributing plants, the market administrator incurs expenses in essentially the same manner as in applying the order to pool handlers, even though the order is not applicable to the partially regulated handler to the same extent as to fully regulated handlers. Hence, payment of the administrative assessment on the partially regulated handler's in-area sales only would reasonably constitute such handler's pro rata share of the administrative expense.

In the case of unregulated milk that enters the market through a regulated plant for Class I use, it is the regulated handler who utilizes the unregulated milk and who must report to the market administrator the receipt and use of such milk. Also, the receipts and utilization of all milk at the regulated handler's plant are subject to verification by the market administrator. Hence, the regulated handler should be responsible for payment of the administrative assessment on such unregulated milk.

The order is designed so that the cost of administration is shared equitably among handlers distributing milk in the proposed marketing area. However, to

avoid duplication, an assessment should not be made on other source milk on which an assessment was made under another Federal order.

Provision should be made so that the Secretary may reduce the amount of the administrative assessment without the necessity of amending the order. The rate can thus be reduced when experience indicates a lower rate will be sufficient to provide adequate funds for the administration of the order.

Proponents, in conjunction with their producer-handler definition, proposed that the administrative assessment also apply to all producer-handlers. Proponents contend that it is unfair to other handlers to incur an administrative assessment as a result of costs that are incurred in determining whether certain operations should be qualified as producer-handlers and thus be exempt from the pricing and pooling provisions. Basically, proponents contend that producer-handlers should pay their pro rata share of at least the administrative costs involved in determining and monitoring their exempt status. Proponents contend that handlers should not have to bear such cost since they do not benefit from the producer-handler exemption.

Contrary to proponents' views, handlers do derive a benefit from the administrative expense that they incur. To the extent administrative costs are incurred in administering the producer-handler provisions, handlers are assured that producer-handlers continue to operate in the manner provided under the order. As previously stated, this insures that producer-handlers are not able to transfer the costs and risks of their operation to others and, consequently, are not able to gain a demonstrable advantage relative to producers or handlers. In addition, the producer-handler exemption from the administrative assessment is similar to the exemption of the assessment on other handlers for receipts of other source milk that is allocated to other than Class I use. Such receipts affect the administrative costs and complicate the verification process involved in determining the utilization of producer milk. Therefore, the proposal to apply an administrative assessment to producer-handlers is denied.

General provisions. The Carolina order adopted herein incorporates, by reference, certain terms, definitions, and administrative provisions that are included in part 1000 of the Code of Federal Regulations. These provisions are common to all Federal milk orders, having been so adopted effective July 1, 1971 (36 FR 9844).

The first section (§ 1000.1) states that the uniform provisions included in part 1000 shall be a part of each Federal milk marketing order as if set forth in full in each order, except in any order where any such provision is expressly defined or modified otherwise.

The second section (§ 1000.2) includes definitions of five general terms used in all Federal milk orders: Act, Order, Department, Secretary, and Person.

The third section (§ 1000.3) deals with the designations, powers, and duties of the market administrator.

The fourth section (§ 1000.4) pertains to the continuity and separability of provisions in an individual order. For the most part, these are internal administrative rules and instructions to Department employees regarding procedures involved in the suspension, termination, or liquidation of any or all provisions of a Federal milk order.

The fifth section (§ 1000.5) describes a handler's responsibility with respect to records and facilities.

The final section (§ 1000.6) relates to the termination of obligations.

The general provisions of part 1000 have the same intent and purpose in each Federal milk order. They have worked effectively. Adopting part 1000 by reference for the Carolina order will promote uniform application of these provisions, which have the same intent and purpose in all orders.

A detailed discussion of the need and basis for incorporating the general provisions in each order is contained in a decision issued by the Assistant Secretary on April 15, 1971 (36 FR 7514). Official notice was taken of this decision at the hearing held April 17–25, 1989, for this market. The record evidence indicates that the findings and conclusions of the 1971 decision and the statement of consideration in the related 1980 termination order are equally applicable under current marketing conditions in the proposed Carolina marketing area.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

In his brief, counsel for Kraft renewed his exception to two rulings of the Administrative Law Judge (ALJ). One of the rulings limited counsel's cross-examination of an expert witness on California's solids-not-fat testing procedures. The second ruling involved counsel's cross-examination of the same expert witness on the storability of milk samples.

In his complaint regarding the first ruling, counsel points out that the expert witness was called by the proponents of MCP "to testify on milk component test procedures used by the California Dairy Industry for the basis of producer payments" and discussed sub-components of SNF in his direct testimony. When counsel for Kraft cross-examined the witness concerning the sub-components of SNF included in California tests, proponent's representative objected that such examination was irrelevant. Counsel indicates that the ALJ sustained the objection and ruled that counsel could not examine the milk testing expert on the technicalities of testing but must limit cross-examination to the cost of testing. Counsel complains this ruling was clearly erroneous, and leaves the record without important information concerning the propriety of SNF testing. Counsel states the witness indicated that the California Dairy Industry is apparently considering moving away from SNF pricing on milk used to make cheese and moving towards casein pricing, which excludes pricing of whey protein and nitrogen gas.

The expert witness read a prepared statement regarding California's milk component pricing and testing that is the basis for payment by dairy processors for milk received from dairy farmers. The prepared statement appears on pages 4 through 9 of the transcript for April 20, 1989. Questions and responses by the expert witness on direct examination cover pages 9–41. Cross-examination of the expert witness by counsel for Kraft covers pages 41–64 and pages 67–85.

The Department's review of the proceeding does not indicate that the ALJ erred in limiting counsel's cross-examination of the expert witness. In the first instance, the ALJ was asked to rule on an objection to the line of cross-examination. The basis offered for the objection was that the expert witness had testified regarding the testing of the total solids (fat and nonfat solids) in milk. The person objecting stated that the make-up of the components of milk was not relevant since the proposed MCP was to be based upon the total solids-not-fat content of the milk.

In reviewing the transcript of the hearing, there is some question whether counsel for Kraft abandoned at the hearing the line of questioning that is in controversy. Counsel states on page 56 and 57 of the transcript of April 20, 1989, "In fact, let me go on to something else and I'll come back to that. I think I have just about finished it." However, counsel does not come back to the line of questioning during the remaining cross-examination of the expert witness.

In any event, the Department finds no fault with the ALJ in limiting cross-examination by counsel on the components of SNF. The expert witness for proponents of MCP was there to testify on testing for SNF in milk and the cost of various testing methods. Consequently, the ALJ appropriately sustained the objection to cross-examination regarding the make-up of the components of solids-not-fat.

With regard to the second exception, counsel for the Department initially objected to the line of questioning by counsel for Kraft stating that it was getting into minutiae about California's testing procedures. The Administrative Law Judge overruled that objection on the basis that the relevancy of the questions was borderline and permitted counsel for Kraft to continue. After additional questions and answers covering 5 to 6 pages in the transcript of the proceeding, the ALJ interjected that counsel for Kraft's line of questioning was really getting into minutiae now and that counsel had covered that (line of questioning) pretty well. Counsel responded, "I'm almost done. I have one more, one more question on that line, your honor, just one more." Counsel was asked by the ALJ to keep his question short. The question by counsel was not especially short and after receiving an answer to the question, counsel then wanted to ask a further question to clarify the answer. At this point the ALJ cut off the line of questioning on the basis that counsel had been allowed to ask his one question.

Counsel for Kraft's objection to the second ruling by the ALJ is without merit. The ruling by the ALJ was in accordance with the condition established by counsel, that he be permitted one more question. Furthermore, there was sufficient basis for the ALJ to have precluded the additional question on the basis that it was not relevant.

In addition, the rulings by the ALJ in limiting counsel's cross-examination did not adversely impact counsel's position that the use of SNF as one of the components in MCP is inappropriate. In that regard, it is noted that the use of MCP is not adopted in this decision.

General Findings

(a) The tentative marketing agreement and the order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the order, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held;

(d) All milk and milk products handled by handlers as defined in the tentative marketing agreement and the order are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1005.85 of the aforesaid tentative marketing agreement and the order.

Recommended Marketing Agreement and Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order. The following order regulating the handling of milk in the Carolina marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1005

Dairy products, Milk, Milk marketing orders.

7 CFR part 1005 is proposed to be added to read as follows:

PART 1005—MILK IN THE CAROLINA MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.

1005.1 General provisions.

Definitions

1005.2 Carolina marketing area.
1005.3 Route disposition.
1005.4 Plant.
1005.5 Distributing plant.
1005.6 Supply plant.
1005.7 Pool plant.
1005.8 Nonpool plant.
1005.9 Handler.
1005.10 Producer-handler.
1005.11 [Reserved]
1005.12 Producer.
1005.13 Producer milk.
1005.14 Other source milk.
1005.15 Fluid milk product.
1005.16 Fluid cream product.
1005.17 Filled milk.
1005.18 Cooperative association.
1005.19 [Reserved]
1005.20 Product prices.

Handler Reports

1005.30 Reports of receipts and utilization.
1005.31 Payroll reports.
1005.32 Other reports.

Classification of Milk

1005.40 Classes of utilization.
1005.41 Shrinkage.
1005.42 Classification of transfers and diversions.
1005.43 General classification rules.
1005.44 Classification of producer milk.
1005.45 Market administrator's reports and announcements concerning classification.

Class Prices

1005.50 Class prices.
1005.51 Basic formula price.
1005.52 Basic Class II formula price.
1005.53 Plant location adjustments for handlers.
1005.54 Announcement of class prices.
1005.55 Equivalent price.

Uniform Price

1005.60 Handler's value of milk for computing uniform price.
1005.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).
1005.62 Announcement of uniform price and butterfat differential.

Payments for Milk

1005.70 Producer-settlement fund.
1005.71 Payments to the producer-settlement fund.
1005.72 Payments from the producer-settlement fund.
1005.73 Payments to producers and to cooperative associations.
1005.74 Butterfat differential.
1005.75 Plant location adjustments for producers and on nonpool milk.

Sec.

1005.76 Payments by handler operating a partially regulated distributing plant.
1005.77 Adjustment of accounts.
1005.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1005.85 Assessment for order administration.
1005.86 Deduction for marketing services.

Base-Excess Plan

1005.90 Base milk.
1005.91 Excess milk.
1005.92 Computation of base for each producer.
1005.93 Base rules.
1005.94 Announcement of established bases.

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

Subpart—Order Regulating Handling

General Provisions

§ 1005.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter are hereby incorporated and made a part of this order.

Definitions

§ 1005.2 Carolina marketing area.

The "Carolina marketing area", hereinafter called the marketing area, means all the territory within the boundaries of the following counties, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties (in the event such provision conflicts with a similar provision of an adjacent Federal milk order, the provisions of the adjacent Federal order shall have precedence.):

(a) Northwestern Zone. North Carolina counties of Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Rockingham, Stokes, Surry, Swain, Transylvania, Watauga, Wilkes, Yadkin, and Yancey.

(b) Base Zone. North Carolina counties of Alamance, Anson, Cabarrus, Caswell, Catawba, Chatham, Cleveland, Davidson, Davie, Durham, Forsyth, Franklin, Gaston, Granville, Guilford, Halifax, Iredell, Lee, Lincoln, Mecklenberg, Montgomery, Moore, Nash, Northampton, Orange, Person, Polk, Randolph, Richmond, Rowan, Rutherford, Stanly, Union, Vance, Wake, and Warren.

South Carolina counties of Abbeville, Anderson, Cherokee, Chester, Greenville, Greenwood, Lancaster, Laurens, McCormick, Oconee, Pickens, Spartanburg, Union, and York.

(c) Southeastern Zone. North Carolina counties of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Scotland, Tyrrell, Washington, Wayne, and Wilson.

South Carolina counties of Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Edgefield, Fairfield, Florence, Georgetown, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Marlboro, Newberry, Orangeburg, Richland, Saluda, Sumter, and Williamsburg.

§ 1005.3 Route disposition.

Route disposition means a delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk.

§ 1005.4 Plant.

Plant means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products, including filled milk, are received, processed, or packaged. Separate facilities without stationary storage tanks that are used only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1005.5 Distributing plant.

Distributing plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1005.6 Supply plant.

Supply plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which fluid milk products are transferred during the month to a pool distributing plant.

§ 1005.7 Pool plant.

Except as provided in paragraph (d) of this section, *pool plant* means:

(a) A plant that is approved by a duly constituted regulatory agency for the processing or packaging of Grade A milk and from which during the month there is:

(1) Route disposition, except filled milk, in the marketing area is not less than 15 percent of its total route disposition, except filled milk, during the month; and

(2) The total quantity of fluid milk products, except filled milk, disposed of in Class I is not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1005.13. The applicable percentage in this subparagraph may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if that person finds such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

(b) A plant, other than a plant described in paragraph (a) of this section, from which fluid milk products, except filled milk, are shipped to pool plants pursuant to paragraph (a) of this section. Such shipments must equal not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of milk approved by a duly constituted regulatory agency for fluid consumption that is received during the month from dairy farmers (including producer milk diverted from the plant pursuant to § 1005.13 but excluding milk diverted to such plant) and handlers described in § 1005.9(c). The operator of such plant may include milk diverted from such plant to plants described in paragraph (a) of this section as qualifying shipments in meeting up to one-half of the required shipments. The applicable shipping percentage of this paragraph may be increased or decreased up to 10

percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

(c) A plant located in the State of North Carolina, South Carolina or Virginia that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month 60 percent or more of the producer milk of members of such cooperative association, excluding such milk that is received at or diverted from pool plants described in paragraph (b) of this section but including milk delivered by such cooperative as a handler described in § 1005.9(c), is delivered directly from their farms to pool plants described in paragraph (a) of this section or is transferred to such plants as a bulk fluid milk product from the plant of the cooperative association, subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under the provisions of another Federal order applicable to a distributing plant or a supply plant; and

(2) The plant is approved by a duly constituted regulatory agency to handle milk for fluid consumption.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area; and

(4) A plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements for the month under another Federal order.

§ 1005.8 Nonpool plant.

Nonpool plant means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *Other order plant* means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) *Partially regulated distributing plant* means a nonpool plant that is not a producer-handler plant, a governmental agency plant or another order plant and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) *Unregulated supply plant* means a nonpool plant that is not a producer-handler plant, a governmental agency plant or another order plant and from which fluid milk products are shipped to a pool plant.

(e) *Governmental agency plant* means a plant operated by a governmental agency from which fluid milk products are distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

§ 1005.9 Handler.

Handler means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to milk of such producers diverted to nonpool plants for the account of such association pursuant to § 1005.13, excluding the milk of producers diverted by the association as a handler pursuant to paragraph (a) of this section;

(c) Any cooperative association with respect to milk excluding the milk of producers diverted to pool plants by the association as a handler pursuant to paragraph (a) of this section, that it receives for its account from the farm of a producer for delivery to a pool plant or another handler, in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler of such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1005.7(d)(3) or (4); and

(g) Any person who operates an unregulated supply plant.

§ 1005.10 Producer-handler.

Producer-handler means any person:

(a) Who operates a dairy farm and a processing plant from which there is route disposition in the marketing area;

(b) Who receives no fluid milk products from sources other than his own farm production, pool plants and other order plants;

(c) Whose receipts of fluid milk products from pool plants and other order plants do not exceed the lesser of 5 percent of Class I disposition or 5,000 pounds during the month;

(d) Who disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from his own farm production or pool plants; and

(e) Who provides proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for his own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

§ 1005.11 [Reserved].

§ 1005.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption, which milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1005.9(c); or

(3) Diverted from a pool plant in accordance with § 1005.13.

(b) "Producer" shall not include:

(1) A producer-handler as described in any order (including this part) issued pursuant to the Act;

(2) A governmental agency operating a plant exempt pursuant to § 1005.8(e);

(3) Any person with respect to milk produced by such person which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1005.44(a)(8)(iii) and the corresponding step of § 1005.44(b); and

(4) Any person with respect to milk produced by such person which is reported as diverted to an other order plant if any portion of such person's

milk so moved is assigned to Class I under the provisions of such other order.

§ 1005.13 Producer milk.

Producer milk means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant, excluding such milk that is diverted from another pool plant;

(b) Received by a handler described in § 1005.9(c);

(c) Diverted from a pool plant for the account of the handler operating such plant to another pool plant;

(d) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler described in § 1005.9(a) or (b) subject to the following conditions:

(1) A producer's milk shall be eligible for diversion to a nonpool plant during any month in which such producer's milk is physically received at a pool plant as follows:

(i) In any month of July through February, six days' production;

(ii) In any month of March through June, two days' production.

(2) During each of the months of July through November and January and February, the total quantity of milk diverted by a cooperative association shall not exceed one-fourth of the producer milk that such cooperative caused that month to be delivered to or diverted from such pool plants;

(3) A handler described in § 1005.9(a) that is not a cooperative association may divert for its account any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d)(2) of this section. The total quantity of milk so diverted shall not exceed one-fourth of the milk that is physically received at or diverted from pool plants as producer milk of such handler in each month of July through November and January and February;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (c)(3) and (4) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to make such designation, no milk diverted by such handler pursuant to this paragraph shall be producer milk;

(5) To the extent that it would result in nonpool status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(6) The cooperative association shall designate the dairy farmer deliveries that are not producer milk pursuant to paragraph (d)(5) of this section. If the diverting handler fails to make such designation, no milk diverted by such handler shall be producer milk; and

(e) Milk diverted pursuant to paragraph (c) or (d) of this section shall be priced at the location of the plant to which diverted.

§ 1005.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1005.40(b)(1) from any source other than producers, handlers described in § 1005.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1005.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1005.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1005.40(b)(1)) for which the handler fails to establish a disposition.

§ 1005.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, *fluid milk product* means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1005.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1005.17 Filled milk.

Filled milk means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1005.18 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have and be exercising full authority in the sale of milk of its members.

§ 1005.19 [Reserved]

§ 1005.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1005.52:

(a) *Butter price. Butter price* means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following workday until the next price is reported. A workday is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price. Cheddar cheese price* means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the

Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following workday until the next price is reported. A workday is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price. Nonfat dry milk price* means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding workday until the day such prices were previously reported. A workday is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price. Edible whey price* means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding workday until the day such price was previously reported. A workday is each Monday through Friday except national holidays.

Handler Reports

§ 1005.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of its pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1005.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1005.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1005.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1005.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1005.9 (a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) Such producer's name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1005.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1005.32 Other reports.

(a) Each handler described in § 1005.9 (a), (b) and (c) shall report to the market administrator on or before the 7th day after the end of each month of March through June the aggregate quantity of base milk received from producers during the month, and on or before the 20th day after the end of each month of March through June the pounds of base milk received from each producer during the month.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1005.30 and 1005.31, each handler shall report such other information as the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1005.40 Classes of utilization.

Except as provided in § 1005.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1005.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph

(b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1005.15; and

(6) In shrinkage assigned pursuant to § 1005.41(a) to the receipts specified in § 1005.41(a)(2) and in shrinkage specified in § 1005.41 (b) and (c).

§ 1005.41 Shrinkage.

For the purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1005.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1005.9(c), and in milk diverted to such plant from another pool plant, except that in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1005.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1005.42 Classification of transfers and diversions.

(a) Transfers to pool plants. Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1005.44(a)(12) and the corresponding step of § 1005.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1005.44(a)(7) or the corresponding step of § 1005.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1005.44(a) (11) or (12) or the corresponding steps of § 1005.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) Transfers and diversions to other order plants. Skim milk or butterfat transferred or diverted in the form of a

fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section.

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to the class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1005.40.

(c) Transfers to producer-handlers and transfers and diversions to governmental agency plants. Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to a governmental agency plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) Transfers and diversions to other nonpool plants. Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in such handler's report of receipts and utilization filed pursuant to § 1005.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment

priorities at the second plant that are set forth in this subparagraph.

(e) Transfers by a handler described in § 1005.9(c) to pool plants. Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1005.9(c) to another handler's pool plant shall be classified pursuant to § 1005.44 pro rata with producer milk received at the transferee-handler's plant.

§ 1005.43 General classification rules.

In determining the classification of producer milk pursuant to § 1005.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1005.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1005.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1005.40, 1005.41, and 1005.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1005.9 (b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk of a handler pursuant to § 1005.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such handler.

§ 1005.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1005.9(a) for each pool plant of the handler separately the classification of producer milk and milk received from a handler described in § 1005.9(c), by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1005.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1005.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1005.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1005.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1005.40(b)(1) that were not subtracted pursuant to paragraphs (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a governmental agency plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler

described in § 1005.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1005.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a) (7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1005.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1005.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in § 1005.9(c), subtract such excess from the pounds of skim milk remaining in each class in series

beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1005.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1005.45 Market Administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1005.44(a)(12) and the corresponding step of § 1005.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1005.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association that was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

Class Prices

§ 1005.50 Class prices.

Subject to the provisions of § 1005.53, the class prices for the month per hundredweight of milk shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $3.08.

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1005.52 for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1005.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1005.52.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1005.52 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1005.52 Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1005.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1005.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month, and separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in

the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

§ 1005.53 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1005.9(c) which is classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the Class I price specified in § 1005.50(a) shall be adjusted by the amount stated in paragraphs (a) (1) through (6) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1005.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Northwestern	Minus 15 cents.
Base	No adjustment.
Southeastern	Plus 15 cents.

(2) For a plant located within the Tennessee Valley Federal order marketing area (part 1011), except Kentucky and West Virginia counties, the adjustment shall be minus 31 cents;

(3) For a plant located within the State of Florida, the adjustment shall be a plus 50 cents;

(4) For a plant located outside the areas specified in paragraphs (a) (1), (2), and (3) of this section and south of a line extending through the southern boundary of the State of Tennessee and east of the Mississippi River, the adjustment shall be the adjustment applicable at Anderson, North Augusta, or Hardeeville, South Carolina, whichever city is nearest;

(5) For a plant located outside the area specified in paragraph (a)(2) of this section and in the State of Virginia, the adjustment shall be the adjustment applicable at Reidsville, Roanoke Rapids, or Elizabeth City, North Carolina, whichever city is nearest;

(6) For a plant located outside the areas specified in paragraphs (a) (1), (2), (3), (4), and (5) of this section, the adjustment shall be a minus 2.5 cents for each 10 miles or fraction thereof (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the city halls in Greenville, South Carolina or Charlotte or Greensboro, North Carolina.

(b) For fluid milk products transferred in bulk from a pool plant to a pool distributing plant at which a higher Class I price applies and which are classified as Class I milk, the Class I price shall be the Class I price applicable at the location of the transferor-plant subject to a location adjustment credit for the transferor-plant which shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) Subtract from the pounds of skim milk remaining in Class I at the transferee-plant after the computations pursuant to § 1005.44(a)(12) an amount equal to:

(i) The pounds of skim milk in receipts of milk at the transferee-plant from producers and handlers described in § 1005.9(c); and

(ii) The pounds of skim milk in receipts of packaged fluid milk products from other pool plants.

(2) Assign any remaining pounds of skim milk in Class I at the transferee-plant to the skim milk in receipts of bulk fluid milk products from other pool plants, first to the transferor-plant at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies;

(3) Compute the total amount of location adjustment credits to be assigned to transferor-plants by multiplying the hundredweight of skim milk assigned pursuant to paragraph (b)(2) of this section to each transferor-plant at which the Class I price is lower than the Class I price at the transferee-plant by the difference in the Class I prices applicable at the transferor-plant and transferee-plant, and add the resulting amounts;

(4) Assign the total amount of location adjustment credits computed pursuant to paragraph (b)(3) of this section to those transferor-plants that transferred fluid milk products containing skim milk classified as Class I milk pursuant to § 1005.42(a) and at which the applicable Class I price is less than the Class I price at the transferee-plant, in sequence beginning with the plant at which the highest Class I price applies. Subject to the availability of such credits, the credit assigned to each plant shall be equal to the hundredweight of such Class I skim milk multiplied by the applicable location adjustment rate for such plant. If the aggregate of this computation for all plants having the same location adjustment rate exceeds the credits that are available to those plants, such credits shall be prorated to the volume of skim milk in Class I transfers from such plants; and

(5) Location adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraph (b)(1) through (4) of this section.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1005.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1093.50(b).

§ 1005.55 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1005.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk for each handler described in § 1005.9(a) with respect to each of its pool plants and for each handler described in § 1005.9(b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1005.9(c) that were classified in each class pursuant to §§ 1005.43(a) and 1005.44(c) by the applicable class prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1005.44(a)(14) and the corresponding step of § 1005.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1005.74, that

are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1005.44(a)(9) and the corresponding step of § 1005.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1005.44(a)(7)(i) through (iv) and the corresponding step of § 1005.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1005.44(a)(7)(v) and (vi) and the corresponding step of § 1005.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1005.44(a)(11) and the corresponding step of § 1005 44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1005.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the weighted average price for each month and the uniform price for each month of July through February per hundredweight for milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers who filed the reports prescribed in § 1005.30 for the month and who made the payments pursuant to § 1005.71 for the preceding month;

(2) Add one-half the unobligated balance in the producer-settlement fund;

(3) Add an amount equal to the total value of the minus adjustments and subtract an amount equal to the total value of the plus adjustments computed pursuant to § 1005.75;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1005.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent, shall be the weighted average price for each month and the uniform price for the months of July through February.

(b) For each month of March through June, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the total value of excess milk for all handlers included in the computations pursuant to paragraph (a)(1) of this section as follows:

(i) Multiply the hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class III milk by the Class III price;

(ii) Multiply the remaining hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class II milk by the Class II price;

(iii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk;

(3) From the amount resulting from the computations pursuant to paragraphs (a)(1) through (3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b)(2) of this section times the hundredweight of excess milk from the amount computed pursuant to paragraph (b)(3) of this section;

(5) Divide the amount calculated pursuant to paragraph (b)(4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more ten cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure, rounded to the nearest cent, shall be the uniform price for base milk.

§ 1005.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the applicable uniform price(s) pursuant to § 1005.61 for such month.

Payments for Milk

§ 1005.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1005.71, 1005.76, and 1005.77, and out of which he shall make all payments pursuant to §§ 1005.72 and 1005.77; Provided, That any payments due any handler shall be offset by any payments due from such handler.

§ 1005.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1005.60.

(2) The sum of:

(i) The value at the uniform price(s), as adjusted pursuant to § 1005.75, of such handler's receipts of producer milk and milk received from handlers pursuant to § 1005.9(c); and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1005.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in

route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1005.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1005.71(a)(2) exceeds the amount computed pursuant to § 1005.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1005.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the last day of each month, for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler before the 25th day of the month at not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher, less proper deductions authorized in writing by the producer; and

(2) On or before the 15th day of the following month, an amount equal to not less than the uniform price(s), as adjusted pursuant to §§ 1005.74 and 1005.75, multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1005.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producers; and

(iv) Less proper deductions authorized in writing by such producer: Provided, That if by such date such handler has not received full payment from the market administrator pursuant to § 1005.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to the paragraph next following after the receipt of the balance due from the market administrator;

(b) Each handler shall make payment to the cooperative association for producer milk which it caused to be delivered to such handler, if such cooperative association is authorized to collect such payments for its members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk as follows:

(1) On or before two days prior to the last day of each month for producer milk received during the first 15 days of the month; and

(2) On or before the 13th day after the end of each month for milk received during such month.

(c) Each handler pursuant to § 1005.9(a) who receives milk from a cooperative association as a handler pursuant to § 1005.9(c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk as follows:

(1) On or before two days prior to the last day of the month for milk received during the first 15 days of the month, not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher; and

(2) On or before the 13th day of the following month for milk received during the month, not less than the appropriate uniform price(s) as adjusted pursuant to §§ 1005.74 and 1005.75, and less any payments made pursuant to paragraph (c)(1) of this section.

(d) In making payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom he has received milk a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds and the average butterfat content of producer milk;

(3) For the months of March through June the total pounds of base milk received from the producer;

(4) The minimum rate(s) at which payment to the producer is required pursuant to this order;

(5) The rate(s) used in making the payment if such rate(s) is other than the applicable minimum rate(s);

(6) The amount, or the rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to such producer or cooperative association.

§ 1005.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price(s) shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1005.75 Plant location adjustment for producer and on nonpool milk.

(a) In making the payments required pursuant to § 1005.73, the uniform price and the uniform price for base milk pursuant to § 1005.61 for the month shall be adjusted by the amounts set forth in § 1005.53 according to the location of the plant where the milk being priced was received.

(b) For purposes of computing the value of other source milk pursuant to § 1005.71, the weighted average price shall be adjusted by the amount set forth in § 1005.53 that is applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1005.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1005.30(b) and 1005.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the

amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants, handlers pursuant to § 1005.9(b), and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and weighted average price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1005.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant, a handler described in § 1005.9(b), or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant or as classified pursuant to § 1005.42 with respect to receipts from a handler described in § 1005.9(b);

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1005.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1005.60 for such handler shall include, in lieu of the value of other source milk specified in § 1005.60(f) less the value of such other source milk specified in § 1005.71(a)(2)(ii), a value of milk determined pursuant to § 1005.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1005.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ 1005.30(b) and 1005.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1005.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1005.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1005.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1005.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1005.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to § 1005.72, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1005.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 1005.78 Charges on overdue accounts.

Any unpaid obligations of a handler pursuant to §§ 1005.71, 1005.73, 1005.76, 1005.77, 1005.85 or 1005.86 shall be increased one and one-fourth percent per month beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due, subject to the following conditions:

The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid interest charges previously computed pursuant to this section;

(b) For the purposes of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

Administrative Assessment and Marketing Service Deduction

§ 1005.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to:

(a) Receipts of producer milk (including such handler's own production) other than such receipts by a handler described in § 1005.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1005.9(c);

(c) Other source milk allocated to Class I pursuant to § 1005.44(a) (7) and (11) and the corresponding steps of § 1005.44(b), except such other source milk that is excluded from the computations pursuant to § 1005.60 (d) and (f); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat specified in § 1005.76(a)(2).

§ 1005.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of such handler's own production) pursuant to § 1005.73, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

Base-Excess Plan

§ 1005.90 Base milk.

Base milk means the producer milk of a producer in each month of March through June that is not in excess of the producer's base multiplied by the number of days in the month.

§ 1005.91 Excess milk.

Excess milk means the producer milk of a producer in each month of March through June in excess of the producer's base milk for the month, and shall include all the producer milk in such months of a producer who has no base.

§ 1005.92 Computation of base for each producer.

(a) Subject to § 1005.93, the base for each producer shall be an amount obtained by dividing the total pounds of producer milk delivered by such producer during the immediately preceding months of August through December by the number of days' production represented by such producer milk or by 130, whichever is more.

(b) The base for a producer whose milk was delivered to a nonpool plant that became a pool plant after the beginning of the base-forming period (August-December) shall be calculated as if the plant were a pool plant for the entire base-forming period. A base thus assigned shall not be transferable.

§ 1005.93 Base rules.

(a) Except as provided in § 1005.92(b) and in paragraph (b) of this section, a base may be transferred in its entirety or in amounts of not less than 300 pounds effective on the first day of the month following the date on which an application for such transfer is received by the market administrator. Base may be transferred only to a person who is or will be a producer by the end of the month that the transfer is to be effective. Such application shall be on a form approved by the market administrator and signed by the baseholder or the legal representative of the baseholder's estate and the person to whom the base is to be transferred. If a base is held jointly, the application shall be signed by all joint holders or the legal representative of the estate of any deceased baseholder.

(b) A producer who transferred base on or after February 1 may not receive by transfer additional base that would be applicable during March through June of the same year. A producer who received base by transfer on or after February 1 may not transfer a portion of the base to be applicable during March through June of the same year, but may transfer the entire base.

(c) The base established by a partnership may be divided between the partners on any basis agreed to in writing by them if written notification of the agreed-upon division of base signed by each partner is received by the market administrator prior to the first day of the month in which such division is to be effective.

(d) Two or more producers in a partnership may combine their separately established bases by giving notice to the market administrator prior to the first day of the month in which such combination of bases is to be effective.

(e) The base assigned a person who was a producer during any of the immediately preceding months of August through December may be increased to 90 percent of such producer's average daily producer milk deliveries in the month immediately preceding the month during which a condition described in paragraph (d) (1), (2), or (3) of this section occurred, providing such producer submitted to the market administrator in writing on or before March 1 a statement that established to the satisfaction of the market administrator that in the immediately preceding August through December base-forming period the amount of milk produced on such producer's farm was substantially reduced because of conditions beyond the control of such person, which resulted from:

(1) The loss by fire or windstorm of a farm building used in the production of milk on the producer's farm;

(2) Brucellosis, bovine tuberculosis or other infectious diseases in the producer's milking herd as certified by a licensed veterinarian; or

(3) A quarantine by a Federal or State authority that prevents the dairy farmer from supplying milk from the farm of such producer to a plant.

§ 1005.94 Announcement of established bases.

On or before February 1 of each year, the market administrator shall calculate a base for each person who was a producer during any of the immediately preceding months of August through December and shall notify each producer and the handler receiving milk from such dairy farmer of the base established by the producer. If requested by a cooperative association, the market administrator shall notify the cooperative association of each producer-member's base.

Signed at Washington, DC, on March 21, 1990.

Daniel Haley,

Administrator.

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

Community Development Block Grants; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-90-1464; FR-2496-P-01]

RIN 2506-AA84

Community Development Block Grants; Miscellaneous Revisions of Part 570

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Community Development Block Grant program (24 CFR part 570) to implement certain changes made in the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) (the 1987 Act) and in the Department of Housing and Urban Development—Independent Agencies Appropriations Act of 1989 (Pub. L. 100-404, approved August 19, 1988) (the Appropriations Act). The proposed changes would implement the following sections of the 1987 Act: (1) Section 508—Citizen Participation Plan; (2) Section 510—Limited New Construction of Housing under the Community Development Block Grant program; (3) Section 511—Availability of Community Development Block Grants for Uniform Emergency Telephone Number Systems. The proposed changes would also implement the section of the Appropriations Act at 102 Stat. 1014 page 1019 amending section 105(c)(2) of the Housing and Community Development Act of 1974.

COMMENT: Public comments are due May 29, 1990.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Entitlement Cities Division ((202) 755-5977), Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. A telecommunications device for deaf persons (TDD) is available at (202) 755-5965. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. Public reporting burdens for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading *Other matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Management and Budget, Washington, DC 20503.

Background

This proposed rule would revise the Community Development Block Grant program (24 CFR part 570) to implement certain changes made in the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) (the 1987 Act) and in the Department of Housing and Urban Development—Independent Agencies Appropriations Act of 1989 (Pub. L. 100-404, approved August 19, 1988) (the Appropriations Act). The proposed changes would implement the following sections of the 1987 Act: (1) Section 508—Citizen Participation Plan; (2) Section 510—Limited New Construction of Housing under the Community Development Block Grant program; (3) Section 511—Availability of Community Development Block Grants for Uniform Emergency Telephone Number Systems. The proposed rule would also implement the provision in the Appropriations Act amending section 105(c)(2) of the Housing and Community Development Act of 1974 affecting the determination of benefit to low- and moderate-income persons where Community Development Block Grant funds are used to pay for special assessments.

On September 6, 1988 (53 FR 34416), the Department published a final rule amending substantial portions of its Community Development Block Grant regulation at 24 CFR part 570. The rule implemented statutory changes made in the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 99-181, approved November 30, 1983), and those statutory changes made in the 1987 Act that could be implemented without public comment. The changes contained in this proposed rule affecting the Entitlement and HUD-administered Small Cities programs are drafted to revise the text of the regulation, as modified by the September final rule.

Reconstruction of Housing Under the Community Development Block Grant Program

Section 510 of the 1987 Act modified section 105(a) of the Act which lists the activities eligible for assistance under Title I. Section 510 added a new section 105(a)(19) which makes the substantial reconstruction of housing owned and occupied by low- and moderate-income persons an eligible activity under limited circumstances. The purpose of this provision is to specifically enable local CDBG-funded neighborhood rehabilitation programs to be comprehensive. The section permits the undertaking of such neighborhood rehabilitation without causing the displacement of low- and moderate-income families, or leaving such families' dwellings unrepaired. H.R. Rep. No. 122, 100th Cong. 1st. Sess. 75 (1987). Prior to the enactment of this provision, a recipient could rehabilitate housing, but if a house was infeasible for rehabilitation, the recipient was prohibited from using CDBG funds to replace it with a new house, since under the CDBG program, recipients are generally not authorized to construct new housing.

The proposed rule at § 570.202(f) implements section 510. Under the proposed rule, reconstruction could be accomplished by rebuilding the existing house on the same foundation or constructing a new house on the same site. CDBG funds could be used by a recipient to reconstruct residential structures having low or moderate income owner-occupants if one of two circumstances is met.

Under the first situation, reconstruction would be permitted if the need for the reconstruction was not determinable until after physical rehabilitation activities under section 105 of the Act had commenced (see

section 105(a)(19)(A)). The proposed rule reflects this provision at § 570.202(f)(1)(i).

Under the second situation, reconstruction would be permitted if the recipient is carrying out, or proposing to carry out, a rehabilitation effort which includes rehabilitation of housing located in a neighborhood (as defined in § 570.204 of this part), the housing that is to be reconstructed would otherwise be a part of the housing rehabilitation in that neighborhood, the recipient determines that the housing is not suitable for rehabilitation, and the recipient demonstrates to the satisfaction of the Secretary that the cost of substantial reconstruction is significantly less than the cost of new construction, and less than the fair market value of the property after substantial reconstruction (see section 105(a)(19)(B)).

While it is anticipated that the housing being reconstructed would generally be single family housing, the reconstruction of housing containing more than one unit would not be precluded where every unit was occupied by a low and moderate income owner-occupant.

In order to make a determination that housing is not suitable for rehabilitation under section 105(a)(19)(B)(i), the proposed rule requires the recipient to develop and apply a local definition of "unsuitable for rehabilitation." For metropolitan cities and urban counties, the local definition of this term must be consistent with the definition of housing suitable for rehabilitation established under § 570.306(e)(1).

The statute requires the recipient to demonstrate to the satisfaction of the Secretary that the cost of reconstruction is "significantly less" than the cost of new construction. Under the proposed rule, recipients would be required to determine that the estimated cost of reconstruction is at least 20 percent less than the estimated cost of purchasing comparable newly constructed housing elsewhere in that neighborhood or in a comparable neighborhood of the recipient. Twenty percent was selected as the percentage, as suggested by the Conference Committee in its report on the 1987 Act. (See H.R. Rep. 426, 100 Cong. 1st. Sess. 229 (1987).) For the purposes of this section, the estimated cost of purchasing comparable newly constructed housing would include the cost of land. For purposes of calculating the estimated cost of reconstruction, any costs of demolition or temporary relocation would be excluded.

The statute also requires the recipient to demonstrate to the satisfaction of the Secretary that the cost of reconstruction is less than the fair market value of the property after reconstruction. The proposed rule provides that this determination must be based on an appraisal (prepared prior to the reconstruction) of the projected value of the reconstructed housing and land.

The recipient would be required to document the basis of each of its determinations and maintain the documentation to support the eligibility of reconstruction activities.

Availability of Community Development Block Grants for Uniform Emergency Telephone Number Systems

Each eligible activity under section 105(a) of the Act that is assisted in whole or in part with CDBG funds must meet one or more of the three broad national objectives. The three national objectives include: benefit to low and moderate income families, aid in the prevention or elimination of slums or blight, or meet other community development needs having a particular urgency because existing conditions impose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs.

Section 105 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, approved November 30, 1983) (HURRA) amended section 105 of the Act to add a new subsection (c)(2). This new section provides that an activity that is designed to serve an area generally will be considered to benefit persons of low and moderate income in the area if: (1) Not less than 51 percent of the residents of the area are persons of low and moderate income; or (2) in any metropolitan city or urban county, the area served by such activity is within the highest quartile of all areas within the jurisdiction of the metropolitan city or urban county in terms of the degree of concentration of persons of low and moderate income. Regulatory amendments implementing these provisions were included in the final rule published September 6, 1988 (53 FR 34415) at § 570.208(a)(1).

Under those regulations, CDBG funds may be used to support uniform emergency telephone number systems as eligible public service activities where they serve areas that qualify under the above described provisions. Section 511 of the 1987 Act further amended section 105(c)(2) to provide that the restrictions contained in section 105 of HURRA do not prevent the use of assistance under the CDBG program for the development, establishment, and operation for not to exceed 2 years after its establishment of a uniform emergency telephone number system that will serve an area having less than 51 percent of the residents that are low or moderate income, if the Secretary determines that: (i) The system will contribute substantially to the safety of the residents of the area served by the system; (ii) not less than 51 percent of the use of the system will be by persons of low and moderate income; and (iii) other Federal funds received by the recipient are not available for the development, establishment, and operation of the system due to the insufficiency of the amount of the funds, restrictions on the use of the funds, or the prior commitment of the funds for other purposes by the recipient.

Section 511 further provides that the percentage of the population to be served that is made up of persons of low and moderate income serves as a percentage limit on the cost of the development, establishment, and operation of a 911 system that may be paid from CDBG assistance.

The proposed rule implements section 511 at § 570.208(a)(1)(iii). The proposed rule provides procedures and submission requirements for obtaining HUD approval for the use of these funds where the area served is less than 51% low and moderate income and, where applicable, less than the recipient's "upper quartile" percentage. Under the proposal, each recipient seeking to use funds for an uniform emergency telephone number system serving such an area must obtain prior written approval from the HUD field office. To obtain approval, the recipient must submit the following information:

—In demonstrating that the system will contribute significantly to the safety of the residents, the recipient must submit a list of the emergency services that will participate in the emergency telephone number system.

—To demonstrate that not less than 51 percent of the use of the system will be by persons of low and moderate income, information must be submitted where available which identifies the total number of calls actually received over the preceding twelve month period for each of the emergency services that would be covered by the emergency telephone number system and relates those calls to the geographic segment (expressed as nearly as possible in terms of census tracts, enumeration districts, block groups, or combinations thereof that are contained within the segment) of the service area from which the calls were generated. HUD will presume that the income of the callers generally reflects the income

characteristics of the general population residing in the same geographic area where the callers reside. For example, if 10 calls originated from a census block group having 60 percent low and moderate income residents, then HUD will presume that 6 of the 10 callers were of low and moderate income for the purpose of making its determination. If further information is required, the recipient may request that HUD review the recipient's planned methodology to acquire such information prior to expending the effort. Commenters may wish to advise HUD of the information that is most readily available and most cost effective to analyze for the various emergency services.

—The recipient would be required to submit a statement explaining how the lack of Federal funds for the uniform emergency telephone number system is due to the insufficiency of the amount of such funds, restrictions on the use of such funds, or the prior commitment of such funds for other purposes by the recipient.

—Finally, as part of its demonstration that the percentage of the total cost of the system paid for by CDBG funds does not exceed the percentage of low and moderate income persons in the service area of the system, the recipient must describe the boundaries of the service area of the uniform emergency telephone number system, the census tracts that lie within these boundaries, the number of persons and the number of low and moderate income persons within each census tract, the percentage of low and moderate income persons in the service area, and the total cost of the system. As noted above, this percentage will limit the cost of the development, establishment, and operation of the system that may be paid from CDBG assistance. Additionally, any such system assisted with CDBG funds should be accessible to hearing impaired persons.

Alleviation of Lakefront Erosion

Under the Act, recipients must certify that the projected use of funds will give maximum feasible priority to activities that serve one of the following three national objectives of the Act: the activity must benefit low- or moderate-income families; aid in the prevention or elimination of slums or blight; or be designed to meet community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. Section 506 of the 1987 Act created an exception to the requirement. This provision revised section 104(b)(3) to provide that a recipient that borders on the Great Lakes and that experiences significant adverse financial and physical effects due to lakefront erosion or flooding may include in the projected use of funds activities that are clearly designed to alleviate the threat posed, and rectify the damage caused, by such erosion or flooding if such activities will principally benefit persons of low and moderate income, and the recipient certifies that such activities are necessary to meet other needs having a particular urgency.

The purpose of this new statutory exception was to make it easier for eligible recipients to use funds to alleviate lakefront erosion. In reality, the exception contained in section 506 contains more rigorous requirements than those contained in the general rule. To fall within the exception, the activity must both principally benefit persons of low and moderate income *and* the recipient must certify that the activities are necessary to meet other needs having a particular urgency. To fall within the general rule, the activity need only meet one of the three national objectives, one of which is to benefit persons of low and moderate income. Thus, any activity that would fall within the exception added by section 506 would already have met the requirements contained in the statute. In light of this, HUD has decided not to implement section 506.

Special Assessments—Benefit to Low and Moderate Income Persons

The Appropriations Act contained a provision which further amends section 105(c)(2) of the Act. The provision recognizes the expenditure of CDBG funds to meet the national objective of benefit to low and moderate income persons where the CDBG assistance for a public improvement that provides benefits to all the residents of an area is limited to paying special assessments levied against properties owned and occupied by persons of low and moderate income. "Special assessment" is defined in the regulations in § 570.200(c) of this part.

The effect of this provision is to permit a recipient to pay for part of the cost of a public improvement which serves an area where less than 51% of the residents are low and moderate income persons so long as the CDBG assistance is limited to paying the special assessments levied against properties owned and occupied by such persons and to qualify such payments as meeting the national objective of benefiting low and moderate income persons. The provision does not change the other requirements for special assessments such as the requirement that the public improvement must comply with all applicable CDBG program requirements (e.g. Davis-Bacon).

Citizen Participation Plan

Section 508 of the 1987 Act adds a new section 104(a)(3). This section includes certain additional citizen participation requirements designed to assure that low and moderate income persons, particularly those living in distressed areas and in areas where CDBG funds are likely to be used, can participate in the planning and evaluation stages of the grantee's CDBG program. Although these groups are specifically mentioned by the statute, we expect grantees to make whatever efforts are appropriate for the locality to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as mobility, visually and hearing impaired persons.

This proposed rule would incorporate the new citizen participation requirements along with existing requirements at section 104(a)(2) of the Act. Section 104(a)(2) governs the development of proposed and final statements of community development objectives and projected use of funds. The proposed rules for the Entitlement Grants program (subpart D) and the HUD-administered Small Cities program (subpart F) combine existing regulations governing the preparation of these statements with the new citizen participation requirements. The content of the proposed statement under the Entitlement grants program would be expanded to improve the ability of citizens to determine the degree to which they would be affected by the use of CDBG funds. The content of the final statement would be also expanded to provide more information to citizens and to improve HUD's ability to monitor new activities within their first year of implementation, prior to submission of a performance and evaluation report covering those activities. HUD's implementation of the new citizen participation requirements under section 104(a)(3) of the Act for the Entitlement Grants program and the HUD-administered Small Cities program are discussed below.

1. *Plan development.* Under the Entitlement program (§ 570.301(b)), grantees would be required to have and

follow a detailed citizen participation plan. While citizen participation in the development of the plan is not required by statute, HUD would administratively impose the requirement that the grantee provide citizens with an opportunity to comment on the original plan and any amendment to an existing plan and to make the plan or plan amendment public.

Applicants under the HUD-administered Small Cities program would also be required to develop and follow a citizen participation plan and to make the plan public. However, because grantees would usually not be applying for and receiving funds each year, these applicants would not be required to provide citizens with an opportunity to comment on the plan or amendments to the plan. The plan must be complete and available prior to the submission of an application to HUD for assistance. See § 570.431(b).

2. *Plan requirements*—a. *Citizen participation.* Under section 104(a)(3) of the Act, a grantee must follow a plan that provides for and encourages citizen participation (with particular emphasis on participation by persons of low and moderate income who are residents of slum and blighted areas and residents of areas in which CDBG funds are proposed to be used). These requirements are incorporated in the proposed rules for the two programs at §§ 570.301(b)(8) and 570.431(b)(6).

In the case of entitlement grantees under subpart D, the plan must also provide for the participation of residents in low and moderate income neighborhoods, as that term is defined by the local jurisdiction. Proposed § 570.301(b)(8) reflects this additional requirement.

b. *Access.* Section 104(a)(3)(B) states that the citizen participation plan must provide citizens with reasonable and timely access to local meetings, information, and records relating to the grantees proposed and actual use of CDBG funds. These requirements are incorporated at proposed §§ 570.301(b)(1) and 570.431(b)(1).

c. *Technical assistance.* Under section 104(a)(3)(C), the citizen participation plan must provide for technical assistance to groups representative of persons of low and moderate income that request such assistance in developing proposals. The House committee report stated that citizen participation plans should explain the basis upon which the grantee may provide technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals. Proposed §§ 570.301(b)(3) and 570.431(b)(2) would require the disclosure of the basis upon which technical assistance would be provided. The level and type of assistance to be provided, however, would be left to the discretion of the grantee. Under the proposed rules, technical assistance need not include providing funds to such groups.

d. *Public hearings.* Under section 104(a)(2)(C) in the development of the final statement of community development objectives and projected use of funds, grantees are required to hold one or more public hearings to obtain the views of citizens on the community development and housing needs. Section 104(a)(3)(D) requires that citizen participation plans must provide for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including at least the development of needs, the review of proposed activities, and the review of program performance. The hearings must be held after adequate notice, at times and locations convenient to potential or actual beneficiaries, and with accommodation for the handicapped.

The Entitlement program rule would incorporate these two public hearing requirements at § 570.301(b)(4). In implementing these requirements, HUD recognizes that, during any given program year, an entitlement grantee may be carrying out activities covered under several different final statements and will be planning for the use of funds expected to be received in the next year. Grantees have accordingly chosen to use a single hearing to review past performance, consider needs, and propose new activities. Therefore, this section provides for a minimum of two public hearings per year for the purpose of obtaining citizens' views and formulating or responding to proposals and questions. Each public hearing must be conducted at a different stage of the program year. Together, the hearings must address community development and housing needs, development of proposed activities and review of program performance. There must be reasonable notice of the hearings and the hearings must be held at times and locations convenient to potential or actual beneficiaries, with accommodation for the handicapped. The grantee must specify in its plan how it will meet the requirement for hearings at times and locations convenient to potential or actual beneficiaries. It is recognized that grantees that are geographically large or that have widely dispersed populations, such as an urban county, will probably have to hold two or more sessions at different locations for each of these hearings in order to meet this requirement. The HUD-administered Small Cities program incorporates substantially the same public hearing requirements at § 570.431(b)(3).

e. *Complaints and grievances.* Section 104(a)(3)(E) states that the citizen participation plan must provide for timely written answers to written complaints and grievances, within 15 working days where practicable. This requirement is contained in the proposed rules at §§ 570.301(b)(7) and 570.431(b)(5).

f. *Needs of non-English speaking residents.* Section 104(a)(3)(F) provides that the citizen participation plan must identify how the needs of non-English speaking residents will be met at public hearings where a significant number of non-English speaking residents can be reasonably expected to participate. Due to the large ethnic diversity between affected communities, HUD has provided grantees with the maximum amount of discretion for determining how the needs of non-English speaking residents will be addressed. In accordance with this provision, §§ 570.301(b)(5) (Entitlement program) and 570.431(b)(4) (HUD-administered Small Cities) would require that each citizen participation plan must identify how the needs of non-English speaking residents will be met at any hearing where a significant number of non-English speaking residents can be reasonably expected to participate.

g. *Impact of the plan requirements.* Section 104(a)(3) provides that the citizen participation plan requirements may not be construed to restrict the responsibility or authority of the grantee for the development and execution of its community development program. This statutory requirement is incorporated in the proposed rules at §§ 570.301(b) and 570.431(a).

3. *Amendments.* The requirements for amending final statements formerly located in § 570.305 are now located in § 570.301(c)(3).

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room

10276, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because it does not affect the amount of funds provided in the CDBG program, but rather modifies and updates program administration and procedural requirements to comport with recently enacted legislation.

This rule was listed as Item No. 1078 in the Department's Semiannual Agenda of Regulations published on October 30, 1989 (54 FR 44702, 44726) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.218, 14.219, 14.221, 14.225, and 14.227.

Family Impact. The General Counsel, as the Designated Official for Executive Order 12606, *the Family*, has determined that the provisions of this proposed rule do not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. The rule would provide for increased citizen participation in the Community Development Block Grants (CDBG) program, and would authorize the use of CDBG funds for the reconstruction of certain types of housing, and for the establishment of uniform emergency telephone number systems. Any effect on the family or on family formation, maintenance, and general well-being is incidental.

Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the provisions of this rule would not have "federalism implications" within the meaning of the Order. The increased citizen participation requirements under the CDBG program, the authority to use CDBG funds for the reconstruction of certain types of housing, and the establishment of uniform emergency telephone number systems will not have a substantial direct effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

The information collection requirements contained in this rule have been submitted to OMB for review under the section 3504(h) of the Paperwork Reduction Act of 1980. Sections 570.202, 570.208, 570.301 and 570.431 of this proposed rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM—PROPOSED RULE

Description of information collection	Provision of proposed rule	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Citizen participation plan	§ 570.301(b) and 431(b)	843	1	843	40	33,720
Additional information needed for proposed and final statements.	§ 570.301(c) and 431(d)	843	2	1686	.5	843
Determinations for limited new construction of housing.	§ 570.202(f)(ii)	252	1	252	10	2,520
Determinations for emergency telephone number systems.	§ 570.208(a)(1)(iii)	101	1	101	50	5,050
Total burden						42,133

List of Subjects in 24 CFR Part 570

Community development block grants; Grant programs: housing and community development; Loan programs: housing and community development; Low and moderate income housing; New communities; Pockets of poverty; Small cities.

Accordingly, the Department amends 24 CFR part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for part 570 continues to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–20); and Sec. 7(d), Department of Housing and Community Development Act (42 U.S.C. 3535(d)).

2. A new paragraph (f) would be added to § 570.202 to read as follows:

§ 570.202 Eligible rehabilitation and preservation activities.

* * * * *

(f) *Reconstruction of housing.* (1) Reconstruction means the rebuilding of housing on the same site. CDBG funds may be used to reconstruct residential structures having low or moderate income owner-occupants if either:

(i) The need for the reconstruction was not determinable until after rehabilitation of the structure under this section had commenced; or

(ii) The housing that is being reconstructed is part of a neighborhood (as defined at § 570.204) rehabilitation effort in which the recipient is carrying out, or is proposing to carry out, housing rehabilitation activities, the housing to be reconstructed would otherwise be a part of the housing rehabilitation in that neighborhood, and the recipient determines that:

(A) The housing to be reconstructed is not suitable for rehabilitation. The recipient must develop and make public its definition of "unsuitable for rehabilitation" to be used for the purposes of this section. For metropolitan cities and urban counties, this definition must be consistent with its local definition of housing "suitable for rehabilitation," as required under § 570.306(e)(1);

(B) The estimated cost of reconstruction is at least 20 percent less than the estimated cost of purchasing comparable newly constructed housing

(including land) located in that neighborhood or in a comparable neighborhood of the recipient (for purposes of this paragraph, comparable newly constructed housing means a newly constructed residential structure of approximately the same size on a lot of approximately the same size); and

(C) The estimated cost of the reconstruction is less than the fair market value of the reconstructed housing and land (based on an appraisal obtained prior to reconstruction).

(2) The recipient must document the basis for each determination that it is required to make under this paragraph, and must maintain such documentation to support the eligibility of all reconstruction undertaken with CDBG funds.

3. In § 570.208, paragraphs (a)(1) (iii) and (iv) would be redesignated as paragraphs (a)(1) (v) and (vi), respectively, and new paragraphs (a)(1) (iii) and (iv) would be added to read as follows:

§ 570.208 Criteria for national objectives.

* * * * *

(a) * * *

(1) * * *

(i) * * *

(ii) * * *

(iii) An activity to develop, establish and operate for up to two years after the establishment, a uniform emergency telephone number system serving an area having less than the percentage of low and moderate income residents required under paragraph (a)(1)(i) of this section or, where applicable, paragraph (a)(1)(ii) of this section, provided the recipient obtains prior approval from HUD. To obtain such approval, the recipient must meet each of the following requirements:

(A) The recipient must demonstrate that the system will contribute significantly to the safety of the residents of the area. The request for approval must include a list of the emergency services that will participate in the emergency telephone number system;

(B) The recipient must submit information that serves as a basis for HUD to use to determine whether at least 51 percent of the use of the system will be by low and moderate income persons. Where available, the recipient must provide information which identifies the total number of calls actually received over the preceding twelve month period for each of the emergency services to be covered by the emergency telephone number system and relates those calls to the geographic segment (expressed as nearly as possible in terms of census tracts, enumeration districts, block groups, or combinations thereof that are contained within the segment) of the service area from which the calls were generated. In analyzing this data to meet the requirements of this section, HUD will presume that the income of the callers generally reflects the income characteristics of the general population residing in the same geographic area where the callers reside. If HUD can conclude that the users have primarily consisted of low and moderate income persons, no further submittal need be made by the recipient. If further submittals are required, the recipient may request that HUD review its planned methodology before expending the effort to acquire the information it expects to use to make its case;

(C) The recipient must demonstrate that other Federal funds received by the recipient are insufficient or unavailable for a uniform emergency telephone number system. For this purpose, the recipient must submit a statement explaining whether the lack of funds is due to the insufficiency of the amount of the available funds, restrictions on the use of such funds, or the prior commitment of funds by the recipient for other purposes; and

(D) The recipient must demonstrate that the percentage of the total costs of the system paid for by CDBG funds does not exceed the percentage of low and moderate income persons in the service area of the system. For this purpose the recipient must include a description of the boundaries of the service area of the emergency telephone number system, the census tracts within the boundaries of the service area, the total number of persons and the total number of low and moderate income persons within each census tract, the percentage of low and moderate income persons within the service area, and the total cost of the system.

(iv) An activity where the assistance to a public improvement that provides benefits to all the residents of an area is limited to paying special assessments (as defined in § 570.200(c)) levied against residential properties owned and occupied by persons of low and moderate income.

4. Section 570.301 would be revised to read as follows:

§ 570.301 Presubmission and citizen participation requirements.

(a) *Presubmission requirements.* Prior to the submission to HUD of its annual grant, the grantee must:

(1) Fulfill the applicable requirements contained in its citizen participation plan developed in accordance with § 570.301(b).

(2) Develop a proposed statement of community development objectives and projected use of funds in accordance with § 570.301(c)(1).

(3) Prepare a final statement of community development objectives and projected use of funds in accordance with § 570.301(c)(2).

(4) Submit and receive approval of its Housing Assistance Plan in accordance with § 570.306.

(b) *Citizen participation plan.* The grantee must have and follow a citizen participation plan which complies with the requirements described below. The grantee must provide citizens with an opportunity to comment on the original plan and on any amendments to the plan, and must make the plan public. Although these requirements are designed to encourage participation by low and moderate income persons, particularly those living in slum and blighted areas and in areas where CDBG funds are proposed to be used, grantees are expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as mobility, visually and hearing impaired persons. The requirements for citizen involvement do not restrict the responsibility or authority of the grantee for the development and execution of its CDBG program. The citizen participation plan must set forth the grantee's policies and procedures for:

(1) Furnishing citizens with necessary information each year to permit public examination and appraisal of the proposed statement of community development objectives and projected use of funds. Such information includes, but is not limited to, the following:

(i) The amount of CDBG funds expected to be made available for the coming program year (including the annual grant, program income expected to be received during the coming program year together with any program income that will have been received before the start of the coming year and that has not yet been programmed, and surplus from urban renewal settlement) for community development and housing activities.

(ii) The range of activities that may be undertaken with the CDBG funds in accordance with the criteria of subpart C of this part.

(iii) The estimated amount of the CDBG funds proposed to be used for activities that will meet the national objective of benefit to low and moderate income persons pursuant to § 570.200(a)(3); and

(iv) The proposed CDBG activities likely to result in displacement and the grantee's plans (consistent with the grantee's Housing Assistance Plan and policies developed under § 570.606(b)) for minimizing displacement of persons as a result of its proposed activities.

(v) The types and levels of assistance the grantee will make available (or require others to make available) to persons displaced by CDBG funded activities even if the grantee expects no displacement to occur.

(2) Holding a minimum of two public hearings per year for the purpose of obtaining citizens' views and formulating or responding to proposals and questions. Each public hearing must be conducted at a different stage of the program year. Together the hearings must address community development and housing needs, development of proposed activities and review of program performance. At least one of these hearings must be held prior to submission of the final statement to obtain the views of citizens on community development and housing needs. There must be reasonable notice of the hearings and the hearings must be held at times and locations convenient to potential or actual beneficiaries, with accommodation for the handicapped. The grantee must specify in its plan how it will meet the requirement for hearings at times and locations convenient to potential or actual beneficiaries.

(3) Giving citizens timely notice of local meetings and reasonable and timely access to local meetings, information, and records relating to the grantee's proposed and actual use of CDBG funds.

(4) Providing technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals. The level and type of assistance to be provided is at the discretion of the grantee. Such assistance need not include the provision of funds to such groups.

(5) Meeting the needs of non-English speaking residents at any public hearing where a significant number of non-English speaking residents can reasonably be expected to participate.

(6) Providing affected citizens with reasonable advance notice of, and opportunity to comment on, proposed activities not previously described in a final statement and activities which are proposed to be deleted or substantially changed in terms of purpose, scope, location, or beneficiaries, as required in § 570.301(c)(3). The criteria the grantee will use to determine what constitutes a substantial change for this purpose must be described in the citizen participation plan.

(7) Responding to citizens' complaints and grievances, including the procedures that citizens must follow when submitting complaints and grievances. The grantee's policies and procedures must provide for timely written answers to written complaints and grievances within 15 working days of the receipt of the complaint, where practicable.

(8) Encouraging citizen participation, particularly by:

(i) Low and moderate income persons who reside in slum or blighted areas;

(ii) Low and moderate income persons who reside in other areas in which CDBG funds are proposed to be used; and

(iii) Residents of predominantly low and moderate income neighborhoods, as defined by the grantee.

(c) *Statement of community development objectives and projected use of funds.*—(1) *Proposed statement.* (i) The grantee must annually develop a proposed statement of community development objectives and projected use of funds, including the following:

(A) The community development objectives the grantee proposes to pursue;

(B) The community development activities the grantee proposes to carry out with anticipated CDBG funds (including the annual grant, program income expected to be received during the coming program year together with any program income that will have been received before the start of the coming program year and that has not yet been programmed, and surplus from urban renewal settlement) to address its intended community development objectives. Each activity must meet the applicable requirements of subpart C of this part and be described in sufficient detail, including national objective to be met, amount of funds expected to be used, and location, to allow citizens to determine the degree to which they may be affected. The statement must also describe where citizens may obtain additional information about proposed activities.

(ii) The grantee must publish community-wide its proposed statement of community development objectives and projected use of funds so as to afford affected citizens an opportunity to examine the statement's contents and to provide comments on the proposed statement.

(2) *Final statement.* Grantees must prepare a final statement of community development objectives and projected use of funds. In the preparation of the final statement, the grantee must consider citizens' comments received in response to the proposed statement and may make such modifications to the proposed statement as it deems appropriate. Upon completion, the grantee must make the final statement available to the public. The final statement must describe each activity in sufficient detail to permit a clear understanding of the nature and eligibility of each activity, as well as the national objective to be met and the amount of funding expected to be used. The statement must also indicate which activities are expected to generate program income. The final statement may include activities which do not either benefit low and moderate income persons or prevent or eliminate slums and blight only if the grantee identifies such activities in the final statement and certifies that such activities are designed to meet other community development needs having a particular urgency because existing conditions pose a serious threat to the health or welfare of the community and other financial resources are not available.

(3) *Amendments.* The grantee must amend its final statement whenever it decides not to carry out an activity described in the final statement, to carry out an activity not previously described in the statement, or to substantially change the purpose, scope, location, or beneficiaries of an activity. Before amending its final statement, the grantee must provide for citizen participation for amendments as described in paragraph (b)(6) of this section. In the preparation of an amendment to the final statement, the grantee must consider citizens comments and may make such modifications to the proposed amendment as it deems appropriate. Upon completion, the grantee must make the amendment to the final statement available to the public and must submit to HUD a description of changes adopted. A letter transmitting the description to HUD shall be signed by the official representative of the grantee.

5. In § 570.302, paragraph (a)(2) would be revised to read:

§ 570.302 Submission requirements.

(a) *Content.* * * *

(1) * * *

(2) A copy of the grantee's final statement of community development objectives and projected use of funds, covering the same items as listed in § 570.301(c)(2); and

* * * * *

§ 570.303 [Amended]

6. In § 570.303, paragraphs (d) through (m) would be redesignated as paragraphs (e) through (n) and paragraph (c) would be revised and a new paragraph (d) added to read as follows:

* * * * *

(c) Prior to the submission of its final statement to HUD, the grantee has:

(1) Furnished citizens with the information required by § 570.301(b)(1);

(2) Held one or more public hearings to obtain the views of citizens on community development and housing needs; and

(3) Met the requirements governing the proposed and final statement of community development objectives and proposed use of funds described in § 570.301(c).

(d) It is following a detailed citizen participation plan which meets the requirements described in § 570.301(b).

* * * * *

§ 570.305 [Removed]

7. Section 570.305 would be removed and reserved.

8. Section 570.431 would be revised to read as follows:

§ 570.431 Citizen participation requirements for single purpose and comprehensive applications.

(a) *General.* An applicant that is located in a nonentitlement area of a State that has not elected to distribute funds shall comply with the citizen participation requirements described in this section, including requirements for the preparation of the proposed application and the final application. The requirements for citizen participation do not restrict the responsibility or authority of the applicant for the development and execution of its community development program.

(b) *Citizen participation plan.* The applicant must develop and follow a detailed citizen participation plan and must make the plan public. The plan must be completed and available before the application for assistance is submitted to HUD and the applicant must certify that it is following the plan. The plan must set forth the applicant's policies and procedures for:

(1) Giving citizens timely notice of local meetings and reasonable and timely access to local meetings, information, and records relating to the grantee's proposed and actual use of CDBG funds including, but not limited to:

(i) The amount of CDBG funds expected to be made available for the coming year, including the grant and anticipated program income;

(ii) The range of activities that may be undertaken with those funds;

(iii) The estimated amount of those funds proposed to be used for activities that will benefit low and moderate income persons;

(iv) The proposed CDBG activities likely to result in displacement and the applicant's plans, consistent with the policies developed under § 570.606(b), for minimizing displacement of persons as a result of its proposed activities.

(v) The types and levels of assistance the applicant plans to make available (or to require others to make available) to persons displaced by CDBG-funded activities, even if the applicant expects no displacement to occur.

(2) Providing technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals. The level and type of assistance to be provided is at the discretion of the applicant. Such assistance need not include the provision of funds to such groups.

(3) Holding a minimum of two public hearings, each at a different stage of the CDBG program, for the purpose of obtaining citizen's views and formulating or responding to proposals and questions. Each public hearing must be conducted at a different stage of the CDBG program. Together the hearings must address community development and housing needs, development of proposed activities and review of program performance. There must be reasonable notice of the hearings and the hearings must be held at times and locations convenient to potential or actual beneficiaries, with accommodation for the handicapped. The applicant must specify in its plan how it will meet the requirement for hearings at times and locations convenient to potential or actual beneficiaries.

(4) Meeting the needs of non-English speaking residents in the case of public hearings where a significant number of non-English speaking residents can reasonably be expected to participate.

(5) Responding to citizen complaints and grievances, including the procedures that citizens must follow when submitting complaints and grievances. The applicant's policies and procedures must provide for timely written answers to written complaints and grievances within 15 working days of the receipt of the complaint, where practicable.

(6) Encouraging citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas, and other areas in which CDBG funds are proposed to be used.

(c) *Publication of proposed application.* The applicant shall publish a proposed application consisting of the proposed community development activities and community development objectives in order to afford affected citizens an opportunity to:

(1) Examine the application's contents to determine the degree to which they may be affected;

(2) To submit comments on the proposed application;

(3) To submit comments on the performance of the applicant.

(d) *Preparation of a final application.* An applicant shall prepare a final application. In the preparation of the final application, the applicant shall consider comments and views received related to the proposed application and may, if appropriate, modify the final application. The final application shall be made available to the public and shall include:

(1) The community development objectives and use of funds; and

(2) The community development activities.

(e) *Amendments.* To assure citizen participation on amendments to final applications that require HUD approval under § 570.434, the grantee shall:

(1) Furnish citizens information concerning the amendment;

(2) Hold one or more public hearings to obtain the views of citizens on the proposed amendment;

(3) Develop and publish the proposed amendment in such a manner as to afford affected citizens an opportunity to examine the contents, and to submit comments on the proposed amendment;

(4) Consider any comments and views expressed by citizens on the proposed amendment and, if the grantee finds it appropriate, modify the final amendment accordingly; and

(5) Make the final amendment to the community development program available to the public prior to its submission to HUD.

Dated: March 16, 1990.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 90-7002 Filed 3-27-90; 8:45 am]

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March 28, 1990

Part IV

Department of Health and Human Services

Agency for Toxic Substances and Disease Registry

Identification of Priority Data Needs for Phenol, Chloroethane, Carbon Tetrachloride and Isophorone; Request for Comments; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Toxic Substances and Disease Registry

[ATSDR-18]

Identification of Priority Data Needs for Phenol, Chloroethane, Carbon Tetrachloride and Isophorone

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Request for Public Comment on the Identification of Priority Data Needs for Phenol, Chloroethane, Carbon tetrachloride and Isophorone.

SUMMARY: This notice announces the priority data needs for phenol, chloroethane, carbon tetrachloride and isophorone. Section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604(i)), as amended by the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499), requires that ATSDR (1) with EPA develop a list of hazardous substances found at National Priorities List sites (in order of priority), (2) prepare toxicological profiles of those substances, and (3) assure the initiation of a research program to fill identified priority data needs associated with the substances.

A list identifying the first 100 substances was published in the **Federal Register** on April 17, 1987 (52 FR 12866), a list of an additional 100 substances was published in the **Federal Register** on October 20, 1988 (53 FR 41280), and a list of an additional 25 substances was published in the **Federal Register** on October 26, 1989 (54 FR 43615). These lists identify the 225 hazardous substances at Superfund sites which have been determined by ATSDR and the Environmental Protection Agency (EPA) to pose the most significant potential threat to human health.

Each profile prepared for a listed substance includes an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and data are to be used to ascertain the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is now available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of a program of research designed to determine these health effects.

In developing and implementing a research program, ATSDR is required to coordinate with EPA and NTP to avoid the conduct of duplicative research in other programs and under other authorities. In addition, ATSDR is directed to consider the recommendations of the Interagency Testing Committee (ITC). A "Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles" was published in the **Federal Register** on September 11, 1989 (54 FR 37618). As the next step in its research program, four pilot substances: phenol, chloroethane, carbon tetrachloride, and isophorone have been selected for application of its earlier published Decision Guide. All four substances are listed in ATSDR's second priority group of hazardous substances which have recently been finalized. The selection of these four substances for this pilot exercise does not imply anything about their overall priority of concern with respect to health effects.

The identified priority data needs for these four pilot substances are presented below. Public comment is invited. After consideration of public comments the priority data needs for these substances will be finalized and a research program will be initiated to fill the data needs. The cost of such research may be funded through the Toxic Substances Control Act, the Federal Insecticide, Fungicide, and Rodenticide Act, private sector voluntarism, or Superfund as appropriate.

DATES: Comments concerning this notice must be received by May 14, 1990.

ADDRESSES: Comments on this notice should bear the docket control number ATSDR–18 and should be submitted to the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road NE., Atlanta, Georgia 30333.

Comments on this notice will be available for public inspection at the Agency for Toxic Substances and Disease Registry, Building 37, Executive Park Drive, Atlanta, Georgia 30329, from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: The Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road NE., Atlanta, Georgia 30333. Telephone: 404–639–0730.

SUPPLEMENTARY INFORMATION:

Administrative Record: ATSDR has established a public version of this record with materials pertaining to this notice (ATSDR docket control number–18). The public file is available for inspection during the times and at the address given in the Address section of this notice.

Prioritization of Data Needs

Exposure and toxicity data needs for each substance are identified during the development of the toxicological profiles. All data needs were reviewed by experts who, collectively, have knowledge of each substance's physical and chemical properties, toxicokinetics, key health endpoints, mechanisms of action, human and animal exposure, and quantification of risk to humans. In addition, these data needs were made available for public comment through the release of draft profiles prior to finalizing the toxicological profiles. The priority data needs for each substance that follows have been reviewed by an interagency panel representing ATSDR, EPA, and NTP.

A. Exposure

Application of the hierarchy of exposure research priorities presented in the ATSDR Decision Guide begins with the evaluation of available analytical methods for these four substances and proceeds to assessing the need for data on physical/chemical properties, human and environmental exposure levels, environmental fate, bioavailability, and the development of exposure registries.

1. Phenol

Although adequate methods are available for the analysis of phenol in biological samples, improved methods are needed to accurately determine the levels of phenol in air. Environmental monitoring data available for air, soil, water, sediments and biota are not sufficient to determine the levels found at or near waste disposal sites, or ambient background concentrations. These data are critical for estimating the potential for past, current, and future human exposure to phenol in the environment.

Additionally, data concerning exposure levels in humans are incomplete and generally not current. Thus, the prioritized exposure data needs for phenol are as follows:

Concentrations of phenol in contaminated environmental media at hazardous waste sites

Exposure levels in persons living near hazardous waste sites

Studies to improve the recovery of phenol from environmental samples are not a high priority at this time because current methods are adequate for detecting the presence of phenol at or near hazardous waste sites. While necessary for understanding the environmental fate of phenol, the confirmation of phenol's rate of volatilization from water is not high priority since estimates do not indicate that this transport mechanism is of great significance. Following collection of the prioritized data, the need to conduct bioavailability studies and to develop a registry of exposed persons will be assessed.

2. Chloroethane

Adequate methods are available for the analysis of chloroethane in biologic samples and in environmental media. Available data on the patterns of chloroethane use and its release do not reflect the dramatic changes that have occurred within the past several years in the United States, and this information is necessary to assess the potential for human exposure. Current data are inadequate to determine levels of chloroethane in ambient air, air in the vicinity of waste disposal sites, and in other environmental media. Similarly, human monitoring information is insufficient to determine workplace and general population exposures. Although human exposure levels are currently being determined in on-going studies (National Health And Nutrition Examination Survey III [NHANES III]), no actual data from human exposure levels of individuals living near hazardous waste sites is anticipated.

Information on the release of chloroethane to the environment, human monitoring, and environmental contamination levels is necessary to evaluate the current potential for human exposure to chloroethane at or near hazardous waste sites. Thus, the prioritized exposure data needs for chloroethane are as follows:

Current use and release of chloroethane
Concentrations of chloroethane in contaminated environmental media at hazardous waste sites
Exposure levels in persons living near hazardous waste sites

Additional information on the environmental fate of chloroethane is required to determine its persistence in the environment. However, the conduct of additional environmental fate studies, while still a data need, is not assigned high priority at this time because of the importance of characterizing the population potentially exposed to chloroethane. The need for studies on the bioavailability of chloroethane and the development of a registry of exposed persons will be assessed following the collection of environmental and human monitoring data.

3. Carbon Tetrachloride

Generally, adequate methods are available for the analysis of carbon tetrachloride in air, water, solid waste, soil, and for most biological media. Building a sound basic data foundation for higher level environmental research on carbon tetrachloride requires the determination of human exposure levels. Although referent levels are currently being determined in on-going studies (NHANES III), no actual data from human exposure levels of individuals living near hazardous waste sites is anticipated. This information is necessary to assess the need to conduct human health studies of these populations and should be rigorously collected concurrent to the acquisition of data from the NHANES III study. In addition, carbon tetrachloride should be considered a candidate for a registry of exposed persons as it has been found at a large number of hazardous waste sites in the United States. Thus, the prioritized exposure data needs for carbon tetrachloride are as follows:

Exposure levels in persons living near hazardous waste sites
Concentrations of carbon tetrachloride in contaminated environmental media at hazardous waste sites
Candidate for registry of exposed persons

Even though additional environmental fate and bioavailability studies are data needs, they are not given high priority at this time because of the importance of characterizing the potentially large population currently exposed to carbon tetrachloride.

4. Isophorone

Adequate methods are available for the analysis of isophorone in air, water, and soil. No tested analytical methods are available, however, that allow the determination of isophorone in human tissues and fluids. Prior to the conduct of more costly and complex research initiatives, development of this method is necessary to confirm on-going and future human exposure to isophorone. A necessary supplement to these priority data needs for isophorone is an understanding of its primary environmental removal mechanisms. These studies should be undertaken concurrent with the collection of much needed environmental monitoring data, especially around hazardous waste sites. Following collection and evaluation of these data, which should provide an understanding of the pervasiveness of isophorone in the environment, the need to conduct bioavailability studies or to develop exposure registries can be assessed. Thus, the prioritized exposure data needs for isophorone are as follows:

Analytic method for determination of isophorone in human tissues and fluids
Monitoring data in persons and the environment
Environmental fate studies

B. Toxicity

Application of the hierarchy of toxicity research priorities presented in the ATSDR Decision Guide begins with the evaluation of available information on target organs and dose-response. The health endpoints evaluated for each substance include lethality, systemic toxicity, neurotoxicity, immunotoxicity, reproductive and developmental toxicities, genotoxicity, and carcinogenicity. In general, this information is required for all routes (inhalation, oral, and dermal) and durations (acute, intermediate, and chronic) of exposure; however, highest priority is given to studies conducted via the primary environmental route of exposure. The need for additional route-specific data is assigned priority as a result of evaluation (or conduct) of toxicokinetic studies. Higher level data needs evaluated for each substance include epidemiological studies, mechanism of toxic action, biomarkers, and clinical methods for mitigating toxicity.

1. Phenol

The dose-response relationships for effects resulting from exposure to phenol by the inhalation, oral, and dermal routes are not adequately characterized. Results from an oral carcinogenicity bioassay are inconclusive and there is no information available on the carcinogenic effects following inhalation exposure. Additional data from early dermal studies and other recent investigations differ on the tumor-promoting effects of phenol and, thus, a well conducted two-year bioassay is needed to better characterize the carcinogenic potential of phenol. There was no evidence of impaired reproductive performance in an early report, although more recent data suggest that phenol may have an effect on spermatogenesis. An assessment of the reproductive toxicity of phenol is necessary to fully evaluate this endpoint. Neurological effects have been observed from exposure to phenol by the inhalation, oral, and dermal routes of exposure.

A more complete understanding of the neurobehavioral effects and neurological dysfunction is needed to determine the potential for neurotoxicity in humans exposed to levels of phenol found at or in the vicinity of hazardous waste sites. The relationship between the route of exposure and health effects caused by phenol is unclear. Although neurological effects have been reported for all routes of exposure, adverse effects on the liver have only been observed following inhalation exposure. Toxicokinetic data are needed to compare the disposition of phenol from inhalation, oral, and dermal exposures. Thus, the prioritized toxicity data needs for phenol are as follows:

Dose-response data in animals for acute, intermediate, and chronic durations via drinking water
Toxicokinetic studies
Multigeneration reproductive studies via drinking water
Neurotoxicity test battery via drinking water
Bioassay for carcinogenicity via drinking water

Developmental effects have been reported following oral exposure to phenol. The need for additional studies on developmental effects by the inhalation route should be assessed following the completion of toxicokinetic studies. Although a limited report indicated that phenol did not alter the susceptibility of mice to infections, there are no detailed studies available on the effects of phenol on the immune system. Findings from subchronic toxicity studies may indicate whether the immune system is affected by phenol, although further studies on the immunotoxic effects of phenol are not a high priority at this time. The need for population studies and methodological development of biomarkers or toxicity mitigation will be assessed following collection and evaluation of the current priority data needs.

2. Chloroethane

Acute-duration and intermediate-duration studies are needed to characterize the toxicity of chloroethane, especially by the oral and dermal routes of exposure and to determine dose-response relationships. Inadequate toxicokinetic information is available following inhalation exposure to chloroethane and no data exist following oral or dermal exposure. These studies are needed to evaluate and compare the disposition of chloroethane from all routes of exposure and to assess the need to conduct toxicology studies by routes other than the primary route.

Thus, the prioritized toxicity data needs for chloroethane are as follows:

Dose-response data in animals following acute- and intermediate-duration exposure to chloroethane via drinking water
Toxicokinetic studies

Reproductive function in animals following inhalation or oral exposure to chloroethane has not been evaluated. However, additional studies are to be considered since histological lesions were observed in the mouse uterus following chronic inhalation exposure. The effect of chloroethane on the immune system has not been thoroughly studied. A report of dermal sensitization in humans was located, although no effects on immune system organs and tissues have been noted in studies of animals exposed to chloroethane. Results from a subchronic study may indicate whether chloroethane affects the immune system and further establish the need for more detailed studies on the immune system. The need for chronic toxicity studies and additional studies on the developmental, neurological, and carcinogenic effects from oral exposure to chloroethane will be assessed following the completion of toxicokinetic studies. The need for population studies and methodological development of biomarkers or toxicity mitigation will be assessed following collection and evaluation of the current priority data needs.

3. Carbon Tetrachloride

Much information is available on carbon tetrachloride, although some of it is from studies done quite some time ago. This does not mean that data derived from older studies are not adequate. ATSDR agrees with the National Research Council that it is not appropriate to judge the quality of past and future studies solely by the standards of today. In the case of carbon tetrachloride, much of the older toxicity data is acceptable; however, no studies have been performed on the immune system as a toxicologic endpoint. The immune system has been recently determined to be a sensitive indicator of chronic toxicity for a variety of substances and as such should be evaluated for carbon tetrachloride by the most commonly encountered route of exposure: oral (drinking water). In addition, reproductive toxicity assessment is necessary as there are limited data to suggest that carbon tetrachloride can cause developmental effects in offspring following oral (drinking water) exposure. These two nonhuman research needs are justified because of the widespread contamination of environmental media by carbon tetrachloride. Additionally, if damage to the immune system is determined to be a sensitive indicator of carbon tetrachloride toxicity, immune "biomarker" evaluations could be utilized in human populations exposed to carbon tetrachloride.

As a consequence of the widespread medicinal, industrial, and residential use of carbon tetrachloride, human exposure to this substance is occurring, but there is very limited epidemiological information concerning carbon tetrachloride. Thus, populations exist that have experienced exposure to carbon tetrachloride, either via environment or occupation, which should be identified to serve as a source of epidemiological data. In summary, the prioritized toxicity data needs for carbon tetrachloride are as follows:

Dose-response data in animals for acute-(inhalation) and chronic-(drinking water) duration exposures
Multigeneration reproductive study via drinking water
Immune function tests following oral (drinking water) exposure
Epidemiological studies on the health effects of carbon tetrachloride

Several on-going studies were located that attempt to investigate the mechanism of carbon tetrachloride-induced toxicity. Although these studies may not specifically address the mechanisms by which carbon tetrachloride causes carcinogenicity and neurotoxicity, they provide justification for not assigning mechanistic studies a high priority at this time. Also, the need for methodological development for biomarkers or toxicity mitigation will be more appropriately addressed once populations have been identified which have known exposures to carbon tetrachloride.

4. Isophorone

Several well conducted studies exist that examine dose-response relationships following intermediate- and chronic-duration exposure to isophorone; however, only limited information is available on local effects following brief exposure to isophorone. Additionally, there are no data on the chemical disposition of isophorone in persons and only limited data on its metabolism in rats and rabbits following oral exposure. Although no treatment-related lesions have been found in reproductive organs in animals exposed orally to isophorone, specific tests of reproductive function were not performed. Inconclusive studies suggest that isophorone may cause birth defects and growth retardation following inhalation exposure, thus additional

studies are necessary to evaluate this endpoint following exposure via drinking water (the most likely route of exposure at hazardous waste sites). Finally, a battery of neurotoxicity tests in animals is necessary to examine the mechanism of action as central nervous system toxicity has been reported in inhalation, oral, and dermal studies.

In summary, the prioritized toxicity data needs for isophorone are as follows:

Dose-response data in animals following acute exposure to isophorone (drinking water)
Multigeneration reproductive study via oral route (drinking water)
Developmental toxicity studies via oral route (drinking water)
Neurotoxicity studies via oral route
Comparative toxicokinetics

The need for additional dose-response and cancer bioassay data will be assessed following completion of the toxicokinetic studies. Although the possible effects of isophorone on the immune system have not been thoroughly studied, no human anecdotal information, data from subchronic/chronic animal studies, nor structural activity alerts suggest the immune system as a target for isophorone; thus these studies are not a high priority at this time. The need for population studies and methodological development for biomarkers or toxicity mitigation will be assessed following collection and evaluation of the current priority data needs.

Dated: March 22, 1990.

Elvin Hilyer,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

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Reader Aids

Federal Register

Vol. 55, No. 60

Wednesday, March 28, 1990

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

7289-7470.....1
7471-7686.....2
7687-7878.....5
7879-8114.....6
8115-8438.....7
8439-8896.....8
8897-9092.....9
9093-9310.....12
9311-9406.....13
9407-9708.....14
9709-9866.....15
9867-10032.....16
10033-10222.....19
10223-10394.....20
10395-10596.....21
10597-10764.....22
10765-10998.....23
10999-11132.....26
11133-11356.....27
11357-11570.....28

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6102.....7467
6103.....7683
6104.....8439
6105.....8897
6106.....9311
6107.....9405
6108.....9865
6109.....10761
6110.....10763

Executive Orders:
12473 (See 12708).....11353
12513 (Revoked by EO 12707).....9707
12670 (Superseded by EO 12706).....9313
12686 (Amended by EO 12705).....8113
12705.....8113
12706.....9313
12707.....9707
12708.....11353

Administrative Orders:
Presidential Determinations:
No. 90-10 of Feb. 20, 1990.....8899
No. 90-11 of Feb. 20, 1990.....11129
No. 90-12 of Feb. 28, 1990.....10597
Memorandums:
Mar. 7, 1990.....10033
Mar. 14, 1990.....11131

5 CFR

302.....9407
581.....10223
831.....9093
890.....9107, 10395

7 CFR

52.....9412
246.....9709, 11109
272.....8289
273.....8289
274.....8289
276.....8289
301.....9719
354.....7289
905.....8441
907.....7687, 8901, 9867, 10675
910.....7471, 8903, 9867, 10767
918.....7289
925.....9416
948.....8443
959.....7689
966.....7879
982.....8904
985.....8905
1106.....10999
1421.....7690
1736.....8907
1772.....7867, 7880
1900.....9870, 11000
1940.....11133
1945.....7471
1951.....9870, 11000
1955.....9870
1980.....7471, 11133

Proposed Rules:
27.....10781
28.....10781
29.....11023
301.....11208-11209
322.....7499
701.....11384
800.....10784
810.....8956
907.....9453
908.....9453
911.....10785
915.....10785
946.....9460
959.....7717
979.....7903, 8146
981.....9457
1005.....11506
1012.....7718
1032.....7904
1068.....8472
1150.....11024
1230.....11025
1475.....7905

8 CFR

214.....7881
241.....11150
245.....10395

Proposed Rules:
292.....10620

9 CFR

71.....11154
78.....7882, 11154
92.....7883, 10030
97.....7289, 11157
309.....7472
310.....7472
317.....7289
318.....7294
381.....7289

Proposed Rules:
11.....11385
312.....7499
318.....7339
327.....8956
329.....7499
381.....7339, 7499, 8956

10 CFR

30.....10397

40 10397
50 10397
60 10397
61 10397
70 10397
72 10397
150 10397
600 9109
605 10035

Proposed Rules:
50 9137
110 10786
430 7719
708 9326

12 CFR

5 7692
220 11158
229 11357
264b 11360
312 10406
357 11160
510 7694
545 11293
563 ..... 7299, 11293
567 7475
600 7884
611 10042
612 7884
614 7884
615 7884
618 7884
960 7479

Proposed Rules:
208 8147
225 8147
226 10465
563 11311
568 10247
611 9138

13 CFR

Ch. V 11360
108 9110
115 10224

Proposed Rules:
108 9139

14 CFR

27 7992
29 7992
39 ..... 7300, 7696, 7703, 8115–8125, 8370–8374, 8445, 8446, 8909, 8910, 9112, 9315, 10042–10048, 10226–10228, 10599–10606, 11007, 11161, 11163
71 ..... 7301, 8448, 8911, 8912, 9082, 10030, 10232, 10233, 10609, 11009, 11328
73 8127
75 10234
91 ..... 9418, 10610
97 ..... 7704, 9316, 11166
99 8390
121 ..... 8054, 8364, 9824
129 8364
133 7992
135 ..... 8054, 8364
382 8008
1207 9250

Proposed Rules:
Ch. I 10071, 10620
13 ..... 7980, 7989, 9270
21 7724
25 ..... 7724, 10467
29 8474
39 ..... 7341, 7502, 7732, 8148, 8149, 8377–8384, 8474, 8961, 8962, 9140, 10071–10074, 10621–10628, 11026–11028, 11220
47 9270
61 9270
71 ..... 7342, 7868, 8151, 10866, 11110
73 ..... 7867, 8151, 10030, 11110
91 ..... 7414, 9270
93 9090
121 7414
125 7414
135 7414
183 9270
382 ..... 8076, 8078

15 CFR

775 10050
776 ..... 10051–10142, 10611
777 10051
799 ..... 7867, 10142, 11361

Proposed Rules:
400 9824

16 CFR

305 7302
460 10053

Proposed Rules:
307 9142

17 CFR

1 ..... 7884, 8127
30 ..... 7705, 10611
200 ..... 10234, 11167
250 11362
270 7706

Proposed Rules:
240 11387
250 11390
401 ..... 7733, 11291

18 CFR

16 ..... 7490, 10768

Proposed Rules:
4 9894
16 9894
375 9894
380 9894
803 10629

19 CFR

134 7303
171 10055
353 ..... 9046, 11109
355 ..... 9046, 11109

Proposed Rules:
177 10249

20 CFR

404 ..... 7306, 7313, 8449, 11009
416 ..... 7311, 7411, 8449, 10415, 11009
422 ..... 7313, 10030

Proposed Rules:
416 ..... 9332, 9824

21 CFR

5 ..... 9078, 9418
7 9078
10 9078
12 9078
13 9078
14 ..... 7315, 9078
15 9078
16 9078
20 9078
25 9078
168 8458
173 8912
175 10235
176 10236
177 8139
178 8913
179 9078
182 9826
184 ..... 10030, 10932
333 9721
338 9078
430 11110
448 9721
453 11109
455 ..... 9317, 11110
510 ..... 8459, 8461
520 ..... 8459, 8461
522 8461
524 8461
540 ..... 8459, 8461
555 8461
558 ..... 8459, 8461, 11012
600 11012
601 11012
606 11012
607 11012
610 ..... 10420, 11012
620 11012
630 11012
640 ..... 10420, 11012
650 11012
660 11012
680 11012
801 7491
803 11168
807 11168
812 11168
813 11168
814 11168
820 11168
860 11168
1308 ..... 8914, 9113, 9117

Proposed Rules:
173 8476
175 8476
176 8476
177 8476
178 8476
179 8476
180 8476
181 8476
182 9834
347 11291
348 11291
500 10467
582 10467

22 CFR

60 9722
61 9722
62 9722
63 9722
65 9722
171 9317

23 CFR

Proposed Rules:
172 7739
655 10988
658 10468

24 CFR

44 8462
201 8464
203 8464
234 8464
235 9723
251 11342
252 11342
255 11342
791 9252
882 9252
885 9117

Proposed Rules:
90 9332
251 11332
252 11332
255 11332
570 11556

25 CFR

61 7492

26 CFR

1 ..... 7316, 7711, 7891, 8946, 9420–9426, 11110
301 ..... 9438, 10236, 11367
602 ..... 7891, 9438, 10236, 11110

Proposed Rules:
1 ..... 7343, 9461–9464, 9920

28 CFR

301 9296
345 11326
513 9296

29 CFR

517 ..... 7450, 7967
1612 8140
1910 7967
2676 9724

Proposed Rules:
1910 ..... 8152, 10250

30 CFR

202 7317
203 7317
206 7317
250 10614
740 9400
936 11169

Proposed Rules:
75 ..... 9732, 11394
206 ..... 8964, 10787
218 10630
250 8485
925 10632
931 ..... 7919, 7920
935 9143
938 10469

31 CFR

215 7494
545 10618

32 CFR

64 9319
375 11368
516 10350
518 10870

Proposed Rules:
168a 10469
199 9921
838 9733

33 CFR

100 ..... 7711, 9120, 9725, 11180
110 11368
117 ..... 10768, 11181
334 10237

Proposed Rules:

100 9465
110 10787
115 7744
117 ..... 8154, 9145, 9466
334 10253

34 CFR

245 7711
673 10237

36 CFR

217 7892
228 10423
251 7892
261 10423

Proposed Rules:

7 8487

38 CFR

3 ..... 8140, 8141, 10866
17 11369

39 CFR

111 10060
775 10452
776 10452
3001 ..... 8142, 10455

40 CFR

35 10452
52 ..... 7712, 7713, 9121–9125, 9442, 9726, 9876, 9878, 10061, 10062, 11183, 11370
60 11338
61 ..... 8292, 10455
141 8948
180 ..... 8142, 9467, 10218, 10456–10459, 11372
185 10218
186 10218
228 11185
260 8948
261 ..... 8948, 11188
271 ..... 7318, 7320, 7896, 9127, 9128, 9880, 11015, 11192
272 9880
300 ..... 8666, 9688
799 7322

Proposed Rules:

52 ..... 7503, 8489, 9146, 9923, 10076, 10470, 11029
180 ..... 9467, 10471, 11395, 11396
228 10633
271 10076
300 7507
372 ..... 10254, 10473
799 11398

41 CFR

Ch. 101 11018
101–17 8465
Ch. 301 10866
301–2 10769
301–3 10769
301–10 10769
301–15 10769
301–16 7327
302–1 10769
302–11 10866

42 CFR

57 10063
74 9538
405 ..... 9538, 11019, 11372
416 9538
424 11372
440 9538
482 9538
483 9538
488 9538
493 9538

Proposed Rules:

72 7678
400 9740
405 10951
410 9740
411 8491
413 9740
414 9740
417 9740
424 9740
431 10938–10951
433 10938
440 10077
447 10077
466 9740
473 9740
483 ..... 10256, 10938–10951
485 9740
489 9740
494 9740

43 CFR

Public Land Orders:

6765 8289
6770 7898
6771 11373

44 CFR

64 9882
65 8950
207 ..... 7328, 10030

Proposed Rules:

67 9923

45 CFR

305 8465
704 9884
707 10142
1180 10460
1351 7967

46 CFR

550 10238
580 10238
581 10238

Proposed Rules:

10 8155
515 10259
525 10259
530 10259
560 10259
572 10259

47 CFR

0 ..... 8951, 9444
1 ..... 9727, 10461
2 11195
13 7898
15 7494
21 10461
22 ..... 7899, 10461
73 ..... 7330, 7332, 7495, 7498, 7714, 8468, 8952, 8953, 9322, 9323, 9445, 9446, 9886, 10243, 10778, 10779, 11195, 11373–11375
80 7898
87 7332
94 ..... 9727, 10461
97 9323
300 9324

Proposed Rules:

2 ..... 8964, 11407
21 7344
22 10475
43 7344
65 10788
73 ..... 7345, 7509, 7745, 7746, 9148–9150, 9340, 9468, 9929–9931, 10259, 10260, 10789–10791, 11222, 11223, 11411, 11412
74 7344
76 7509
78 7344
80 11407
90 8966
94 7344
97 9341

48 CFR

35 7634
415 7333
504 8953
528 7967
545 8953
552 ..... 8953, 9886
553 8953
705 8469
706 8469
719 8469
726 8469
752 8469
1846 9446
1852 9446

Proposed Rules:

44 7870
52 7870
220 10637
225 10637

49 CFR

591 11375
1022 11196
1043 11196
1044 11196
1047 11196
1051 11196
1058 11196
1061 11196
1063 11196
1067 11196
1070 11196
1080 11196
1081 11196
1083 11196
1084 11196
1085 11196
1091 11196
1104 11196
1136 11196
1143 11196
1161 11196
1167 11196
1169 11196
1170 11196
1331 11196

Proposed Rules:

27 ..... 8081, 11119
28 9342
225 9469
386 11224
571 ..... 7346, 7510, 8497

50 CFR

14 9730
17 ..... 9129, 9447
23 7714
33 7334
285 ..... 10244, 10618
611 ..... 8142, 9887, 11382
663 11021
641 8143
655 9324
656 ..... 7900, 9451
672 ..... 7902, 9887
675 ..... 7337, 7716, 8142, 8145, 8954, 9887, 10246, 10779

Proposed Rules:

17 ..... 7746, 7920, 9150, 9472, 9741, 10083, 11230, 11413
20 9618
227 10260
228 10475
251 8157
641 8158
642 11414
658 7747

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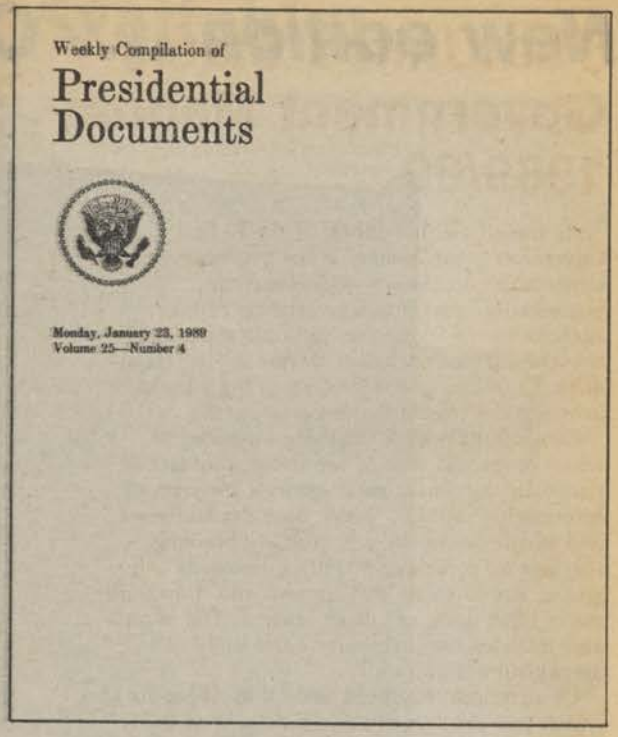

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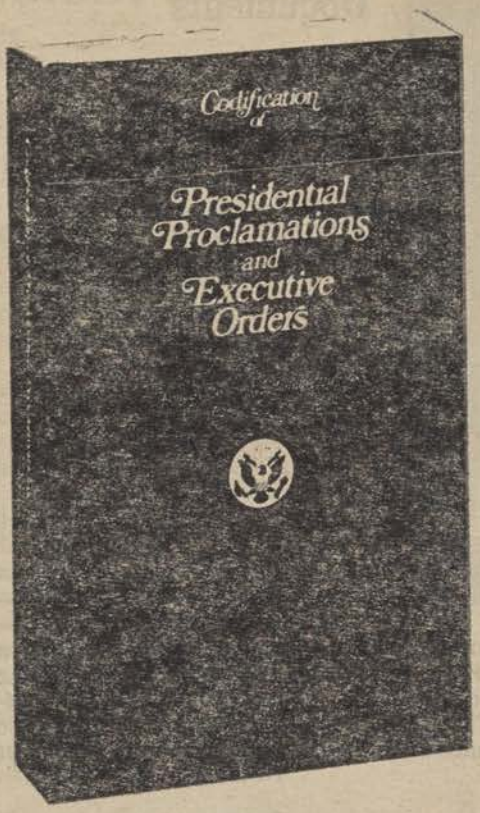

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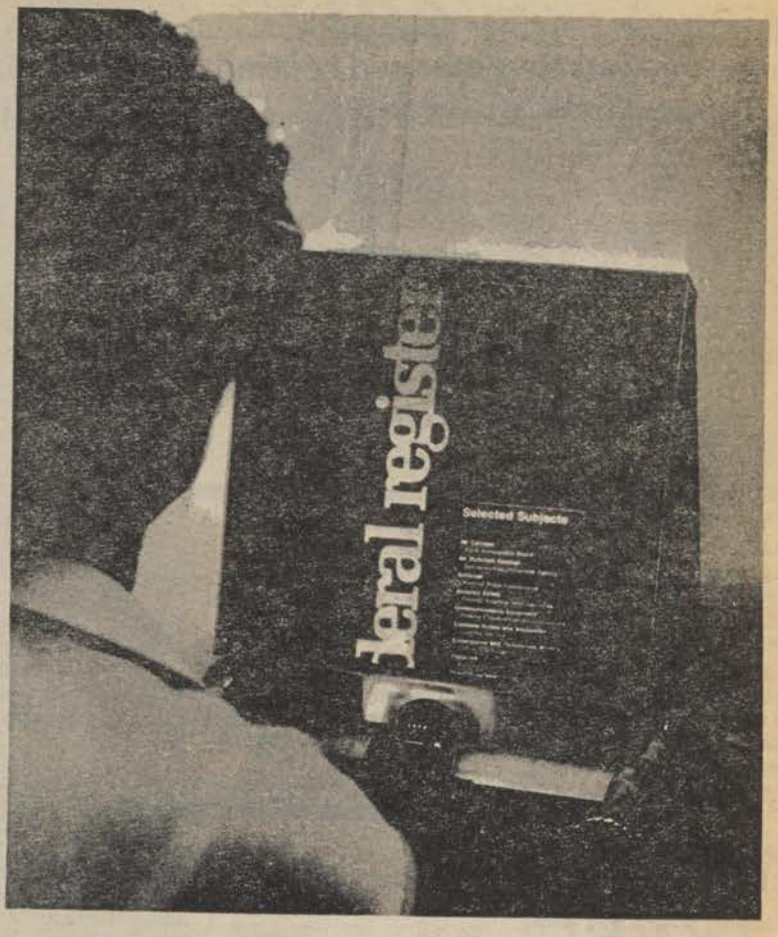

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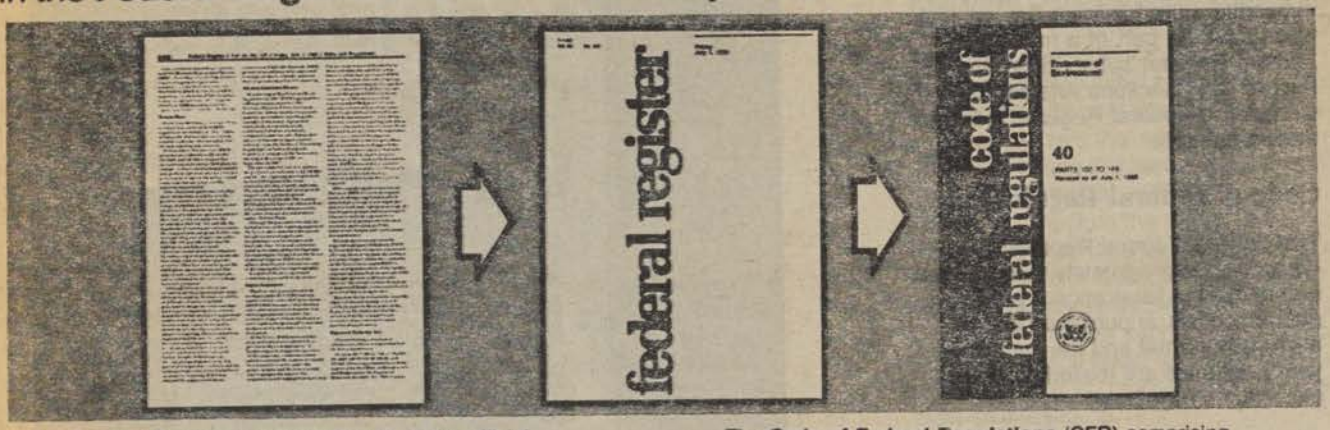

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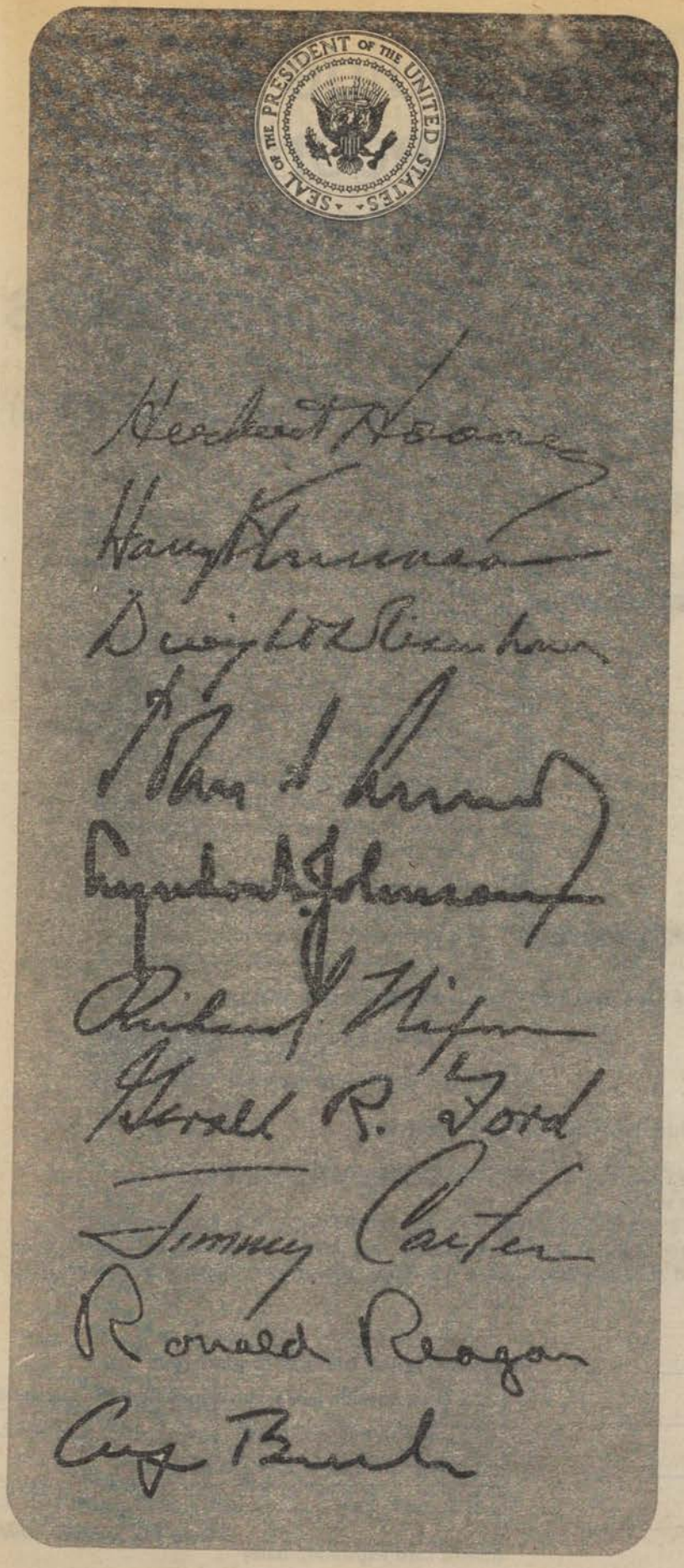

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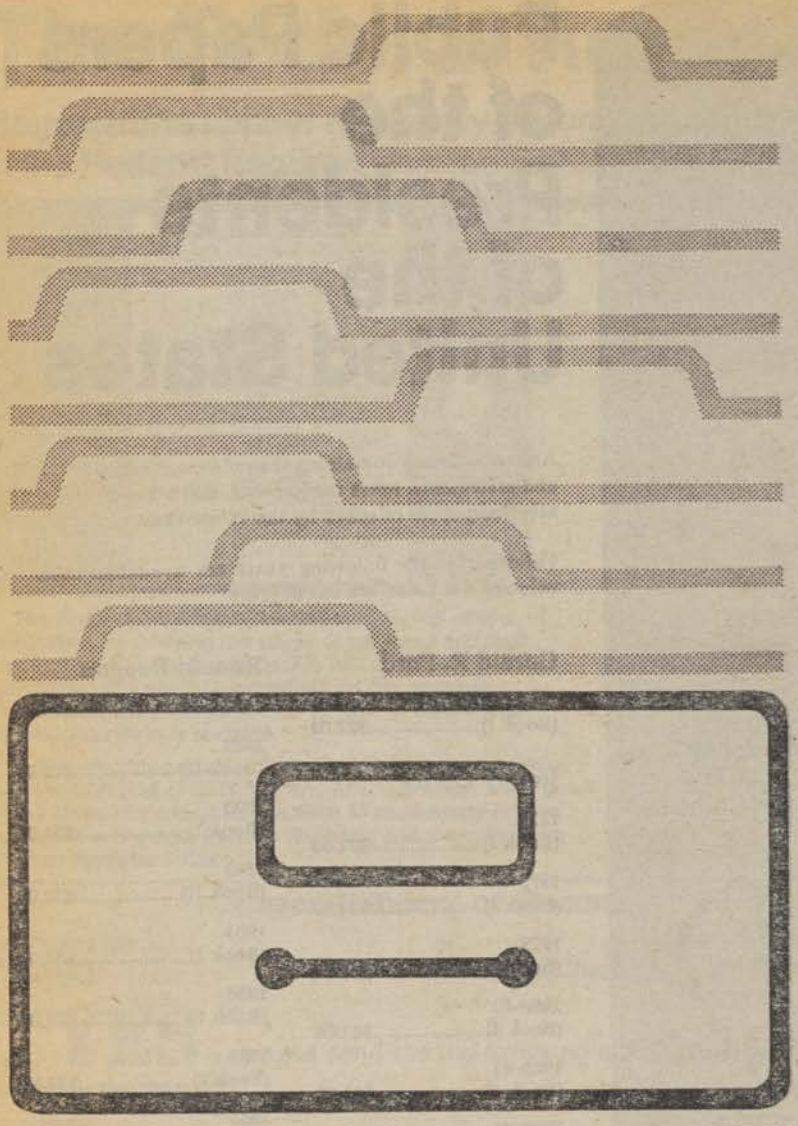

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