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Wednesday
August 25, 1982

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Securities and Exchange Commission

Air Pollution Control
Environmental Protection Agency

Archives and Records
National Archives and Records Service

Banks, Banking
Federal Deposit Insurance Corporation
Fiscal Service

Coal Mining
Surface Mining Reclamation and Enforcement Office

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Land Sales
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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1403

Interest on Delinquent Debts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The interim rule, which was published at 47 FR 61442 amending the Commodity Credit Corporation (CCC) regulations by prescribing the imposition of an interest charge on delinquent debts, is adopted as a final rule. This rule permits the application of interest on delinquent debts as an incentive for debtors to repay their debts, and this reduce the cost to CCC for additional borrowings from the United States Treasury.

EFFECTIVE DATE: August 25, 1982.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Claims Specialist, Fiscal Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013, (202) 382–0185.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified "nonmajor." It has been determined that the provisions of this final rule 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.

This action will not have a major impact specifically on area or community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local government are informed of this action.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule 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 final rule.

On December 17, 1981, an interim was published in the **Federal Register** (46 FR 61442) that amended Chapter XIV, Subchapter A of the Code of Federal Regulations by adding Regulations at 7 CFR Part 1403. The interim rule set forth a policy of CCC to apply interest on delinquent debts. The interim rule allows CCC to apply a late payment charge to the full amount of delinquent debts and sets forth the terms and conditions under which such late payment charge will be calculated and assessed. Comments were solicited for a period of 60 days after publication of the interim rule. There was one journalistic inquiry but no comments were received during the comment period.

List of Subjects in 7 CFR Part 1403

Credit, Loan programs—agriculture.

Final Rule

PART 1403—INTEREST ON DELINQUENT DEBTS

Accordingly, the interim rule published at 47 FR 61442 on December 17, 1981, which adds to the Regulations, Part 1403 of 7 CFR, governing the interest charge on delinquent debts, is hereby adopted as a final rule except for § 1403.6 which is revised to read as follows:

§ 1403.6 Applicability.

(a) This part shall only be applicable to (1) any debt incurred after the effective date of this part and which subsequently becomes a delinquent debt; (2) delinquent debts originally incurred before the effective date of this part, the repayment of which is rescheduled by agreement of CCC and the debtor after the effective date of this part; and (3) any other debt or delinquent debt to which the debtor and CCC agree that this part will be applicable.

(b) This part shall not apply to any delinquent debt where the payment of interest on such delinquent debt is otherwise provided for by contract, agreement, regulation, or other means.

(Sec. 4, Pub. L. 80–89, 62 Stat. 1070, as amended (15 U.S.C. 714b), 4 CFR, Parts 101–105)

Signed at Washington, D.C. on: August 18, 1982.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 82–23246 Filed 8–24–82; 8:45 am]
BILLING CODE 3410–05–M

FEDERAL RESERVE SYSTEM

12 CFR Part 201

Extensions of Credit by Federal Reserve Banks; Changes in Discount Rates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A, "Extensions of Credit by Federal Reserve Banks," for the purpose of adjusting discount rates with a view of accomodating commerce and business in accordance with other related rates and the general credit situation of the country. The action was taken in light of moderate growth in money, some indication of reduced credit demands at banks, and declines in market interest rates.

EFFECTIVE DATE: The changes were effective on the dates specified below.

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452–3257).

SUPPLEMENTARY INFORMATION: Pursuant to the authority of 5 U.S.C. 553 (b)(3)(B) and (d)(3), these amendments are being published without prior general notice of proposed rulemaking, public participation, or deferred effective date. The Board has for good cause found that current economic and financial considerations required that these amendments must be adopted immediately.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Credit Unions, Foreign banks.

Pursuant to section 14(d) of the Federal Reserve Act (12 U.S.C. 357) Part 201 is amended as set forth below:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS

1. Section 201.51 is revised to read as follows:

§ 201.51 Short term adjustment credit for depository institutions.

The rates for short term adjustment credit provided to depository institutions under § 201.3(a) of Regulation A are:

Federal Reserve Bank of	Rate	Effective
Boston	10½	Aug. 16, 1982.
New York	10½	Aug. 16, 1982.
Philadelphia	10½	Aug. 16, 1982.
Cleveland	10½	Aug. 16, 1982.
Richmond	10½	Aug. 16, 1982.
Atlanta	10½	Aug. 16, 1982.
Chicago	10½	Aug. 16, 1982.
St. Louis	10½	Aug. 16, 1982.
Minneapolis	10½	Aug. 16, 1982.
Kansas City	10½	Aug. 16, 1982.
Dallas	10½	Aug. 16, 1982.
San Francisco	10½	Aug. 16, 1982.

2. Section 201.52 is revised to read as follows:

§ 201.52 Extended credit to depository institutions.

(a) The rates for seasonal credit extended to depository institutions under § 201.3(b)(1) of Regulation A are:

Federal Reserve Bank of	Rate	Effective
Boston	10½	Aug. 16, 1982.
New York	10½	Aug. 16, 1982.
Philadelphia	10½	Aug. 16, 1982.
Cleveland	10½	Aug. 16, 1982.
Richmond	10½	Aug. 16, 1982.
Atlanta	10½	Aug. 16, 1982.
Chicago	10½	Aug. 16, 1982.
St. Louis	10½	Aug. 16, 1982.
Minneapolis	10½	Aug. 16, 1982.
Kansas City	10½	Aug. 16, 1982.
Dallas	10½	Aug. 16, 1982.
San Francisco	10½	Aug. 16, 1982.

(b) The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

Federal Reserve Bank of	Rate	Effective
Boston	10½	Aug. 16, 1982.
New York	10½	Aug. 16, 1982.
Philadelphia	10½	Aug. 16, 1982.
Cleveland	10½	Aug. 16, 1982.
Richmond	10½	Aug. 16, 1982.
Atlanta	10½	Aug. 16, 1982.
Chicago	10½	Aug. 16, 1982.
St. Louis	10½	Aug. 16, 1982.
Minneapolis	10½	Aug. 16, 1982.
Kansas City	10½	Aug. 16, 1982.
Dallas	10½	Aug. 16, 1982.
San Francisco	10½	Aug. 16, 1982.

Note.—These rates apply for the first 60 days of borrowing. A 1 percent surcharge applies for borrowing during the next 90 days, and a 2 percent surcharge applies for borrowing thereafter.

(12 U.S.C. 347b and 12 U.S.C. 357)

By order of the Board of Governors of the Federal Reserve System, August 18, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-23189 Filed 8-24-82; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

Amendment Relating to Restrictions on Nondeposit Obligations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends §329.10(b)(2) of FDIC regulations, relating to obligations other than deposits, by eliminating the prohibition against automatic renewal of retail repurchase agreements ("repos" or "RPs"). The FDIC was petitioned to eliminate the prohibition against automatic renewal as a matter of competitive fairness to banks.

EFFECTIVE DATE: August 16, 1982.

FOR FURTHER INFORMATION CONTACT: Carol Galbraith, Attorney, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429 (202–389–4171).

SUPPLEMENTARY INFORMATION: Part 329 of FDIC's regulations prescribes interest rates that may be paid on deposits by FDIC-supervised banks (12 CFR 329 (1982)). Prior to August 1, 1979, § 329.10(b)(2) of FDIC's regulations exempted from the coverage of Part 329 any obligation other than a deposit obligation of an insured nonmember bank that:

(2) Evidences an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof, that the bank is obligated to repurchase.

In August 1979, the FDIC and the Federal Reserve Board ("FRB") issued final rules narrowing the exemption for "retail" repos by requiring that repos for less than $100,000 mature in less than 90 days and not be automatically renewed or extended (12 CFR 329.10(b)(2) and 12 CFR 217.1(f)(2)). The Federal Home Loan Bank Board ("FHLBB") issued a similar rule (12 CFR 531.12). These amendments are referred to generically hereinafter as "the 1979 Amendments".

On May 30, 1979, the FDIC proposed that all RPs of less than $100,000 be subject to interest rate ceilings (44 FR 32397 (1979)). Because most of those who commented objected that such a rule would preclude market rate returns on funds of small businesses and municipalities, the final rule exempted from interest rate ceilings "retail repos," RPs of less than $100,000 provided that they matured in less than 90 days and could not be automatically renewed or extended. In defining retail RPs, the conditions of less than 90 days and no automatic renewal or extension were fashioned as restrictions so that these conditions would discourage widespread offering of consumer RPs and thereby limit the extent of interest rate circumvention, particularly at the interest rate levels prior to the last quarter of 1979.

At the time of the 1979 Amendments, certain repurchase agreement programs were viewed as substitutes for time deposits that avoided interest rate ceilings. Numerous pertinent changes have occurred in the financial environment since August 1979. In March 1980, the Depository Institutions Deregulation Act of 1980 was enacted, mandating the extinction of interest rate ceilings by March 31, 1986 (Depository Institutions Deregulation Act of 1980, 12 U.S.C. 3501–3509 (1980)). During 1981, a greatly increasing number of banks began marketing repurchase agreements in denominations of less than $100,000. Federal and State supervisory agencies began issuing specific guidance on the issuance of these retail repos. The FDIC adopted its statement of policy on retail repurchase agreements on September 28, 1981 (Statement of Policy, 46 FR 49197 (1981)).

On May 20, 1982, after having published a proposed rule (47 FR 8204 (1982) (proposed February 18, 1982)) the FHLBB adopted a final rule which eliminates the prohibition against automatic renewal (47 FR 23140 (1982) (to be codified at 12 CFR 563.8–4)). Subsequently, a number of bankers and the American Bankers Association asked the FDIC to eliminate the prohibition against automatic renewal as a matter of competitive fairness to banks.

This final rule eliminates the prohibition against automatic renewal. The FDIC's statement of policy on retail

repurchase agreements continues to apply to all repos in denominations of less than $100,000.

As an alternative to this rule, FDIC considered taking no action, because FDIC's interpretation of "no automatic renewal" permits bank customers to renew repos by telephone or by certain kinds of account activity, as well as by writing. Thus, the costs and inconveniences of renewal are reduced. Nonetheless, we rejected this alternative because it does entail unnecessary burdens to banks and their customers.

This rule relieves a restriction and does not entail additional expense to any affected bank. Therefore, good cause exists for FDIC to find that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. For the same reason, this rule is made effective immediately. Because this amendment is issued as a final rule, the Regulatory Flexibility Act (5 U.S.C. 601–612 (Supp. 1982)) is not applicable. This rule does not entail any reporting or recordkeeping requirements; thus, the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520 (Supp. 1982)) is not applicable.

List of Subjects in 12 CFR Part 329

Banks, Banking, Federal Deposit Insurance Corporation.

For the reasons set forth in the preamble, 12 CFR Part 329 (1982) is amended to read as follows:

PART 329—INTEREST ON DEPOSITS

1. The authority citation for Part 329 reads as follows:

Authority: Secs. 9 and 18, Pub. L. 797, 64 Stat. 881, 891 (12 U.S.C. 1819, and 1828); sec. 303, Pub. L. 96–221, 94 Stat. 146 (12 U.S.C. 1832).

2. In Part 329, § 329.10(b)(2) is revised to read as follows:

§ 329.10 Obligations other than deposits.

* * * * *

(b) * * *

(2) Evidences an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof, that the bank is obligated to repurchase, and is either (i) in denominations of $100,000 or more, or (ii) in denominations of less than $100,000 and matures in less than 90 days;

* * * * *

By Order of the Board of Directors, August 16, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 82-23222 Filed 8-24-82; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6420; 34-18978; 35-22607; 39-743; IC-12607; IA-820; FOIA-64]

Public Observation of Commission Meetings; Information and Requests and Related Matters

AGENCY: Securities and Exchange Commission.

ACTION: Final rule and correction to existing rule.

SUMMARY: The Securities and Exchange Commission is amending its rules under the Government in the Sunshine Act, pertaining to the public observation of Commission meetings. The Commission is amending 17 CFR 200.21(b), which lists the persons who may certify a meeting closed in the absence of the General Counsel, to include the Deputy General Counsel. In addition, the Commission is correcting an error in 17 CFR 200.402(a)(4)(i) by removing the word "resignation" and replacing it with the word "registration."

EFFECTIVE DATE: August 25, 1982.

FOR FURTHER INFORMATION CONTACT: Ted Bloch, Office of the General Counsel, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272–2434.

SUPPLEMENTARY INFORMATION:

List of Subjects in 17 CFR Part 200

Administrative practice and procedure; Freedom of Information; Privacy; Securities.

Statutory Authority: In amending § 200.21(b) (17 CFR 200.21(b)) and in correcting § 200.402(a)(4)(i) (17 CFR 200.402(a)(4)(i)), the Commission is acting pursuant to the Act of September 13, 1976, Pub. L. No. 94–409, 90 Stat. 1241.

Text of Amendments

Accordingly, Part 200 of Chapter II, Title 17, of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. By revising paragraph (b) of § 200.21 to read as follows:

§ 200.21 The General Counsel.

* * * * *

(b) The General Counsel also is responsible to the Commission for the administration of the Government in the Sunshine Act for publicly certifying, pursuant to § 200.406, that, in his or her opinion, particular Commission meetings may properly be closed to the public. In the absence of the General Counsel, the Solicitor to the Commission shall be deemed the General Counsel for purposes of § 200.406. In the absence of the General Counsel and the Solicitor, the Deputy General Counsel shall be deemed the General Counsel for purposes of § 200.406. In the absence of the General Counsel, the Solicitor, and the Deputy General Counsel, the most senior Associate General Counsel available shall be deemed the General Counsel for purposes of § 200.406. In the absence of the General Counsel, the Solicitor, the Deputy General Counsel and every Associate General Counsel, the most senior Assistant General Counsel available shall be deemed the General Counsel for purposes of § 200.406. In the absence of the General Counsel, the Solicitor, the Deputy General Counsel, every Associate General Counsel and every Assistant General Counsel, such attorneys as the General Counsel may designate (in such order of succession as the General Counsel directs) shall exercise the responsibilities imposed by § 200.406.

§ 200.402 [Amended]

2. Paragraph (a)(4)(i) of § 200.402 is corrected by removing the word "resignation" which appears as the tenth word in the paragraph and replacing it with the word "registration."

* * * * *

The Commission finds that this amendment and correction, concerning who may certify that a Commission meeting may properly be closed to the public in the absence of the General Counsel and the correction of an error, pertains only to procedural matters; it is therefore not subject to the provisions of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, requiring advance notice and opportunity for comment. Accordingly, it is effective immediately upon publication in the **Federal Register.**

Dated: August 17, 1982.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-23194 Filed 8-24-82; 8:45 am]

BILLING CODE 8010-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 5H5091/T95; PH-FRL 2193-4]

Tolerances for Pesticides in Animal Feeds Administered by the Environmental Protection Agency; Amitraz

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a feed additive regulation permitting the combined residues of the insecticide amitraz in or on citrus pulp resulting from application of the insecticide to growing grapefruit, lemons, oranges, and tangerines in connection with an experimental use program. This regulation to permit the continued marketing of the commodity while further data are collected on the insecticide was requested by the Upjohn Co., Kalamazoo, MI 49001.

EFFECTIVE DATE: Effective on: August 25, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a regulation published in the **Federal Register** of October 13, 1981 (46 FR 50365) to permit the combined residues of the insecticide amitraz (*N'*-(2,4-dimethylphenyl)-*N*-[[2,4-dimethylphenyl)imino[methyl]-*N*-methyl-methanimidamide and its metabolites containing 2,4-dimethylaniline moiety (calculated as the parent compound) in or on citrus pulp at 7 parts per million resulting from application of the insecticide to growing grapefruit, lemons, oranges, and tangerines, in accordance with experimental use permit 1028-EUP-35.

The data and other relevant material have been evaluated. A related document ((PP 5G1623/T387) establishing temporary tolerances in or on the raw agricultural commodities appears elsewhere in this issue of the **Federal Register.**

The pesticide is considered useful for the purpose for which the regulation is sought, and it is concluded that the pesticide can be safely used in accordance with the provisions of the experimental use permit which was issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973; 76 U.S.C. 136 *et seq.*). Therefore, the feed additive regulation is extended as set forth below.

Any person adversely affected by this regulation may on or before September 24, 1982 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 ground for the objections. If a hearing is requested, the objections must state the issues for the hearing 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 regulation from the requirements of section 3 of Executive Order 12291.

(Sec. 409(c)(1), 72 Stat. 1786; (21 U.S.C. 346(c)(1)))

List of Subjects in 21 CFR Part 561

Animal feeds, Pesticide and Pests.

Dated: July 29, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore, 21 CFR 561.195 is revised to read as follows:

§ 561.195 Amitraz.

(a) [Reserved].

(b) A feed additive regulation is established permitting the combined residues of the insecticide amitraz (*N'*-(2,4-dimethylphenyl)-*N*-[[2,4-dimethylphenyl)imino]methyl]-*N*-methyl-methanimidamide and its metabolites containing 2,4-dimethylaniline moiety (calculated as the parent compound) in or the following feeds resulting from application of the insecticide to growing grapefruit, lemons, oranges, and tangerines in accordance with an experimental use program:

Feeds	Parts per million	Company	Expiration date
Citrus pulp	7.0	The Upjohn Co.	July 8, 1983.

(c) The following conditions for the regulation in paragraph (b) of this section shall be met.

(1) Residues in the feed in excess of the established tolerance resulting from the use described in paragraph (b) of this section remaining after expiration of the experimental program will not be considered to be actionable if the plant growth regulator is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and the feed additive regulation.

(2) The Company concerned shall immediately notify the Environmental Protection Agency of any findings for the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

[FR Doc. 82-23056 Filed 8-24-82; 8:45 am]

BILLING CODE 6560-50-M

21 CFR Part 561

[FAP 1H5317/R119; PH-FRL 2193-2]

Tolerances for Pesticides in Animal Feeds Administered by the Environmental Protection Agency; 2,3-Dihydro-5,6-Dimethyl-1,4-Dithiin-1,1,4,4-Tetraoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation permitting the residues of the harvest growth regulant 2,3-dihydro-5,6-dimethyl-1,4-dithiin-1,1,4,4-tetraoxide in or on the animal feed cottonseed hulls. This regulation to establish the maximum permissible level for residues of the harvest growth regulant in or on cottonseed hulls was submitted pursuant to a petition by Uniroyal Chemical Co.

EFFECTIVE DATE: Effective on August 25, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Rm. 245, CM#2, Environmental Protection

Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice of proposed rulemaking published in the **Federal Register** of July 29, 1982 (47 FR 32737) which announced that the Uniroyal Chemical Co., Division of Uniroyal, Inc., 74 Amity Rd., Bethany, CT 06525, had submitted feed additive petition 1H5317 to the EPA. The petition proposed that a regulation be established permitting residues of the harvest growth regulant 2,3-dihydro-5,6-dimethyl-1,4-dithiin-1,1,4,4-tetraoxide in or on the commodity cottonseed hulls at 0.7 part per million (ppm).

No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

A related document [PP 1F2560/R476] establishing tolerances in or on a variety of raw agricultural commodities appears elsewhere in this issue of the **Federal Register.**

The pesticide is considered useful for the purpose for which the feed additive regulation is sought, and it is concluded that the pesticide may be safely used in accordance with the prescribed manner when such uses are in accordance with the label and labeling registered pursuant to FIFRA as amended (86 Stat. 973, 89 Stat. 751, U.S.C. 135(a) *et seq.*). Therefore, the feed additive regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice 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. If a hearing is requested, the objections must state the issues for the hearing 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. (Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1))).

List of Subjects in 21 CFR Part 561

Animal feeds, Pesticides and pests.

Dated: August 13, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore, 21 CFR Part 561 is amended by establishing a new § 561.425 to read as follows:

§ 561.425 2,3-Dihydro-5,6-dimethyl-1,4-dithiin-1,1,4,4-tetraoxide.

A regulation is established permitting residues of the harvest growth regulant 2,3-dihydro-5,6 dimethyl-1,4-dithiin-1,1,4,4-tetraoxide in or on cottonseed hulls at 0.7 part per million (ppm) when it is present as a result of the application of the harvest growth regulant to the growing agricultural commodity cotton.

[FR Doc. 82–23131 Filed 8–24–82; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF STATE

22 CFR Part 42

[Dept. Reg. 108.824]

Documentation of Immigrants; Miscellaneous Amendments

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations to 22 CFR Part 42 relating to documentation of immigrants under the Immigration and Nationality Act, as amended, to conform the provisions of certain sections in that Part with the amendments made to the Immigration and Nationality Act by the Panama Canal Act of 1979; the Refugee Act of 1980; the Immigration and Nationality Act Amendments of 1981 and the Omnibus Budget Reconciliation Act of 1981. Some of the amendments correct statutory references and most are of an editorial and technical nature.

EFFECTIVE DATE: August 25, 1982.

FOR FURTHER INFORMATION CONTACT: Guida Evans-Magher, Foreign Affairs Specialist, Bureau of Consular Affairs, Visa Services, (202) 632–2907.

SUPPLEMENTARY INFORMATION: Pub. L. 96–70, of September 27, 1979, also known as the Panama Canal Act, added three new subparagraphs to the Immigration and Nationality Act expanding the special immigrant definition to certain categories of aliens who at the time of enactment of the law were, or had been former employees of the Panama Canal Company or Canal Zone Government. That Act also provided for an overall numerical limitation of 15,000 on the total number of aliens classifiable as special immigrants under those provisions. As a result of those new categories new classification symbols were added to § 42.12 and the formerly reserved § 42.37 was reactivated to incorporate new provisions for the new classes of special immigrants. This final rule amends § 42.37 to delete paragraph (b) of that section as the provisions therein are no longer applicable within the deadline of April 1, 1982 imposed by the Panama Canal Act.

Section 203(c)(3) of the Refugee Act of 1980 included provisions for the deletion of section 203(a)(7) of the Immigration and Nationality Act, relating to authorized "conditional entrants", and for the addition of new sections 207, 208 and 209 to the Act, under which aliens formerly qualifying as "conditional entrants" might qualify for admission to the United States as refugees. As a result of the deletion of section 203(a)(7), sections 203(a)(8) and 203(a)(9) were redesignated as sections 203(a)(7) and 203(a)(8), respectively. The latter changes are made by reference, wherever they appear, to the affected §§ 42.12, 42.30, 42.31, 42.32, 42.33, 42.34, 42.35, and 42.62 of 22 CFR Part 42.

In addition, § 42.12 is amended to incorporate changes made by Pub. L. 97–116, also cited as the Immigration and Nationality Act Amendments of 1981. Section 5(d)(1) of that Act added a new category of certain foreign medical graduate special immigrants to section 101(a)(27). As a result an additional symbol "SJ" is added to § 42.12 to be used for this new class of special immigrants. Editorial corrections are made to § 42.91(a)(14), and § 42.91(a)(15) is amended to conform with an organizational change made by the Omnibus Budget Reconciliation Act of 1981 which transferred the authority to issue income poverty guidelines from the "Community Services Administration" to the "Department of Health and Human Services".

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is not required in this instance because these amendments are editorial and technical changes which are necessary to conform with statutory changes and because they are mandated by statute, this order is also exempt from the procedures prescribed under E.O. 12291 of February 17, 1981.

List of Subjects in 22 CFR Part 42

Immigrant visas, Aliens.

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. Section 42.12(d) is amended to change "203(a)(8)" and "203(a)(9)" to read "203(a)(7)" and "203(a)(8)", respectively, wherever they appear in that paragraph, and to add a new symbol at the end of the table in paragraph (b) to read:

§ 42.12 Classification symbols.

* * * * *

(b) * * *

Class	Section of the law	Symbol to be inserted in visa
* *	* *	*
Certain foreign medical graduates.	101(a)(27)(H)	SJ-1
Accompanying spouse or children of alien classified SJ-1.	101(a)(27)(H)	SJ-2

§§ 42.30–42.35, 42.62 [Amended]

2. Sections 42.30, 42.31, 42.32, 42.33, 42.34, 42.35, and 42.62, are amended to change "§ 203(a)(8)" and "§ 203(a)(9)" to read "§ 203(a)(7)" and "§ 203(a)(8)", respectively, wherever they appear.

§ 42.37 [Amended]

3. Paragraph (b) to § 42.37 is removed.

4. The last sentence in subparagraph (i) of § 42.91(a)(14) is revised to read:

§ 42.91 Aliens ineligible to receive visas.

(a) * * *

(14) *Aliens entering to perform skilled or unskilled labor.* (i) * * * The provisions of section 212(a)(14) shall apply only to aliens who are preference immigrants described in section 203(a)(3) or (6) and to aliens who are nonpreference immigrants as described in section 203(a)(7).

* * * * *

5. In § 42.91(a)(15)(iii) lines seven through thirteen are revised to read:

(a) * * *

(15) *Public charge.* (iii) * * * guidelines published annually (or any shorter interval the Secretary of Health and Human Services deems feasible and desirable) by the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, and * * *

* * * * *

(Sec. 104, 66 Stat. 116; 8 U.S.C. 1106; 109(b)(1), 91 Stat. 847)

Dated: August 17, 1982.

Diego C. Asencio,

Assistant Secretary for Consular Affairs.

[FR Doc. 82-23196 Filed 8-24-82; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Permanent State Regulatory Program of Oklahoma

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: The Secretary of the Interior is extending the deadline for the State of Oklahoma to meet the conditions of its approved State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On April 8, 1982, the Oklahoma Department of Mines (ODOM) requested that the deadlines to meet its conditions be extended until May 15, 1983 (OK-409), in order to allow the State to complete the necessary legislative and rulemaking procedures. However, on May 13, 1982, ODOM submitted a set of rules of practice and procedure to meet the requirements of one of its conditions (See OK-415).

OSM proposed a rule on June 24, 1982 (47 FR 27383-27384), that would extend the deadlines to May 15, 1983. By that notice, OSM also requested public comment on the adequacy of the Oklahoma rules of practice and procedure. After considering all the information contained in the administrative record, including public comments, the Secretary has determined that the Oklahoma rules of practice and procedure do not meet all of the requirements for removal of the condition found at 30 CFR 936.11(b). Accordingly, the Secretary has decided to grant the State's request for an extension until May 15, 1983, to meet all four conditions. The Secretary hereby publishes amendments to the Federal rules contained in 30 CFR 936.11 to effect this action.

EFFECTIVE DATE: August 25, 1982.

ADDRESSES: See **"SUPPLEMENTARY INFORMATION"** below for addresses where copies of Oklahoma's extension request, rules of practice and procedure, and other documents (including public comments) associated with this rulemaking are available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Markey, Director, Oklahoma Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma 74103, Telephone: (918) 581-7927.

SUPPLEMENTARY INFORMATION:

I. Availability of Copies

Copies of Oklahoma's extension request, rules of practice and procedure and the administrative record of this rulemaking are available for public inspection and copying during normal business hours at:

Office of Surface Mining Reclamation and Enforcement, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma 74103.

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 L Street NW., Washington, D.C. 20240.

Oklahoma Department of Mines, 4040 North Lincoln Boulevard, Suite 107, Oklahoma City, Oklahoma 73105.

II. Background on the Oklahoma Program and Conditional Approval

Under 30 CFR 732.13(i), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State has initiated and is proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set in the notice of conditional approval.

The Oklahoma program was approved on January 19, 1981 (46 FR 4902). In that document the Secretary published a schedule for resolving the four conditions of approval. However, a series of events, including the rescission of the State's approved rules, necessitated an extension of time from the schedule outlined at the time of the Secretary's approval. On February 18, 1982, OSM extended the deadlines for Oklahoma to meet its four conditions until May 15, 1982.

On April 8, 1982, the Oklahoma Department of Mines indicated in a letter to OSM that additional time will be needed by the State to meet the conditions and requested that the deadline be extended to May 15, 1983 (See OK-409). On April 27, 1982, ODOM provided OSM additional information concerning actions Oklahoma had taken thus far, and expects to take in the

future, to meet each condition (See OK–414).

On May 13, 1982, Oklahoma provided OSM a copy of a set of rules of practice and procedure intended to meet the requirement of one of its conditions (30 CFR 936.11(b)). See OK–415.

On June 24, 1982, the Secretary announced that he was seeking public comment on the proposed extension of the deadline for Oklahoma to meet its conditions and on the adequacy of Oklahoma's rules of practice and procedure (47 FR 27383).

III. Secretary's Findings

The Secretary has carefully reviewed Oklahoma's extension request and rules of practice and procedure. Based on the information contained in the administrative record, including the public comments, the Secretary makes the following findings:

1. While Oklahoma's rules of practice and procedure contain many of the public participation provisions required by SMCRA, 30 CFR Chapter VII, and 43 CFR Part 4, certain Federal requirements are omitted and some of the State provisions are unclear as to whether the specific Federal requirements have been met. In accordance with this finding, the Secretary has, through OSM, provided Oklahoma with a detailed list of concerns that the State must address before the condition at 30 CFR 936.11(b) can be removed.

2. Oklahoma's request for an extension of the deadline to meet its conditions is premised on the need for additional time to complete legislative and rulemaking procedures.

3. Oklahoma has stated that it has taken several steps toward meeting the three remaining conditions. See OK–414. Based on that information, the Secretary is satisfied that the State is proceeding to act in good faith and that the granting of an additional extension of time will not change the classification of any of these deficiencies from being minor.

IV. Disposition of Comments

Although public comments were requested, no substantive comments were received.

V. Secretary's Decision

Based on the above findings, the Secretary hereby grants Oklahoma's request for an extension to May 15, 1983, of the deadline to meet its conditions.

A copy of the letter from OSM to Oklahoma detailing the Secretary's concerns about the State's rules of practice and procedure will be placed in the administrative record and made available for public review shortly.

VI. Other Information

EPA Concurrence

On January 12, 1981, the Administrator of the Environmental Protection Agency transmitted a written concurrence on the Oklahoma permanent program. The deadline extension approved in this document is not an aspect of the Oklahoma permanent program which relates to air or water quality standards promulgated under the authority of the Federal Clean Water Act, as amended (33 U.S.C. 1151–1175), and the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*).

Paperwork Reduction Act

There are no information collection requirements in 30 CFR 936.11 requiring approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3507.

Executive Order 12291

On August 28, 1981, OMB granted OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs, actions, or amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

Regulatory Flexibility Act

The Department of the Interior has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this rule will not have a significant economic effect on a substantial number of small entities as the rule is essentially a timing change with no direct or indirect impact on small entities.

National Environmental Policy Act

The Secretary has determined that, pursuant to subsection 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on these rules.

List of Subjects in 30 CFR Part 936

Coal mining, Environmental protection, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 936 is hereby amended as set forth herein.

Dated: August 18, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary for Energy and Minerals.

PART 936—OKLAHOMA

The authority for 30 CFR Part 936 is:

Authority: Sec. 503, Pub. L. 95–87, 91 Stat. 407 (30 U.S.C. 1253).

§ 936.11 [Amended]

Section 936.11 (a), (b), (c) and (d) are amended by substituting "May 15, 1983" for "May 15, 1982" each time the latter date appears.

[FR Doc. 82–23270 Filed 8–24–82; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 203

Treasury Tax and Loan Accounts; Implementation of Off Premises Custody Arrangements To Secure Certain Treasury Tax and Loan Funds During Specified Periods of Time

AGENCY: Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Fiscal Service is amending 31 CFR Part 203, entitled "Treasury Tax and Loan Depositaries," to increase the capacity of the Treasury Tax and Loan Account System to hold additional funds during periods of peak balances by permitting Treasury tax and loan depositaries to secure certain tax and loan funds—identified as special direct investments (SDI)—with collateral pledged under an "off premises collateral arrangement" (OPC). This final rule establishes the terms and conditions under which depositaries will be permitted to participate in the Special Direct Investment/Off Premises Collateral Arrangement (SDI/OPC). Participation is voluntary and is available to all depositaries satisfying eligibility requirements and other conditions established by the Treasury and the Federal Reserve Banks. A depositary wishing to participate in SDI/OPC must apply to the Federal Reserve Bank or Branch of its district for that purpose.

EFFECTIVE DATE: September 1, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. John A. Kilcoyne, Assistant Fiscal Secretary (Banking), Department of the Treasury, 15th & Pennsylvania Avenue NW., Room 2064, Washington, DC 20220, 202/566–2553.

A financial institution having questions regarding operating procedures for SDI/OPC may direct such questions to the Federal Reserve Bank or Branch of its district.

SUPPLEMENTARY INFORMATION: For a full understanding of the need for these changes, two basic facts about the Treasury tax and loan account system must by known: First, Treasury tax and loan depositaries are now required to

secure tax and loan balances in excess of the amount of recognized insurance coverages by pledges of collateral security. In order to perfect Treasury's security interest in collateral pledged by depositaries for this purpose, the collateral is transferred from the possession of the depositary to the custody of the Federal Reserve Bank or a third party custodian designated by the Federal Reserve Bank. Under the changes being effected by this interim rule, another arrangement—off premises collateral (OPC)—is being added to supplement the currently existing arrangements. Under OPC, the collateral will remain in the possession of the depositaries and secure certain tax and loan funds for periods of not to exceed 21 calendar days at a time.

Second, besides serving as the U.S. Government's primary collection mechanism for Federal taxes, a chief purpose of the Treasury Tax and Loan Account System is to facilitate the conduct of monetary policy. This is accomplished by buffering the sharp impact of Government financial operations on the distribution and level of bank reserves and on the money market. The peaks and valleys in the timing of money flows between the public and the Government can cause sharp changes in bank reserves as well as undesirable fluctuations in money market interest rates and the availability of loanable funds. Under normal circumstances the tax and loan accounts prevent these drastic swings. Under normal circumstances, the Treasury is able to draw down or build up the tax and loan balances with the depositaries so as to match the flow of funds into the Treasury's accounts at the Federal Reserve Banks with the flow of payments from those accounts. This minimizes the impact on bank reserves and the money market.

The Treasury Department's experience over the past four years however, has been such that there are certain times during the year when the amount of funds flowing into the tax and loan accounts is greater than the amount the depositaries can hold. The amount the depositaries can hold is limited by, among other things, the amount of collateral the depositaries have pledged under the current custodial methods just described. Consequently, when the capability of the tax and loan system to absorb additional inflows from the public is completely saturated, all of the excess funds flow directly, without any attenuation, into the Treasury's operating accounts at the Fed. This has a direct, uncontrolled impact on bank reserves, and impairs Treasury's ability to facilitate monetary policy.

The changes that are being made by this amendment which are predicated on the use of OPC are expected to correct this operational deficiency because more collateral will be made available to secure the tax and loan balances. While nine classes of collateral are now eligible to be pledged for TT&L purposes, due to local operating constraints at Federal Reserve Banks and considerations, all of the eligible collateral that is capable of securing tax and loan balances has not been pledged by depositaries. The OPC will apply to collateral of the classes listed at 203.15(d)(4) through (d)(8) which is eligible but has not been pledged and thereby expand the pool of available collateral.

A brief description of the SDI/OPC arrangement and its planned application is as follows:

Section 9–304(4) of the Uniform Commercial Code provides a private sector analogue for the OPC arrangements. Under that section a creditor (e.g., the Treasury through its agents, the FRB's) can obtain a perfected security interest in collateral for a 21-day period from the time the security interest in the collateral attaches (e.g., when a Special Direct Investment is credited to the depositary's account) without obtaining possession of it, provided that there is a written security agreement in effect and that the debtor has rights in the collateral.

Collateral pledged under an Off Premises Collateral Arrangement may only be used to secure tax and loan funds specifically made available to a depositary as "Special Direct Investments" (SDI). Special Direct Investments are a special form of direct investment which are made pursuant to 31 CFR § 203.9(c)(2). Tax and loan balances arising in any other fashion (i.e. by taxpayer payments to the depositary or regular direct investments) must still be secured under conventional pledging arrangments.

Special Direct Investments will be initiated by the Treasury when it forecasts that the aggregate tax and loan note account balance will exceed the amount of collateral that depositaries have pledged under conventional arrangements. It is expected that Special Direct Investments will be employed in conjunction with periods of peak flows. It is also expected that SDI's will be used at other times as well should the need arise. If a depositary wishes to participate in Special Direct Investments it should make application through its local Federal Reserve Bank.

The terms and conditions under which the SDI/OPC will be administered are described in detail in the "Instructions to TT&L Depositaries Relating to Special Direct Investments" which is available from the Federal Reserve Banks. In order to qualify for the SDI/OPC arrangement, a depositary must satisfy the following eligibility requirements:

A. The depositary must be a qualified Treasury Tax and Loan Depositary.

B. The depositary must currently be participating in the regular direct investment feature of the program.

C. The depositary must pledge collateral under the Off Premises Collateral Arrangement in a minimum amount of $2.5 million. Higher amounts are definitely encouraged. However, the amount of collateral pledged under an Off Premises Collateral Arrangement cannot exceed an amount equivalent to 10 percent of a depositary's total assets based upon information contained in that depositary's December call report or year-end balance sheet.

D. The depositary must be qualified to secure borrowings (advances) from the Federal Reserve Bank's discount window under the off premises procedures that the FRB of the District has established for that purpose.

E. The depositary must demonstrate a legitimate need to supplement, by the use of OPC, its pool of collateral eligible for TT&L purposes under conventional pledging arrangements. (A substitution of collateral under OPC for collateral under conventional arrangements will not be permitted.)

Because these revisions involve matters relating to public contracts, 31 CFR 203.6, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public comment, and delay in the effective date are inapplicable. Because these amendments are not a "rule," as that term is defined in the regulatory Flexibility Act (5 U.S.C. 601(2)), no regulatory flexibility analysis has been prepared. The Fiscal Assistant Secretary has determined that this is not a major rule for purposes of Executive Order 12291. Accordingly, no regulatory impact analysis has been prepared.

List of Subjects in 31 CFR Part 203

Banks, Banking, Taxes.

PART 203—TREASURY TAX AND LOAN DEPOSITARIES

Accordingly, 31 CFR Part 203 is amended by revising § 203.2, § 203.9(f), §203.15(a), and § 203.15(c) as follows:

1. By revising § 203.2 to read as follows:

§ 203.2 Definitions.

As used in this part:

(a) "Advices of credit" means those Treasury forms, which are supplied to tax and loan depositaries to be used in supporting credits to Treasury tax and loan accounts.

(b) "Business day" means any day on which the Federal Reserve Bank of the district is open to the public.

(c) "Election of Option form" means a document, preprinted and supplied by the Federal Reserve Bank of each district, on which a tax and loan depositary indicates the option under which it will administer its Treasury tax and loan account after the effective date of this part.

(d) "Federal funds rate" means the weekly Federal funds rate as published in the Federal Reserve Bulletin in Table A–27 entitled "Interest Rates, Money and Capital Markets".

(e) "Federal Reserve Bank of the district" means the Federal Reserve Bank which services the geographical area in which the tax and loan depositary is located. Tax and loan depositaries located in Puerto Rico, the Virgin Islands, and the Panama Canal Zone are included in the Second Federal Reserve District.

(f) "Federal tax deposit form" means a preinscribed form supplied to a taxpayer by the Treasury Department to accompany deposits of Federal taxes.

(g) "Federal taxes" means those Federal taxes specified by the Secretary of the Treasury or the Secretary's delegate as eligible for payment through the procedure prescribed in this part and Part 214.

(h) "Note Option" means that choice available to a tax and loan depositary under which funds debited to its Treasury tax and loan account are added by the Treasury to its investments in obligations of the depositary. The amount of such investments will be evidenced by an open-ended interest-bearing note maintained at the Federal Reserve Bank of the district.

(i) "Off Premises Collateral Arrangement" means a collateral custody arrangement established pursuant to § 203.15(c)(2) of this Part wherein a depositary is permitted to hold in its possession for the Federal Reserve Bank instruments enumerated at § 203.15(d)(4) through and including (d)(8) of this Part as collateral security for funds invested with the depositary as special direct investments.

(j) "Recognized Insurance Coverage" means the insurance provided by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Share Insurance Fund, and the insurance provided by insurance organizations specifically qualified by the Secretary of the Treasury pursuant to 31 CFR Part 226.

(k) "Remittance Option" means that choice available to a tax and loan depositary under which funds equivalent to the amount of deposits credited by the depositary to its Treasury tax and loan account will be withdrawn by the Federal Reserve Bank immediately upon receipt by the Federal Reserve Bank of the advices of credit supporting such deposits.

(l) "Reporting cycle" means the time period established for reporting and computation purposes. A reporting cycle begins on the first Thursday of each month and ends on the Wednesday preceding the first Thursday of the following month.

(m) "Reserve account" means that account every member of the Federal Reserve System maintains at the Federal Reserve Bank of its district for reserve purposes pursuant to 12 CFR Part 204.

(n) "Special depositary" means a depositary that had been designated under the provisions of 31 CFR Part 203 prior to the effective date of this revision. A depositary thereafter designated under this Part shall be known as a Treasury tax and loan depositary.

(o) "Special direct investment" means the type of addition to a Treasury tax and loan depositary's note account referred to in § 203.9(a) of this Part, where the addition is specifically identified as a "special direct investment" and is secured by instruments retained in the possession of the depositary pursuant to the terms of § 203.15(c)(2) of this Part.

2. In § 203.9, paragraph (f) is revised to read as follows:

§ 203.9 Note option.

* * * * *

(f) *Maximum Balance.* As of the date specified by each Federal Reserve Bank, each depositary selecting the Note Option may establish a maximum balance for its note account by providing notice to that effect in writing to the Federal Reserve Bank of the district. That portion of any advice of credit when posted at the Federal Reserve Bank which would cause the note balance to exceed the amount specified by the depositary will be automatically withdrawn by the Federal Reserve Bank. The maximum balance applies to that portion of the note account balance which is secured by collateral deposited in accordance with § 203.15(c)(1) with either Federal Reserve Banks or authorized third party custodians. Special direct investments, which are secured by collateral held by the depositary in accordance with § 203.15(c)(2) under off premises custody arrangements, shall not be considered in determining the amounts to be withdrawn automatically when a depositary's maximum balance is exceeded.

3. In § 203.15, by revising paragraphs (a) and (c) to read as follows:

§ 203.15 Collateral security requirements.

(a) *Note Option.* (1) Before crediting deposits to its Treasury tax and loan account, a Note Option depositary shall pledge collateral security in accordance with the requirements of paragraphs (c)(1), (d) and (e) of this section in an amount that is sufficient to cover the sum of 100 percent of the amount of the note balance and the closing balance in its Treasury tax and loan account which exceeds recognized insurance coverage, minus the amount of the note balance attributable to special direct investments.

(2) Before special direct investments are credited to a depositary's note account, a Note Option depositary shall pledge collateral security in accordance with the requirements of paragraphs (c)(2) and (e) of this section, and in accordance with the valuations of paragraphs (d)(4) through (d)(8) of this section, as applicable, to cover 100 percent of the amount of the special direct investments to be received.

* * * * *

(c) *Deposits of securities.* (1) Collateral security required under paragraphs (a)(1) and (b) of this section shall be deposited with the Federal Reserve Bank of the district, or with a custodian or custodians within the United States designated by the Federal Reserve Bank, under terms and conditions prescribed by the Federal Reserve Bank.

(2)(i) Collateral security required under paragraph (a)(2) of this section shall be pledged under a written security agreement on a form provided by the Federal Reserve Bank of the district. The collateral security pledged to satisfy the requirements of paragraph (a)(2) of this section may remain in the pledging depositary's possession and the fact that it has been pledged shall be evidenced by advices of custody to be incorporated by reference in the written security agreement. The written security agreement and all advices of custody covering collateral security pledged

under that agreement shall be provided by the depositary to the Federal Reserve Bank of the district. Collateral security pledged under the agreement shall not be substituted for or released without the advance written approval of the Federal Reserve Bank of the district, and any collateral security subject to the security agreement shall remain so subject until an approved substitution is made. No substitution or release shall be approved until an advice of custody containing the description required by the written security agreement is received by the Federal Reserve Bank of the district.

(2)(ii) Treasury's security interest in collateral security pledged by a depositary in accordance with subparagraph (i) of this paragraph to secure special direct investments is perfected without the Treasury's taking possession of the collateral security for a period of not to exceed 21 days from the day of receipt of the special direct investment.

* * * * *

Dated: August 20, 1982.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 82-23281 Filed 8-24-82; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 1-39

[DAC 76-32]

Defense Acquisition Regulation

AGENCY: Defense Department.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76-32. Some of the changes include certification of requests for adjustment or relief exceeding $100,000; calculation and application of capital employed for facilities under construction; cost of money as an element of the cost of capital assets under construction; use of facilities contracts; Appendix N update; and retention of price/cost analysis files.

EFFECTIVE DATE: December 18, 1981 (except as otherwise noted).

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, Room 3C257, Pentagon, Washington, D.C. 20301, Telephone (202) 697-7266..

SUPPLEMENTARY INFORMATION:

Background

The Defense Acquisition Regulation (DAR) is codified in Title 32, Parts 1-39, Volumes I, II and III, of the Code of Federal Regulations (CFR). The August 1, 1981 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1976 edition of the DAR made by Defense Acquisition Circulars 76-1 through 76-27.

The Department of Defense announced the promulgation of the 1979 CFR edition in the **Federal Register** of December 31, 1979 (44 FR 77148), and also announced at that time that subsequent amendments to the DAR would be published in the **Federal Register.**

Defense Acquisition Circular 76-32.

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76-32, issued December 18, 1981. The following is a summary of the amendments:

Certification of Requests for Adjustment or Relief Exceeding $100,000. DAR 1-342 is supplemented by the addition of a new subparagraph (d) to clarify when the dollar thresholds requiring certification are met. This clarification conforms the language of 1-342 to that of 1-314(L)(3).

Calculation and Application of Capital Employed for Facilities Under Construction. DAR 3-1301 is a new paragraph which sets forth guidelines for (i) the calculation of a contractor's investment in assets under construction; (ii) the cost of money rate(s) to be applied to these assets; and (iii) the capitalization and amortization of these costs. The effective date of this coverage is December 11, 1981.

Cost of Money as an Element of the Cost of Capital Assets Under Construction. DAR 15-205.50 is revised to recognize cost of money on capital assets under construction as an allowable cost. The effective date of this cost principle is December 11, 1981.

Use of Facilities Contracts. DAR 13-303(b)(i) has been revised to raise the threshold from $50,000 to $100,000, above which a single facilities contract is required for all facilities provided to a contractor.

Appendix N Update. Numerous changes to Appendix N are included in this DAC to update addresses of contracting activities. (Note: Appendix N has not been changed in its entirety.)

Retention of Price/Cost Analysis Files. DAR Supplement No. 2 (S2-504) is revised to establish a retention period for pricing review files containing documents related to reviews of contractor price proposals subject to certification of cost or pricing data. (Note: DAR Supplements are not included as part of the CFR.)

Because the Defense Acquisition Regulation concerns agency management, public property, and contracts, it is not necessary to issue proposed rules for public comment. Neither is it necessary to delay the effective date until 30 days after the date of publication of these rules, 5 U.S.C. 533 (a) and (d). The amendments became effective on December 18, 1981. (Note: DAR changes with respect to capital employed for facilities under construction and cost of money as an element of the cost of capital assets under construction are effective December 11, 1981.)

How to Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76-32. The number at the top of each page (for example, 1:77-B) identifies the page from the Regulation which is being replaced. The number at the botton of the page is a reference to the last appearing numbered paragraph on that page, or if none shows, on a preceding page. The vertical line in the right margin indicates where the amendment is located.

List of Subjects in 32 CFR Parts 1-39

Government procurement.

Adoption of Amendments

Therefore, the Defense Acquisition Regulation contained in the July 1, 1979 edition of 32 CFR Parts 1-39, Volumes I, II, and III, as supplemented on July 1, 1980, is amended in the DAR paragraphs indicated by substitution of the replacement pages listed in the table:

DAR paragraph	Replacement pages
Volume I	
1-342(d)	1:77-B.
Section III, Part 13 (Title)	3:190.
3-1300 (Title)	3:190.
3-1301 (add)	3:193.
3-1301.1 (add)	3:193.
3-1301.2 (add)	3:193, 3:193-A.
3-1301.3 (add)	3:193-B.
3-1301.4 (add)	3:193-B.
3-1301.5 (add)	3:193-C.
3-1301.6 (add)	3:193-C.

DAR paragraph	Replacement pages
Volume II	
13-303	13:10.
15-205.50	15:52, 15:52-A.
Volume III	
Appendix N	N:1, N:14, N:30, N:31, N:34, N:38, N:39, N:44, N:46, N:47, N:50, N:53 through N:61, N:82 through N:88, N:90 through N:93, N:95, N:96, N:99, N:100, N:102, N:104 through N:116.

(Change to DAR Supplement No. 2—not in CFR: S2-504—Page S2-22).

Dated: August 19, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

BILLING CODE 3810-01-M

ment from interim to final contract cost of money. However, estimated or target cost will not be adjusted.

3–1300.7 *Administrative Procedures.*

(a) Contractor submission of Forms CASB-CMF will normally be initiated under the same circumstances as Forward Pricing Rate Agreements (see 3–807.8), and evaluated as complementary documents and procedures. Separate Forms are required for each prospective cost accounting period during which Government contract performance is anticipated. If the contractor does not annually negotiate FPRA's, submissions may nevertheless be made annually *or* with individual contract pricing proposals, as agreed to by the contractor and the cognizant ACO. The cognizant ACO shall, with the assistance of the cognizant auditor, evaluate the cost of money factors, and retain approved factors with other negotiated forward pricing data and rates.

(b) When a contracting officer uses the Weighted Guidelines method of determining a profit objective under the criteria of 3–808.2, he will complete a DD Form 1861 "Contract Facilities Capital and Cost of Money" after evaluating the contractor's cost proposal and determining this pre-negotiation cost objective, but before completing a DD Form 1547 "Weighted Guidelines Profit/Fee Objective". When available, a computer generated form is acceptable, provided all essential elements of data are included and identified as DD Form 1861 data. At his option, a PCO may request the cognizant ACO to complete the DD Form 1861 in connection with normal field pricing support under 3–801.5, and include it in his field pricing report with appropriate evaluation comments and recommendations.

(c) A final Form CASB-CMF must be submitted by the contractor under CAS 414 as soon after the end of each cost accounting period as possible, for the purpose of final cost determinations and/or repricing. The submission should accompany the contractor's proposal for actual overhead costs and rates, and be evaluated as complementary documents and procedures.

3–1301 Facilities Capital Employed for Facilities Under Construction.

3–1301.1 *Policy.* It is the policy of the Department of Defense to recognize a contractor's investment in capital facilities while these are being constructed, fabricated, or developed for the contractor's own use. This recognition is made through the allowance of an imputed cost of money amount which is (i) calculated in accordance with 3–1301.3 below, (ii) capitalized along with the other costs of the asset for which the investment is made, and (iii) allocated to Department of Defense contracts in accordance with 3–1301.4.

3–1301.2 *Definitions.* The following definitions have been taken or developed from Cost Accounting Standard (CAS) 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction, which has been incorporated in DAR Appendix O.

(a) *Intangible Capital Asset.* An asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefit it yields.

and reasonable. The ACO will then consider the contractor's position and shall within sixty days either modify his original position or issue a decision in writing under the Disputes clause of the contract. When elements of indirect cost are involved, such decision will be rendered by the contacting officer with authority for final overhead settlement (*see 3–700*).

(c) As a minimum the Notice of Intent to Dissallow or Not Recognize Costs should contain the following information:

(i) contractor identification;
(ii) contract(s) affected;
(iii) description of cost exception(s);
(iv) estimated dollar value by item;
(v) reason(s) for the exception;
(vi) applicable time period(s) involved;
(vii) potential impact on billing rates and FPRAs;
(viii) effective date of notice;
(ix) provision for acknowledgment of receipt;
(x) date when formal reply must be received; and
(xi) recipients of copies of notice.

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1-342 Certification of Requests for Adjustment or Relief Exceeding $100,000.

(a) Section 813 of the 1979 Department of Defense Appropriation Authorization Act, Public Law 95-485, requires the certification of contract claims, requests for equitable adjustment to contract terms, requests for relief under Public Law 85-804, and similar requests exceeding $100,000. This certification must be signed by a senior company official in charge at the plant or location involved. Although the law only requires submission of the certification with requests exceeding $100,000, even if the requirement is not set forth in the contract, the clause contained in 7-104.102 shall be inserted in all contracts expected to exceed $100,000 in value.

(b) Submission of the Section 813 certification is required in addition to any certification required by the Truth in Negotiations Act and by 3-807.

(c) Section 6(c) of the Contract Disputes Act, Public Law 95-563, also requires the certification of claims. The Section 813 certification described above is due when the claim or request for relief is first asserted to the Government. However, the certification under the Contract Disputes Act is due only after a dispute has come into being and the contractor submits a written claim for the purpose of obtaining a contracting officer's decision. A single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, can be used to comply with both statutes in those situations where the first assertion of a claim or request for relief coincides with the inception of a contract dispute.

(d) In determining when the dollar thresholds requiring a Section 813 certification described above are met, the aggregate amount of both the increased and decreased costs shall be used. (See examples at 3-807.3(b)(ii).)

Part 4—Procurement Responsibility and Authority

1-400 Scope of Part. This Part deals with the procurement responsibility and authority of (i) the Head of a Procuring Activity, (ii) purchasing offices, (iii) contract administration offices, and (iv) contracting officers, and with the appointment of contracting officers. This Part also imposes limitations upon the authority to enter into and administer contracts. For the purpose of this Part, the term "contracting officer" does not include authorized representatives of the contracting officer.

1-401 Responsibility of Each Procuring Activity. Except as otherwise prescribed by procedures of each respective Department, the Head of a Procuring Activity is responsible for the procurement of supplies and services under or assigned to the procurement cognizance of his activity.

1-402 Authority of Contracting Officers. Contracting officers at purchasing offices (see 1-201.24) are authorized to enter into contracts for supplies or services on behalf of the Government, and in the name of the United States of America, by formal advertising, by negotiation, or by coordinated or interdepartmental procurement; and when authorized by 20-703 to administer such contracts, in accordance with this Regulation. This authority is subject to the requirements prescribed in 1-403 and 1-404 and any further limitations, consistent with this Regulation, imposed by the appointing authority. Contracting officers at contract administration offices (see 1-201.25) are, except as provided in 20-703.3, authorized to perform the applicable contract administration functions (see 1-406) and to perform additional procurement functions when delegated by the purchasing office.

1-403 Requirements To Be Met Before Entering Into Contracts. No contract shall be entered into unless all applicable requirements of law and of this Regulation, and all other applicable procedures, including business clearance and approval, have been met.

1-404 Special Requirements To Be Met Before Entering Into Negotiated Contracts. In addition to the requirements in 1-403, no negotiated contract shall be entered into until the determinations and findings required by Section III, Parts 3 and 4, with respect to the circumstances justifying negotiation and with respect to any use of a special method of contracting have been made.

1-405 Selection, Appointment, and Termination of Appointment of Contracting Officers. The selection, appointment, and termination of appointment of contracting officers shall be made only by the Secretary of the Department, the Head of a Procuring Activity, or their designees.

1-405.1 *Selection.*

(a) *Considerations.* In selecting contracting officers, the appointing authority shall consider experience, training, education, business acumen, judgment, character, reputation, and ethics.

(b) *Evaluation of Experience, Training, and Education.* In considering experience, training, and education, the following shall be evaluated:

(i) experience in a Government procurement office, commercial procurement, or related fields;

(ii) formal education or special training in business administration, law, accounting, or related fields;

(c) Receipt of Cost Impact Proposal. Upon receipt of an acceptable proposal from the contractor, the ACO shall promptly analyze the proposal with the assistance of the auditor for purposes of determining whether or not the proposed change will result in increased costs being paid by the United States. In considering the proposed adjustments to subcontracts containing the Cost Accounting Standards clause for the purposes of determining whether increased cost to the United States will result from the change, the ACO shall not consider the effect of the proposed adjustments upon the prime contracts and subcontracts under which the subcontracts were entered into. If the ACO determines that the proposed adjustments will not result in an increase in the aggregate cost to be paid under the contracts and subcontracts, containing the Cost Accounting Standards clause, he shall promptly negotiate the contract price adjustments pursuant to 3-1207. If the ACO determines that the proposed adjustments will result in an increase in the aggregate cost to be paid under the contracts and subcontracts containing the Cost Accounting Standards clause, he shall so notify the contractor and advise him that the proposed change will not be recognized unless an agreement can be reached which will prevent an increase in the aggregate cost to be paid under such contracts and subcontracts. Contracts and subcontracts which contain paragraph (a)(4)(C) of the Cost Accounting Standards clause or paragraph (a)(5) of the Disclosure and Consistency of Cost Accounting Practices clause provide for equitable adjustment for changes if the contracting officer determines that the change is desirable and not detrimental to the interests of the Government (see 3-1207(a)). When the ACO makes such a determination, he shall notify the contractor and the parties will negotiate an equitable adjustment.

(d) *Failure to Submit Cost Impact Proposal or Reach Agreement Concerning Cost Impact.*

(1) If the contractor does not submit a proposal in the form and time specified or if the parties fail to agree concerning the cost impact, the ACO, with the assistance of the auditor, shall estimate the cost impact on contracts and subcontracts containing the *Cost Accounting Standards* clause.

(2) Upon completion of the estimate indicating the effect on contract costs, the ACO shall request agreement from the contractor as to the cost or price adjustment. The contractor shall also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, action may be taken in accordance with the *Disputes* clause of the contract. If the ACO issues a unilateral determination under the *Disputes* clause, he shall consider appropriate action to protect the interests of the Government, with respect to the amount demanded from the contractor, pursuant to Appendix E, Part 6.

Part 13—Facilities Capital Employed for Facilities in Use or Under Construction

3-1300 Facilities Capital Employed for Facilities in Use.

3-1300.1 *Policy.*

(a) It is the policy of the Department of Defense to recognize facilities capital employed as an element in establishing the price of certain negotiated defense contracts when such contracts are priced on the basis of cost analysis. The inclusion of this recognition is intended to reward contractor investments, motivate increased productivity and reduced costs through the use of modern manufacturing technology, and to generate other efficiencies in the performance of defense contracts. The recognition of contractor investments in the development of the profit objective will result in a profit objective based on a combination of effort, risk, and investment factors.

(b) Separate recognition shall be given to the cost of capital and the special risk associated with the facilities capital employed for defense contract purposes.

(1) The risk aspect of facilities capital employed shall be recognized as a part of profit when the profit objective is established in accordance with the guidelines set forth in 3-808. (See especially 3-808.7).

(2) Cost of money for facilities capital will be recognized as an allowable cost in those negotiated defense contracts priced on the basis of cost analysis. (See 15-205.50).

(c) *Applicability.* This policy shall apply to contracts awarded on or after 1 October 1976. This policy shall apply to modifications to contracts awarded prior to 1 October 1976, *provided* the contractor will estimate, accumulate and report the cost of the modification without incurring unreasonable administrative expense, and contract terms and conditions are amended to make 15-205.50 applicable to the modification. This policy and the above requirement shall apply to any tier subcontract or modifications thereto, upon the subcontractor's request, *provided* the prime contract or modification thereto was eligible as of the date of award for facilities capital cost of money in accordance with 15-205.50.

3-1300.2 *Definitions, Measurement and Allocation.* Cost Accounting Standard (CAS) No. 414, "Cost of Money as an Element of the Cost of Facilities Capital," incorporated in ASPR Appendix O, establishes criteria for the measurement and allocation of the cost of capital committed to facilities, as an element of contract cost for historical cost determination purposes. Important features of the CAS are its definitions, techniques for application, and a prescribed Form CASB-CMF with instructions. This Part adopts the techniques of CAS 414 as the approved method of measurement and allocation of facilities cost of money to overhead pools at the business unit level, and adds only such supplementary procedures as are necessary to extend those techniques to contract forward pricing and administration purposes. Therefore, these procedures are intended to be completely compatible with, and an extension of, the definitions, criteria and techniques of CAS 414. Contractors who computerize their financial data are encouraged to meet the requirements of both CAS 414 and this Part from the same data bank and programs.

3-1300.3 *Estimating Business Unit Facilities Capital and Cost of Money.* The method of estimating the business unit facilities capital and cost of money utilizes

ment from interim to final contract cost of money. However, estimated or target cost will not be adjusted.

3-1300.7 *Administrative Procedures.*

(a) Contractor submission of Forms CASB-CMF will normally be initiated under the same circumstances as Forward Pricing Rate Agreements (see 3-807.8), and evaluated as complementary documents and procedures. Separate Forms are required for each prospective cost accounting period during which Government contract performance is anticipated. If the contractor does not annually negotiate FPRA's, submissions may nevertheless be made annually *or* with individual contract pricing proposals, as agreed to by the contractor and the cognizant ACO. The cognizant ACO shall, with the assistance of the cognizant auditor, evaluate the cost of money factors, and retain approved factors with other negotiated forward pricing data and rates.

(b) When a contracting officer uses the Weighted Guidelines method of determining a profit objective under the criteria of 3-808.2, he will complete a DD Form 1861 "Contract Facilities Capital and Cost of Money" after evaluating the contractor's cost proposal and determining this pre-negotiation cost objective, but before completing a DD Form 1547 "Weighted Guidelines Profit/Fee Objective". When available, a computer generated form is acceptable, provided all essential elements of data are included and identified as DD Form 1861 data. At his option, a PCO may request the cognizant ACO to complete the DD Form 1861 in connection with normal field pricing support under 3-801.5, and include it in his field pricing report with appropriate evaluation comments and recommendations.

(c) A final Form CASB-CMF must be submitted by the contractor under CAS 414 as soon after the end of each cost accounting period as possible, for the purpose of final cost determinations and/or repricing. The submission should accompany the contractor's proposal for actual overhead costs and rates, and be evaluated as complementary documents and procedures.

3-1301 Facilities Capital Employed for Facilities Under Construction.

3-1301.1 *Policy.* It is the policy of the Department of Defense to recognize a contractor's investment in capital facilities while these are being constructed, fabricated, or developed for the contractor's own use. This recognition is made through the allowance of an imputed cost of money amount which is (i) calculated in accordance with 3-1301.3 below, (ii) capitalized along with the other costs of the asset for which the investment is made, and (iii) allocated to Department of Defense contracts in accordance with 3-1301.4.

3-1301.2 *Definitions.* The following definitions have been taken or developed from Cost Accounting Standard (CAS) 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction, which has been incorporated in DAR Appendix O.

(a) *Intangible Capital Asset.* An asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefit it yields.

(b) *Tangible Capital Asset.* An asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the service it yields.

(c) *Cost of Money Rate.* The cost of money rate is either the interest rate determined by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat 97), or the time-weighted average of such rates for each cost accounting period during which the asset is being constructed, fabricated, or developed. The time-weighted average interest rate is calculated by multiplying the various rates in effect during the months of construction by the number of months each rate was in effect. The sum of the products is divided by the total number of months in which the rates were experienced.

(d) *Representative Investment.* The representative investment is the calculated amount considered invested by the contractor in the project to construct, fabricate, or develop the asset during the cost accounting period. In calculating the representative investment, consideration must be given to the rate or expenditure pattern of the investment, i.e., if most of the investment was at the end of the cost accounting period, the representative investment calculation must reflect this fact.

(1) If the contractor experiences an irregular or uneven expenditure pattern in the construction, fabrication, or development of a capital asset, i.e., a majority of the construction costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor must either:

(i) determine a representative investment amount for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

(ii) treat month-end balances as individual representative investment amounts.

(2) If the construction, fabrication, or development costs were incurred in a fairly uniform expenditure pattern throughout the construction period, the contractor may:

(i) determine a representative investment amount for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period; or

(ii) treat month-end balances as individual representative investment amounts.

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3-1301.3 *Measurement.*

(a) The imputed cost of money for an asset under construction, fabrication, or development is calculated by applying a cost of money rate (see 3-1301.2(c)), to the representative investment amount (see 3-1301.2(d)).

(1) When a representative investment amount is determined for a cost accounting period in accordance with 3-1301.2(d)(1)(i) or 3-1301.2(d)(2)(i), the cost of money rate used shall be the time-weighted average rate.

(2) When a monthly representative investment amount (see 3-1301.2(d)(1)(ii) or 3-1301.2(d)(2)(ii)) is used, the cost of money rate shall be the rate in effect each month. (Note: Under this method, the cost of money calculation is made monthly and the total for the cost accounting period is the sum of the monthly calculations.)

(b) The method chosen by a contractor for determining the representative investment amount may be different for each capital asset being constructed, fabricated, or developed as long as the method fits the expenditure pattern of the construction costs incurred.

(c) The imputed cost of money will be capitalized only once in any cost accounting period; either at the end of the period or at the end of the construction period, whichever comes first.

(d) When the construction of an asset takes more than one cost accounting period, the cost of money capitalized for the first cost accounting period will be included in determining the representative investment amount for any future cost accounting periods.

3-1301.4 *Composition and Allocation of Costs.*

(a) The cost of money for a tangible capital asset determined in accordance with 3-1301.2 and 3-1301.3 shall be capitalized along with the other construction, fabrication, or development cost of that asset for purposes of depreciation pursuant to 15-205.9.

(b) The cost of money for an intangible capital asset determined in accordance with 3-1301.2 and 3-1301.3 shall be capitalized along with other construction, fabrication, or development costs of that asset and amortized over appropriate cost accounting periods.

(c) Where CAS 414 cost of money is allocated to construction, fabrication, or development effort in accordance with 3-1300, it will be recognized and considered an element of total construction costs and be included in all calculations of the asset's representative investment amount.

3-1301.5 *Limitations.* If substantially all activities necessary to get an asset ready for its intended use are discontinued, cost of money shall not be capitalized for the period of discontinuance, except when such discontinuance arises out of causes beyond the control and without the fault or negligence of the contractor.

3-1301.6 *Preaward Capital Employed Application.* An offset to the profit objectives as set forth in 3-808.7 is not required for CAS 417 cost of money.

Part 14—Indirect Cost Monitoring Office

3-1400 Scope of Part. This Part deals with the organization and function of the Indirect Cost Monitoring Office (ICMO) and its role in the DoD procurement process.

3-1401 General. The Indirect Cost Monitoring Office (ICMO), under the direction of the Director, Contracts and Systems Acquisition, Office of the Under Secretary of Defense, Research and Engineering, is responsible for assuring uniform application of contracting policies and consistent treatment of cost allowability including research and development/bid and proposal (IR&D/B&P) costs, and for promoting timely and equitable settlement of overhead and advance agreements for IR&D/B&P costs. The function of the ICMO will include:

(i) maintaining a data bank concerning Section XV cost principles;

(ii) maintaining a liaison with DCAA to achieve maximum consistency between negotiation decisions and audit decisions as to contracting officer determined and audit determined final overhead rates;

(iii) attending, after coordination with the Departments, selected negotiations of final overhead rates to act as an observer/advisor, as appropriate, and to identify problem areas requiring policy change;

(iv) monitoring the negotiation of advance agreements for IR&D/B&P in order to assure maximum uniformity and consistency, and maintaining an awareness of matters that may require policy change;

(v) recommending to the Director, Contracts and Systems Acquisition (C&SA), OUSD(R&E), policy changes as needed;

(vi) monitoring establishment of CACO's and the conduct of contracting officer determination assignments in accordance with established criteria. The responsibility and authority for establishing the positions and designation of the individual to perform the function remains with the cognizant Department;

(vii) maintaining a master list of contractor locations and responsible activities where final overhead rates are contracting officer determined and negotiated advance agreements for IR&D and B&P costs are required by Public Law 91-441;

(iii) the total plant and equipment investment cost to support a specific major system or subsystem (including ammunition-related project requests) will not exceed $25 million during the projected acquisition or maintenance effort. (Approval authority shall not be redelegated lower than the level of Assistant Secretary.)

Approval may be granted only when there is compliance with all provisions of this regulation and DoD Directive 4275.5 "Acquisition and Management of Industrial Resources."

(b) All projects which will exceed the above limitations will be submitted to the Under Secretary of Defense for Research and Engineering for approval.

(c) Facilities projects that involve real property transactions shall not be undertaken prior to reporting such transactions to the Committees on Armed Services of the House of Representatives and the Senate, as required by 10 U.S.C. 2662, and during the 30-day period prescribed therein. Further, Congress must be notified in advance of starting any construction regardless of cost. If not included in the annual budget, submission to all appropriate Congressional Committees will be made by using DD 1391 Forms. Such reporting shall be accomplished in accordance with Departmental procedures consistent with 1-108.

13-303 Use of Facilities Contracts.

(a) Except as provided in (b) below, facilities shall be provided by the Government to a contractor or subcontractor only under a facilities contract.

(b) Facilities may be provided to a contractor under a contract other than a facilities contract when:

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(i) the cumulative total acquisition cost (actual or estimated) of the facilities provided to the contractor at one plant or general location does not exceed $100,000;
(ii) the contract is for construction;
(iii) the contract is for the performance of work within an establishment or installation operated by the Government; or
(iv) the contract is for the performance of services involving the operation of a Government-owned plant or installation and the facilities provided are to be used only in connection with such contract, which shall, to the extent practicable, contain the clauses in Part 7 of Section VII.

When facilities are provided under a contract other than a facilities contract, the contract shall contain the appropriate Government Property clause, except where, pursuant to (iv) above, adequate contractual coverage is obtained through the use of clauses referenced in Part 7 of Section VII.

(c) Unless the contracting officer determines it to be impracticable, all facilities provided by a Procuring Activity for use by a contractor at any one plant or general location shall be governed by a single facilities contract.

(d) Special tooling and special test equipment will normally be provided to a contractor under a supply contract, but may be provided under a facilities contract when to do so is administratively desirable.

13–304 Furnishing Existing Government-owned Special Tooling.

(a) *General.* It is the policy of the Department of Defense that existing special tooling to which the Government has title, or the right to acquire title pursuant to the Special Tooling clause in 7–104.25, be offered to prospective contractors for use in performing Government contracts and subcontracts, if:

(i) to do so will not interfere with production or program schedules having a greater priority;
(ii) to do so is otherwise advantageous to the Government; and
(iii) its use would be authorized pursuant to 13–402 or 13–403 were it furnished.

(b) *Contract Provisions.* Special tooling shall be furnished pursuant to either the appropriate clause referenced in Part 7 of this Section or a facilities contract. In any case, the contract under which the special tooling is furnished shall contain a description thereof, and the terms and conditions applicable to its shipment to the plant of the contractor and to the cost of adapting and installing it.

13–305 Acquisition of Special Tooling.

13–305.1 *General.*

(a) *Policy.* It is the policy of the Department of Defense that contractors provide and retain title to special tooling required for the performance of defense contracts to the maximum extent consistent with sound procurement objectives. Government acquisition of title or the right to title in special tooling creates substantial administrative burden, encumbers the competitive procurement process and frequently results in the retention of special tooling without advantage commensurate with such burden. In certain instances, however, the acquisition of special tooling or rights thereto may help the Government obtain fair prices, recover the residual value of special tooling paid for by the Government, and increase

the duration of the function can be determined. Technological life may be used by the contractor if he can demonstrate that existing facilities must be replaced because of:

(i) specific program objectives or contract requirements which cannot be accomplished with the existing facilities;
(ii) cost reductions which will produce identifiable savings in production or overhead costs;
(iii) increase in workload volume which cannot be accomplished efficiently by modifying or augmenting existing facilities; or
(iv) consistent pattern of capacity operation (2 1/2–3 shifts) on existing facilities.

Technological advances per se will not justify replacement of existing facilities before the end of their physical life if such existing facilities will be able to satisfy future requirements or demands.

(2) In estimating the least cost to the Government for such useful life, the cumulative costs that would be allowed if the contractor owned the property should be compared with cumulative costs that would be allowed under any of the various types of leasing arrangements available. For the purposes of this comparison, the costs of ADPE exclude interest or other unallowable costs pursuant to Section XV, Part 2; they include but are not limited to the costs of operation, maintenance, insurance, depreciation, facilities capital cost of money, rental, and the cost of machine services, as applicable.

(d)(1) Except as provided in (3) below, the contractor's justification, under (b)(1) above, of his leasing decisions shall consist of but is not limited to the following supporting data, prepared prior to acquisition:

(i) analysis of utilization of existing ADPE;
(ii) application of the criteria in (b) above;
(iii) specific objectives or requirements, generally in the form of a data system study and data system specification;
(iv) solicitation of proposals from qualified sources based on the data system specification; and
(v) proposals received in response to the solicitation, and reasons for selection of the equipment chosen and for the decision to lease.

(2) Except as provided in (3) below, the contractor's annual justification, under (b)(2) above, of his decision to retain or change his existing ADPE capability and the need to continue leasing that capability shall consist of but is not limited to current data as specified in (i) through (iii) above.

(3) When a contractor's prospective ADPE lease cost equals or exceeds the thresholds specified in 15–205.48(b)(2)(iii), data in support of the initial decision to lease, under (b)(1) above, shall be furnished in accordance with 3–1100.3. If the total cost of leasing ADPE in a single plant, division, or cost center exceeds $500,000 per year, and 50% or more of the total leasing cost is allocated to Government contracts requiring the negotiation or determination of costs, data in support of the annual justification, under (b)(2) above, for retention or change of existing ADPE capability and the need to continue leasing that capability shall also be furnished in accordance with 3–1100.3.

15-205.49 *Deferred Research and Development Costs* (CWAS-NA). As used herein, research and development refers to the type of technical effort which is described in 15-205.35(a) but which is sponsored by, or required in performance of, a contract or grant. Research and development costs (including amounts capitalized) which were incurred prior to the award of a particular contract are unallowable except when allowable as precontract costs (see 15-205.30). In addition, when costs are incurred in excess of either the price of a contract or amount of a grant for research and development effort, such excess may not be allocated as a cost to any other Government contract (see 15-205.19).

15-205.50 *Cost of Money* (CWAS-NA).

(a) *Facilities Capital Cost of Money*.

(1) Facilities capital cost of money (Cost of Capital Committed to Facilities) is an imputed cost determined by applying a cost of money rate to facilities capital employed in support of Defense contracts. A cost of money rate is derived from a common source and uniformly imputed to all contractors. Capital employed is determined without regard to its source as between equity or borrowed capital. The resulting cost of money is an imputed cost and is not a form of interest on borrowings as discussed in 15-205.17.

(2) Facilities capital cost of money is allowable cost *provided* (i) the contractor's capital investment is measured, allocated to contracts, and costed in accordance with 3-1300, and (ii) the contractor maintains adequate records to demonstrate compliance with item (i).

(3) Cost of money for facilities capital need not be entered on the company's books of account. However, a memorandum entry of the cost shall be made. All relevant schedules, cost data and other data necessary to fully support the entry shall be maintained in a manner to permit audit and verification.

(4) Cost of money which is calculated, allocated and documented in accordance with these regulations shall be deemed an "incurred cost" for cost reimbursement purposes pursuant to the payment provisions of applicable cost type contracts. See E-509.5 re: applicability of cost of money for progress payment purposes under fixed-price contracts.

(b) *Cost of Money as an Element of the Cost of Capital Assets Under Construction.*

(1) Cost of money as an element of the cost of capital assets under construction is an imputed cost determined by applying a cost of money rate to the investment in tangible and intangible capital assets while they are being constructed, fabricated, or developed for a contractor's own use. The source of the investment for capital assets being constructed, whether equity or borrowed capital, is not considered in this cost of money determination.

(2) Cost of money computed on representative investments prior to the contractor's first fiscal year subsequent to December 15, 1980 is not allowable. Cost of money may be capitalized on assets under construction beginning with the contractor's first fiscal year after December 15, 1980. However, amortization of such costs shall first be allowable for

full CAS covered contracts on the same date that CAS 417 becomes applicable. For non-CAS covered contracts or modified CAS covered contracts, the cost of money will first be allowable for new awards made on or after the effective date of this cost principle change. Whether or not the contract is otherwise subject to the cost accounting standards, and except as specified in paragraph 3 (below), the cost of money for capital assets under construction, fabrication, or development is allowable only when:

(i) the cost of money is calculated, allocated to contracts, and costed in accordance with 3-1301;

(ii) the contractor maintains adequate records to demonstrate compliance with (i) above;

(iii) the cost of money for tangible capital assets is included in the capitalized cost which provides the basis for allowable depreciation costs, or in the case of intangible capital assets, the cost of money is included in the cost of those assets for which amortization costs are allowable.

(3) Actual interest cost in lieu of the calculated imputed cost of money for capital assets under construction, fabrication, or development is unallowable.

(4) The cost of money for capital assets under construction need not be entered on the contractor's books of account. However, the contractor shall (i) make a memorandum entry of the cost and (ii) maintain, in a manner that permits audit and verification, all relevant schedules, cost data, and other data necessary to support the entry.

(5) Cost of money that is allowable under subparagraph (b) of this cost principle shall be an "incurred cost" for reimbursement purposes under applicable cost reimbursement contracts and for progress payment purposes under fixed-price contracts. (See E-509.5.)

15-205.51 *Lobbying Costs.*

(a) For the purpose of this section, lobbying is defined as any activity or communication which is intended or designed to directly influence or to engage in any campaign to encourage others to influence members of the Congress, their staffs, or the staffs of committees of the Congress to favor or oppose legislation, appropriations or other actions of the Congress, its members, or its committees, for the procurement of specific supplies or services by the federal government. Except as provided in (c) below, lobbying activity includes, but is not limited to, all

forms of communications by the contractor, its employees, or its agents with the Congress, its members, and staffs of members and committees for the above-mentioned purpose.

(b) The costs of lobbying as defined herein, including the applicable portion of the salaries of the contractor's employees and the fees of individuals or firms engaged in lobbying, on behalf of the contractor (whether or not the individuals or firms are registered as lobbyists under any applicable law) are unallowable. In addition, the directly associated costs (see 15-201.6) of lobbying are unallowable.

(c) Legislative liaison activities, such as attendance at committee hearings, gathering information regarding pending legislation, analysis of the effect of pending legislation, and the like are not lobbying and are allowable. In addition, communications that would be considered lobbying in accordance with (a) above shall be allowable if they are performed after receipt of an invitation or request from a congressional or executive branch source.

15-206 Notice of Intent to Disallow or Not Recognize Costs.

(a) *Purpose.* The clause entitled "*Notice of Intent to Disallow or Not Recognize Costs*" is a required clause for all cost-type contracts and fixed-price incentive contracts and contracts providing for price redetermination (*see 7-203.35*). A Notice of Intent to Disallow or Not Recognize Costs provides the basis under a contract for the contractor to appeal, prior to final settlement of costs of the contract, a determination of exception to costs either incurred or to be incurred. It thereby provides a vehicle for disputes to be settled in a more timely fashion.

(b) At any time during the performance of the contract, the cognizant contracting officer may issue a Notice of Intent to Disallow or Not Recognize Costs stating his intent to take exception to specific costs or portions thereof, under the contract. Usually, the decision to issue a Notice of Intent to Disallow or Not Recognize Costs results from activities performed through monitorship of contractors' cost (*see Section XX, Part 10*), or on advice of auditors or technical personnel. Also, the decision to issue a Notice of Intent to Disallow or Not Recognize Costs shall only be made after discussion between the contracting officer and the contractor. The notice should be specific as to the type of cost to which exception is taken, the amount of such exception (if applicable), reasons for exception, applicable time period of the exception, and should reference the Notice of Intent to Disallow or Not Recognize Costs clause of the contract. When such notification involves elements of indirect costs, the approval of the contracting officer haveing authority for final settlement of overhead shall be obtained prior to issuance of of the notice except that a Corporate Administrative Contracting Officer (CACO) need not obtain the approval of local cognizant ACOs for items of corporate exepnse. When the Notice of Intent to Disallow Not Recognize Costs is issued, the originating contracting officer (CACO or ACO) will distribute information copies to all administrative contracting officers cognizant of that corporation. The notice will allow the contractor sixty days in which to contest the exception in writing and provide justification why the proposed expediture is justifiable

and reasonable. The ACO will then consider the contractor's position and shall within sixty days either modify his original position or issue a decision in writing under the Disputes clause of the contract. When elements of indirect cost are involved, such decision will be rendered by the contacting officer with authority for final overhead settlement (*see 3-700*).

(c) As a minimum the Notice of Intent to Dissallow or Not Recognize Costs should contain the following information:

(i) contractor identification;
(ii) contract(s) affected;
(iii) description of cost exception(s);
(iv) estimated dollar value by item;
(v) reason(s) for the exception;
(vi) applicable time period(s) involved;
(vii) potential impact on billing rates and FPRAs;
(viii) effective date of notice;
(ix) provision for acknowledgment of receipt;
(x) date when formal reply must be received; and
(xi) recipients of copies of notice.

APPENDIX N — ACTIVITY ADDRESS NUMBERS

Activity Address Numbers are for use in conjunction with the Uniform Procurement Instrument Identification Numbering System as prescribed in section XX, part 2. The six-digit number is used in the first six positions of the Procurement Instrument Identification Number (PIIN). The two-digit number is used in the first two positions of the Call / Order Serial Number.

For further information, see section XX, part 2.

Activities numbering procurement instruments shall use only those unique and significant numbers assigned by their respective Department / Agency Activity Address Monitor(s). When required, activities shall also be assigned a two-digit number. (Newly assigned numbers will be listed in future revisions to appendix N.) Activity Address Monitors are as follows:

Army

HQDA (JDHQ-SV-W)
Chief, Procurement Statistics Division
Washington, D.C. 20310

Navy

Navy Accounting and Finance Center
(NAFC-3113)
Washington, D.C. 20390
(Six-digit Unit Identification Number only)

Air Force

Hq USAF (RDCL)
Directorate, Contracting and Manufacturing Policy
Washington, D.C. 20330

Defense Logistics Agency

Chief, Policy Branch (DLA-PPR)
Procurement Division
Defense Logistics Agency
Cameron Station
Alexandria, Virginia 22314

(See footnote on following page)

APPENDIX N — ACTIVITY ADDRESS NUMBERS

Marine Corps

Commandant, U.S. Marine Corps (CHS-2)
Washington, D.C. 20380
(Six-digit Unit Identification Number only)

Defense Civil Preparedness Agency

Staff Director, Procurement
Services Division
Defense Civil Preparedness Agency
Washington, D.C. 20301

Defense Mapping Agency

Staff Director for Logistics
Defense Mapping Agency
Washington, D.C. 20305

Defense Nuclear Agency

Chief, Contract Division
Defense Nuclear Agency
Washington, D.C. 20305

Defense Communications Agency

Chief, Logistics Management Office
Code 202
Defense Communications Agency
Washington, D.C. 20305

*The Navy and Marine Corps Activity Address Monitor for assignment of two-digit "alpha-numeric call / serial numbers" is:
Chief, Naval Material Command
(MAT 08C12)
Washington, D.C. 20360

ARMED SERVICES PROCUREMENT REGULATION

APPENDIX N — ACTIVITY ADDRESS NUMBERS

DACA58	USA Engineer Division, North Pacific
DACW58	210 Custom House
DU	Portland, OR 97209
DACA59	USA Engineer District, Pittsburgh
DACW59	Federal Building, 1000 Liberty Avenue
DV	Pittsburgh, PA 15222
DACA60	USA Engineer District, Charleston
DACW60	PO Box 905
DW	Charleston, SC 29402
DACA61	USA Engineer District, Philadelphia
DACW61	Custom House, 2nd & Chestnut Streets
CF	Philadelphia, PA 19106
DACA62	USA Engineer District, Nashville
DACW62	PO Box 1070
DX	Nashville, TN 37202
DACA63	USA Engineer District, Fort Worth
DACW63	PO Box 17300
DY	Forth Worth, TX 76102
DACA64	USA Engineer District, Galveston
DACW64	PO Box 1229
DZ	Galveston, TX 77551
DACA65	USA Engineer District, Norfolk
DACW65	803 Front Street
EA	Norfolk, VA 23510
DACA66	USA Engineer District, Memphis
DACW66	668 Federal Office Building
EB	Memphis, TN 38103

APPENDIX N — ACTIVITY ADDRESS NUMBERS

DACA67	USA Engineer District, Seattle
DACW67	PO Box C-3755
EC	Seattle, WA 98124
DACA68	USA Engineer District, Walla Walla
DACW68	Building 602, City-County Airport
YW	Walla Walla, WA 99362
DACA69	USA Engineer District, Huntington
DACW69	502 Eighth Street
CG	Huntington, WV 25721
DACA70	USA Engineer Division, Southwestern
DACW70	Main Tower Building
YX	1114 Commerce Street Dallas, TX 75242
DACA72	USA Coastal Engineering Research Center
DACW72	Kingman Building
ZA	Fort Belvoir, VA 22060
DACA73	Office, Chief of Engineers (DAEN-ECP-C)
DACW73	Washington, DC 20314
CH	
DACA74	Rivers and Harbors, Board of Engineers
DACW74	TEMPO "C" Building
ZB	Second & O Streets, S.W. Washington, DC 20315
DACA75	USA Engineer Division, Middle East
DACW75	APO New York, NY 09038
ZC	
DACA76	USA Engineer Topographic Laboratories
DACW76	Fort Belvoir, VA 22060
ZD	

APPENDIX N — ACTIVITY ADDRESS NUMBERS

DEPARTMENT OF THE NAVY

N00011
7E
Navy Department Procurement Branch
Office of the Chief of Naval Operations
1300 Wilson Boulevard
Arlington, VA 22209

N00014
EE
Office of Naval Research
Arlington, VA 22217

N00019
EF
Naval Air Systems Command
Washington, DC 20361

N00023
Naval Supply Systems Command
Washington, DC 20376

N00024
EH
Naval Sea Systems Command
Washington, DC 20360

N00025
EJ
Naval Facilities Engineering Command
200 Stovall Street
Alexandria, Va. 22332

N00030
EK
Strategic System Project Office
Department of the Navy
Washington, DC 20376

N00033
EL
Commander, Military Sealift Command
Washington, DC 20390

N00034
EM
U.S. Navy Finance Center
Cleveland, OH 44114

N00039
NS
Naval Electronic Systems Command
Washington, DC 20360

APPENDIX N — ACTIVITY ADDRESS NUMBERS

N00062
8A
Chief of Naval Education and Training
Building 624, NAS
Pensacola, FL 32508

N00101
3R
U.S. Naval Air Station
South Weymouth, MA 02190

N00102
EN
Portsmouth Naval Shipyard
Portsmouth, NH 03801

N00104
EP
EQ
U.S. Navy Ships Parts Control Center
Mechanicsburg, PA 17055

N00109
F1
U.S. Naval Weapons Station
Yorktown, VA 23491

N00112
U.S. Naval Hospital
Chelsea, MA 02150

N00123
ES
Naval Regional Contracting Office
Long Beach, CA 90801

N00124
M5
Naval War College
Newport, RI 02840

N00127
H1
U.S. Naval Air Station
Quonset Point, RI 02819

N00128
EU
Supply Department
Naval Administrative Command
U.S. Naval Training Center
Great Lakes, IL 60088

N00129
EV
U.S. Naval Submarine Base, New London
Groton, CT 06340

ARMED SERVICES PROCUREMENT REGULATION

N00140 EX	Naval Regional Contracting Office Naval Base Bldg. No. 600 Philadelphia, PA 19112
N00146 QK	Marine Corps Air Station Cherry Point, NC 28533
N00148	U.S. Naval Air Station, New York c/o Naval Air Station Willow Grove, PA 19090
N00151 EY	Philadelphia Naval Shipyard Philadelphia, PA 19112
N00158 3V	U.S. Naval Air Station Willow Grove, PA 19090
N00161 FA	U.S. Naval Academy Annapolis, MD 21402
N00163 FB	U.S. Naval Avionics Center 21st and Arlington Avenue Indianapolis, IN 46218
N00164 FC	U.S. Naval Weapons Support Center Crane, IN 47522
N00166	U.S. Naval Air Facility Washington, DC 20390
N00167 FD	Naval Ship Research & Development Center Washington, DC 20007
N00168 FE	National Naval Medical Center Bethesda, MD 20014

N00171 N5	HQ, Naval District Washington Washington Navy Yard Washington, DC 20374
N00173 FF	U.S. Naval Research Laboratory Washington, DC 20390
N00174 FG	U.S. Naval Ordnance Station Indianhead, MD 20640
N00178 FH	U.S. Naval Weapons Laboratory Dahlgren, VA 22448
N00181 FJ	Norfolk Naval Shipyard Portsmouth, VA 23709
N00187	U.S. Naval Public Works Center Norfolk, VA 23511
N00188 H2	U.S. Naval Air Station Norfolk, VA 23511
N00189 FK	U.S. Naval Supply Center Norfolk, VA 23512
N00191 FL	Charleston Naval Shipyard, U.S. Naval Base Charleston, SC 29408
N00193	U.S. Naval Weapons Station Charleston, SC 29408
N00196 3K	U.S. Naval Air Station, Atlanta Marietta, GA 30060

APPENDIX N — ACTIVITY ADDRESS NUMBERS

N00197 FM	U.S. Naval Ordnance Station Louisville, KY 40214
N00200 H3	U.S. Naval Station Key West, FL 33040
N00203	U.S. Naval Aerospace Medical Center Pensacola, FL 32512
N00204 FN	U.S. Naval Air Station Pensacola, FL 32508
N00205 FP	Naval Support Activity New Orleans, LA 70140
N00206	U.S. Naval Air Station New Orleans, LA 70140
N00207 FQ	U.S. Naval Air Station Jacksonville, FL 32212
N00213 H4	U.S. Naval Air Station Key West, FL 33040
N00215 3W	U.S. Naval Air Station Dallas, TX 75211
N00216 FR	Supply Officer Building 10 Naval Air Station Corpus Christi, TX 78419
N00221 K5	Mare Island Naval Shipyard Vallejo, CA 94592

APPENDIX N — ACTIVITY ADDRESS NUMBERS

N00228 FU	U.S. Naval Supply Center Oakland, CA 94625
N00231	U.S. Naval Hospital Quantico, VA 22134
N00236 NX	U.S. Naval Air Station Alameda, CA 94501
N00244 NW	U.S. Naval Supply Center 937 North Harbor Drive San Diego, CA 92132
N00246 H5	U.S. Naval Air Station, North Island San Diego, CA 92135
N00247 HC	U.S. Naval Training Center San Diego, CA 92133
N00249	Procurement Management Division Seabee Systems Engineering Office Naval Construction Battalion Center Port Hueneme, CA 93041
N00250 FW	Navy Resale Systems Office 830 Third Avenue Brooklyn, NY 11232
N00251 FX	Puget Sound Naval Shipyard Bremerton, WA 98314
N00253 FY	U.S. Naval Torpedo Station Keyport, WA 98345
N00267	U.S. Naval Hospital Key West, FL 33040

N00651 H8	U.S. Naval Supply Depot, Subic Bay Box 33 FPO San Francisco, CA 96651
N00693	U.S. Naval Training Center Bainbridge, MD 21905
NOO743 8N	U.S. Naval Communication Station (Ponce, Puerto Rico) FPO New York 09554
N00788	U.S. Naval Communication Station Washington, DC 20390
NOO867 8P	U.S. Naval Communication Station (Fort Amador, Canal Zone) FPO Miami 34059
N00886 QB	U.S. Naval Communication Station San Francisco, Rough and Ready Island Stockton, CA 95203
NOO927 8E	U.S. Naval Communication Station (San Miguel, Luzon, Philippines) FPO San Francisco 96656
NOO950 8R	U.S. Naval Communication Area Master Station, EASTPAC Wahiawa, HI 96786
N0428A 3Q	U.S. Naval Air Station Patuxent River, MD 20670
N0429A 3A	U.S. Naval Air Station Point Mugu, CA 93042

N08939	U.S. Naval Mission to Venezuela, Caracas Department of State Washington, DC 20521
N09534	U.S. Naval Mission to Peru Box 31 APO New York, NY 09339
N09550 4G	U.S. Fleet Air Mediterranean FPO New York, NY 09521
N30776 4N	U.S. Naval Air Station Kingsville Auxiliary Landing Field Orange Grove Det. Orange, TX 77630
N30779 3Z	U.S. Naval Auxiliary Landing Field Goliad, TX 77963
N32525 8S	U.S. Naval Communication Detachment (Sigonella, Italy) FPO New York 09523
N32832 7K	Naval Air Technical Assistance Group Alverca, Portugal APO New York, NY 09285
N60002	U.S. Naval Hospital Memphis 74 Millington, TN 38054
N60028 QC	U.S. Naval Station, Treasure Island San Francisco, CA 94130

APPENDIX N — ACTIVITY ADDRESS NUMBERS

N60036 QD	U.S. Naval Weapons Station Concord, CA 94520
N60050 HD	Marine Corps Air Station El Toro Santa Ana, CA 92709
N60087 3P	U.S. Naval Air Station Brunswick, ME 04011
N60103 3L	U.S. Naval Air Station Glynco, GA 31520
N60191 4A	U.S. Naval Air Station, Oceana Virginia Beach, VA 23460
N60200 3G	U.S. Naval Air Station Cecil Field, FL 32215
N60201 L7	U.S. Naval Station Mayport, FL 32228
N60205 3B	U.S. Naval Air Station Imperial Beach, CA 92032
N60211 3D	U.S. Naval Auxiliary Landing Field Crows Landing, CA 95313
N60234 4R	U.S. Naval Air Station Soufley Field Pensacola, FL 32508
N60235 3H	U.S. Naval Air Station Ellyson Field Pensacola, FL 32509
N60241 3X	U.S. Naval Air Station Kingsville, TX 78363

APPENDIX N — ACTIVITY ADDRESS NUMBERS

N60258 GK	Long Beach Naval Shipyard Long Beach, CA 90801
N60259 H9	U.S. Naval Air Station Miramar, CA 92145
N60376 3Y	U.S. Naval Air Station, Chase Field Beeville, TX 78102
N60462	U.S. Naval Station, Adak FPO Seattle, WA 98791
N60478	U.S. Naval Weapons Station, Earle Colt's Neck, NJ 07722
N60495 3T	U.S. Naval Air Station Fallon, NV 89406
N60508 4Q	U.S. Naval Air Station Whiting Field Milton, FL 32570
N60514 GL	U.S. Naval Supply Depot, Guantanamo Bay Box 33 FPO New York, NY 09593
N60530 GM	U.S. Naval Weapons Center China Lake, CA 93555
N60656 GN	U.S. Navy Commissary Store, Naval Station Annapolis, MD 21402
N60663 GR	U.S. Navy Commissary Store, Naval Training Center Great Lakes, IL 60088

N61510 HU	U.S. Navy Commissary Store, Naval Station Guam, Box 179 FPO San Francisco, CA 96630
N61533 HW	Naval Ship Research and Development Laboratory Annapolis, MD 21402
N61602 HX	Morocco-U.S. Naval Training Command FPO New York, NY 09544
N61726 QL	Naval Submarine Medical Center Naval Submarine Base New London Groton, CT 06340
N61751	U.S. Naval Medical Research Unit No. 3, Cairo FPO New York, NY 09527
N61762 HY	U.S. Naval Ordnance Missile Test Facility White Sands Missile Range, NM 88002
N62021 7V	Naval Amphibious Base Coronado, CA 92155
N62161 HZ	U.S. Navy Commissary Store, Rough and Ready Island Stockton, CA 95203
N62199 JA	U.S. Navy Commissary Store, Naval Station Midway Island FPO San Francisco, CA 96614
N62245	U.S. Naval Medical Field Research Laboratory Camp Lejeune, NC 28542

N62254	U.S. Naval Air Facility, NAHA FPO Seattle, WA 98770
N62269 JC	U.S. Naval Air Development Center, Johnsville Warminster, PA 18974
N62271 QE	U.S. Naval Postgraduate School Monterey, CA 93940
N62376 4K	U.S. Naval Air Propulsion Center Trenton, NJ 08628
N62381 JG	Military Sealift Command, Atlantic 58th Street & First Avenue Brooklyn, NY 11250
N62382	Military Sealift Command, Gulf Subarea 4400 Dauphin Street New Orleans, LA 70146
N62383 JH	Military Sealift Command, Pacific Naval Supply Center Oakland, CA 94625
N62395	U.S. Naval Public Works Center, Guam FPO San Francisco, CA 96630
N62404 JJ	Military Sealift Command, Far East FPO Seattle, WA 98760
N62462	Naval Applied Science Laboratory Brooklyn, NY 11251

APPENDIX N — ACTIVITY ADDRESS NUMBERS

N62467
JM
Southern Division, Naval Facilities
Engineering Command
PO Box 10068
Charleston, SC 29411

N62470
JN
Atlantic Division, Naval Facilities
Engineering Command
Norfolk, VA 23511

N62471
N7
Officer in Charge of Construction, Naval
Facilities Engineering Command, Mid-Pacific
FPO San Francisco, CA 96610

N62472
JP
Northern Division, Naval Facilities
Engineering Command, U.S. Naval Base
Philadelphia, PA 19112

N62474
JR
Western Division, Naval Facilities
Engineering Command
San Bruno, CA 94066

N62477
JU
Chesapeake Division, Naval Facilities
Engineering Command
Washington Navy Yard
Washington, DC 20390

N62481
N8
U.S. Naval Station, Bermuda
FPO New York, NY 09560

N62507
U.S. Naval Air Station, Atsugi
FPO Seattle, WA 98767

N62510
U.S. Naval Correspondence Course Center
Scotia, NY 12302

APPENDIX N — ACTIVITY ADDRESS NUMBERS

N62522
JV
Military Sealift Command
Eastern Atlantic & Mediterranean
FPO New York, NY 09514

N62535
HE
Marine Corps Air Station (HELO)
Tustin, CA 92710

N62537
Military Sealift Command, Mediterranean Subarea
Box 357
FPO New York, NY 09521

N62566
3F
U.S. Naval Fuel Depot
PO Box 9068
Jacksonville, FL 32208

N62573
K8
Marine Corps Air Facility
New River Plaza
Jacksonville, NC 28540

N62578
J2
Naval Construction Battalion Center
Davisville, RI 02854

N62583
J3
Naval Construction Battalion Center
Port Hueneme, CA 93041

N62588
NR
U.S. Naval Support Activity, Naples
FPO New York, NY 09521

N62604
J4
Naval Construction Battalion Center
Gulfport, MS 39501

N62649
JY
U.S. Naval Supply Depot, Yokosuka
FPO Seattle, WA 98762

N62665
Supervisor of Shipbuilding, Conversion & Repair, USN
Bldg. 114, Section D
666 Summer Street
Boston, MA 02210

APPENDIX N — ACTIVITY ADDRESS NUMBERS

N62670 8B	Supervisor of Shipbuilding, Conversion & Repair, USN Drawer T Mayport Naval Station Jacksonville, FL 32228
N62673	Supervisor of Shipbuilding, Conversion & Repair, USN Naval Base Charleston, SC 29408
N62678 8C	Supervisor of Shipbuilding, Conversion & Repair, USN PO Box 215 Portsmouth, VA 23705
N62742 KB	Pacific Division, Naval Facilities Engineering Command Pearl Harbor, HI 96860
N62745	Officer in Charge of Construction Naval Facilities Engineering Command Contracts Madrid APO New York, NY 09285
N62766 L1	Officer in Charge of Construction Naval Facilities Engineering Command Contracts Guam FPO San Francisco, CA 96630
N62786 ER	Supervisor of Shipbuilding, Conversion & Repair, USN 574 Washington Street Bath, ME 04530
N62789 L8	Supervisor of Shipbuilding, Conversion & Repair, USN Groton, CT 06340
N62791 NU	Supervisor of Shipbuilding, Conversion & Repair, USN Naval Station, Box 119 San Diego, CA 92136

APPENDIX N — ACTIVITY ADDRESS NUMBERS

N62793 4T	Supervisor of Shipbuilding, Conversion & Repair, USN Newport News, VA 23607
N62794 7D	Supervisor of Shipbuilding, Conversion & Repair, USN Flushing & Washington Avenues Brooklyn, NY 11251
N62795 7F	Supervisor of Shipbuilding, Conversion & Repair, USN Pascagoula, MS 39567
N62798 4X	Supervisor of Shipbuilding, Conversion & Repair, USN San Francisco, CA 94135
N62799 7M	Supervisor of Shipbuilding, Conversion & Repair, USN Seattle, WA 98115
N62808	U.S. Navy Public Works Center, Subic Bay FPO San Francisco, CA 96651
N62810	Chief, Navy Section, Military Assistance Advisory Group Taiei, Box 12 FPO San Francisco, CA 96268
N62814	U.S. Naval Medical Research Unit No. 2 Taipei, Box 14, APO San Francisco, CA 96268
N62826	Chief, Navy Section, Military Assistance Advisory Group Tokyo APO San Francisco, CA 96390
N62832	U.S. Naval Activities, Rota, Spain FPO New York, NY 09540

APPENDIX N — ACTIVITY ADDRESS NUMBERS

N62836
L4
Officer in Charge of Construction
Naval Facilities Engineering Command Contracts,
Far East
Yokosuka, Box 61
FPO Seattle, WA 98762

N62852
Naval Electronic System Security Engineering Center
Naval Security Station
3801 Nebraska Avenue, NW
Washington, DC 20390

N62861
KD
Naval Plant Representative Office
General Dynamics
PO Box 2505
Pomona, CA 91766

N62863
U.S. Naval Station, Rota, Spain
FPO New York, NY 09540

N62864
L2
Officer in Charge of Construction
Naval Facilities Engineering Command Contracts
Southwest Pacific
APO San Francisco, CA 96528

N62907
KG
Naval Plant Representative Office
Applied Physics Laboratory
Johns Hopkins Road
Laurel, MD 20810

N62908
8D
Naval Weapons Engineering Support Activity
Washington Navy Yard
Washington, DC 20374

N62921
KH
Naval Plant Representative Office
(Special Projects)
Lockheed Missiles & Space Co.
PO Box 504
Sunnyvale, CA 94088

APPENDIX N — ACTIVITY ADDRESS NUMBERS

N62922
7W
Resident Officer in Charge of Construction, Pacific
Department of the Navy
PO Box 418
San Bruno, CA 94067

N62932
KJ
U.S. Navy Commissary Store, Taipei
APO San Francisco, CA 96263

N62938
KK
Naval Plant Representative Office
Grumman Aerospace Corp.
Bethpage, L.I., NY 11714

N62940
KM
Naval Plant Representative Office
North American Rockwell Corp.
4300 E. Fifth Avenue
Columbus, OH 43216

N62953
Navy Public Works Center, Naval Base
Newport, RI 02844

N62972
Chief, U.S. Naval Mission to Brazil
Rio De Janeiro
APO New York, NY 09676

N62974
JB
Marine Corps Air Station
Yuma, AZ 85364

N62990
Supervisor of Shipbuilding, Conversion & Repair, USN
PO Box 26
Sturgeon Bay, WI 54235

N62995
4H
U.S. Naval Air Facility, Sigonella
FPO New York, NY 09523

N63015
7Y
Naval Education and Training Support Center, Pacific
Fleet Station PO Bldg
San Diego, CA 92132

N63325
7X
Naval Education & Training Support Center, Atlantic
Bldg. Z-86, Naval Station
Norfolk, VA 23511

N63331
LF
Naval Plant Representative Office
United Aircraft Corp., Sikorsky Aircraft Div.
Stratford, CT 06497

N63339
LL
U.S. Navy Commissary Store
Naval Station, Adak
FPO Seattle, WA 98791

N63340
LM
U.S. Navy Commissary Store
Naval Station, Argentia
FPO New York, NY 09597

N63341
LN
U.S. Navy Commissary Store
Naval Auxiliary Air Station, Chase Field
Beeville, TX 78102

N63343
LQ
U.S. Navy Commissary Store, Naval Air Station
Brunswick, ME 04011

N63344
LR
U.S. Navy Commissary Store, Naval Station
Charleston, SC 29408

N63345
LS
U.S. Navy Commissary Store
Naval Base, Guantanamo Bay
FPO New York, NY 09598

N63346
LT
U.S. Navy Commissary Store
Naval Station, Keflavik
FPO New York, NY 09571

N63347
LU
U.S. Navy Commissary Store, Kenitra
FPO New York, NY 09544

N63348
LV
U.S. Navy Commissary Store,
Naval Auxiliary Air Station
Kingsville, TX 78364

N63349
LW
U.S. Navy Commissary Store, Naval Air Station
Lemoore, CA 93246

N63351
LY
U.S. Navy Commissary Store, Naval Station
Long Beach, CA 90802

N63352
KE
U.S. Navy Commissary Store,
Naval Auxiliary Air Station
Meridian, MS 39301

N63353
MA
U.S. Navy Commissary Store
Naval Support Activity, Naples
FPO New York, NY 09521

N63356
MD
U.S. Navy Commissary Store, Naval Station
Roosevelt Roads
FPO New York, NY 09551

N63357
ME
U.S. Navy Commissary Store
Naval Station, Rota
FPO New York, NY 09540

N63360
MH
U.S. Navy Commissary Store
Fleet Activities, SASEBO
FPO Seattle, WA 98766

APPENDIX N — ACTIVITY ADDRESS NUMBERS

N63362
MK
U.S. Navy Commissary Store
Naval Station, Subic Bay
FPO San Francisco, CA 96651

N63364
MM
U.S. Navy Commissary Store
Navy Housing Activity, Yokohama
FPO Seattle, WA 98761

N63365
MN
U.S. Navy Commissary Store
Headquarters Support Activities, Yokosuka
FPO Seattle, WA 98762

N63367
MP
U.S. Navy Commissary Store, Naval Station
Norfolk, VA 23511

N63387
JD
U.S. Naval Public Works Center, Naval Base
San Diego, CA 92136

N63394
L6
Naval Ship Weapon Systems Engineering Station
Port Hueneme, CA 93043

N63395
8L
U.S. Naval Communication Station
(Thurso, Caithness, UK)
FPO New York 09516

N63402
K7
US. Polaris Missile Facility, Pacific
Silverdale, WA 98383

N63410
KA
Navy Manpower Material and
Analysis Center, Atlantic
Norfolk, VA 23511

N63427
8F
U.S. Naval Communication Station, Perth
FPO San Francisco, CA 96680

N63439
K9
Naval Ophthalmic Support and Training Activity
Williamsburg, VA 23185

APPENDIX N — ACTIVITY ADDRESS NUMBERS

N63821
Atlantic Undersea Test & Evaluation Center, Bahamas
FPO New York, NY 09559

N63886
8Q
U.S. Naval Security Group Activity
(Adak, AK)
FPO Seattle 98777

N64267
M9
Fleet Analysis Center
Naval Weapons Station, Seal Beach
Corona, CA 91720

N65117
NJ
Naval Plant Representative Office
(Strategic Systems Project Office)
General Electric Ordnance Systems
100 Plastics Ave.
Pittsfield, MA 01201

N65202
Supervisor of Shipbuilding, Conversion & Repair, USN
Box 400
Pearl Harbor, HI 96860

N65227
NH
Naval Plant Representative Office
Sperry Rand Corp.
Great Neck, L.I., NY 11020

N65236
V7
Naval Electronic Systems Engineering Center
4600 Goer Road
North Charleston, SC 29406

N65576
Navy Space Systems Activity
PO Box 92960
Worldway Postal Center
Los Angeles, CA 90009

APPENDIX N — ACTIVITY ADDRESS NUMBERS

N65580 M2	Naval Electronic Systems Engineering Center PO Box 55 Portsmouth, VA 23705
65584	Naval Electronic Systems Engineering Center, PO Box 80337 San Diego, CA 92138
N65870	Supervisor of Shipbuilding, Conversion & Repair, USN Long Beach Naval Shipyard Long Beach, CA 90822
N65913 7L	Naval Sea Support Center, Pacific San Diego, CA 92138
N65928 N3	Naval Training Center Orlando, FL 32813
N65980	Naval Electronic Systems Engineering Activity St. Inigoes, MD 20684
N66001 7N	Naval Ocean Systems Center San Diego, CA 92152
N66021 7G	Fleet Air, Western Pacific FPO Seattle, WA 98767
N66032	Automatic Data Processing Selection Office Washington, DC 20376

APPENDIX N — ACTIVITY ADDRESS NUMBERS

N66314 QF	Naval Regional Procurement Office Oakland, CA 94625
N66444 4V	Naval Strategic System Navigation Facility Flushing & Washington Avenues Brooklyn, NY 11251
N66604 N4	Naval Underwater Systems Center Newport, RI 02840
N66669 V1	U.S. Naval Communication Station (Diego Garcia) FPO San Francisco 96685
N66691 4P	U.S. Naval Detachment Souda Bay, Crete FPO New York, NY 09528
N68047 4L	U.S. Naval Office, Singapore FPO San Francisco, CA 96699
N68056 JE	Navy Regional Medical Center San Diego, CA 92134
N68084	Navy Regional Medical Center Charleston, SC 29408
N68085	Navy Regional Medical Center Jacksonville, FL 32214
N68086 7S	Navy Regional Medical Center Newport, RI 02840

N68087	Navy Regional Medical Clinic, Navy Department Washington, DC 20360
N68092	Navy Regional Medical Center Great Lakes, IL 60088
N68093	Navy Regional Medical Center Camp Lejeune, NC 28542
N68094 V9	Navy Regional Medical Center Camp Pendleton, CA 92055
N68095 JF	Naval Regional Medical Center Bremerton, WA 98314
N68097 QA	Navy Regional Medical Center Oakland, CA 94627
N68100	Navy Regional Medical Center St. Albans Long Island, NY 11425
N68101	Navy Regional Medical Center 17th Street and Pattison Avenue Philadelphia, PA 19145
N68171 M3	U.S. Naval Regional Procurement Office FPO New York 09521
N68221 7J	Commanding Officer Naval Personnel Research and Development Center San Diego, CA 92152
N68248 V6	Officer in Charge of Construction Naval Facilities Engineering Command Contracts, Naval Submarine Base Kings Bay, GA 31547

N68311 JL	Naval Station Long Beach, CA 90822
N68322 7Z	Naval Education & Training Program and Development Center Ellyson Pensacola, FL 32509
N68335 4Y	U.S. Naval Air Engineering Center Lakehurst, NJ 08733
N68346 KC	Naval Submarine Base, Bangor Bremerton, WA 98315
N68443 7T	Naval Regional Dental Center Bremerton, WA 98310
N68463 7C	Naval Oceanographic Office National Space Technology Laboratory Bay St. Louis, MS 39520
N68470 V8	Naval Medical Center (Okinawa, Japan) FPO Seattle 98778
N68478 7H	Naval Plant Branch Representative Office Westinghouse Electric Corporation Oceanic Division; PO Box 1488 Annapolis, MD 21404
N68520 7P	Naval Aviation Logistics Center U.S. Naval Air Station Patuxent River, MD 20670
N68525 7Q	Naval Plant Representative Office General Electric Company Aircraft Engine Group 1000 Western Avenue Lynn, MA 01910

APPENDIX N — ACTIVITY ADDRESS NUMBERS

N68546
QG
Navy Environmental Health Center
Naval Station
Norfolk, VA 23511

N68790
Officer in Charge of Construction
Naval Facilities Engineering Command Contracts
Diego Garcia
FPO San Francisco 96685

N69080
Navy Regional Medical Center
7500 Carson St.
Long Beach, CA 90801

N70092
U.S. Naval Security Station
3801 Nebraska Ave., N.W.
Washington, DC 20390

N70243
V2
U.S. Naval Communication Area
Master Station, WESTPAC
(Guam, Mariana Islands)
FPO San Francisco 96630

N70272
8G
U.S. Naval Communication Area
Master Station LANT
Norfolk, VA 23511

N70273
V3
Naval Radio Station
Jim Creek
Oso, WA 98223

N70278
V4
U.S. Naval Communication Station
(Yokosuka, Japan)
Box 3
FPO Seattle 98762

N70291
U.S. Naval Security Group Activity,
Kami Seya
FPO Seattle, WA 98768

APPENDIX N — ACTIVITY ADDRESS NUMBERS

N70294
8H
U.S. Naval Communication Area
Master Station MED
(Naples, Italy)
FPO New York 09524

N70295
8J
U.S. Naval Communication Station
(Nea Makri, Greece)
FPO New York 09525

N70300
V5
U.S. Naval Communication Unit
(Christchurch, New Zealand)
FPO San Francisco 96690

M00027
MS
Hqrs. U.S. Marine Corps
Washington, DC 20380

M00146
MT
Commissary Store, Marine Corps Air Station
Cherry Point, NC 28533

M00243
NE
Marine Corps Recruit Depot
San Diego, CA 92140

M00263
MX
Marine Corps Recruit Depot
Parris Island, SC 29905

M00264
MY
Marine Corps Schools Development
and Education Command
Quantico, VA 22134

M00318
MU
Commissary Store, Marine Corps Air Station
FPO San Francisco, CA 96628

M00681
NG
Marine Corps Base, Camp Pendleton
Oceanside, CA 92054

ARMED SERVICES PROCUREMENT REGULATION

APPENDIX N — ACTIVITY ADDRESS NUMBERS

M67410 Marine Barracks, Naval Missile Facility
Lompoc, CA 93436

M67415 Marine Barracks, Sigonella, Sicily
FPO, New York, NY 09521

M67418 Marine Barracks, NAV Forces Iceland, Keflavik
FPO New York, NY 09571

M67422 Marine Air Reserve Training Detachment, NAS
Seattle, WA 98105

M67424 Subunit 2, Marine Air Reserve Training Detachment
Los Alamitos, Pasadena, CA 91107

M67425 Subunit 3, Marine Air Reserve Training Detachment
Alameda, CA 94501

M67426 Subunit 4, Marine Air Reserve Training Detachment
Alameda, San Jose, CA 95112

M67432 Subunit 2, Marine Air Reserve Training Detachment
Willow Grove, MCRTC
Wyoming, PA 18644

M67433 Subunit 1, Marine Corps Reserve Training Detachment
Grosse Ile, NMCRTC
Green Bay, WI 54305

APPENDIX N — ACTIVITY ADDRESS NUMBERS

DEPARTMENT OF THE AIR FORCE

(C) Denotes a Central Contracting Activity.

F01600 Maxwell AFB
5A AL 36112

F01630 Phase IV PMO/PGZ
TL Gunter AFS, AL 36114

F02600 Williams AFB
5B AZ 85224

F02601 Davis-Monthan AFB
5C AZ 85707

F02604 Luke AFB
5D AZ 85309

F03601 Blytheville AFB
5E AR 72315

F03602 Little Rock AFB
5F AR 72076

F04604 Castle AFB
5G CA 95342

F04605 March AFB
5H CA 92508

F04606 Sacramento ALC/PM
SM McClellan AFB, CA 95652

F04607 Norton AFB
5J CA 92409

APPENDIX N — ACTIVITY ADDRESS NUMBERS

F04609
5K
George AFB
CA 92392

F04611
QQ
AFFTC R & D Contracts (C)
Edwards AFB, CA 93523

F04612
5L
Mather AFB
CA 95655

F04614
S5
WSMC/PM
Vandenberg AFB, CA 93437

F04620
S6
AFPRO TRW, Defense & Space Systems Group
One Space Park
Redondo Beach, CA 90278

F04626
5M
Travis AFB
CA 94535

F04666
5N
Beale AFB
CA 95903

F04679
QR
AFPRO, Northrop Corp.
Hawthorne, CA 90250

F04681
QS
AFPRO, Rockwell International Corp.
North American Aircraft Div.
Los Angeles, CA 90009

F04682
QT
AFPRO, Hughes Acft. Co.
P.O. Box 92463
Los Angeles, CA 90009

F04684
QW
Vandenberg AFB
CA 93437

APPENDIX N — ACTIVITY ADDRESS NUMBERS

F04688
QV
AFPRO, Aerojet-General Corp.
PO Box 15846
Sacramento, CA 95813

F04689
RN
Air Force Satellite Control Facility, AFSCF/PKC
Base Contracts
Sunnyvale AFS CA 94086

F04690
RF
Air Force Satellite Control Facility
Sunnyvale AFS CA 94086

F04691
QX
AFPRO, Lockheed Msl. & Space Co., Inc.
PO Box 504
Sunnyvale, CA 94088

F04693
SD/PMH Directorate of Base Contracting
Los Angeles AFS
PO Box 92960, Worldway Postal Center
Los Angeles, CA 90009

F04696
RB
AFPRO, Rockwell International Corp., Anaheim
3370 Miraloma Ave.
Anaheim, CA 92803

FO4699
Q5
Sacramento ALC/PMK, Base Contracting
McClellan AFB, CA 95652

F04700
Q2
AFFTC Base Contracting
Edwards AFB, CA 93523

F04701
TB
SD(C), Los Angeles AFS
PO Box 92960, Worldway Postal Center
Los Angeles, CA 90009

APPENDIX N — ACTIVITY ADDRESS NUMBERS

F04702	AF Audio Visual Center (AVVCP)(C) Norton AFB, CA 92409
F04703 R8	Western Space and Missile Center (C) Vandenberg AFB, CA 93437
F04704 R9	Ballistic Missiles Office (C) Norton AFB, CA 92409
F04705 RT	Det 6, 2762 Logistics Sq. Special (AFLC) Norton AFB, CA 92409
F04710 TC	AFPRO, McDonnell Douglas Corporation Douglas Aircraft Company Long Beach, CA 90846
F04720 RD	AFCMD OL-AD, AF Plant 42 2503 East Avenue P Palmdale, CA 93550
F05600 5P	Lowry AFB CO 80230
F05604 SX	4614 Contracting Squadron Peterson AFB, CO 80914
F05611 5Q	USAF Academy CO 80840
F05617 RE	AFPRO, Martin Marietta Aerospace (Denver Div.) PO Box 179 Denver, CO 80201
F06700 T5	AFPRO, Pratt & Whitney OL/AA Commercial Products Division East Hartford, CT 06108

APPENDIX N — ACTIVITY ADDRESS NUMBERS

F07603 5R	Dover AFB DE 19901
F08602 5S	MacDill AFB FL 33608
F08606 RG	SAMTO/ESMC (C) Patrick AFB, FL 32925
F08620 5T	Hurlburt FLD FL 32544
F08621 5U	Homestead AFB FL 33030
F08635 RH	AD(C) Eglin AFB, FL 32542
F08637 5V	Tyndall AFB FL 32401
F08650 TJ	SAMTO/ESMC, Small Purchases Div. Patrick AFB, FL 32925
F08651 Q3	AD, Directorate of Base Contracts Eglin AFB, FL 32542
F08675 T2	AFPRO, Pratt & Whitney Government Products Division West Palm Beach, FL 33402
F09603 RJ, RR	Warner Robins ALC/PM Robins AFB, GA 31098

F09604 RU	Det 8, 2762 Logistics Sq. Special (AFLC) Robins AFB, GA 31098
F09607 5W	Moody AFB GA 31601
F09609 5X	Dobbins AFB GA 30060
F09632 RK	AFPRO, Lockheed-Georgia Co. Marietta, GA 30063
F09634 5Y	AFRES Robins AFB, GA 31098
F09650 Q6	Warner Robins ALC/PMK, Base Contracting Robins AFB, GA 31098
F10603 5Z	Mountain Home AFB ID 83648
F11602 6A	Chanute AFB IL 61868
F11603 6B	Chicago O'Hare Intl Airport Chicago, IL 60666
F11623 6C	Scott AFB IL 62225
F11626 RL	HQ MAC/LGC(C) Scott AFB, IL 62225
F11628 RM	HQ AFCC(C) Scott AFB, IL 62225

F12617 6D	Grissom AFB IN 46970
F14614 6E	McConnell AFB KS 67221
F16600 6F	England AFB LA 71301
F16602 6G	Barksdale AFB LA 71110
F17600 6H	Loring AFB ME 04750
F18400 S2	AFPRO, Westinghouse Electric Corp. PO Box 1693 Baltimore, MD 21203
F18600 RQ	HQ, AFSC, Andrews AFB, (C) Washington, DC 20334
F19617	Westover AFB MA 01022
F19628 RS	ESD, Hanscom AFB, (C) MA 01731
F19630 RV	AF Computer Acquisition Center, AFCAC/PK, (C) Hanscom AFB, MA 01731
F19650	Base Contracts Directorate, ESD Hanscom AFB, MA 01731
F20603 6J	Wurtsmith AFB MI 48753
F20612 6K	Kincheloe AFB MI 49788

F20613 6L	K.I. Sawyer AFB MI 49843
F21603 6M	Duluth International Airport Duluth, MN 55814
F21611 6N	Minneapolis-St. Paul Intl Aprt. St. Paul, MN 55417
F22600 RC	Keesler AFB MS 39534
F22608 6Q	Columbus AFB MS 39701
F23606 6R	Whiteman AFB MO 65301
F23608 6S	Base Contracting Division Richards-Gebaur AFB, MO 64030
F23621 RY, S1	AFPRO, McDonnell Douglas Corp. St. Louis, MO 63166
F24604 6T	Base Contracting Division PO Box 5000 Malmstrom AFB, MT 59402
F24607	Glasgow AFB MT 59231
F25600 6U	Offutt AFB NE 68113

F25606 TD	HQ SAC/LGC Offutt AFB, NE 68113
F26600 S4	Nellis AFB NV 89110
F27604 R5	Pease AFB NH 03801
F28609 6V	McGuire AFB NJ 08641
F29601 RW	Kirtland Contracting Center (PKR) Kirtland AFB, NM 87117
F29605 6W	Cannon AFB NM 88101
F29650 R3	Kirtland Contracting Center (PKB) Kirtland AFB, NM 87117
F29651 6X	Holloman AFB NM 88330
F30602 RX	RADC (C) Griffiss AFB, NY 13441
F30617 6Y	Niagara Falls Intl Airport NY 14304
F30635 S3	Griffiss AFB NY 13441
F30636 6Z	Plattsburgh AFB NY 12903

APPENDIX N — ACTIVITY ADDRESS NUMBERS

F30637 TE	Northern Communications Area Griffiss AFB, NY 13441
F30669 R7	AFPRO Fairchild Republic Co. Farmingdale, NY 11735
F31601 10	Pope AFB NC 28308
F31610 11	Seymour Johnson AFB NC 27530
F32604 12	Minot AFB ND 58701
F32605 13	Grand Forks AFB ND 58201
F33600 RZ	2750 ABW/PMA & PMT WPAFB, OH 45433
F33601 Q7	2750 ABW/PMB, Base Contracting WPAFB, OH 45433
F33615 SG	ASD/PMR, Directorate of R&D Contracting WPAFB, OH 45433
F33617 14	Rickenbacker AFB OH 43217
F33630 15	Youngstown Municipal Airport Vienna, OH 44473

APPENDIX N — ACTIVITY ADDRESS NUMBERS

F33654 SB	AFPRO, General Electric Company Evendale, OH 45215
F33657 SC	ASD (C) WPAFB, OH 45433
F33659 Q8	Aerospace Guidance & Metrology Center Newark AFS, OH 43055
F33661	AFCMC, WPAFB, OH 45433 With the following codes for each detachment:
RP	Det 21, AF Contr. Maint. Center 3801 South Oliver Wichita, KS 67210
QY	Det 30, AF Contr. Maint. Center APO New York, NY 09253
SS	Det 16, AF Contr. Maint. Center APO New York, NY 09633
SU	Det 19, AF Contr. Maint. Center APO New York, NY 09285
S8	AFLC Logistics Support Group, Saudi Arabia AFCMC OL APO New York, NY 09616
SV	Det 17, AF Contr. Maint. Center APO New York, NY 09378

R1	Det 28, AF Contr. Maint. Center APO San Francisco, CA 96259
	(End of AFCMC Detachments)
F33700 S7	HQ. Acquisition Logistics Division (AFLC) WPAFB, OH 45433
F34600 16	Vance AFB OK 73701
F34601 SD,TA,TG	Oklahoma City ALC/PM Tinker AFB, OK 73145
F34608 TF	Southern Communications Area Oklahoma City AFS, OK 73145
F34612 17	Altus AFB OK 73521
F34650 Q9	Oklahoma City ALC/PMK, Base Contracting Tinker AFB, OK 73145
F35610 18	Kingsley Field Klamath Falls, OR 97601
F36629 19	Greater Pittsburgh Airport Pittsburgh, PA 15231
F36700 20	Willow Grove Air Reserve Facility Willow Grove, PA 19090

F36701 SF	AFPRO, General Electric Co. Reentry and Environmental Systems Division and Space Division PO Box 8555 Philadelphia, PA 19101
F38601 21	Shaw AFB SC 29152
F38606 22	Myrtle Beach AFB SC 29577
F38610 23	Charleston AFB SC 29404
F39601 24	Ellsworth AFB SD 57706
F40600 Q4	AEDC (C) Arnold AFS, TN 37389
F40650 25	Base Contracting Div (AEDC) Arnold AFS, TN 37389
F41608 SA, QU	San Antonio ALC/PM Kelly AFB, TX 78241
F41612 26	Sheppard AFB TX 76311
F41613 27	Carswell AFB TX 76127
F41614 28	Goodfellow AFB TX 76901

F41620 29	Reese AFB TX 79489
F41621 SJ	AF Cryptologic Support Center San Antonio, TX 78243
F41652 30	Dyess AFB TX 79607
F41685 31	Laughlin AFB TX 78840
F41687 32	Bergstrom AFB TX 78743
F41689 SK	3303 Contracting Squadron (C) Randolph AFB, TX 78148
F41695 SL, TH	AFPRO, General Dynamics PO Box 371, Ft. Worth Division Fort Worth, TX 76101
F41800 T9	San Antonio Contracting Center P.O. Box 8218 San Antonio, TX 78208
F41999	AFNAF Purchasing Office, Directorate of Morale, Welfare, and Recreation HQ AFMPC/MPCSK PO Box 248 Randolph AFB, TX 78148
F42600 QP, SY	Ogden ALC/PM Hill AFB, UT 84056

F42650 R2	Ogden ALC/PMK, Base Contracting Hill AFB, UT 84056
F42651 R6	AFPRO, Thiokol Corporation Box 524 Brigham City, UT 84302
F44600 33	Langley AFB VA 23665
F44650 Q1	4400 Contracting Squadron Langley AFB, VA 23665
F45603 34	McChord AFB WA 98438
F45613 35	Fairchild AFB WA 99011
F45632 SP	AFPRO, Boeing Co. PO Box 3707 Seattle, WA 98124
F45633 SQ	1929 AFCC Gp 5140 Federal Ofc Bldg. Seattle, WA 98104
F47606 36	Gen. Billy Mitchell Fld. 300 College Ave. Milwaukee, WI 53207
F48608 37	F.E. Warren AFB WY 82003

APPENDIX N — ACTIVITY ADDRESS NUMBERS

F61310	USDAO, American Embassy APO New York, NY 09285
F61354 44	TUSLOG Det 118/LGC APO New York, NY 09224
F61355 T4	HQ TUSLOG/LGC APO New York, NY 09254
F61358 45	TUSLOG Det 10/LGC APO New York, NY 09289
61503 47	435 TAW/LGC APO New York, NY 09057
F61504 T6	7350 ABG APO New York, NY 09611
F61517 48	USAFE Contracting Region - EIFEL Det 3, 7000 Contr. Sq. APO New York, NY 09132
F61519 R4	50 TFW/LGC APO New York, NY 09109
F61521 49	USAFE Contracting Region - Rheinland Det 2, 7000 Contr. Sq APO New York, NY 09012
F61546 50	USAFE Contracting Center Det 1, 7000 Contr. Sq. APO New York, NY 09633

APPENDIX N — ACTIVITY ADDRESS NUMBERS

F61708 51	USAFE Contracting Region - Thames Valley Det 9, 7000 Contr. Sq. APO New York, NY 09194
F61712 52	81 TFW/LGC APO New York, NY 09755
F61730 53	10 TFW/LGC APO New York, NY 09238
F61775 54	USAFE Contracting Region - UK , North APO New York, NY 09179
F61815 T7	32 TFS/LGC APO New York, NY 09292
F61817 55	USAFE Contracting Office OL A Det 5, 7000 Contr. Sq. APO New York, NY 09286
F61830 S9	Det 3, AFCMD F-16 Caseur Brussels, Belgium APO New York, NY 09667
F62032	U.S. Military Training Mission (Saudi Arabia) APO New York, NY 09616
F62088	John Hay Air Base APO San Francisco, CA 96298
F62321 RA	PACAF Contracting Region, Okinawa APO San Francisco, CA 96239
F62501	1956 Comm. Group APO San Francisco, CA 96328

ARMED SERVICES PROCUREMENT REGULATION

APPENDIX N — ACTIVITY ADDRESS NUMBERS

F62509
QZ
Misawa AB
APO San Francisco, CA 96519

F62562
SW
PACAF Contracting Center, Japan
APO San Francisco, CA 96328

F62600
5DSCS
APO San Francisco, CA 96287

F63197
57
USAFE Contracting Office
OL A Det 7, 7000 Contr. Sq.
APO New York, NY 09291

F64133
58
Andersen AFB
APO San Francisco, CA 96334

F64605
TN
PACAF Contracting Center, Hawaii
Hickam AFB, HI 96853

F64608
Pacific Communications Area
Hickam AFB, HI 96853

F64620
SZ
CINCPACAF/LGC
Hickam AFB, HI 96853

F64719
TK
PACAF Contracting Center, Philippines
APO San Francisco, CA 96274

F65501
59
Elmendorf AFB
AK 99506

F65503
60
Eielson AFB
AK 99702

APPENDIX N — ACTIVITY ADDRESS NUMBERS

F65504
1931st Communications Group
Elmendorf AFB, AK 99506

F65517
QN
HQ AAC/LGC
Elmendorf AFB, AK 99506

F66501
24th Composite Wing
Howard AFB, Panama 34001

ARMED SERVICES PROCUREMENT REGULATION

DEFENSE LOGISTICS AGENCY

DLAH00
YK
Hqrs., Defense Logistics Agency
Contracting Directorate
Cameron Station, Alexandria, VA 22314

DLA001
TR
Defense Logistics Services Center
50 North Washington Street
Battle Creek, MI 49016

DLA002
TS
Defense Industrial Plant Equipment Center
Defense Depot Memphis
Memphis, TN 38114

DLA003
TT
Defense Depot Ogden
Ogden, UT 84401

DLA004
TU
Defense Depot Memphis
Memphis, TN 38115

DLA005
TV
Defense Depot Tracy
Tracy, CA 95376

DLA006
W1
Defense Logistics Agency Admin. Support Center
Cameron Station, Alexandria, VA 22314

DLA100
TW
Defense Personnel Support Center
Directorate of Clothing & Textiles
2800 South 20th Street
Philadelphia, PA 19101

DLA120
TX
Defense Personnel Support Center
Directorate of Medical Materiel
2800 South 20th Street
Philadelphia, PA 19101

DLA132
U8
Defense Subsistence Office, Kansas City
601 E. 12th Street, Room 1768
Kansas City, MO 64106

DLA135
W4
Defense Subsistence Office, New Orleans
4400 Dauphine Street
New Orleans, LA 70146

DLA136
W5
Defense Subsistence Office, Cheatham
Cheatham Annex, Bldg 113
Williamsburg, VA 23185

DLA137
W6
Defense Subsistence Region, Pacific
2155 Mariner Square Loop
Alameda, CA 94501

DLA139
U6
Defense Subsistence Region, Europe
APO New York, NY 09052

DLA140
W7
Defense Personnel Support Center
(Installation Support)
2800 South 20th Street
Philadelphia, PA 19101

DLA200
X1
Defense Property Disposal Service
Federal Center
Battle Creek, MI 49016

DLA400
ΓY
Defense General Supply Center
Richmond, VA 23297

DLA410
Defense General Supply Center
Base Support Branch
Richmond, VA 23297

DLA420
Defense General Supply Center
Educational Supplies Branch
Richmond, VA 23297

APPENDIX N — ACTIVITY ADDRESS NUMBERS

DLA500 TZ YQ	Defense Industrial Supply Center 700 Robbins Avenue Philadelphia, PA 19111
DLA600 UA	Defense Fuel Supply Center Cameron Station, Alexandria, VA 22314
DLA700 UB	Defense Construction Supply Center Columbus, OH 43215
DLA710 YL	Defense Construction Supply Center Commercial Services & Supplies Branch Contracting Division II Columbus, OH 43215
DLA720 YM	Defense Construction Supply Center Wood Products Branch Contracting Division I Columbus, OH 43215
DLA900 UD	Defense Electronics Supply Center 1507 Wilmington Pike Dayton, OH 45444
DLA910	Defense Electronics Supply Center Base Contracting Section 1507 Wilmington Pike Dayton, OH 45444
DLA13H UE	Defense Personnel Support Center Directorate of Subsistence 2800 South 20th Street Philadelphia, PA 19101
DLA8AC UG	DCASMA, Santa Ana 34 Civic Center Plaza PO Box C 12700 Santa Ana, CA 92712
DLA8AG Z3	DCASPRO, Aero Route 7, Box 40 Lake City, FL 32055

APPENDIX N — ACTIVITY ADDRESS NUMBERS

DLA8AL Y1	DCASMA, Atlanta 805 Walker Street Marietta, GA 30060
DLA8AT UL	DCASR, Atlanta 805 Walker Street Marietta, GA 30060
DLA8BA UN	DCASMA, Birmingham 908 South 20th Street Birmingham, AL 35256
DLA8BC UP	DCASMA, Bridgeport 550 South Main Street Stratford, CT 06497
DLA8BL Y4	DCASPRO AVCO Lycoming Division 550 South Main Street Stratford, CT 06497
DLA8BM UR	DCASMA, Baltimore 300 East Joppa Road Towson, MD 21204
DLA8BN US	DCASPRO, Western Electric Co. 204 Graham Hopedale Road Burlington, NC 27215
DLA8BP UT	DCASR, Boston 666 Summer Street Boston, MA 02210
DLA8BS Y3	DCASMA, Boston 666 Summer Street Boston, MA 02210
DLA8BT UU	DCASPRO, Bendix Corp. Route 46 Teterboro, NJ 07608

DLA8BV
YT
DCASPRO, GE, Burlington
Lakeside Avenue
Burlington, VT 05402

DLA8CD
UZ
DCASMA, Cedar Rapids
4333 Edgewood Road, N.E.
Cedar Rapids, IA 52402

DLA8CH
UY
DCASR, Chicago, O'Hare International Airport
PO Box 66475
Chicago, IL 60666

DLA8CL
VB
DCASR, Cleveland
Anthony J. Celebrezze Fed. Bldg.
1240 East Ninth Street
Cleveland, OH 44199

DLA8CN
Y5
DCASMA, Cleveland
Anthony J. Celebrezze Federal Bldg.
1240 East Ninth Street
Cleveland, OH 44199

DLA8CS
VE
DCASPRO, General Dynamics
5001 Kearny Villa Road
PO Box 80847
San Diego, CA 92138

DLA8DA
VG
DCASR, Dallas
500 South Ervay Street
Dallas, TX 75201

DLA8DB
Z7
DCASMA, Dallas
500 South Ervay Street
Dallas, TX 75201

DLA8DC
VH
DCASMA, San Diego
Bldg. 4, AF Plant 19
4297 Pacific Coast Highway
San Diego, CA 92110

DLA8DD
U4
DCASPRO, Rockwell International Corporation
870 Presidential Drive
Richardson, TX 75081

DLA8DM
Y7
DCASMA, Detroit
McNamara Federal Bldg.
477 Michigan Avenue
Detroit, MI 48226

DLA8DN
VK
DCASMA, Denver
701 West Hampden Ave., Suite E-3210
Englewood, CO 81054

DLA8DP
VL
DCASMA, Dayton
c/o Defense Electronics Supply Center, Bldg. 1
1502 Wilmington Pike
Dayton, OH 45401

DLA8EC
YP
DCASMA, Chicago
O'Hara international Airport
6400 N. Manneheim Road
PO Box 66911
Chicago, IL 60666

DLA8FL
VN
DCASPRO, ITT, Defense Space Group
500 Washington Avenue
Nutley, NJ 07110

DLA8FN
VQ
DCASPRO, Northern Ordnance
4800 East River Road
Minneapolis, MN 55421

DLA8FS
VR
DCASPRO, FMC
1125 Coleman Avenue
P.O. Box 367
San Jose, CA 95103

DLA8FT
Y2
DCASPRO, Ford Aeronutronic Div
Admin Bldg, Rm 307, Ford Road
Newport Beach, CA 92660

DLA8GD
YB
DCASPRO, Gould
18901 Euclid Avenue
Cleveland, OH 44117

DLA8GL
VV
DCASPRO, General Electric
1100 Western Ave (27753)
Lynn, MA 01910

DLA8GM
VW
DCASMA, Grand Rapids
Riverview Center Bldg.
678 Front Street, N.W.
Grand Rapids, MI 49504

DLA8GN
VX
DCASMA, Garden City
605 Stewart Avenue
Garden City, LI, NY 11530

DLA8HB
WA
DCASPRO, Hayes
Hayes International Corporation
PO Box 2583
Birmingham, AL 35202

DLA8HC
WB
DCASMA, Hartford
96 Murphy Road
Hartford, CT 06114

DLA8HD
WC
DCASPRO, Singer
1225 McBride Avenue
Little Falls, NJ 07424

DLA8HE
Z2
DCASPRO, Hayes (Dothan)
Napier Field
Dothan, AL 36301

DLA8HM
WD
DCASPRO, Honeywell
2701 Fourth Avenue South
Minneapolis, MN 55408

DLA8HR
Z9
Hawaii Residency (DCASMA-SF)
Federal Building, Room 4115
300 Ala Moana Blvd.
Honolulu, HI 96813

DLA8JJ
WG
DCASMA, Indianapolis,
Building 1, Finance Center
Fort Benjamin Harrison
Indianapolis, IN 46249

DLA8JK
Z6
DCASPRO, GMC Detroit
Diesel Allison
2355 South Tibbs Avenue
Indianapolis, IN 46241

DLA8LA
WL
DCASR, Los Angeles
11099 South La Cienega Blvd.
PO Box 45011
Los Angeles, CA 90045

DLA8LB
WM
DCASPRO, Litton
20812 Ventura Blvd.
Woodland Hills, CA 91364

DLA8LC
Y8
DCASMA, Inglewood
9920 South La Cienega Blvd.
Inglewood, CA 90301

DLA8LT
WN
DCASPRO, E-Systems, Inc.
PO Box 379
Greenville, TX 75401

DLA8MH
X9
DCASPRO, McDonnell Douglas
Astronautics Co., West
5301 Bolsa Avenue
Huntington Beach, CA 92647

DLA8MN
WQ
DCASMA, Twin Cities
2305 Ford Parkway
St. Paul, MN 55116

DLA8MW
WR
DCASMA, Milwaukee
744 North Fourth Street
Milwaukee, WI 53203

DLA8NC
WV
DCASMA, Ottawa
14th Floor Journal Towers South
365 Laurier Avenue West
Ottawa , ON, Canada K1A0S5

DLA8NF
WW
DCASMA, Orlando
3555 Maguire Blvd.
Orlando, FL 32803

DLA8NH
YS
DCASPRO, Sanders Associates, Inc.
Daniel Webster Highway South
Nashua, NH 03061

DLA8NJ
WT
DCASMA, Springfield
240 Route 22
Springfield, NJ 07081

DLA8NL
Z1
DCASMA, New Orleans
13800 Old Gentilly Highway, Bldg. 350
PO Box 29283
New Orleans, LA 70189

DLA8NM
YR
DCASPRO, IBM
Route 17c
Owego, NY 13827

DLA8NN
YN
DCASPRO, PRD Electronics
6801 Jericho Turnpike
Syosset, NY 11791

DLA8NY
WU
DCASR, New York
60 Hudson Street
New York, NY 10013

DLA8NZ
Y9
DCASMA, New York
60 Hudson Street
New York, NY 10013

DLA8PA
WY
DCASMA, Phoenix
3800 North Central Avenue
Phoenix, AZ 85012

DLA8PH
XA
DCASR, Philadelphia
PO Box 7478
Philadelphia, PA 19101

DLA8PL
X3
DCASMA, Philadelphia
PO Box 7699
Philadelphia, PA 19101

DLA8PP
XD
DCASMA, Pittsburgh
1626 South Federal Bldg.
1000 Liberty Avenue
Pittsburgh, PA 15222

DLA8PW
XE
DCASPRO, Ford Aerospace
3939 Fabian Way
Palo Alto, CA 94303

DLA8RB
XF
DCASPRO, Raytheon, Spencer Laboratory
Wayside Avenue
Burlington, MA 01803

DLA8RP
XM
DCASMA, Reading
45 South Front Street
Reading, PA 19602

DLA8RS
X4
DCASPRO, Rocketdyne
6633 Canoga Avenue
Canoga Park, CA 91304

DLA8SA
XN
DCASMA, San Antonio
615 E. Houston
San Antonio, TX 78294

DLA8SD
X8
DCASPRO, Sundstrand
PO Box 5066
Rockford, IL 61125

DLA8SF
XR
DCASMA, San Francisco,
1250 Bayhill Drive
San Bruno, CA 94066

DLA8SK
XQ
DCASPRO, Singer-Link
600 Main Street
Johnson City, NY 13790

DLA8SL
XS
DCASR, St. Louis
1136 Washington Avenue
St. Louis, MO 63101

DLA8SN
XU
DCASMA, Syracuse
U.S. Courthouse & Federal Bldg.
Syracuse, NY 13260

DLA8ST
X5
DCASMA, St. Louis
1136 Washington Avenue
St. Louis, MO 63101

DLA8SW
XW
DCASMA, Seattle
Bldg. 5D, Naval Support Activity
Sand Point, Seattle, WA 98115

DLA8SY XX	DCASPRO, GTE Products Corporation 180 First Avenue Needham, MA 02194
DLA8TC YF	DCASPRO, Teledyne CAE c/o Teledyne Continental Aviation and Engineering 1330 Laskey Road Toledo, OH 43612
DLA8TE XZ	DCASPRO, Texas Instruments PO Box 226015, MS 256 Dallas, TX 75226
DLA8TO U3	DCASPRO, McDonnell Douglas/Rockwell 2000 North Memorial Drive Tulsa, OK 74115
DLA8VC YC	DCASMA, Van Nuys 6230 Van Nuys Blvd. Van Nuys, CA 91408
DLA8WK YD	DCASMA, Wichita Wichita Mid-Continent Airport Terminal Bldg. Wichita, KS 67209
DLA8WR YH	DCASPRO, Williams International Corporation 2280 West Maple Road Walled Lake, MI 48088
DLA8WS YG	DCASPRO, Westinghouse Hendy Avenue Sunnyvale, CA 94088
DLA8WT Z8	DCASPRO, Grumman Aerospace Corp. Stuart, FL 33494

DEFENSE CIVIL PREPAREDNESS AGENCY

DCPA01	Procurement Services Division Defense Civil Preparedness Agency Washington, DC 20301

DEFENSE MAPPING AGENCY

DMA600	Defense Mapping Agency Bldg. 56, U.S. Naval Observatory Washington, DC 20305
DMA650	Director Defense Mapping Agency Inter-American Geodedic Survey Fort Sam Houston, TX 78234
DMA700	Defense Mapping Agency Aerospace Center 8900 South Broadway St. Louis, MO 63125
DMA800 YZ	Defense Mapping Agency Hydrographic/Topographic Center 6500 Brooks Lane Washington, DC 20315
DMA920	Director DMA Distribution Center Clearfield, UT 84016

Part 5—Disposal of Contract Files

S2-501 Disposal of Purchasing, Administration, and Paying Office Official Contract Files. Official contract case files of purchasing, administration, and paying offices shall be disposed of as follows:

(a) Except as provided in (b), (c), and (d) below, and in S2-505, contract case files relating to all procurements of $10,000 or less shall be destroyed one year after final payment and those relating to all procurements over $10,000 shall be destroyed six years after final payment; however, when the documents listed below are readily identifiable as separate file segments (*i.e.*, when maintained as decentralized files in other offices or locations or when segmented within the contract file), they shall be handled as follows:

(i) unsuccessful bids (including tie bids), and all unsuccessful proposals or quotations for contracts of $10,000 or less, shall be destroyed either after final payment under the contract, or after one year from date of award of the contract, whichever occurs later, except that:

(A) an unsuccessful bid, proposal or quotation shall be retained until final resolution of any protest or complaint concerning it; and

(B) an unsuccessful bid, proposal or quotation concerning data that the purchasing office determines has future value to the Government shall be retained as long as advisable;

(ii) when contract is received for progressing and expediting or production surveillance only, contract status (progressing) and expediting and production surveillance records shall be destroyed six months after final shipment under the contract;

(iii) rejected engineering change proposals shall be destroyed six months after final payment under the contract;

(iv) labor compliance records, including equal employment opportunity records, shall be destroyed three years after final payment under the contract.

(b) Original purchase orders, contracts, and modifications of purchase orders and contracts of purchasing offices shall be destroyed six years and three months after final payment.

(c) In accordance with 10 U.S.C. 2304(b), all data respecting the negotiation of each contract under 3-201 and 3-207 through 3-217 shall be retained for six years after final payment and then destroyed.

(d) As required by 3-308, executed originals and copies of supporting documents for determinations and findings authorizing procurement by negotiation must be retained for six years following the date of the determination.

S2-502 Disposal of Contractor General Files.

(a) Documents in the contractor general file pertaining generally to the contractor (see S2-402) and not relating to any specific contract shall be destroyed as soon as superseded or obsolete.

(b) Routine documents which pertain only to specific contracts shall be destroyed as soon as all related contracts have been completed. Documents not routine in nature which pertain to specific contracts shall be destroyed six years after transfer to the inactive file.

S2-503 Disposal of Contract Cross Reference/Locator Files. Completed contract cross reference/locator files shall be destroyed at the same time as the related contract file, or when they are not longer required as contract cross reference/locator.

S2-504 Disposal of Duplicate or Working Contract or Contractor Files. Duplicate copies of official file documents and extraneous materials not required or appropriate for filing in official files shall be destroyed as soon as they have served their purpose, when actions which the file facilitated have been taken, or upon physical completion or final payment under the contract, as appropriate. In no case shall such copies be retained for longer than one year after final payment under the contract. However, pricing review files containing documents related to reviews of contractor price proposals, subject to certification of cost or pricing data (see 3-807.3), shall not be destroyed before the expiration of 6 years from the date of final payment under the contract. If conditions exist, however, which do not permit cross referencing the pricing review file to the official contract file to determine the date of final payment, the pricing review file will, in that case, be retained for 9 years following completion of the proposal review.

S2-505 Disposal Exception. The disposal provisions in S2-501 through S2-504 shall not apply to any records pertaining to outstanding exceptions, unsettled claims for or against the United States, incomplete investigations, cases pending or under litigation, or similar matters. Such records shall be preserved until final clearance or settlement of the matters and until the applicable time period authorized for the file has expired.

[FR Doc. 82-23235 Filed 8-24-82; 8:45 am]

BILLING CODE 3810-01-C

32 CFR Parts 1-39

[DAC 76-33]

Defense Acquisition Regulation

AGENCY: Defense Department.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76-33. Some of the changes include redesignation of Head of Contracting Activity; reference to "Jewel Bearings and Related Items Certificate;" two-step formal advertising; increased threshold for approval of R&D D&F's; contractor's weighted average share in cost risk (CWAS); application of Cost Accounting Standard 405 to directly associated costs; citation of currency conversion rate used on negotiated contracts with Canadian Commercial Corporation; affirmative action requirements for construction contracts; indefinite quantity contracts for architect-engineer contracts; contract administration services for Non-DoD organizations; quality assurance; mortuary services; credit billings for materiel returns; and contract file maintenance and close-out instructions.

EFFECTIVE DATE: February 15, 1982.

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, Room 3C257, Pentagon, Washington, D.C. 20301, Telephone 202-697-7266.

SUPPLEMENTARY INFORMATION: .

Background

The Defense Acquisition Regulation (DAR) is codified in Title 32, Parts 1-39, Volumes I, II, and III, of the Code of Federal Regulations (CFR). The August 1, 1981 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1976 edition of the DAR made by Defense Acquisition Circulars 76-1 through 76-27.

The Department of Defense announced the promulgation of the 1979 CFR edition in the **Federal Register** of December 31, 1979 (44 FR 77158), and also announced at that time that subsequent amendments to the DAR would be published in the **Federal Register.**

Defense Acquisition Circular 76-33

This document contains amendments to the Defense Acquisition Regulation in the Form of replacement pages which were included in DAC 76-33, issued February 15, 1982. The following is a summary of the amendments:

Redesignation of Head of Contracting Activity (HCA). DAR 1-201.14 is revised to delete the designation of the Office of Deputy Commander for Subsistence and Commander, Subsistence Field Activities as a contracting activity (Defense Logistics Agency).

Jewel Bearings and Related Items Certificate. DAR 2-201(a) and 3-501(b)(3), Section L (Uniform Contract Format) are revised to advise the offeror when a "Jewel Bearings and Related Items Certificate" is required.

Two-Step Formal Advertising. DAR 2-501(i) and 2-503(e) have been revised to specify that no matter of responsibility as defined in 1-903 is to be resolved in step one of two-step formal advertising.

Increased Threshold for Approval of R&D D&F's. DAR 3-302(i), 3-303(a) and J-502 have been revised to reflect an increase, from $100,000 to $5 million, in the statutory threshold at which R&D D&F's under DAR 3-211 must be approved at the Secretarial level, as a result of the FY 82 DoD Authorization Act (Public Law 97-86).

Contractor's Weighted Average Share in Cost Risk (CWAS). DAR 3-803(c)(4)(ii), Section III, Part 10, and 15-201.3 have been revised to reflect several changes in CWAS policies which had been previously published in Defense Procurement Circulars (DPCs) 75-1, 75-7, 76-11, and subsequent interpretive guidance. The changes published in this document merely codify the contents of those DPCs in the matters relating to (i) the threshold for CWAS qualification (75% or more), (ii) the basis for computing CWAS qualification, (iii) determining whether a fixed-price contract is competitive, and (iv) procedural instructions for CWAS-related actions. None of the material was changed substantively from that previously published in DPCs.

Application of Cost Accounting Standard (CAS) 405, Accounting for Unallowable Costs, to Directly Associated Costs. DAR 15-201.6 is revised to incorporate the provisions of CAS 405. DAR 15-205.2, 15-205.11, 15-205.17, and 15-205.31 are revised to identify directly associated costs as unallowable. DAR 3-809 is revised to provide procedures for identifying and segregating unallowable costs, in compliance with CAS 405 and 15-201.6.

Citation of Currency Conversion Rate Used on Negotiated Contracts With Canadian Commercial Corporation. When contracts are negotiated with the Canadian Commercial Corporation (CCC), it is permitted to request in Canadian currency. However, occasionally this causes difficulties in estimating the amount of the obligation in U.S. dollars. To facilitate the estimating, changes have been made to DAR 6-504.1 to require the citation of the conversion rate applicable at the time of award on the face of the contract. Related changes have been made in Section III, Parts 5 and 6.

Affirmative Action Requirements for Construction Contracts. The clauses in DAR 7-603.60 and 7-2003.14(d) concerning affirmative action requirements for construction contracts have been revised to implement the regulations issued by the Office of Federal Contract Compliance Programs on October 3, 1980.

Indefinite Quantity Contracts for Architect-Engineer Contracts. DAR 18-402.2(h) is revised to clearly authorize the use of indefinite quantity type contracts for obtaining architect-engineer services.

Contract Administration Services for Non-DoD Organizations. DAR 20-502 has been revised to permit the Departments, on an exception basis and with the approval of the Head of the Contracting Activity, to enter into agreements with non-defense organizations prescribing the use of non-defense procedures in contract administration.

Quality Assurance. The format of DAR 20-506, which sets out exceptions from the requirement for reimbursement for services furnished Non-DoD organizations, has been revised. An exception has also been added in 20-506(b) for reimbursement for quality assurance, inspection, and contract audit services furnished under an effective reciprocal agreement which provides for such services to be rendered on a no-charge basis.

Mortuary Services. DAR 22-501.5 has been modified to show the current addresses for distribution of contracts for mortuary services. Paragraphs 22-503.1 and 22-503.2 have been revised to conform with the current specifications of caskets used by the Military Departments.

Credit Billings for Materiel Returns. Appendix H has been modified to include detailed instructions concerning use of fund codes (used on Army contractor Government-furnished material turn-in documents) that identify the Army activity to which credits should be given. This is to facilitate prompt crediting of appropriate accounts.

Contract File Maintenance and Close-Out Instructions. Paragraphs S2-101 and S2-301 of DAR Supplement No. 2 have been revised to eliminate the concept of

contracts given limited administration being accorded distinctive treatment in files maintenance. These contracts will no longer be so identified for purposes of file maintenance. Also included in this DAC are editorial changes to S2–102.1(ix) and S2–102.2(iii), to reflect the correct title of DD Form 254.

Because the Defense Acquisition Regulation concerns agency management, public property, and contracts, it is not necessary to issue proposed rules for public comment. Neither is it necessary to delay the effective date until 30 days after the date of publication of these rules, 5 U.S.C. 533(a) and (d). The amendments became effective on February 15, 1982.

How To Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76–33. The number at the top of each page (for example, 1:17) identifies the page from the Regulation which is being replaced. The number at the bottom of the page is a reference to the last appearing numbered paragraph on that page, or if none shows, on a preceding page. The vertical line in the right margin indicates where the amendment is located.

List of Subjects in 32 CFR Parts 1–39

Government procurement.

Adoption of Amendments

Therefore, the Defense Acquisition Regulation contained in the August 1, 1981 edition of 32 CFR Parts 1–39, Volumes I, II and III, is amended in the DAR paragraphs indicated by substitution of the replacement pages listed in the table.

DAR paragraph	Replacement pages
Volume I	
1–201.14	1:17.
2–201	2:11.
2–501	2:43.
2–503.1	2:45.
3–302	3:19.
3–303	3:20.
3–501	3:61, 3:62, 3:63, 3:66–C, 3:70, 3:70–A.
3–608.2	3:92.
3–809	3:155, 3:157, 3:157–A.
3–1000	3:165.
3–1001	3:165.
3–1002	3:165.
3–1003.1	3:165, 3:166, 3:167.
3–1003.2	3:167.
3–1004 (add)	3:167, 3:168, 3:169.
3–1005 (add)	3:169, 3:170.
3–1006 (add)	3:170 (3:171 and 3:172 removed).
6–504.2	6:24.
Volume II	
7–603.60	7:314, 7:314–A, 7:314–B, 7:314–C.
7–2003.14	7:502–A, 7:502–B.
15–201.3	15:7, 15:8.
15–201.6	15:9, 15:9–A.
15–205.2	15:12.
15–205.11	15:24.
15–205.17	15:27–A.
15–205.31	15:32.
Volume III	
18–402.2	18:17.
20–502	20:27.
20–506	20:28.
22–501.5	22:17.
22–503.1	22:18.
22–503.2	22:19.
H–502	H:35, H:36.
H–606.1	H:47.
H–606.3	H:50, H:50–A.
J–502	J:12.

CHANGES TO DAR SUPPLEMENT NO. 2—NOT IN CFR

	Page
S2–101.1	S2–1.
S2–102.1	S2–2.
S2–102.2	S2–5.
S2–301	S21–5.
S2–301.2	S2–15

Dated: August 20, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

BILLING CODE 3810–01–M

Military District of Washington, U.S. Army;
U.S. Army, Europe;
National Guard Bureau;
Office of the Chief of Engineers;
U.S. Army Communications Command;
Office of The Surgeon General;
U.S. Army Western Command;
Military Traffic Management Command;
U.S. Army Ballistic Missile Defense Organization; and
Assistant Chief of Staff for Automation and Communications.

FOR THE NAVY:
Headquarters, Naval Material Command;
Office of Assistant Deputy Chief of Naval Material for Contracts and Business Management;
Naval Air Systems Command;
Naval Data Automation Command;
Naval Electronic Systems Command;
Naval Facilities Engineering Command;
Naval Sea Systems Command;
Naval Supply Systems Command;
Office of Naval Research;
Navy Aviation Supply Office;
Military Sealift Command;
Ships Parts Control Center;
United States Marine Corps; and
Installations and Logistics Department, Headquarters, U.S. Marine Corps.

FOR THE AIR FORCE:
HQ USAF, Director of Contracting and Acquisition Policy;
Air Force Logistics Command;
Air Force Systems Command;
Strategic Air Command;
Tactical Air Command;
Air Force Communications Command;
Military Airlift Command;
Air Training Command;
Pacific Air Forces;
United States Air Forces in Europe; and
Alaskan Air Command.

FOR THE DEFENSE LOGISTICS AGENCY:
Office of the Deputy Director for Contract Administration Services;
Office of the Executive Director, Procurement and Production;
Defense Supply Centers; and
Defense Personnel Support Center.

FOR THE DEFENSE COMMUNICATIONS AGENCY:
Headquarters, Defense Communications Agency; and
Defense Commercial Communications Office.

FOR THE DEFENSE NUCLEAR AGENCY:
Headquarters, Defense Nuclear Agency.

FOR DEFENSE MAPPING AGENCY:
Headquarters, Defense Mapping Agency, Logistics Office.

FOR THE NATIONAL SECURITY AGENCY:
Headquarters, National Security Agency.

FOR THE DEFENSE SUPPLY SERVICE--WASHINGTON:
Director, Defense Supply Service--Washington

It also includes any other procuring activity hereafter established. The number and designation of particular procuring activities of any Military Department may be changed by directive of the Secretary.

1-201.15 *Secretary* means the Secretary, the Under Secretary, or any Assistant Secretary of any Military Department. Secretary shall also include the Director and Deputy Director of the Defense Supply Agency, the Director of the Defense Communications Agency, the Director, Defense Nuclear Agency, the Director, Defense Mapping Agency, and the Director of the National Security Agency, except to the extent that any law or executive order limits the exercise of authority to persons at the Secretarial level. In the latter situation, such authority shall be exercised by the Assistant Secretary of Defense (Installations and Logistics).

1-201.16 *Shall* is imperative.

1-201.17 *Small Business Concern*. See 1-701.1.

1-201.18 *Supplemental Agreement* means any contract modification which is accomplished by the mutual action of the parties. (See 16-103.)

1-201.19 *Supplies* means all property except land or interest in land. It includes public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts, and accessories thereto; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing. "Supplies" as used in this Regulation is synonymous with "property" as described in 10 U.S.C. 2303(b).

1-201.20 *United States*, when used in a geographic sense, means the States and the District of Columbia.

1-201.21 *Construction*. See 18-101.1.

1-201.22 *Classified Procurement* is that which requires access to classified information ("Confidential, Secret or Top Secret") either to submit a bid or proposal, or to perform the contract; see 1-320.

1-201.23 *Designee*, as used, for example, in the phrase, "Head of a Procuring Activity or his designee", may include one or more officials.

1-201.24 *Purchasing Office* means the office which awards or executes a contract for supplies or services and performs post-award functions not assigned to a contract administration office.

1-201.25 *Contract Administration Office* means the office which performs assigned functions related to the administration of contracts, and assigned pre-award functions.

1-201.26 *Assignment of Contract Administration* means that process whereby identified functions, duties, or responsibilities related to the administration of

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(B) include in Section L of the solicitation a provision substantially as follows:

MINIMUM ACCEPTANCE PERIOD (1975 MAR)

Offerors allowing less than the number of calendar days specified in the "Offer" portion of SF 33 for acceptance by the Government will be rejected as nonresponsive.

(End of provision)

(xviii) when the contract is to contain a first article approval clause, the statement required by 1-1903;
(xix) any applicable notices of small business or labor surplus area set-asides (see 1-706.6 and 1-804.2);
(xx) the applicable small business size standard and product classification (see 1-701 and 1-703);
(xxi) any offer by the Government to provide Government production and research property for the performance of the contract (see Section XIII, Part 3) (see, for example, 13-202(b));
(xxii) the provision in 7-2003.10 when a "brand name or equal" item is being acquired;
(xxiii) in unusual cases, where bidders are required to have special technical qualifications due to the complexity of the equipment being acquired, or for some other special reason, a statement of such qualifications;
(xxiv) if the solicitation is to include an Industrial Preparedness Production Planning line item, the provision in 7-2003.69 will be included (see 1-2206);
(xxv) in accordance with 3-213.4, insert the Notice of Possible Standardization provision in 7-2003.38;
(xxvi) when the statement of work requires the design, development, or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72;
(xxvii) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6;
(xxviii) when the solicitation is subject to an in-house versus contract cost comparison (Section IV, Part 12), include the provision in 7-2003.89(a);
(xxix) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer; and
(xxx) information as to requirements for a Jewel Bearing and Related Items Certificate when required by 1-2207.2.

SECTION M - Evaluation Factors for Award.

(i) a statement of the exact basis upon which bids will be evaluated and award made, to include any Government costs or expenditures (other than bid prices) to be added or deducted, or any provisions for economic price adjustment as factors for evaluation. (The amount of any royalty payable under the royalty-sharing provisions of a previously accepted value engineering change proposal incorporated in the solicitation will be considered in evaluating offers when the value engineering change is one of two or more acceptable alternatives under the solicitation.) See also 1-304.3.
(ii) if the solicitation contains an economic price adjustment clause, the provision in 7-2003.23(a);
(iii) when the contracting officer determines that it is necessary to consider the advantages or disadvantages to the Government that might result from making more than one award (multiple awards) (see 2-407.5(iii)), the provision in 7-2003.23(b);
(iv) discount provision (see 2-407.3);
(v) when bids (or proposals) are to be solicited f.o.b. origin only and when requirement exists for transit arrangements at transit point(s) in the United States (excluding Alaska and Hawaii) (see 19-206(a)), the provision in 7-2003.23(c);
(vi) to establish the means the Government will use in f.o.b. origin solicitations in applying transportation costs for evaluation (see 19-208.2(c)), the provision in 7-2003.23(d) (which may be modified to accommodate other methods of transportation);
(vii) when the exact destination is not known (see 19-208.4(a)), the provision in 7-2003.24(a);
(viii) when the exact destination is not known (see 19-208.4(a)), or when f.o.b. origin contracts may result (see 19-209), the provision in 7-2003.24(b);
(ix) when the supplies may be purchased f.o.b. origin (see 19-212), the provision in 7-2003.24(c);
(x) when both f.o.b. origin and f.o.b. destination bids are desired (see 19-104.2(b)), the provision in 7-2003.24(d);
(xi) any provision concerning evaluation or award peculiar to the kind of contract (for example, the provision required by 22-702.1 for laundry and drycleaning services, that required by 22-502 for mortuary services, that required by 22-600.3 and 22-600.4 for the preparation of personal property for shipment or storage and the performance of intra-area movement);

Part 5—Two-Step Formal Advertising

2–501 General. Two-step formal advertising is a method of procurement designed to expand the use and obtain the benefits of formal advertising where inadequate specifications preclude the use of conventional formal advertising. It is especially useful in procurements requiring technical proposals, especially those for complex items. It is conducted in two steps:

(i) Step one consists of the request for, and submission, evaluation, and, if necessary, discussion of a technical proposal, without pricing, to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and includes engineering approach, special manufacturing processes, and special testing techniques. When it is necessary in order to clarify basic technical requirements, related requirements such as management approach, manufacturing plan, or facilities to be utilized may be clarified in this step. Conformity to the technical requirements is resolved in this step, but matters of responsibility as defined in 1-903 are not.

(ii) Step two is a formally advertised procurement confined to those who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the awards made in accordance with Parts 3 and 4 of this Section.

Two-step formal advertising requires that the contracting officer work closely with technical personnel and that he utilize their specialized knowledge in determining the technical requirements of the procurement, in determining the criteria to be used in evaluating technical proposals, and in making such evaluation. An objective of this method is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirement, including an adequate technical data package, so the subsequent procurements may be made by conventional formal advertising.

2–502 Conditions for Use.

(a) Two-step formal advertising shall be used in preference to negotiation when all of the following conditions are present, unless other factors require the use of negotiation, *e.g.*, 3–213;

(i) available specifications or purchase descriptions are not sufficiently definite or complete or may be too restrictive, and the listing of the salient characteristics in a "brand name or equal" description would likewise be too restrictive, to permit full and free competition without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to insure mutual understanding between each source and the Government;

(ii) definite criteria exist for evaluating technical proposals, such as design, manufacturing, testing, and performance requirements, and special requirements for operational suitability and ease of maintenance;

(iii) more than one technically qualified source is expected to be available;

(iv) sufficient time will be available for use of the two-step method; and

(v) a firm fixed-price contract or a fixed-price contract with economic price adjustment will be used.

(b) None of the following in itself precludes the use of two-step formal advertising:

(i) A multi-year procurement is being made.

(ii) A first or subsequent production quantity is being procured under a performance specification.

(iii) Government-owned facilities or special tooling is to be made available to the successful bidder.

(iv) A total small business set-aside is involved (see 1–706.5(b) and 1–706.2). A total small business set-aside would not be appropriate in a procurement of a highly technical and complex item where it is anticipated that, in order to obtain adequate competition (1) a significant number of acceptable technical proposals must be received from firms with prior testing, developmental and production experience of the item, or major components thereof, and (2) the restriction of such procurement to small business firms would seriously limit the number of qualified firms eligible to submit proposals.

2–503 Procedures.

2–503.1 *Step One.*

(a) A request for technical proposals shall be distributed to qualified sources in accordance with 1–302.2. In addition, the request shall be synopsized in accordance with Section I, Part 10. The request may be in the form of a letter and shall contain, as a minimum, the following information:

(i) the best practicable description of the supplies or services required;

(ii) notification of the intent to conduct the procurement in two steps and the actions involved;

(iii) the requirements of the technical proposal, *i.e.*, the necessary details such as drawings, data, presentations, etc., to be submitted;

(iv) the criteria for evaluating the technical proposal (see 2–502(a) (ii));

(v) a statement that the technical proposals shall not include prices or pricing information;

(vi) the date or date and hour by which the proposal must be received and the Late Technical Proposals provision in 7–2002.3 (this replaces paragraphs 7 and 8 of Standard Form 33A);

(vii) a statement that in the second step of the procurement only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for awards; and that each bid in the second step must be based on the bidder's own technical proposals;

(viii) a statement that offerors are advised to submit proposals which are fully and clearly acceptable without additional explanation or information, since the Government may make a final determination as to whether a proposal is acceptable or unacceptable solely on the basis of the proposal as submitted and proceed with the second step without requesting further information from any offeror; however, if the Government deems it necessary to obtain sufficient acceptable

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proposals to assure adequate price competition in the second step or deems it otherwise desirable in its best interest the Government may, in its sole discretion, request additional information from offerors of proposals which the Government considers reasonably susceptible of being made acceptable by additional information clarifying or supplementing but not basically changing any proposal as submitted and, for this purpose, the Government may discuss any such proposal with the offeror;

(ix) a statement that each source submitting an unacceptable technical proposal will be so notified upon completion of the technical evaluation of his proposal, and final determination of such unacceptability; and

(x) a statement either that only one technical proposal may be submitted by each offeror or that multiple technical proposals may be submitted. When compliance with specifications permit utilization of essentially different technical approaches, it is generally in the interest of the Government to authorize the submission of multiple proposals. If multiple proposals are authorized the request shall include the clause in 7-2003.36.

(b) Although the Government's delivery or performance requirements are not evaluation factors under Step One, information about those requirements may be of assistance to potential bidders in determining whether or not to submit a technical proposal. Accordingly, a request for technical proposals may contain a statement indicating what the Government's probable contract delivery or performance requirements will be. The statement shall also advise that such information is not binding on the Government and that the Government's actual delivery or performance requirements will be contained in invitations for bids issued under Step Two.

(c) Upon the receipt of technical proposals:

(i) every precaution shall be taken to safeguard technical proposals against disclosure to unauthorized persons;

(ii) technical proposals submitting data marked in accordance with 3-507.1 shall be accepted and handled in accordance with that paragraph; and

(iii) any reference to price or cost shall be removed.

(d) The contracting officer shall establish a time period within which technical proposals will be evaluated. The time period may vary from procurement to procurement depending upon the complexity and number of proposals involved. However, it is essential that the evaluation of technical proposals by all personnel concerned with the procurement, as well as any subsequent discussion with sources submitting technical proposals, be completed expeditiously.

(e) Technical evaluation of the proposals shall be based upon the criteria contained in the request for technical proposals and such evaluation shall not include consideration of responsibility as defined in 1-903. The proposals as submitted, shall be categorized as:

(i) acceptable;

(ii) reasonably susceptible of being made acceptable by additional information clarifying or supplementing, but not basically changing the proposal as submitted; or

(iii) in all other cases, unacceptable.

Any proposal which modifies, or fails to conform to the essential requirements or specifications of, the request for technical proposals shall be considered nonresponsive and categorized as unacceptable. If the contracting officer determines that there are sufficient proposals in category (i) above to assure adequate price competition under step two and that further time, effort and delay to make additional proposals acceptable and thereby increase competition would not be in the best interest of the Government, he may proceed directly with step two. Otherwise, the contracting officer shall request bidders under proposals in category (ii) above to submit additional information, setting forth to the extent practicable the nature of the deficiencies in the proposal as submitted or the nature of the additional information required. The contracting officer may also arrange discussions for this purpose. In initiating requests for additional information, the contracting officer shall fix an appropriate time for bidders to conclude discussions, if any, submit all additional information, and incorporate such additional information as part of their proposals as submitted. Such time may be extended in the discretion of the contracting officer. If the additional information incorporated as part of a proposal within the final time fixed by the contracting officer establishes that the proposal is acceptable, it shall be so categorized. Otherwise, it shall be categorized as unacceptable.

(f) Upon final determination that a technical proposal is unacceptable, the contracting officer shall promptly notify the source submitting the proposal of that fact. The notice shall state that revision of his proposal will not be considered, and shall indicate, in general terms, the basis for the determination for example, that rejection was based on failure to furnish sufficient information or on an unacceptable engineering approach. Upon written request, and at the earliest feasible time after contract award, such source(s) shall be debriefed in accordance with 3-508.4.

(g) Consideration of late technical proposals is governed by the procedure in 3-506.

(h) If, as a result of the evaluation of technical proposals, it appears necessary to discontinue two-step formal advertising, a statement setting forth the full facts and circumstances shall be made a part of the contract file. Each source will be notified in writing of the discontinuance and the reason therefor. When step one results in no acceptable technical proposal or only one acceptable technical proposal, the procurement may be continued by negotiation under the authority of 3-210.2(iii). (But see 3-210.3.)

2-503.2 *Step Two.* Upon completion of step one, a formally advertised procurement in accordance with Parts 2, 3, and 4 of this Section will be conducted except that invitations for bids:

(i) will be issued only to those sources whose technical proposals have been evaluated and determined to be acceptable under step one;

(ii) will include the provision in 7-2003.37;

(e) When an option provision in the contract is contemplated, the D&F shall set forth the approximate quantity to be awarded initially and the extent of the increase to be permitted by the option.

(f) D&Fs shall be dated at the time of signature.

(g) The authority to act under a D&F expires when the authority granted thereunder is exercised or on a specified expiration date, whichever first occurs. When the request for proposals or for quotations has been furnished to the prospective contractor prior to the expiration of the authority under the D&Fs, such authority will continue until award of the contract(s) resulting from that solicitation.

3–302 Determinations and Findings by the Secretary of a Department. The following determinations, and written findings in support thereof, may be made only by the Secretary of a Department and not delegated hereunder except to the extent provided in (i), (vii), and (viii) below:

(i) the determination required by 3–211 with respect to any negotiated contract for experimental, developmental, or research work, or for the manufacture or furnishing of supplies for experimentation, development, research, or test (but see 3–303(a)(ii) when the amount does not exceed $5 million);

(ii) the determination required by 3–212 with respect to any negotiated contract that should not be publicly disclosed;

(iii) the determination required by 3–213 with respect to any negotiated contract for technical equipment requiring standardization and interchangeability of parts;

(iv) the determination required by 3–214 with respect to any negotiated contract for technical or specialized supplies requiring a substantial initial investment or an extended period of preparation for manufacture;

(v) the determination required by 3–215 with respect to any negotiated contract entered into after advertising has proved unsatisfactory;

(vi) the determination required by 3–216 with respect to any negotiated contract entered into in the interest of national defense or industrial mobilization;

(vii) the determination required with respect to advance payments under any negotiated contract (but see Defense Contract Financing Regulations, Part 4, Appendix E); and

(viii) the determinations required with respect to waiving a requirement for submission of cost or pricing data and certification thereof (see 3–807.3(b)) and for inclusion of the clauses required by 7–104.29 and 7–104.42 (but see 3–303(a)(i) for contracts with foreign governments or agencies thereof).

In addition to the foregoing determinations, the Secretary of any Department may also make any of the determinations, and written findings in support thereof, that may be made by the Head of any Procuring Activity signing as a chief officer responsible for procurement or by a contracting officer.

3–303 Determinations and Findings Below the Secretarial Level.

(a) Determinations, and findings in support thereof, not required to be made by higher authority including those in (i) through (iv) below may be made with respect to individual purchases or contracts by the Head of a Procuring Activity signing as a chief officer responsible for procurement. Unless his authority is limited by higher authority, the contracting officer may make the determinations and findings in (ii) through (iv) with respect to individual purchases and contracts:

(i) the determination required with respect to waiving the requirements for submission of cost or pricing data and certification thereof and for the inclusion of the clauses required by 7–104.29 and 7–104.42 for contracts with foreign governments or agencies thereof;

(ii) determinations and findings with respect to authority to enter into contracts by negotiation required by 3–202.3, 3–207.3, 3–208.3, 3–210.3 and 3–211.3; *provided*, that under 3–211.3 the basic contract or any single modification thereto does not obligate the Government to pay more than $5 million (in a procurement under 3–211, where it is known in advance that the scope of the contract will be expanded to include additional phases or where it is incrementally funded, the total estimated cost of all increments will be used as the basis for determining whether a determinations and finding will be made at the Secretarial level or by the contracting officer);

(iii) determinations and findings with respect to the use of a cost or a cost-plus-a-fixed-fee or an incentive-type contract required by 3–404.4, 3–405, 3–405.4, and 3–405.6; and

(iv) any other determinations and findings not required to be made by higher authority.

(b) The authority to make class determinations and findings with respect to authority to enter into contracts by negotiation pursuant to 3–202, 3–207, 3–208, and 3–210 may be delegated by the Secretary of any Department.

3–304 Reserved.

3–305 Formats for Determinations and Findings. A D&F with respect to (i) negotiation of an individual contract or a class of contracts, (ii) the type of contract to be used, or (iii) waiving a requirement for submission of cost or pricing data and certification thereof, should conform generally to the appropriate format set forth in Appendix J. A D&F for advance payments should be prepared in accordance with the format in E–410. A D&F for any other purpose shall be prepared in accordance with Departmental procedures. Each determination and findings shall set out enough facts and circumstances to justify clearly the specific determination made. Each determination and findings for authority to negotiate either an individual contract or a class of contracts shall clearly and convincingly establish that the use of formal advertising would not be feasible and practicable.

3–306 Procedure With Respect to Determinations and Findings.

(a) Determinations and findings for authority to negotiate required by 3–202, 3–207, 3–208, and 3–210 through 3–216 shall be signed by the appropriate official prior to issuance of a request for proposals or quotations. Any modifications of such Determinations and Findings subsequently found to be necessary will not require cancellation of the request for proposals or quotations, provided the

SECTION F - Deliveries or Performance.

(i) the time of delivery or performance (see 1-305);

(ii) place and method of delivery (see Section XIX);

(iii) when MILSTAMP procedures apply to shipments of supplies, a provision setting forth the obligations of the contractor under such procedures (see 19-101).

SECTION G - Contract Administration Data.

(i) accounting and appropriation data (Note: where SF 33 is used, include only data not set forth on that form);

(ii) instructions to paying offices and administrative contracting offices, including name, organization code, and telephone area code, number, and extension of contracting office representative.

(iii) for contracts requiring payment in Canadian currency, the contract price shall be quoted in terms of Canadian dollars and shall be identified by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the US/Canadian conversion rate in effect at the time of award and the US dollar equivalent of the Canadian dollar contract amount.

SECTION H - Special Provisions.

(i) if the contract is to include option provisions, a clear statement of the provisions (see 1-1506);

(ii) if the contract is to include design-to-cost requirements, provisions in accordance with 1-338;

(iii) if 1-1503(d) applies, a conspicuous notice cautioning offerors that an offer containing an option price higher than the base price may be accepted only if the acceptance does not prejudice any other offeror (this may be placed elsewhere as long as the notice is adjacent to the limitation as to option price);

(iv) if the price negotiated is not predicated on allowability of the cost of money for facilities capital employed, the contract shall include a statement that: the cost of money for facilities capital (15-205.50) is unallowable.

(v) if the contract is to be conditioned on the availability of funds, include one of the clauses in 7-104.91;

(vi) if the contract is multiyear, the provisions required by 1-322.2(a), (b), or (f);

(vii) any progress payments provisions (see Appendix E);

(viii) any applicable Service Contract Act wage determinations of the Secretary of Labor (see Section XII, Part 10);

(ix) any special provisions relating to the Government's providing Government production and research property (see Section XII, Part 3);

(x) when the clause in 7-104.62 is included in the contract and Appendix I, Table 2, does not list addresses of the required special distribution recipients, the applicable names and addresses shall be included in this Section H. The contracting office issuing the contract shall reference the line item as necessary, the addresses of the status control activity/inventory manager, and, if applicable, the processing contracting office cited in the Military Interdepartmental Purchase Request (MIPR);

(xi) in accordance with 1-1208, the clause in 7-104.48 and the clause in 7-104.49;

(xii) if the contract is to contain the Safety Precautions for Ammunition and Explosives clause in 7-104.79, a specific list of any of the mandatory requirements of DoD Manual 4145.26-M that are being waived;

(xiii) when the contract is expected to contain requirements for provisioned items, include the information prescribed in 4-302.1;

(xiv) for acquisitions involving Military Assistance Program (MAP)(Grant Aid), include the MAP Record Control/Program/Directive Number identifier and special markings, if appropriate. For Foreign Military Sales (FMS) acquisitions, include the special markings, if appropriate, and specify the FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY-D-DCA. These identification entries are required to permit the contractor to comply with Appendix I-301, Block 16(12), and to facilitate collection of contract administration charges from foreign governments on FMS acquisitions.

(xv) if the contract is for supplies acquired for resale, include the clause in 7-104.88;

(xvi) if international air transportation of personnel and cargo is possible during performance of the contract, include the clause in 7-104.95;

(xvii) in accordance with 9-603(b), insert the Identification of Restricted Rights Computer Software provision in 7-2003.76;

(xviii) if the contract is to involve materials of a hazardous nature, include the clause in 7-104.98 as prescribed by 1-323.2; and

(xix) when the proposed contract is to require the contractor to prepare production progress reporting in accordance with the clause in 7-104.51, the contract schedule shall contain instructions as prescribed in 25-202.

Part II—General Provisions

SECTION I - General Provisions.

(i) such general contract provisions (contract clauses) as are required by law or by this Regulation;

(ii) such additional general provisions (contract clauses) as may be applicable to the contract;

(iii) such alterations in contract provisions as are appropriate.

Part III—List of Documents, Exhibits, and Other Attachments

SECTION J - List of Documents, Exhibits, and Other Attachments.

(i) Here list all of the documents, exhibits, and other attachments that make up the request for proposals or requests for quotations package; give form number, name, date, and number of pages for each document; give type and identifier (for example, "Exhibit A"), name, and number of pages for each exhibit, appendix, or other attachment (for example, work frequency schedules, work statements, specifications, special requirements, or other documents too lengthy to be conveniently written into the request for proposals or request for quotations proper).

Part IV—General Instructions

SECTION K - Representations, Certifications, and Other Statements of Offeror.

(i) when neither SF 18 nor SF 33 is used, the following shall be included in this Section K:

The Offeror/Quoter represents and certifies as part of his proposal/quotation that: (Check or complete all applicable boxes or blocks.)

(A) SMALL BUSINESS

He /_/ is, /_/ is not a small business concern. A small business concern for the purpose of Government contracting is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is quoting on Government contracts, and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration. (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed industry definitions and related procedures.) If the

offeror/quoter is a small business concern and is not the manufacturer of the supplies offered, he also represents that all supplies to be furnished /_/ will, /_/ will not, be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico.

(B) SMALL DISADVANTAGED BUSINESS CONCERN

(a) The offeror represents that he ( ) is, ( ) is not, a small business concern owned and controlled by socially and economically disadvantaged individuals. The term "small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" means a small business concern—

(1) that is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially or economically disadvantaged individuals; and

(2) whose management and daily business operations are controlled by one or more such individuals.

(b) The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans (i.e., American Indians, Eskimos, Aleuts, and Native Hawaiians), Asian-Pacific Americans (i.e., U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), and other minorities or any other individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

(xxxvii) when the solicitation is subject to an in-house versus contract cost comparison (Section IV, Part 12), include the clause in 7-2003.89(b);
(xxxviii) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer; and
(xxxix) information as to requirements for a Jewel Bearing and Related Items Certificate when required by 1-2207.2.

SECTION M - Evaluation Factors for Award.

(i) factors other than price (including technical quality when technical proposals or quotations are requested), which will be given paramount consideration in the awarding of the contract; when an award is to be based upon technical and other factors, in addition to price or cost, the solicitation shall clearly inform offerors of (A) the significant evaluation factors, and (B) the relative order of importance the Government attaches to price and all such other factors. Numerical weights, which may be employed in the evaluation of proposals, shall not be disclosed in solicitations;
(ii) statements of information required to enable evaluation of technical and financial capabilities;
(iii) discount provisions (see 2-407.3);
(iv) any provision concerning evaluation or award peculiar to the kind of contract (for example, the provision required by 22-702.1 for laundry and drycleaning services and that required by 22-502 for mortuary services);
(v) if, pursuant to 1-1504, options are to be evaluated for award, the applicable Evaluation of Options provision shall be inserted;
(vi) a statement explaining the evaluation procedure to eliminate the competitive advantage from the rent-free use of Government production and research property (see Section XIII);
(vii) any information pertaining to evaluation and award when first article approval is involved (see 1-1903);
(viii) in a solicitation for supplies of which wool is a component, the Domestic Wool Preference provision in 7-2003.48;
(ix) the appropriate transportation solicitation evaluation provisions in 7-2003.23 and 7-2003.24;
(x) identification of special factors, such as Government costs or other expenditures, including reliability and maintainability requirements, which must be considered in the evaluation of proposals or quotations (The amount of any royalty payable under the royalty-sharing provisions of a previously accepted value engineering change proposal incorporated in the solicitation will be considered in evaluating offers when the value

(xli) if pursuant to 1-1504, options are to be evaluated for award, the applicable *Evaluation of Options* provision shall be inserted;
(xlii) if 1-1503(d) applies, a conspicuous notice cautioning offerors that an offer containing an option price higher than the base price may be accepted only if such acceptance does not prejudice any other offeror; (This may be placed elsewhere so long as the notice is adjacent to the limitation as to option price.)
(xliii) any requirement for royalty information to be furnished with the offer, proposal or quotation (see 9-110(a));
(xliv) when the contract is for the purchase of a patented item for which the Government is a licensee (1-304.3), include the provision in 7-2003.15;
(xlv) a statement on the first sheet or on a cover sheet of the Request for Proposals that:

PROPOSALS MUST SET FORTH FULL, ACCURATE, AND COMPLETE INFORMATION AS REQUIRED BY THIS REQUEST FOR PROPOSAL (INCLUDING ATTACHMENTS). THE PENALTY FOR MAKING FALSE STATEMENTS IN PROPOSALS IS PRESCRIBED IN 18 U.S.C. 1001.

(xlvi) a statement of arangements to be made for inspecting the site, including designation of the person or persons, if any, with whom such arrangements may be made and who will answer questions or furnish information;
(xlvii) information which may affect performance of the work such as boring samples, original boring logs, etc.;
(xlviii) information as to what utilities the Government will furnish during construction, when the contracting officer determines that any new utilities are adequate for the needs of both the Government and the contractor (see 7-603.30);
(xlix) Reserved;
(l) Reserved;
(li) (A) in accordance with 3-1203(a), insert the provision in 7-2003.67(a);
(B) in accordance with 3-1204, insert the provision in 7-2003.67(b);
(C) in accordance with 3-1213(a), insert the provision in 7-2003.67(c);
(lii) the *Late Technical Proposals* provision in 7-2002.3, or the Late Proposals provision in 7-2002.4, (these replace paragraphs 7 and 8 of SF 22);
(liii) if international air transportation of personnel and cargo is possible during performance of the contract, the clause in 7-104.95;
(liv) the *Contingent Fee* provision in 7-2002.1 shall be substituted for paragraph 3 of SF 19-B;
(lv) the *Clean Air and Water Certification* in 7-2003.71;
(lvi) Reserved;
(lvii) when the statement of work requires the design, development or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72;
(lviii) if the contract is for the acquisition of goods or services for MAP, IMET, or FMS, include the clause in 7-104.97;

(lix) if the contract includes FMS requirements, identify the contract by clearly stamping or otherwise indicating "*FMS Requirement*" on the cover sheet of the contract;

(lx) reserved;

(lxi) when Government specifications are incorporated requiring utilization of recovered materials, insert the certification in 7-2003.82.

(lxii) when the provisions of the Buy American Act or the Balance of Payments Program apply, include the clauses in 7-104.3, 7-104.32, 7-2003.47, and 7-104.106 as prescribed in 6-104.5, 6-803.1(e).

(lxiii) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

(lxiv) when the solicitation is subject to an in-house versus contract cost comparison (Section IV, Part 12), include the clause in 7-2003.89(b).

(lxv) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer.

(lxvi) when the solicitation imposes partial or total small business set-aside procedures pursuant to 1-706.5 and 1-706.6, or is for a combined small business-labor surplus area set-aside procurement pursuant to 1-706.7 and is expected to result in award of a contract during fiscal year 1981, 1982, or 1983, insert the Certification of Handicapped Organizations representation in 7-2003.91. The contracting officer may rely on an offeror's self-certification that it qualifies as an eligible organization as defined in 7-2003.91. Questions concerning the eligibility of offerors shall be processed in accordance with procedures in 1-703.

(lxvii) for contracts requiring payment in Canadian currency, the contract price shall be quoted in terms of Canadian dollars and shall be identified by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the US/Canadian conversion rate in effect at the time of award and the US dollar equivalent of the Canadian dollar contract amount.

(d) *Oral Solicitations.*

(1) Oral solicitations are authorized for small purchases (see Section III, Part 6) and for the acquisition of perishable subsistence.

(2) Oral solicitations, other than those described in (1) above, are authorized in cases where the processing of a written solicitation would delay the furnishing of the supplies or services to the detriment of the Government. Examples of such circumstances may include those listed in 3-202.2. However, oral solicitation is not to be considered justified solely because a high issue Priority Designator has been assigned to the requirement. In addition to other applicable documentation requirements (see 1-308), the record of contract actions above shall include a resume of the circumstances that justified use of an oral solicitation, item description, quantity, deliveries required, sources solicited, prices quoted (including name of individual contacted), date and time contacted, and the solicitation number (see 20-203) provided the prospective sources. Should the issuance of the resulting contractual instrument be unduly delayed, the contract file should be documented to describe the reasons for the delay and justify award based upon the oral solicitation.

(3) Use of oral solicitation does not relieve the contracting officer from complying with other applicable portions of this Regulation; e.g., the appropriate requirements of (b) above, postaward notice of offerors (see 3-508.3), price negotiation policies and techniques (Section III, Part 8), and submission of same terms and conditions to all offerors.

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in 7-2003.50 and the clause in 7-2003.51 shall be inserted in the Schedule, and Clause 6 of the General Provisions (Foreign Supplies) deleted. In addition, the contractor's signature shall be obtained on DD Form 1155r.

(x) Reserved.

(xi) The clauses in 7-104.48 and 7-104.49 may be used in accordance with the provisions of 1-1208.

(xii) When the contract is for mortuary services:

(A) the following clauses shall be inserted in the Schedule—

(I) the Specification clause in 7-1201.4;

(II) the Delivery and Performance clause in 7-1201.7;

(III) the Subcontracting clause in 7-1201.8;

(IV) the Inspection clause in 7-1902.4;

(V) the Professional Requirements clause in 7-1201.11;

(VI) the Facility Requirements clause in 7-1201.12; and

(VII) the Preparation History clause in 7-1201.13;

(B) the Additional Default Provision clause in 7-1201.9 shall be inserted in the Schedule, with the following substitution for paragraph (a) and the first sentence of paragraph (b) of that clause:

(a) This clause supplements the "Termination for Default" clause of this contract.

(b) This contract may be terminated for default by written notice if during the performance of this contract:

(C) The Changes clause in 7-1902.2 shall be substituted for paragraph 17 of the Additional General Provisions on DD Form 1155r.

(xiii) *Reserved.*

(xiv) When required by 6-305, the clauses in 7-104.13 and 7-104.93 shall be added.

(xv) When required by Section XII, Part 10, the clause in 7-1903.41(a) or (b) shall be added.

(xvi) When required by 19-213.2, the clause in 7-104.74 shall be added.

(xvii) In accordance with 1-330, the clause in 7-104.45(a) or 7-1912 may be inserted.

(xviii) When the contract requires the use of a Government bill of lading or mailing indicia, the clause in 7-104.85 shall be added.

(xix) When a bid guarantee is required in accordance with 10-102, the clause in 7-2003.25 shall be included together with the instructions in 10-102.4.

(xx) When performance and payment bonds are required in accordance with 10-103, pertinent instructions with regard thereto shall be added.

(xxi) *Reserved.*

(xxii) When required by 12-302, the *Contract Work Hours and Safety Standards Act* clause in 7-103.16(a) shall be added.

(xxiii) When required by 7-1903.41(d), one of the Linen Supply Service Contract clauses therein shall be added.

(xxiv) When required by 10-405, the *Insurance* clause in 7-104.65 or 7-603.10 shall be added.

(xxv) When required by 1-706.5, the *Notice of Total Small Business Set-Aside* clause in 7-2003.2 shall be added.

(xxvi) The changes authorized by 16-402.2 shall be incorporated when construction procurements are negotiated in accordance with 18-302.

(xxvii) When required by 19-208.3(a), the clause in 7-104.76 shall be added.

(xxviii) When required by 1-2207.3(c)(l)(iii), the clause in 7-104.38 shall be added.

(xxix) When required by 1-2207.4(c)(1)(iii), the clause in 7-104.46 shall be added.

(xxx) When the contract covers the procurement of goods and services for MAP, IMET, and FMS, the clause in 7-104.97 shall be added.

(xxxi) When required by 12-1302(a), insert the clause in 7-103.28.

(xxxii) If the contract is to involve materials of a hazardous nature, include the clause in 7-104.98 as prescribed by 1-323.2.

(xxxiii) When the contract involves the purchase of gas in contractor-furnished returnable cylinders and the contractor retains title to the cylinders, the clause in 7-104.60 shall be added. The clause may also be used, with appropriate modification, in contracts for other supplies under the circumstances specified in 7-104.60.

(xxxiv) In accordance with 12-807.1, insert the applicable clause in 7-103.18.

(xxxv) When the purchase order includes FMS requirements, clearly indicate "FMS Requirement" on its face and specify within the order each FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY-D-DCA.

(xxxvi) The clause in 7-104.103 may be used in accordance with instructions therein.

(xxxvii) For contracts requiring payment in Canadian currency, the contract price shall be quoted in terms of Canadian dollars and shall be identified by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the US/Canadian conversion rate in effect at the time of award and the US dollar equivalent of the Canadian dollar contract amount.

(2) *Use as a Purchase Order of Not More than $10,000 Outside the United States, its Possessions, and Puerto Rico.* DD Form 1155 and 1155r-1, with executed contractor's acceptance when required, are authorized for negotiated purchases of not more than $10,000 when such purchases are for supplies and services procured and used outside the United States, its possessions, and Puerto Rico, *provided:*

(i) the procurement is unclassified;

(ii) no clauses covering the subject matter of any clause set forth in this Regulation, other than clauses set forth in DD Form 1155r-1, are to be used, except that—

(A) either the standard foreign Disputes clauses in 7-103.12(b) or that clause as modified in accordance with 7-103.12(c) shall be inserted in the Schedule.

(B) When the contract is translated into another language, the Schedule shall contain the provision in 7-2003.44.

(C) When Government property having acquisition cost in excess of $50,000 is to be furnished (for use in performance of contract or for repair), the Government Property clause in 7-104.24(a) shall be inserted in the Schedule in accordance with instructions in 7-104.24(b). When Government property having an acquisition cost not in excess of $50,000 is to be furnished for use in performance of the contract or for repair, the Government-Furnished Property (Short Form) clause in 7-104.24(f) shall be inserted in the Schedule in accordance with instructions in that paragraph; *provided* that use of the clause shall be optional when the acquisition cost of property furnished for repair is not in excess of $10,000. When a Government Property clause is inserted in the Schedule, the contractor's signature shall be obtained on DD Form 1155r-1.

Suspended and/or Disapproved" to the contractor. DCAA Form 1 will be processed in the same manner as indicated in (1)(i) above with regard to contractor appeals, and shall contain the statement prescribed therein with respect to costs disapproved.

(3) Responsibilities for Pre-Award Surveys and Reviews: Pre-Award surveys of potential contractors' competence to perform proposed contracts shall be managed and conducted by the contract administration office. When information is required on the adequacy of the contractor's accounting system or its suitability for administration of the proposed type of contract, such information shall always be obtained by the ACO from the auditor. The contract administration office shall be responsible for advising the PCO on matters concerning the contractor's financial competence or credit needs.

(4) Reviews of Contractors' Estimating Systems:

(i) The establishment, maintenance, and consistent use of formal cost estimating systems by contractors is to the mutual benefit of the Government and industry, particularly where a large portion of the contractor's business is defense work and there are a number of significant proposals requiring review. Procuring activities and contract administration activities are required to furnish full support to a program of encouraging major defense contractors to formalize and follow good estimating procedures. It is recognized that estimating procedures will vary among contractors, and may vary between plants or divisions of a contractor due to differences in products, size and methods of operations, production vs. research, and other factors. While formal systems do not eliminate the need for judgmental factors to be applied by contractors in developing cost proposals, they do provide a sound foundation for the systematic and orderly application of these judgment factors to specific proposals. The consistent preparation of proposals in accordance with an acceptable estimating system is of material benefit in assuring both the contractor and the Government that proposals are realistically and reasonably priced, that the 3-807.3 requirements for utilizing current, accurate, and complete cost and pricing data in developing the proposal are met, and that under-estimating and overestimating of contract costs are minimized. Some of the advantages of sound estimating procedures are: a greater degree of confidence can normally be placed in the accuracy and reliability of contractors' individual pricing proposals; it expedites the negotiation process; it reduces the amount of detailed explanation of estimating processes on each individual proposal as required by the notes on DD Form 633; and, as in the case of the well established practice regarding acceptable accounting systems, reduces the scope of reviews performed by audit and other technical and procurement personnel.

(ii) A regular program for conducting reviews of selected contractors' estimating systems or methods shall be established and managed by the Defense Contract Audit Agency. However, reviews will not be conducted at contractor locations that are CWAS qualified. Reviews and reports shall be accomplished as a joint contract audit and contract administration

office team effort, with the contract auditor designated as its head. Reviews shall be tailored to take full advantage of the day-to-day work done as an integral part of both the contract audit and contract administration activities. The program established by the contract audit activity shall be coordinated with the appropriate contract administration activity to assure that team membership includes qualified technical specialists, and that adequate personnel resources are made available to accomplish the program. A copy of the survey report, together with a copy of the official notice of corrective action required, shall be furnished to each purchasing and contract administration office having substantial business with that contractor. Any significant deficiencies in the system not corrected by the contractor shall be referenced in Part V of subsequent Pre-Award Surveys and will be considered in subsequent proposal reviews and by the ACO and PCO in negotiating with, and in determining the reasonableness of prices proposed by, that contractor. Where these deficiencies continue to exist and where they have an adverse effect on prices, the problem should be brought to the attention of procurement officials at a level necessary to bring about corrective action.

(iii) Among the matters to be considered in determining the acceptability of a contractor's estimating system are the following:

(A) responsibilities within the contractor's organization for originating, reviewing, and approving estimates;

(B) procedures followed in developing estimates for each of the direct and indirect elements of cost;

(C) the source of data used in developing the estimates and in assuring that such data is current, complete, and accurate;

(D) the documentation developed and maintained by the contractor to support the estimate;

(E) management support of the program review including approval of the estimate, controls established to assure consistent compliance with estimating procedures, and personnel training and evaluation programs; and

(F) the extent of coordination and communication between the various elements of the contractor's organization responsible for the estimate.

(5) Cost Accounting Standards Board Rules and Regulations:

In accordance with Section III, Part 12 - Cost Accounting Standards, and Section XV - Contract Cost Principles and Procedures, the cognizant contract auditor shall be responsible for making recommendations to the ACO as to whether:

(i) a contractor's Disclosure Statement, submitted as a condition of contracting, adequately describes the actual or proposed cost accounting practices as required by Public Law 91-379, 50 U.S.C. App. 2168, as implemented by the Cost Accounting Standards Board;

(ii) a contractor's disclosed cost accounting practices are in compliance with Section XV and applicable Cost Accounting Standards;

(iii) a contractor's or subcontractor's failure to comply with applicable Cost Accounting Standards or to follow consistently his disclosed cost accounting practices has resulted, or may result in, any increased cost paid by the Government; and

(iv) a contractor's or subcontractor's proposed price changes, submitted as a result of changes made to previously disclosed or established cost accounting practices, are fair and reasonable.

(6) Procedures for Identifying Contractors' Unallowable Costs.

(i) The establishment, maintenance, and consistent use of procedures for identifying and segregating unallowable costs, which will assure compliance with CAS 405 and 15-201.6, will benefit both the Government and contractors. Such procedures may vary between plants or divisions of a contractor due to size, mix of business and complexity of organization. Some of the advantages of sound procedures are that:

(A) a greater degree of confidence can be placed on the accuracy and reliability of contractors' proposals, billings and claims;

(B) they expedite the negotiation process; and

(C) they may reduce the scope of reviews performed by audit and other technical and procurement personnel.

(ii) The responsible Federal Contract Audit organization shall review contractors' procedures and practices in conjunction with other contract audit activities. Deficiencies shall be reported to the cognizant ACO, and, as appropriate, PCOs having substantial business with the contractor. Among the matters to be considered in determining the adequacy of a contractor's procedures are its policy, practices and techniques for:

(A) assignment of responsibilities within the contractor's organization for reviewing and approving claims against the Government;

(B) identification of unallowable costs (expressly unallowable, mutually agreed to be unallowable or specifically designated as unallowable by written decision of the contracting officer) together with the individual employees incurring such costs;

(C) identification and computation of directly associated costs;
(D) assurance that unallowable and directly associated costs are not included in estimated costs proposed, or incurred amounts claimed by the contractor;
(E) coordination and communication between the elements of the contractor's organization that prepare proposals and claims and those responsible for identifying unallowable and directly associated costs; and
(F) assuring the adequacy of the documentation maintained by the contractor identifying the unallowable costs together with directly associated costs.

(iii) Documentation in support of the contractor's procedures shall be made available to authorized Government personnel. (See 3-801.5(b)(7).)

3-810 Exchange of Information. In appropriate cases it is desirable to exchange and coordinate specialized information regarding a contractor between Departments, bureaus, technical services, and other procuring activities since it will provide uniformity of treatment of major issues and it may aid in the resolution of particularly difficult or controversial issues.

3-811 Record of Price Negotiation.

(a) At the conclusion of each negotiation of an initial or a revised price, the contracting officer shall promptly prepare or cause to be prepared, a memorandum, setting forth the principal elements of the price negotiation, for inclusion in the contract file and for the use of any reviewing authorities. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of the initial or revised price, including the current status of the contractor's procurement system. The memorandum should include an explanation of why cost or pricing data was, or was not, required (see 3-807) and, if it was not required in the case of any price negotiation in excess of $100,000, a statement of the basis for determining that the price resulted from or was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. If cost or pricing data was submitted and a certificate of cost or pricing data was required (3-807.6), the memorandum shall reflect the extent to which reliance was not placed upon the factual cost or pricing data submitted and the extent to which this data was not used by the contracting officer in determining his total price objective and in negotiating the final price. The memorandum shall also reflect the extent to which the contracting officer recognized in the negotiation that any cost or pricing data submitted by the contractor was inaccurate, incomplete, or non-current; the action taken by the contracting officer and the contractor as a result; and the effect, if any, of such defective data on the

total price negotiated. Where the total price negotiated differs significantly from the total price objective, the memorandum shall explain this difference. When field pricing support is furnished, the contracting officer shall forward copies of the memorandum to the cognizant ACO and auditor. When appropriate, information on how the advisory services can be made more effective in future negotiations with the contractor should be provided separately.

(b) As part of the requirement in (a) above, determination of the profit or fee objective, in accordance with 3-808, shall be fully documented. Since the profit objective is the contracting officer's pre-negotiation evaluation of the total

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estimated profit under the proposed contract, the amounts set forth for each category of cost will probably change in the course of negotiation. Furthermore, the negotiated profit will probably vary from the profit objective, and from a detailed application of the weighted guidelines method to each element of the Contractor's Input to Total Performance as anticipated prior to negotiation. Since the profit objective is viewed as a whole rather than as its component parts, insignificant variations from the pre-negotiation profit objective, as a result of changes of the Contractor's Input to Total Performance need not be documented in detail. Conversely, significant deviations from the profit objective necessary to reach a final agreement on profit or fee shall be explained. The profit earned as a result of contract performance will generally vary from that anticipated at the time of negotiation.

(c) When the weighted guidelines method is not used because of unusual pricing situations (see 3-808.2(b)(2)), the contract file shall be documented to support the exceptions.

3-812 Disposition of Post Award Audits. An auditor's advisory report of post award reviews of cost and pricing data may result either from a specific request of a contracting officer (see 3-807.10) or from audit action initiated independent of a contracting officer's request. The contracting officer shall prepare a memorandum on each audit report indicating (1) whether defective data were submitted and relied upon and (2) the results of any contract action taken. A copy of the memorandum shall be forwarded to the auditor issuing the audit report and to the cognizant administrative contracting officer.

3-813 Preproduction and Startup and Other Nonrecurring Costs.

(a) Estimates of preproduction and startup costs include such costs as preproduction engineering, special tooling, special plant rearrangement, training programs, and such nonrecurring costs as initial rework, initial spoilage, and pilot runs.

(b) Since an offeror may propose a price which does not include all preproduction and startup or other nonrecurring costs for the purpose of obtaining the first production contract and of gaining an advantage over competitors in negotiations for future procurements, it is important to know whether the offeror intends to absorb any portion of these costs or whether he plans to recover them in connection with subsequent pricing actions under the proposed or future contracts. This information is needed in evaluating competing proposals to determine which proposal is most likely to result in the lowest overall cost to the Government, particularly where the successful offeror is likely to become, in effect, a sole source for follow on procurements (including spare parts or other support items).

(c) When it is anticipated that such costs will be a significant factor in the evaluation of proposals for the procurement of an item, the request for proposals shall require the offeror to provide the following information:

(i) an estimate of the total of such costs;

(ii) the extent to which these costs are included in the proposed price; and

(iii) the intent to absorb, or plan for recovery, of any remaining costs.

Part 10—Contractor's Weighted Average Share in Cost Risk (CWAS)

3-1000 Scope of Part. This Part sets forth the concepts and objectives which govern the Contractor's Weighted Average Share in Cost Risk (CWAS) technique. It also sets forth detailed procedures for determining the CWAS qualification.

3-1001 General Concept. CWAS is a technique for determining and expressing numerically the degree of cost risk a contractor has assumed, based on the percentage that commercial and firm fixed-price competitive Government work is to total work for a given calendar year. The technique recognizes that contractors who conduct business in a predominantly price competitive environment can be relied upon to control or reduce costs of their products with only minimal DoD surveillance of their systems. The CWAS concept is not intended to obviate consideration of such issues as allocability, consistency with generally accepted accounting principles, or exclusions which are not based on standards of reasonableness.

3-1002 Objectives. The objectives of the CWAS program are:

(i) to furnish a measure of an individual contractor's risk motivation, to conduct business prudently and with maximum economy;

(ii) to offer additional inducement to a contractor to accept higher risk type contracts;

(iii) to minimize the extent of Government control, including controls exercised through DoD prime contracts and subcontracts thereunder, thereby reducing Government costs;

(iv) to provide a simple, uniform procedure for determining a contractor's assumption of cost risk that can be applied equitably to all defense contractors who desire to participate by voluntarily submitting pertinent data;

(v) to provide a means for directing audit and other DoD management efforts to those areas where they are most needed because of the greater degree of Government risk; and

(vi) to provide a basis for making determinations as to reasonableness of specified indirect costs and relaxation of specific administrative controls. (See 15-201.3, 23-101, and 3-809(c)(4).)

3-1003 Definitions.

3-1003.1 *Costs Incurred.*

(a) For purposes of this Part, costs incurred consist of the contractor's total cost input for its previous calendar year identified through the use of the contractor's method of accounting and reporting.

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Costs incurred represent all costs (whether or not allowable), including costs of direct labor, direct material, subcontracts, and direct services as well as all properly allocated overhead (indirect) costs, except as provided in (c) below.

(b) The contractor's total cost input for the calendar year will be categorized by commercial and firm fixed-price competitive Government business versus total business. The categorizing of costs will be in accordance with the accounting system and procedures used by the contractor in assigning costs to contracts and commercial business *providing*, in the case of Government contracts, this system and these procedures are acceptable to the Government for contract cost determination and pricing purposes.

(c) With respect to a contractor's production for stock, *i.e.*, finished goods or finished parts not manufactured against specific commercial or Government orders in hand, the treatment to be accorded the costs incurred shall be determined on a practical case-by-case basis. Since the concept is aimed at general orders of magnitude, emphasis in arriving at solutions to individual cases should be on practicality rather than precision. For example, if production for stock consists essentially of only standard items to be sold at a fixed or catalog price on the commercial market or to the Government on the same basis in accordance with 15-205.22(e) or 3-807, the costs incurred shall be reported in the commercial or firm fixed-price competitive Government category. On the other hand, if production for stock involves largely items which are not sold generally on the commercial market as end items (i.e., nonstandard items), but which are incorporated as components under a variety of contracts, the costs incurred shall be excluded until such time as they are chargeable to and can be identified with specific commercial or Government orders. In those situations where production for stock is more evenly composed of standard and nonstandard items and the treatment to be accorded such production will have a significant effect upon the ultimate CWAS rating assigned to the contractor, the mix of standard and nonstandard items should be determined with a fair amount of precision, so that the costs incurred with respect to the standard items can be reported in the commercial or firm fixed-price competitive Government category and the costs associated with the nonstandard items can be excluded. Any method developed regarding the treatment to be accorded costs applicable to items produced for stock shall be provided safeguards to prevent duplicate inclusion of such costs.

(d) Costs incurred which are applicable to raw materials not purchased against specific commercial or Government orders in hand will be excluded until such time as they are chargeable to and can be identified with specific commercial or Government orders.

3-1003.2 *Profit Center.* A profit center is the smallest organizationally independent segment of a company which has been charged by management with profit and loss responsibilities.

3-1004 Procedures for Determining CWAS Qualification.

(a) CWAS is applicable to all contractors of the DoD on a voluntary basis. A contractor desiring to participate may submit the required cost incurred data used to determine its weighted average share in risk, showing the mix of commercial and firm fixed-price competitive Government business as a percentage of total business. If a company has only one profit center, the data shall be developed on a company-wide basis. If a company has more than one profit center which it desires to qualify for CWAS, it shall develop data on a company-wide basis and for each such profit center. Any change in an accepted basis for computing CWAS qualification must be based on a demonstrable organizational change or on an acceptable change to the accounting structure.

(b) In those cases where contractors use a standard cost system of accounting, they may elect to substitute cost of sales in lieu of costs incurred for purposes of CWAS measurement.

(c) Contractors who desire to have their CWAS rating computed on the sales basis, rather than on the costs incurred or cost of sales basis, shall first receive authorization in writing from the ACO. To obtain such authorization, the contractor shall submit a request to use the sales basis, in writing to the ACO, with a copy to the DCAA auditor, by 1 March. The request shall be supported by data and rationale which in the contractor's opinion demonstrates that substantially the same results would be achieved under either the cost incurred or sales basis. The ACO, with the advice of the DCAA auditor, will either authorize or disapprove the contractor's request by 1 April. Once the sales basis has been authorized, the authorization shall remain in effect until such time as circumstances change and in the opinion of the ACO substantially the same results would no longer be achieved. In the case of those contractors who have received authorization from the Government to use the sales basis, the term "costs incurred" as applied to the computation of the CWAS rating in other paragraphs of this Section III, Part 10, will be construed to mean "sales."

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Use of the sales method is encouraged, where appropriate, in order to permit more timely submission and to reduce the Government's administrative and audit review workload in determining the contractor's CWAS qualification.

(d) In order to establish an initial CWAS qualification, the contractor shall submit an application computed on its costs incurred during the previous calendar year. This application (original and two copies) must be received by the ACO before 1 May of the year following the calendar year in which the costs were incurred. A copy should also be submitted to the cognizant DCAA auditor. If not received by 1 May, the contractor shall wait until the end of the calendar year to submit an application. Contractors who qualify for CWAS with a rating of 75% or more will be notified that:

(i) application of cost reasonableness determinations based on CWAS will commence with the contractor's fiscal year in which 1 January of the year following the year used as the CWAS base falls (see 15-201.3(b)); and

(ii) specified administrative controls will be relaxed from the date the ACO notifies the contractor that it is CWAS qualified (see 23-101 and 3-809).

(e) Once the contractor has been qualified with a CWAS rating of 75% or more, the contractor shall continue to be CWAS qualified until such time as it is subsequently found not to be qualified and is so notified in writing by the ACO. If the ACO, as a result of periodic reviews of the contractor's government and commercial mix of business, observes a substantial change in commercial or firm fixed-price competitive Government work, the ACO shall request the contractor to submit a new CWAS application in writing, by 1 March, based on costs incurred for the prior calendar year. If the contractor does not submit the new application within 60 days of the request, the ACO shall advise the contractor in writing that it is no longer CWAS qualified and that CWAS will not apply to determinations of reasonableness of indirect costs for the fiscal year in which the contractor was operating as of the prior 1 January.

(f) The contractor's CWAS qualification will be determined by the ACO as follows:

(i) For the calendar year just ended, determine the total dollar costs incurred for commercial work and firm fixed-price competitive Government contracts; and

(ii) Divide the result by total costs incurred for all business. The resulting percentage is the contractor's CWAS rating.

(g) In computing the CWAS rating, the following will be observed:

(i) Government contracts will include only U.S. Government contracts and Foreign Military Sales.

(ii) Direct foreign sales, commercial or military, will be considered the same as commercial sales.

(iii) Fixed-price Government contracts and fixed-price subcontracts under Government contracts with economic price adjustment provisions awarded on the basis of price competition will be considered the same as firm fixed-price competitive Government contracts.

(iv) A firm fixed-price Government contract or subcontract under a Government contract is competitive for CWAS calculation purposes if it is $1 million or less, or is:

(A) advertised, including two-step formal advertising and small business restricted advertising;

(B) price competitive negotiated, including set-asides; or

(C) based on catalog or market prices when a DD Form 633-7 has been accepted as adequate for exemption from cost or pricing data, or prices set by law or regulation (3-807.7).

3-1005 Determination and Verification.

(a) The ACO is responsible for determining the CWAS qualification. Within 30 days after receipt of the contractor's request, the DCAA auditor shall submit a report to the ACO on the validity of the data and the computation techniques. The ACO will promptly validate the contractor's CWAS rating and advise the contractor whether a CWAS qualification is granted. If the ACO has not advised the contractor

to the contrary within 60 days from receipt of the contractor's request, the proposed CWAS qualification will be considered granted. In lieu of validation by DCAA, the data relative to commercial work and firm fixed-price competitive Government contracts and subcontracts (or in the alternative as agreed upon with the ACO, the total CWAS proposal) will be accepted on the basis of a report thereon by an independent public accountant, to the effect that the data involved is stated in accordance with the procedures and requirements set forth in this Part.

(b) The CWAS qualification may be withdrawn pursuant to a finding by the ACO of fraud, misrepresentation, or other abuse. Such action may be taken with respect to a profit center or centers or the entire corporation.

(c) Reinstatement of a CWAS qualification may be accomplished only after the contractor has satisfactorily corrected the condition leading to withdrawal. Before reinstatement, the contractor must submit a complete statement of corrective actions to the ACO for determination. The contractor shall then reapply for a CWAS qualification in accordance with 3-1004.

(d) The Head of a Contracting Activity having contract management cognizance may deny or revoke a CWAS qualification in exceptional cases when, in his (her) judgment, because of the special nature of the contractor's work, competitive position, future or follow-on contracts, known procedures or other unusual circumstances, the contractor's CWAS qualification does not provide assurance that Government cost audit and controls are not needed in the Government's interest.

3-1006 Maintenance of Records. Each DCASR shall maintain a current central register of CWAS qualifications granted or withdrawn for contractors subject to ACO cognizance by that Region. Copies of all qualifications granted, withdrawn, or reinstated by regional ACO's will also be forwarded to Headquarters, Defense Logistics Agency, Attn: DLA-AFS, where a master register will be maintained. Similarly, ACO's assigned under the National Plant Cognizance Program will forward copies of all CWAS qualifications granted, withdrawn, or reinstated for their contractors to Headquarters, Defense Logistics AGency, Attn: DLA-AFS, for integration into the master register. This master register is maintained for benefit of contracting officers, auditors, and other DoD personnel who may require CWAS qualification information.

[The next page is 3:173.)

(d) A contract with a supplier or contractor located in Canada should normally be made with and administered through the Canadian Commercial Corporation. (See 6-504.2.)

(e) In connection with contracts placed with the Canadian Commercial Corporation, the Department of Supply and Services (Canada) provides without charge to the Defense Departments and Agencies, among other things, such contract administration services as cost and pricing analysis, industrial security, accountability and disposal of Government property, production expediting, compliance with Canadian labor laws, processing of termination claims and disposal of termination inventory, customs documentation, processing of disputes and appeals, and such other related contract administration functions as may be required with respect to the Canadian Commercial Corporation contract with the Canadian supplier. Additionally, in connection with such contracts, audits, when required, are performed by the Audit Services Bureau, Department of Supply and Services (Canada), and the Department of National Defence (Canada) provides inspection personnel, services and facilities, at no charge to the Defense Departments and Agencies.

6-503 Guarantee by Canadian Government. The Canadian Government guarantees to the U.S. Government all commitments, obligations, and covenants of the Canadian Commercial Corporation in connection with any contract or order issued to said Corporation by any contracting activity of the U.S. Government. The Canadian Government has likewise waived notice of any change or modification which may be made from time to time in these commitments, obligations, or covenants.

6-504 Procedures for Canadian Purchases.

6-504.1 Bidding Procedures.

(a) Solicitation of Canadian Firms.

(1) Except as provided in (2) below, Canadian firms shall be included on bidders mailing lists and comparable source lists only upon request by the Canadian Commercial Corporation. Such requests shall be forwarded by the Canadian Commercial Corporation to the activity having acquisition responsibility for the supplies or services involved.

(2) Canadian planned producers under the Industrial Readiness Planning Program shall be included on bidders mailing lists for their planned items (see 2-205.1(b)).

(3) Solicitations shall be sent directly to Canadian firms appearing on the appropriate bidders mailing lists. A complete copy of the solicitation and a listing of all Canadian firms solicited shall be sent to the Canadian Commercial Corporation, Export Supply Centre, Ottawa, Ontario, KIA-OS6, Canada.

(4) Upon request by the Canadian Commercial Corporation, solicitations shall be furnished to it even though no Canadian firms were solicited.

(5) Small purchases (see Section III, Part 6) normally should be handled directly with Canadian firms and not through the Canadian Commercial Corporation (but see 3-603.1(g)).

(b) Submission of Offers.

(1) As indicated in 6-504.2 below, the Canadian Commercial Corporation should normally be the prime contractor. In order to indicate

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its acceptance of offers by individual Canadian companies, the Canadian Commercial Corporation issues a letter supporting the Canadian offer and containing the following information: name of the Canadian offeror; confirmation and endorsement of the offer in the name of the Canadian Commercial Corporation; and a statement that the Corporation shall subcontract 100 percent with the offeror.

(2) When a Canadian offer cannot be processed through the Canadian Commercial Corporation in time to meet the bid-opening requirement or the closing date for receipt of proposals, the Corporation is authorized to permit Canadian firms to submit offers directly, Provided, That the Canadian offer and the Canadian Commercial Corporation endorsement are both received by the contracting office prior to bid opening or the closing date for receipt of proposals.

(3) All formally advertised bids shall be submitted by the Canadian Commercial Corporation in terms of U.S. currency. Contracts placed as a result of such formal competitive bidding shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

(4) All offers and quotations submitted by the Canadian Commercial Corporation, except those in which competition is obtained, shall be in terms of Canadian currency. However, the Corporation may, at the time of submitting the offer, elect to quote and receive payment in terms of U.S. currency; in which event, contracts arising therefrom shall provide for payment in U.S. currency and shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates. (See 6-1406.1(a).)

6-504.2 Contracting Procedures.

(a) Individual contracts covering purchases from suppliers located in Canada, except as noted in (b) below, shall be made with the Canadian Commercial Corporation, which has offices located at the Export Supply Centre, 11 Laurier Ave., Hull, Quebec, Canada, (mail address - Canadian Commercial Corporation, Export Supply Centre, Ottawa, Ontario, K1A-0S6 Canada), and at 2450 Massachusetts Ave., N.W., Washington, D.C. 20008. Contracts should normally be awarded to and administered through the Export Supply Centre office in Hull, and all payments under such contracts awarded to the Canadian Commercial Corporation shall be made to that office. Under contracts with the Canadian Commercial Corporation, direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract, Provided, however, That the approval of the Corporation shall be obtained on any matters involving changes to the contract.

(b) The general policy in (a) above need not be followed for purchases negotiated for experimental, developmental, or research work under 3-205 or 3-211, unless the contract is for a project under the Defense Development Sharing Program, as outlined in 6-1406.1(b); purchases negotiated under 3-202 for public exigency; purchases negotiated under 3-203 for small purchases; or purchases made by U.S. Defense activities located in the Dominion of Canada.

(c) Prices in the contracts shall identify the type of currency; i.e., United States or Canadian. When contracts provide for payment in Canadian currency, the contract price shall be quoted in terms of Canadian dollars and shall identify the amount by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the US/Canadian conversion rate at the time of award and the US dollar equivalent of the Canadian dollar contract amount.

(2) Unless otherwise authorized by the Contracting Officer, all equipment and materials in safety precaution areas shall be marked with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) All objects, placed in safety precaution areas, which project above the approach-departure clearance surface or above the transitional surface must be provided at night with a red light or red lantern.

(g) The Contractor shall keep all paved surfaces, such as runways, taxiways, and hardstands, clean at all times and, specifically, free from small stones which might damage aircraft propellers or jet aircraft.

(h) While work is actually being performed on the airfield by the Contractor, the operation of mobile equipment shall be governed by the safety provisions above. At all other times all mobile equipment shall be removed to locations approved by the Contracting Officer at a distance of at least 750 feet from the runway centerline plus any additional distance necessary to insure compliance with the other provisions of this clause.

(i) Only those trenches may be opened for which material is on hand and ready for placing therein. As soon as practicable after material has been placed and work approved, trenches shall be backfilled and compacted as required by the contract. Meanwhile all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause.

(End of clause)

*At some airfields the width of the primary surfaces is 1,500 feet (750 feet on each side of the runway centerline). In such instances, substitute the proper width in the clause.

7-603.50 *Quantity Surveys.*

(a) Except as provided in (b) below, insert the following clause in contracts containing unit price items where the specifications provide for payment based on surveys.

QUANTITY SURVEYS (1979 MAR)

(a) The Government shall make original and final surveys and make computations to determine the quantities of work performed or finally in place.

(b) The Contractor shall make such surveys and computations as are necessary to determine the quantities of work performed or placed during each period for which a progress payment is to be made. All original field notes, computations and other records for the purpose of layout and progress surveys shall be furnished promptly to the representatives of the Contracting Officer at the site of the work and shall be used by the Contracting Officer to the extent necessary in determining the proper amount of progress payments due the Contractor. A copy of the original notes, computations and records furnished to the Contracting Officer shall be retained by the Contractor. Unless waived by the Contracting Officer in each specific case, quantity surveys made by the Contractor shall be made under the direction of a representative of the Contracting Officer.

(End of clause)

(b) When Government personnel may not be available, it may be advisable to require the contractor to make original and final quantity surveys as well as progress surveys. In this case, the following clause may be used in place of the clause in (a) above, with the approval of the Head of the Procuring Activity or his designee.

QUANTITY SURVEYS (1979 MAR)

(a) The Contractor shall make such surveys and computations as are necessary to determine the quantities of work performed or placed during each period for which a progress payment is to be made. The Contractor shall also make original and final surveys. The Government will make such computations as are necessary to determine the quantities of work performed or finally in place. Unless waived by the Contracting Officer in each specific case, quantity surveys made by the Contractor shall be made under the direction of a representative of the Contracting Officer.

(b) All original field notes, computations and other records of the Contractor for the purposes of layout, original, progress and final surveys shall be furnished promptly to the representative of the Contracting Officer at the site of the work and shall be used by the Contracting Officer to the extent necessary in determining the proper amounts of progress and final payments. A copy of the original notes, computations and records furnished to the Contracting Officer shall be retained by the Contractor.

(End of clause)

7-603.51 *Reserved.*

7-603.52 *Reserved.*

7-603.53 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-603.54 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-603.55 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-603.56 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-603.57 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-603.58 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-603.59 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-603.60 *Affirmative Action Compliance Requirements for Construction.* In accordance with 12-807.1 regarding affirmative action compliance requirements, insert the following clause in all applicable contracts involving construction in excess of $10,000.

AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (1982 FEB)

(a) As used in this clause:

(1) "*Covered area*" means the geographical area described in the solicitation from which this contract resulted;

(2) "*Director*" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

(3) "*Employer indentification number*" means the Federal social security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

(4) "*Minority*" includes:

(i) *Black* (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) *Hispanic* (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);

(iii) *Asian and Pacific Islander* (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) *American Indian or Alaskan Native* (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(b) Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of this clause and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitation from which this contract resulted.

(c) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals.

(d) The Contractor shall implement the specific affirmative action standards provided in subparagraphs (g)(1) through (16) of this clause. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work (whether or not it is Federal or Federally assisted) in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where such work is actually performed. The Contractor is expected to make substantially uniform progress towards its goals in each craft.

(e) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, or the regulations promulgated pursuant thereto.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximun results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

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(2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

(4) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under (g)(2) above.

(6) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(7) Review, at least annually, the company's EEO policy and affirmative action obligations under this clause with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and subcontractors with whom the Contractor does or anticipates doing business.

(9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

(11) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60–3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under this clause are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

(h) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations ((g)(1) through (16)). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (g)(1) through (16) of this clause provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractors noncompliance.

(i) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

(j) The Contractor shall not use the goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of this clause and Executive Order 11246, as amended.

(m) The Contractor, in fulfilling its obligations under this clause shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or this clause, the Director shall proceed in accordance with 41 CFR 60–4.8.

(n) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (*e.g.*, mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(o) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (*e.g.*, those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(End of clause)

7–604 Additional Clauses. The following clauses shall be inserted in contracts when it is desired to cover the subject matter thereof in such contracts.

7–604.1 *Alterations in Contract.* (See 16–501.1(viii).) The following clause may be used if applicable, in negotiated contracts when Standard Form 23 is not used:

ALTERATIONS (1961 JAN)

The following alterations were made in this contract before it was signed by the parties hereto.

(End of clause)

7–604.2 *Approval of Contract.* The contract clause in 7–105.2 may be inserted.

7–604.3 *Layout of Work.* The following clause is authorized for use in construction contracts when appropriate.

LAYOUT OF WORK (1965 JAN)

The Contractor shall lay out his work from Government established base lines and bench marks indicated on the drawings and shall be responsible for all measurements in connection therewith. The Contractor shall furnish, at his own expense, all stakes, templates, platforms, equipment, tools, and materials and labor as may be required in laying out any part of the work from the base lines and bench marks established by the Government. The Contractor will be held responsible for the execution of the work to such lines and grades as may be established or indicated by the Contracting Officer. It shall be the responsibility of the contractor to maintain and preserve all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed, by the Contractor or through his negligence, prior to their authorized removal, they may be replaced by the Contracting Officer at his discretion. The expense of replacement will be deducted from any amounts due or to become due the Contractor.

(End of clause)

NOTIFICATION OF VISA DENIAL (1978 SEP)

It is a violation of Executive Order 11246, as amended, for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States on the basis that such individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where the work is to be performed or for whom the work will be performed (41 CFR 60–1.10). Therefore, the Contractor agrees to notify the Department of State, Washington, D. C., Attention: Director, Bureau of Politico-Military Affairs, and the Director, OFCCP, when it has knowledge of any employee or potential employee being denied an entry visa to a country in which the Contractor is required to perform this contract and it believes such denial is attributable to race, religion, sex, or national origin of the employee or potential employee.

(End of provision)

(d) *Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity.* In accordance with 12–807.1 regarding affirmative action compliance requirements, insert the following provisions in all applicable solicitations involving construction in excess of $10,000. Follow this provision's parenthetical instructions by inserting the applicable construction trade(s), percentage goals and geographical description of the covered area as provided in Departmental instructions.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (1982 FEB)

(a) The Offeror's or Bidder's attention is called to the "Equal Opportunity" and the "Affirmative Action Compliance Requirements for Construction" clauses set forth herein.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade	Goals for female participation in each trade
(Insert goals)	(Insert goals)

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area. If the Contractor performs construction work (whether or not it is Federal or Federally assisted) in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where such work is actually performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs (OFCCP) Office. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity clause, specific affirmative action obligations required by

the clause entitled "Affirmative Action Compliance Requirements for Construction" and its efforts to meet prescribed goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

(c) The Contractor shall provide written notification to the Director, OFCCP within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

(d) As used in this Notice, and in the contract resulting from this Solicitation, the "covered area" is:

(Insert description of the geographical areas where the contract is to be performed, giving the state, county, and city, if any.)

(End of Provision)

7-2003.15 *Patents - Government Licensee.* In accordance with 2-201(a)Sec.K(ix), 2-201(b)(xxviii), 3-501(b)(3)Sec.K(xvii), or 3-501(c)(xliv) as appropriate, insert the following provision.

PATENTS - GOVERNMENT LICENSEE (1974 APR)

The Government is obligated to pay a royalty applicable to the proposed procurement because of a license agreement between the Government and the patent owner. The patent number is ..... and the royalty rate is ..... If the offeror is the owner of, or a licensee under, the patent, he shall indicate below:

( ) Owner

( ) Licensee

If an offeror does not indicate that he is the owner or a licensee of the patent, his offer will be evaluated by adding thereto an amount equal to the royalty.

(End of provision)

Part 2—Contracts with Commercial Organizations

15-201 Basic Considerations.

15-201.1 *Composition of Total Cost.* The total cost of a contract is the sum of the allowable direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits. In ascertaining what constitutes costs, any generally accepted method of determining or estimating costs that is equitable under the circumstances may be used, including standard costs properly adjusted for applicable variances.

15-201.2 *Factors Affecting Allowability of Costs.* Factors to be considered in determining the allowability of individual items of cost include (i) reasonableness, (ii) allocability, (iii) standards promulgated by the Cost Accounting Standards Board, if applicable, otherwise, generally accepted accounting principles and practices appropriate to the particular circumstances, and (iv) any limitations or exclusions set forth in this Part 2, or otherwise included in the contract as to types or amounts of cost items. (But see 15-201.3(b)(4).) When a contractor has disclosed his accounting practices in accordance with Cost Accounting Standards Board Rules, Regulations, and Standards and any such practices are inconsistent with any of the provisions of this Part 2, costs resulting from such inconsistent practices shall not be allowed in excess of the amount that would have resulted from the use of practices consistent with this Part 2.

15-201.3 *Definition of Reasonableness.*

(a) *General.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with firms or separate divisions thereof which may not be subject to effective competitive restraints. What is reasonable depends upon a variety of considerations and circumstances involving both the nature and amount of the cost in question. In determining the reasonableness of a given cost, consideration shall be given to—

(i) whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;

(ii) the restraints or requirements imposed by such factors as generally accepted sound business practices, arm's length bargaining, Federal and State laws and regulations, and contract terms and specifications;

(iii) the action that a prudent business man would take in the circumstances, considering his responsibilities to the owners of the business, his employees, his customers, the Government and the public at large; and

(iv) significant deviations from the established practices of the contractor which may unjustifiably increase the contract costs.

(b) *Application of "Contractor Weighted Average Share in Cost Risk" (CWAS).*

(1) The cost principles contained in 15-205, or in certain cases their subparagraphs, carry either a "(CWAS)" or a "(CWAS-NA)" indicator. Those cost principles or subparagraphs subject to CWAS are preceded by the indicator

"(CWAS)" and those to which CWAS is not applicable are preceded by the indicator "(CWAS-NA)". In all cases where cost reasonableness is not determined under CWAS because of its express inapplicability, the determination will be made in accordance with (a) above. For CWAS qualified contractors, costs subject to those cost principles or subparagraphs designated "(CWAS)" will be presumed reasonable.

(2) The determination of cost reasonableness will be made in accordance with (a) above in all cases where the contractor could not qualify or does not choose to qualify under CWAS.

(3) The application of the CWAS applicable principles in 15-205 to indirect costs incurred in a profit center with CWAS qualification shall be determined in accordance with this subparagraph. Such costs shall be considered reasonable as to nature and amount, notwithstanding any specific limitations or exclusions based on standards of reasonableness contained in 15-205. For example, compensation for personal services (15-205.6(a)) shall be considered reasonable without regard to compensation paid by other firms (15-205.6(a)(2)). In addition, there are costs that are considered unallowable under 15-205 because they exceed a stated criteria of reasonableness. These criteria do not apply to indirect costs incurred in a profit center with CWAS qualification and the reasonableness of such costs shall not be questioned. For example, losses from a contractor's food and dormitory operations would be allowable notwithstanding the criteria in 15-205.10(c), or costs of idle facilities would be allowable notwithstanding the requirements of 15-205.12(b). Similarly, specific cost limitations, such as the 30-day limitation on advance trip time for relocated employees (15-205.25(c)(i)) or the 156-hour limitation for compensation for part time training (15-205.44(b)(v)) shall not apply to cost incurred in a profit center with CWAS qualification. Also, any requirement in 15-205 for contracting officer approval or instructions as a prerequisite to the allowability of certain cost (*e.g.*, 15-205.22(e)(2)) shall not apply.

(4) Questions involving the charging off of assets or setting up of other than normal year-end accruals or reserves will be considered to be questions of allocability or accounting practices rather than reasonableness.

(5) If the profit center incurs costs (*e.g.*, travel, relocation, personnel compensation) on the basis of prescribed corporate-wide policy uniformly applied to all profit centers, consideration should be given to the corporate CWAS qualification in determining the reasonableness of such locally incurred costs.

(6) The CWAS qualification for the company shall be used in testing the reasonableness of corporate type expenses which are allocated to the profit centers. If the contractor has intermediate management organizations, such as Groups, the CWAS qualification for such intermediate management organizations shall be applicable to the expenses allocated by such intermediate organizations to the profit centers.

(7) Indirect costs incurred in cost centers which are applied to specific contracts without relation to total profit center operations may be eliminated by the ACO from the application of CWAS.

15-201.4 *Definition of Allocability.* A cost is allocable if it is assignable or chargeable to one or more cost objectives (see 15-109(e)) in accordance with the relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it:

(i) is incurred specifically for the contract;

(ii) benefits both the contract and other work, or both Government work and other work, and can be distributed to them in reasonable proportion to the benefits received; or

(iii) is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

15-201.5 *Credits.* The applicable portion of any income, rebate, allowance, and other credit relating to any allowable cost, received by or accruing to the contractor, shall be credited to the Government either as a cost reduction or by cash refund, as appropriate.

15-201.6 *Accounting for Unallowable Costs.*

(a) Application of CAS 405. The provisions of CAS 405, *Accounting for Unallowable Costs*, are incorporated herein in their entirety and are applicable to all contracts to which this Part 2 applies. Unallowable costs shall be identified using procedures as contemplated by 3-809(c)(6).

(b) Directly Associated Costs.

(1) A directly associated cost is any cost which is generated solely as a result of the incurrence of another cost, and would not have been incurred had the other cost not been incurred. When an unallowable cost is incurred, the directly associated costs are also unallowable.

(2) If a directly associated cost is included in a cost pool which is allocated over a base that includes the unallowable cost with which it is associated, the directly associated cost shall remain in the cost pool. Since the unallowable cost will attract its allocable share of costs from the cost pool, no further action is required to assure disallowance of the directly associated cost. In all other cases the directly associated costs, if material in amount, must be purged from the cost pool as unallowable costs.

(3) In determining the materiality of a directly associated cost, consideration should be given to the significance of (i) the actual dollar amount, (ii) the cumulative effect of all directly associated costs in a cost pool, or (iii) the ultimate effect on the cost of Government contracts.

(4) Salary expenses of employees who participate in activities which generate unallowable costs shall be treated as directly associated costs to the extent of the time spent on the prescribed activity provided the costs are material in accordance with (3) above (except when such salary expenses are, themselves, unallowable). The time spent in

proscribed activities should be compared to total time spent on company activities (estimated when actual time records are not available), to determine if the costs are material. Time spent by employees outside the normal working hours should not be considered except when it is evident that an employee engages so frequently in company activities during periods outside normal working hours as to indicate that such activities are a part of his regular duties.

(5) When a selected item of cost under 15-205 provides that directly associated costs are unallowable, it is intended that such directly associated costs be unallowable only if determined to be material in amount in accordance with the criteria provided above, except in those situations where allowance of any of the directly associated costs involved would be considered to be contrary to public policy.

15-202 Direct Costs.

(a) A direct cost is any cost which can be identified specifically with a particular final cost objective. (See 15-109(f).) No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective. Costs identified specifically with the contract are direct costs of the contract and are to be charged directly thereto. Costs identified specifically with other final cost objectives of the contractor are direct costs of those cost objectives and are not to be charged to the contract directly or indirectly.

(b) Any direct cost of minor dollar amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives, provided that such treatment produces results which are substantially the same as the results which would have been obtained if such costs had been treated as a direct cost.

15-203 Indirect Costs.

(a) An indirect cost (see 15-109(i)) is one which, because of its incurrence for common or joint objectives, is not readily subject to treatment as a direct cost. Any direct cost of minor dollar amount may be treated as an indirect cost for reasons of practicality under the circumstances set forth in 15-202(b). After direct costs have been determined and charged directly to the contract or other work as appropriate, indirect costs are those remaining to be allocated to the

several cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective.

(b) Indirect costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring the costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the several cost objectives. Commonly, manufacturing overhead, selling expenses, and general and administrative expenses are separately grouped. Similarly, the particular case may require subdivisions of these groupings, *e.g.*, building occupancy costs might be separable from those of personnel administration within the manufacturing overhead group. The number and composition of the groupings should be governed by practical considerations and should be such as not to complicate unduly the allocation where substantially the same results are achieved through less precise methods.

(c) Each cost grouping shall be distributed to the appropriate cost objectives. This necessitates the selection of a distribution base common to all cost objectives to which the grouping is to be allocated. The base should be selected so as to permit allocation of the grouping on the basis of the benefits accruing to the several cost objectives. This principle for selection is not to be applied so rigidly as to complicate unduly the allocation where substantially the same results are achieved through less precise methods. Once an appropriate base for the distribution of indirect costs has been accepted, such base shall not be fragmented by the removal of individual elements. Consequently, all items properly includable in an indirect cost base should bear a pro-rata share of indirect costs irrespective of their acceptance as Government contract costs. For example, when a cost input base is used for the distribution of G&A, all items that would properly be part of the cost input base, whether allowable or unallowable, shall be included in the base and bear their pro-rata share of G&A costs.

(d) The method of allocation of indirect costs must be based on the particular circumstances involved. The method shall be in accordance with Standards promulgated by the Cost Accounting Standards Board, if applicable to the contract. Otherwise, the method shall be in accordance with generally accepted accounting principles. When Cost Accounting Standards Board Standards are not applicable to the contract, the contractor's established practices, if in accordance with generally acceptable accounting principles, shall generally be acceptable. However, the method used by the contractor may require examination when:

(i) any substantial difference occurs between the cost patterns of work under the contract and other work of the contractor;

(ii) any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, the inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances; or

(iii) indirect cost groupings developed for a contractor's primary location are applied to off-site locations. Separate cost groupings for costs allocable to off-site locations may be necessary to permit equitable distribution of costs on the basis of the benefits accruing to the several cost objectives.

(e) A base period for allocation of indirect costs is the cost accounting period during which such costs are incurred and accumulated for distribution to work performed in that period. The criteria and guidance set forth in Part 406 (Cost Accounting Standard 406, Cost Accounting Period) of Appendix O, for selection of the cost accounting periods to be used for allocation of indirect costs, are incorporated in their entirety for application to CAS covered contracts. For contractors not having contracts subject to the Cost Accounting Standards, however, use of a period shorter than the contractor's fiscal year may be appropriate (i) for contracts for which performance involves only a minor portion of the fiscal year, or (ii) where it is general practice in the industry to use a shorter period. In any event, the base period or periods used shall avoid creating inequities in the allocation of indirect costs. When a contract is performed over an extended period, as many base periods will be used as are required to represent the period of contract performance.

(f) Special care should be exercised in applying the principles in (b), (c), and (d) above when Government-owned contractor operated (GOCO) plants are involved. The distribution of corporate, division or branch office general and administration expenses to such plants when they operate with little or no dependence on corporate administrative activities, may require more precise cost groupings, detailed accounts screening, and carefully developed distribution bases.

15-204 Application of Principles and Procedures.

(a) Deviations from the cost principles in this Part 2 shall be processed in accordance with the procedures in 1-109.3.

(b) Costs shall be allowed to the extent that they are reasonable (see 15-201.3), allocable (see 15-201.4), and determined to be allowable in view of the other factors set forth in 15-201.2 and 15-205. These criteria apply to all of the selected items of cost which follow, notwithstanding that particular guidance is provided in connection with certain specific items for emphasis or clarity.

(c) Costs incurred as reimbursements or payments to a subcontractor under a cost-reimbursement, fixed-price incentive, or price redeterminable type subcontract of any tier above the first firm fixed-price subcontract or fixed-price subcontract with economic price adjustment provisions are allowable to the extent that allowance is consistent with the Part of this Section XV which is appropriate to the subcontract involved. Thus, if the subcontract is for supplies, such costs are allowable to the extent that the subcontractor's costs would be allowable if this Part 2 were incorporated in the subcontract; if the subcontract is for construction, such costs are allowable to the extent that the subcontractor's costs would be allowable if Part 4 of this Section XV were incorporated in the subcontract. Similarly, costs incurred as payments under firm fixed-price subcontracts or fixed-price subcontracts with economic price adjustment provisions or modifications thereto, when cost analysis was performed pursuant to 3-807.10(b), shall be allowable only to the extent that the price was negotiated in accordance with the principles in 15-106.

(d) Selected items of cost are treated in 15-205. However, 15-205 does not cover every element of cost and every situation that might arise in a particular case. Failure to treat any item of cost in 15-205 is not intended to imply that it is either allowable or unallowable. With respect to all items, whether or not specifically covered, determination of allowability shall be based on the principles and standards set forth in this Part and, where appropriate, the treatment of similar or related selected items.

15-205 Selected Costs.

15-205.1 *Advertising Costs.*

(a) *Definition.* Advertising costs mean the costs of media advertising and directly associated costs. Media advertising includes magazines, newspapers,

radio and television programs, direct mail, trade papers, outdoor advertising, dealer cards and window displays, conventions, exhibits, free goods and samples, and the like.

(b) (CWAS) The only advertising costs allowable are those which are solely for (i) recruitment of personnel required for the performance by the contractor of obligations arising under the contract, when considered in conjunction with all other recruitment costs, as set forth in 15-205.33, (ii) the procurement of scarce items for the performance of the contract, or (iii) the disposal of scrap or surplus materials acquired in the performance of the contract. Costs of this nature, if incurred for more than one defense contract or for both defense work and other work of the contractor, are allowable to the extent that the principles in 15-201.3, 15-201.4, and 15-203 are observed.

(c) (CWAS-NA) Advertising costs other than those specified in (b) above are not allowable. Unallowable advertising costs include those related to sales promotion. Such advertising involves direct payment for the use of time or space to promote the sale of products, either directly by stimulating interest in a product or product line, or indirectly by disseminating messages calling favorable attention to the advertiser for purposes of enhancing his overall image to sell his products. In both instances, the advertiser has control over the form and content of what will appear, the medium in which it will appear, and when it will appear.

15-205.2 *Bad Debts.* (CWAS-NA) Bad debts, including losses (whether actual or estimated) arising from uncollectible customers' accounts and other claims, and any directly associated costs such as collection costs and legal costs are unallowable.

15-205.3 *Bid and Proposal Costs.*

(a) *Definitions.*

(1) *Bid and proposal (B&P) costs* are the costs incurred in preparing, submitting, and supporting bids and proposals (whether or not solicited) on potential Government or non-Government contracts which fall within the following:

(A) *Administrative costs* including the cost of the nontechnical effort for the physical preparation of the technical proposal documents and also the cost of the technical and nontechnical effort for the preparation and publication of the cost data and other administrative data necessary to support the contractor's bids and proposals, and

(B) *Technical costs* incurred to specifically support a contractor's bid or proposal, including the costs of system and concept formulation studies and the development of engineering and production engineering data.

(2) *Company* as used in this paragraph includes all divisions, subsidiaries, and affiliates of the contractor under common control.

(b) *Composition of Costs.* B&P costs shall include not only all direct costs but also all allocable indirect costs except that general and administrative (G&A) costs shall not be considered allocable to B&P. Both direct and indirect costs shall be determined on the same basis as if each B&P project were under contract.

(c) *Allocation.* As a general rule, B&P costs shall be allocated to contracts on the same basis as the general and administrative expense grouping of the profit center (see 3-1003.3) in which such costs are incurred. However, where B&P

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property may be agreed upon and allowed (but see 15-107). In determining this charge, consideration should be given to cost, total estimated useful life at time of negotiation, effect of any increased maintenance charges or decreased efficiency due to age and the amount of depreciation, if any, previously charged to Government contracts or subcontracts.

(j) Cost Accounting Standard (CAS) 404 *Capitalization of Tangible Assets* is applicable to those assets which are acquired by means of a "capital lease" as defined in Statement of Financial Accounting Standard No. 13 (FAS-13), Accounting for Leases, promulgated by the Financial Accounting Standards Board (FASB). Compliance with CAS 404 and FAS-13 requires that such leased assets (captial lease) be treated as purchased assets; *i.e.*, be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges, both for financial and cost accounting purposes. Therefore, any leased assets whether leased prior to, on, or after 1 January 1977, which are capitalized prior to, on, or after 1 January 1977 under the provisions of FAS-13, are subject to the provisions on depreciation for tangible capital assets enunciated in this cost principle (15-205.9) — they are not subject to the provisions on rental costs set forth in 15-205.34. Existing leases entered into prior to 1 January 1977, which the contractor elects not to capitalize until 1 January 1981 as provided in FAS-13 will be subject to the provisions of rental costs set forth in 15-205.34 (1 July 1976) until such date as they are capitalized. The provisions of this paragraph (15-205.9(j)) apply whether or not the contractor is subject to CAS 404. The standards of Financial Accounting and Reporting set forth in FAS-13 are incorporated into this cost principle and shall govern in the application of this principle except when the provisions of subparagraphs (1), (2), and (3) set forth below conflict with the standards in FAS-13. In this event, the provisions of subparagraphs (1), (2), and (3) below shall govern.

(1) *Sales and Leaseback.* Rental costs under a sale and leaseback arrangement shall be allowable only up to the amount the contractor would be allowed had he retained title to the property.

(2) *Leases Between Related Parties.* Capital leases for all real and personal property which is leased from any division, subsidiary, or affiliate of the contractor under common control shall be subject to the provisions of this paragraph 15-205.9(j). If it is determined that the terms of the lease have been significantly affected by the fact that the lessee and lessor are related, the depreciation charges shall not be allowed in excess of those which would have occurred if the lease contained terms consistent with those found in a lease between unrelated parties.

(3) Assets acquired under leases which the contractor must capitalize in accordance with FAS-13 shall not be treated as purchased assets for contract costing purposes if the leases are covered by the provisions of 15-205.34(f).

15-205.10 *Employee Morale, Health, Welfare and Food Service and Dormitory Costs and Credits.* (CWAS)

(a) Employee morale, health and welfare activities are those services or benefits provided by the contractor to its employees to improve working conditions, employer-employee relations, employee morale and employee performance. Such activities include house publications, health or first-aid clinics, recreation, employee counseling services and, for the purpose of this paragraph 15-205.10, food and dormitory services. Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations or similar types of services for the contractor's employees at or near the contractor's facilities.

(b) Except as limited by (c) below, the aggregate of costs incurred on account of all activities mentioned in (a) above, less income generated by all such activities is allowable to the extent that the net amount is reasonable.

(c) Losses from the operation of food and dormitory services may be included as cost incurred under (b) above, only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at price or rates which obviously would not be conducive to accomplishment of the above objective, are not allowable, except that a loss may be allowed to the extent the contractor can demonstrate that unusual circumstances exist (*e.g.*, (i) where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available or (ii) where it is necessary to operate a facility at a lower volume than the facility could economically support) such that, even with efficient management, operation of the services on a break-even basis would require charging inordinately high prices or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Cost of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(d) In those situations where the contractor has an arrangement authorizing an employee association to provide or operate a service such as vending machines in the contractor's plan, and retain the profits derived therefrom, such profits shall be treated in the same manner as if the contractor were providing the service (but see (e)).

(e) Contributions by the contractor to an employee organization, including funds set over from vending machine receipts or similar sources, may be included as cost incurred under (b) above only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if incurred by the contractor directly.

15-205.11 *Entertainment Costs.* (CWAS-NA) Costs of amusement, diversion, social activities and any directly associated costs such as tickets to shows or sports events, meals, lodging,

the self-insurance provisions of CAS 416. However, if the captive insurer also sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive market forces, the insurance will be considered purchased insurance.

(d) The allowability of premiums for insurance purchased from fronting insurance companies (insurance companies not related to the contractor, but who reinsure with a captive insurer of the contractor) shall not exceed the amount (plus reasonable fronting company charges for services rendered) which the contractor would have been allowed had he insured directly with the captive insurer.

(e) Self-insurance charges for risks of catastrophic losses are not allowable (see 10-303(b)).

(f) Late premium payment charges related to employee deferred compensation plan insurance, incurred pursuant to Section 4007 or Section 4023 of the Employee Retirement Income Security Act of 1974, are unallowable.

(g) Indemnification includes securing the contractor against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Government is obligated to indemnify the contractor only to the extent authorized by law, which authorization is implemented in a provision of the contract, except as provided in subparagraphs (i) and (ii) of (a)(3) above.

15-205.17 *Interest and Other Financial Costs.* (CWAS-NA) Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees paid in connection with the preparation of prospectuses, costs of preparation and issuance of stock rights, and directly associated costs, are unallowable except for interest assessed by State or local taxing authorities under the conditions set forth in 15-205.41. (But see 15-205.24.)

15-205.18 *Labor Relations Costs.* (CWAS) Costs incurred in maintaining satisfactory relations between the contractor and his employees, including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable.

15-205.19 *Losses on Other Contracts.* (CWAS-NA) An excess of costs over income under any other contract (including the contractor's contributed portion under cost-sharing contracts), whether such other contract is of a supply, research, and development, or other nature, is unallowable.

15-205.20 *Maintenance and Repair Costs.*

(a) (CWAS) Costs necessary for the upkeep of property (including Government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see 15-205.9):

(i) normal maintenance and repair costs are allowable;

(ii) extraordinary maintenance and repair costs are allowable, *provided* such are allocated to the periods to which applicable for purposes of determining contract costs. (But see 15-107.)

(b) (CWAS-NA) Expenditures for plant and equipment, including rehabilitation thereof, which, according to generally accepted accounting principles as applied under the contractor's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

15-205.21 *Manufacturing and Production Engineering Costs.* (CWAS) Costs of manufacturing and production engineering including engineering activities in connection with the following, are allowable:

(i) current manufacturing processes such as motion and time study, methods analysis, job analysis, and tool design and improvement; and

(ii) current production problems, such as materials analysis for production suitability and component design for purposes of simplifying production.

15-205.22 *Material Costs.* (CWAS)

(a) Material costs include the costs of such items as raw materials, parts, subassemblies, components, and manufacturing supplies, whether purchased outside or manufactured by the contractor, and may include such collateral items as inbound transportation and intransit insurance. In computing material costs consideration will be given to reasonable overruns, spoilage, or defective work (unless otherwise provided in any provision of the contract relating to inspection and correction of defective work). These costs are allowable subject, however, to the provisions of (b) through (e) below.

(b) Costs of material shall be suitably adjusted for applicable portions of income and other credits, including available trade discounts, refunds, rebates, allowances, and cash discounts, and credits for scrap and salvage and material returned to vendors. Such income and other credits shall either be credited directly to the cost of the material involved or be allocated (as credits) to indirect costs. However, where the contractor can demonstrate that failure to take cash discounts was due to reasonable circumstances, such lost discounts need not be so credited.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs, *provided* such adjustments relate to the period of performance of the contract.

(d) When the materials are purchased specifically for and identifiable solely with performance under a contract, the actual purchase cost thereof should be charged to the contract. If material is issued from stores, any generally recognized method of pricing such material is acceptable if that method is consistently applied and the results are equitable. When estimates of material costs to be incurred in the future are required, either current market price or anticipated acquisition cost may be used, but the basis of pricing must be disclosed.

(e) Allowance for all materials, supplies and services which are sold or transferred between any division, subsidiary or affiliate of the contractor under a common control shall be on the basis of cost incurred in accordance with this Part 2, except that when it is the established practice of the transferring organization to price interorganization transfers of materials, supplies and services at other than

15-205.26 *Patent Costs.*

(a) (CWAS) Costs of (i) preparing disclosures, reports, and other documents required by the contract and of searching the art to the extent necessary to make such invention disclosures; (ii) preparing documents and any other patent costs, in connection with the filing and prosecution of a United States patent application where title or royalty free license is required by Government contract to be conveyed to the Government; and (iii) general counseling services relating to patent matters, such as advice on patent laws, regulations, clauses, and employee agreements, are allowable. (But see 15-205.31.)

(b) (CWAS-NA) Costs of preparing disclosures, reports and other documents and of searching the art to the extent necessary to make invention disclosures, if not required by the contract, are unallowable. Costs in connection with (i) filing and prosecuting any foreign patent application, or (ii) any United States patent application with respect to which the contract does not require conveying title or a royalty free license to the Government, are unallowable. (Also see 15-205.36.)

15-205.27 *Pension Plans.* See 15-205.6.

15-205.28 *Plant Protection Costs.* (CWAS) Costs of items such as (i) wages, uniforms and equipment of personnel engaged in plant protection, (ii) depreciation on plant protection capital assets, and (iii) necessary expenses to comply with military security requirements, are allowable.

15-205.29 *Plant Reconversion Costs.* (CWAS-NA) Plant reconversion costs are those incurred in the restoration or rehabilitation of the contractor's facilities to approximately the same condition existing immediately prior to the commencement of the military contract work, fair wear and tear excepted. Reconversion costs are unallowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon before the costs are incurred. Whenever such costs are given consideration, care should be exercised to avoid duplication through allowance as contingencies, as additional profit or fee, or in other contracts.

15-205.30 *Precontract Costs.* (CWAS-NA) Precontract costs are those incurred prior to the effective date of the contract directly pursuant to the negotiation and in anticipation of the award of the contract where such incurrence is necessary to comply with the proposed contract delivery schedule. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the contract. (But see 15-107.)

15-205.31 *Professional and Consultant Service Costs — Legal, Accounting, Engineering, and Other.* (CWAS-NA)

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the contractor are allowable, subject to (b), (c), (d), and (e) below when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government (but see 15-205.26).

(b) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors among others may be relevant:

(i) the nature and scope of the service rendered in relation to the service required;

(ii) the necessity of contracting for the service considering the contractor's capability in the particular area;

(iii) the past pattern of such costs, particularly in the years prior to the award of Government contracts;

(iv) the impact of Government contracts on the contractor's business (*i.e.*, what new problems have arisen);

(v) whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government contracts.

(vi) whether the service can be performed more economically by employment rather than by contracting;

(vii) the qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-government contracts;

(viii) adequacy of the contractual agreement for the service (*e.g.*, description of the service; estimate of time required, rate of compensation; termination provisions).

(c) In addition to (b) above, retainer fees to be allowable must be supported by evidence that:

(i) the services covered by the retainer agreement are necessary and customary;

(ii) the level of past services justifies the amount of the retainer fees (if no services were rendered, fees are not automatically unallowable); and

(iii) the retainer fee is reasonable in comparison with maintaining an in-house capability to perform the covered services, considering factors such as cost, and level of expertise.

(d) Costs of legal, accounting and consulting services, and directly associated costs, incurred in connection with organization and reorganization, defense of antitrust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting, and consulting services, and directly associated costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the contract. (Also see 15-205.23.)

(e) Except for retainers (see (c) above), fees for services rendered shall be allowable only when supported by evidence of the nature and scope of the services furnished. (Also see 15-205.37(c).)

15-205.32 *Gains and Losses on Disposition of Depreciable Property or Other Capital Assets.* (CWAS-NA)

(a) Gains and losses from the sale, retirement or other disposition (but see 15-205.16) of depreciable property, for purposes of computing contract costs,

(d) A preselection list of the maximum practicable number of qualified firms shall be prepared by a preselection board from data described in 18–403 and other pertinent information which may be available, and the list shall be approved by the head of the construction activity, or his designee.

(e) Both preselection and selection boards shall consist primarily of senior staff architects or engineers, or military personnel having comprehensive experience in military construction.

(f) Preparation of preselection lists for contracts estimated to cost more than $10,000, and selections for contracts estimated to cost more than $2,500, shall be accomplished by formally constituted boards consisting of at least three members.

(g) The selection board shall review the qualifications and performance data (see 18–403) of each of the firms on the preselection list, in accordance with the policy established in 18–402.1 and the criteria developed pursuant to (b) above, and shall recommend, in order of preference, a minimum of three firms for approval for contract negotiations to the head of the construction activity, or his designee. The selection board may submit four or more firms to allow for possible findings by the construction activity or higher authority (as required by 18–402.3(iv) or (v)), that certain firms on the list are unqualified. (See 18–402.3(b) which requires that a minimum of three firms must remain upon final approval of the selection list.) If for any reason the selection board cannot formulate a slate of at least three firms from the preselection list, the selection board shall advise the preselection board of its inability to formulate a slate, and they shall request additional names for consideration. The selection board shall state the number of additional names needed and may provide guidance stating the reasons that the firms are considered unqualified. The preselection board shall furnish at least three names for each vacancy on the final slate.

(h) In the case of any contract estimated to cost more than $10,000, the selection board shall have conducted oral or written discussions with, as a minimum, all of the firms recommended to the head of the construction activity or his designee. Discussions shall be directed to the specific project or types of projects under consideration and shall include but not necessarily be limited to each firm's technical qualifications, experience, organization, capacity, current workload, immediate availability, key individuals who will be placed on the work, anticipated concepts, relative utility of alternative methods of design approach, and other relevant factors, except fee. Discussions may be conducted by telephone when considered appropriate. The requirement for discussions may be waived in individual cases by the head of the next higher organizational level of the construction activity, or his designee at that level, but only when it is considered to be clearly in the best interests of the Government to do so.

(i) The head of the construction activity, or his designee, shall not add firms to any selection list prepared in accordance with (g) above. Upon approval of the selections by the head of the construction activity, or his designee, and such approval as may be required by 18–402.3, negotiations shall be initiated in accordance with 18–306.2.

(j) All preselection and selection actions shall be fully documented.

18–402.3 *Special Approval of Selections.*

(a) Special approval shall be required for certain selections as indicated below. Dollar amounts cited shall include, where applicable, fees for (I) planning and design, (II) supervision and inspection of construction, and (III) any other architect-engineer services related to construction.

(i) When the estimated cost of a contract to be awarded by a field activity exceeds $200,000, the selection shall require the approval of the next higher organizational level of the construction activity;

(ii) When a firm, to which a field contracting office has previously awarded contracts totaling over $200,000 during the current calendar year, has been selected for an additional award to be made by the same contracting office, the selection shall require, prior to negotiation with the firm, the approval of the next higher organization level of the construction activity;

(iii) When a selection is made by the Army Office of the Chief of Engineers, the Naval Facilities Engineering Command, or the Air Force Directorate of Civil Engineering for a contract whose estimated cost is $500,000 or less, the selection shall require the approval of the Chief of Engineers, the Commander, Naval Facilities Engineering Command, or the Director of Civil Engineering, respectively, or their designees;

(iv) When the estimated cost of a contract exceeds $500,000, the selection shall require the approval of the Secretary of the Department concerned, or his designee;

(v) When the estimated cost of a contract exceeds $1,000,000, the selection shall require the approval of the Assistant Secretary of Defense (Installations and Logistics), or his designee;

(vi) When supplemental work to be added to an existing contract will bring the total contract cost to any of the various levels of approval noted above, the selection for such work shall require approval as indicated for the appropriate level (such approval is not required for supplemental work accomplished pursuant to the Changes clause of the contract);

(vii) When approval of a selection for a contract has been obtained at a particular approval level, further approval shall not be required for the selection of the same firm to accomplish supplemental work under that contract, unless the total cost of the basic contract plus all supplemental work is an amount requiring approval of the selection at the next higher approval level or unless the supplemental awards meet the conditions described in (viii), below;

(viii) When a contract totaling over $1,000,000, for which selection approval has been granted in accordance with (v) or (vi), above, is increased by supplemental awards, approval of the selection by the Assistant Secretary of Defense (Installations and Logistics), or his designee, shall be required for each increment of such supplemental awards totaling over $200,000; and

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Part 5—Contract Administration Services for Non-DoD Organizations

20–501 General. Contract administration services similar in nature to those being performed for Department of Defense organizations may be performed also for other organizations pursuant to the procedures in this part. These services include quality assurance, engineering support, production progressing, pre-award surveys, price/cost analysis, termination, property administration, plant clearance, industrial security, small business industrial labor relations, transportation, contractor payment, and equal employment opportunity contract compliance review. A more detailed listing of tasks involving most of the above services is contained in 1-406.

20–502 Procedures for Performance. Department of Defense procedures will be utilized in performing contract administration services for other than Department of Defense organizations. However, the Departments may, on an exception basis and in accordance with Departmental procedures, enter into formal agreements with non-Defense organizations to provide for use of requested non-Defense procedures. This authority to enter into such agreements shall not be delegated below the level of the Head of the Contracting Activity.

20–503 United States Government Departments, Agencies and Corporations. Department of Defense contract administration services components shall, upon direct request, provide contract administration services to:

(i) the National Aeronautics and Space Administration in accordance with the DoD-NASA Agreement (DoDI 5030.42); and

(ii) other United States Government Departments and Agencies to the maximum extent permitted by available resources. Requests for services from U.S. Government agencies other than NASA may be declined on a case-by-case basis if resources are inadequate to accomplish delegated tasks, provided the decision is made by an official above the level of the contract administration office.

20–504 Department of National Defence Production (Canada). In accordance with Section VI, Part 5, Department of Defense components shall upon direct request, provide contract administration services to the Department of National Defence Production (Canada). Performance for other Canadian Government organizations shall be in accordance with 20–505.

20–505 Foreign Governments and International Agencies.

20–505.1 *Performance of Services in the United States.* Department of Defense contract administration services components shall, on receipt of requests from the DoD Central Control Point, provide contract administration services to foreign governments and international organizations who are making direct purchases from United States producers. "Direct purchase" is the purchase of defense supplies in the United States by a foreign government or contractor or international organization in which the supplies are purchased through commercial channels for use by the foreign government or international organization.

20–505.2 *Operations of DoD Central Control Point (CCP).* Requests from foreign governments and international organizations shall be forwarded to the Defense Control Administration Services Region (DCASR), New York, N.Y., which is the designated CCP. The CCP will:

(i) determine that the request is from a friendly foreign government or from an international agency in which the United States is a participant;

(ii) determine that the services requested are consistent with Department of Defense mutual security program policies (Questions as to eligibility of foreign governments or international organizations to receive services from DoD contract administration services components will be referred to the Assistant Secretary of Defense (International Security Affairs));

(iii) assure that the reimbursement arrangements are consistent with 20–506;

(iv) determine that the requested services can be provided, and acknowledge receipt of the request;

(v) distribute the procurement documents and related material to the cognizant contract administration services component, receive statements of costs from performing contract administration services components, bill the foreign governments or international organizations for services rendered, and distribute the remittance when received.

20–505.3 *Performance of Services Outside the United States.* When services are performed by Department of Defense contract administration services personnel outside the United States, the levels of technical capability and the administrative procedures, not already prescribed in existing laws or Department of Defense policies shall be in accordance with arrangements suitable and acceptable to the United States country teams or commanders of unified and specified commands, as appropriate.

20–506 Reimbursement.

(a) Except as noted in (b) and (c) below, reimbursement for services shall be required from non-DoD organizations covered by this part at the current standard rate determined by the Assistant Secretary of Defense (Comptroller).

(b) Reimbursement is not required for quality assurance, inspection, and contract audit services under an effective reciprocal agreement which provides for such services to be rendered on a no-charge basis.

(c) Reimbursement is not required for services performed under contracts awarded by the Small Business Administration in accordance with 1-705.5.

(d) Requests for exceptions other than those noted in (b) and (c) above shall be submitted to the ASD (Comptroller) for resolution or approval when it can be shown that such exceptions are in the best interests of the U.S. Government.

Part 5—Procurement of Mortuary Services

22-500 Scope of Part. Procurement procedures peculiar to contracts for mortuary services (the care of remains) of military personnel within the United States are set forth in this Part. These procedures may be used as guidance in areas outside the United States in procuring such services for both deceased military and civilian personnel. Uniform contract clauses for care of remains contracts are set forth or referenced in Section VII, Part 12.

22-501 Method of Procurement.

22-501.1 *Procurements by Requirements Type Contract.* By agreement among the military activities involved, one military activity in each geographical area shall contract for the estimated requirements for the care of remains for all activities in the area. Procurement shall be by use of a requirements type contract (see 3-409.2) when the estimated annual requirements for the individual activity concerned, or for the activities using one contract, are ten or more. Except where negotiation is authorized under Section III, Part 2, such contracts shall be formally advertised.

22-501.2 *Procurements by Purchase Order.* Where no contract exists, such services shall be obtained by use of DD Form 1155 (Order for Supplies and Services/Request for Quotations) and DD Form 1155r "General Provisions" (see 3-608), inserting in the Schedule the clauses prescribed in 3-608.2(b)(1)(xii).

22-501.3 *Solicitation Planning.* Bids or offers for annual requirements for the next fiscal year shall be solicited in sufficient time to permit award prior to the beginning of the fiscal year.

22-501.4 *Area of Performance.* Each contract for care of remains (except Port of Entry Requirements contracts) shall clearly define the geographical area covered by the contract. The area shall be determined by the activity entering into the contract in accordance with the following general guidelines. It shall be an area using political boundaries, streets, or other features as demarcation lines. Generally, this should be a size roughly equivalent to the contiguous metropolitan or municipal area enlarged to include the activities served. In the event the area of performance best suited to the needs of a particular contract is not large enough to include a carrier terminal commonly used by people within such area, the contract area of performance shall specifically state that it includes such terminal as a pickup or delivery point.

22-501.5 *Distribution of Contracts.* In addition to normal contract distribution, three copies of each contract shall be furnished to each activity authorized to use it, and two copies to each of the following:

(i) HQDA (DAAG-PED)
Alexandria, VA 22331

(ii) Bureau of Medicine and Surgery
Department of the Navy (MED 3134)
23rd and E Streets, N.W.
Washington, D.C. 20372

(iii) Headquarters, AFMPC/MPCCM
Randolph AFB, TX 78150

22-502 Solicitation Provision. Advertised solicitations for mortuary services contracts shall contain the provision in 7-2003.58. This provision shall be appropriately modified for use in negotiated solicitations.

22-503 Schedule Formats.

22-503.1 *Schedule Format for Other Than Port of Entry Requirements Contracts.* Set forth below is an example of a Schedule format suitable for use in solicitations for other than port of entry requirements. The estimated quantities are only illustrative.

ITEM NO.	SUPPLIES, SERVICES AND TRANSPORTATION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	AMOUNT
1	For a standard size casket, supplies and services in accordance with specifications.	10	each		
2	For a wood shipping case, standard size, in accordance with specifications (for use with Item 1 above, as required).	2	each		
3	For an oversize casket, supplies and services in accordance with specifications.	4	each		
4	For an oversize shipping case, in accordance with specifications (for use with Item 3 above, as required).	1	each		
5	For transportation of remains, in accordance with specifications and as provided for in paragraphs (b) and (c) of the "Area of Performance" clause of this contract.	200 Loaded miles	(Loaded mile)		

Additional items may be added (in numerical sequence), as required.

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22-503.2 *Schedule Format for Port of Entry Requirements Contracts.* Set forth below is an example of a Schedule format suitable for use in solicitations for port of entry requirements. The estimated quantities are only illustrative.

ITEM NO.	SUPPLIES, SERVICES AND TRANSPORTATION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	AMOUNT
1	For a standard size casket, supplies and services in accordance with specifications.	20	each		
2	For a shipping case, standard size, in accordance with specifications (for use with Item 1 above).	17	each		
3	For an oversize casket, supplies and services in accordance with specifications.	5	each		
4	For a shipping case, oversize, in accordance with specifications (for use with Item 3 above).	3	each		
5	For inspection and/or reprocessing of casketed remains prior to delivery to selected common carrier.	18	each		
6	For transportation of remains between _____ and processing facility.	31	(Loaded trip each)		
7	For transportation of remains between processing facility and selected common carrier or National Cemetery as indicated below:		(Loaded trip each)		
	X _____	9			
	Y _____	10			
	Z _____	9			
8	For transportation of remains between processing facility and any point within 100 miles as designated by the contracting officer.				

Additional items may be added (in numerical sequence), as required.

Part 6—Shipment or Storage of Personal Property

22-600 Policy.

22-600.1 *Annual Contracts.* Services for the preparation of personal property for shipment or storage and for the performance of intra-area movement normally shall be obtained by requirements contracts awarded as a result of formal advertising. Such contracts shall be on a calendar year basis except for noncontinuous requirements for shorter periods. Award of contracts should be made prior to 1 November of each year.

22-600.2 *Area of Performance.* The solicitation shall define clearly each area of performance. One or more areas may be established; but, the number should be held to a minimum consistent with local conditions. Each schedule may provide for the same or different areas of performance. An area shall be determined in accordance with the following general guidelines. It shall be an area using political boundaries, streets, or any other features as lines of demarcation. Determination as to the number of areas thereof shall take into consideration such matters as total volume, size of overall area and isolated areas of high population density which will be serviced. Frequently used terminals will be specifically identified and considered as being included in each area of performance described in the solicitation.

22-600.3 Solicitation Provisions. The solicitation shall include the provisions in 7-2003.59 and 7-2003.77.

22-600.4 *Use of Pre-Bid Conference.* In accordance with provisions of 2-207, the use of a pre-bid conference shall be considered and is encouraged.

22-600.5 *Appropriate Post-Award Orientation of Contractors.* Contracting officers will assure that in accordance with Section I, Part 18, each successful contractor is provided appropriate post-award orientation.

22-600.6 *Maximum Requirements—Minimum Capability.* The quantities established by the contracting officer in the Estimated Quantities clause in 7-1601.7 must be realistic. He must be assured that the Government's minimum acceptable daily capability will provide for at least the maximum authorized individual weight allowance as prescribed by the Joint Travel Regulations. Extreme caution must be exercised to insure that the established minimum acceptable daily capability does not preclude the submission of bids by small but otherwise acceptable bidders.

22-601 Procedure.

22-601.1 *Coordination.*

(a) Single CONUS military installations or activities assigned total multi-service personal property areas of responsibility in accordance with Chapter 11, Personal Property Traffic Management Regulation DoD 4500.34R shall contract for all estimated requirements within their assigned areas of responsibility. When two or more military installations or activities are assigned personal property responsibilities for a given area, one military activity shall contract for the estimated requirements of all activities in a contiguous area. The activity shall be designated by mutual agreement of the installation commanders concerned.

(b) The Commander, Military Traffic Management Command (MTMC), shall designate the contracting activity when local commanders are unable to reach an agreement as to the activity to be designated.

MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

Part 5—Return of Government-Furnished Material (GFM)

H-500 Scope of Part. This Part sets forth instructions for the preparation and use of the MILSTRIP document for the return of Government-furnished material.

H-501 General.

(a) Shipping Document for GFM Turn-In (DD Form 1483) is authorized for use by a contractor in returning Government-furnished material to the cognizant Military Department.

(b) Serviceable and unserviceable turn-ins shall be documented separately. The type of turn-in shall be indicated by the insertion of an "X" in the "Serviceable" or "Unserviceable" box on the form, as appropriate.

(c) Department of Defense forms, other than the DD Form 1483, used for turn-in shall contain as a minimum the data prescribed in H-502.

H-502 Preparation of DD Form 1483. The following entries on DD Form 1483 are required:

Field/Legend	*Card Columns or Blocks*	*Explanation and Instructions*
Contract number	A	Enter full contract number.
Ship to	B	Enter name and address of storage activity or depot designated by the contracting officer to receive the Government-furnished material.
Mark for	C	As directed by the contracting officer.
Ship from	D	Enter name and address of shipping contractor as listed in DOD Activity Address Directory.
Office administering contract.	E	Enter name and address of activity administering the contract.
Document identifier.	1–3	Leave blank.
Routing identifier (Stock control activity or inventory control point).	4–6	Leave blank.
———	7	Leave blank.
Document number (Basic).	30–39	See H-604.
Service code	30	Enter procuring service code (see H-601).
Shipper	31–35	Enter activity address code of contractor from DOD Activity Address Directory.
Date	36–39	Enter last digit of calendar year followed by Julian day calendar date on which document prepared. See H-609.
	44	Leave blank.
	45–50	Leave blank.
	51	For Army Contractors Only: Enter signal code in accordance with H-606.3. For All Other Contractors: Leave blank.

MILITARY STANDARD REQUISITIONING AND ISSUE PROCEDURE

Field/Legend	*Card Columns or Blocks*	*Explanation and Instructions*
Fund	52–53	For Army Contractors Only: Enter fund code in accordance with H-606.3. For All Other Contractors: As directed by contracting officer.
	54–56	Leave blank.
Project	57–59	As directed by contracting officer.
Priority	60–61	As directed by contracting officer.
Date received	62–64	Leave blank.
	65–66	Leave blank.
Routing identifier (Storage activity or depot).	67-71	Leave blank.
Management Code	72	Enter the appropriate management code as prescribed by the contracting Military Department or Agency; otherwise, leave blank. See H-615.
	73	Leave blank.
	74–80	Leave blank.
Stock number	8–22	Enter stock number in accordance with H-603.1 through H-603.4.
Unit of issue	23–24	Enter appropriate unit of issue as indicated on document on which originally received.
Quantity shipped	F	Enter quantity shipped.
Quantity received	25–29	Leave blank.
Serial number*	40–43	For Air Force Contractors Only. Enter serial number in sequence from the block allocated by the property administrator. The serial number shall not be duplicated on any one day. For All Other Contractors. Enter serial number beginning with 0001 each day and continue in numerical sequence. The serial number shall not be duplicated on any one day.
Unit price	G	As directed by contracting officer.
Condition	H	Leave blank.
Remarks	I	Enter, as applicable, manufacturers' code and part number, item description or publication reference, stock number over 16 digits as described in H-603.3(c) and (d) and H-603.4.

*Serial number in combination with document number (Basic), columns 30–39, forms complete document number for each line item.

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(e) Intra-service requisitions (transactions other than (d) above) may or may not require entries in the fund code field dependent upon the Departmental regulations.

(f) Service use of fund code with signal code "C" or "L" in column 51 will be as follows:

(i) Air Force—in accordance with H-606.2,
(ii) Army—in accordance with H-606.3,
(iii) Navy—not applicable,
(iv) Marine Corps—not applicable, and
(v) Defense Supply Agency—not applicable.

(g) Fund code entries are required in turn-in documents for Government-furnished material prepared by Army contractors. These entries will be in accordance with H-606.3 or as directed by the contracting officer. Fund code entries are required in turn-in documents prepared by other service contractors only when specifically requested by the contracting officer. In such cases, the contracting officer will provide the fund code to be used.

H-606.2 *Air Force Entries in Fund Code (Block 17—Manual) (Columns 52 and 53—Mechanical).*

(a) Air Force contractor activities, when directed by that Department, submitting requisitions to Defense Supply Centers, other Departments, and the General Services Administration for base funded items shall enter a two-digit fund code in which the first position (column 52) shall always be a numeric. (Used with signal codes "A," "B," "J," and "K" in column 51.)

(b) Air Force contractor activities submitting requisitions to Air Force depots, when funding is not a condition of requisitioning, shall leave columns 52 and 53 blank. (Used with signal codes "D" and "M" in column 51.)

(c) Air Force inventory managers, when passing requisitions for centrally funded items to Defense Supply Centers, other Departments, and the General Services Administration shall enter a two-digit fund code in which the first position (column 52) shall always be the appropriate alphabetic character, as listed below, identifying the depot obligating the funds and to effect payment. (Used with signal codes "C" and "L" in column 51.)

Code	*Activity*
A	Acctg Disb Sta Nr 595600 ASD (ASCFA) Wright-Patterson AFB, Ohio 45433
B	Acctg Disb Sta Nr 669800 AFFTC (FTBCC) Edwards Air Force Base California 93523
C	Acctg Disb Sta Nr 678100 ESD (ESCFA) L.C. Hanscom Field Massachusetts 01731

Code	*Activity*
D	Acctg Disb Sta Nr 503900 RADC (EMLCD) Griffiss AFB New York 13440
E	Acctg Disb Sta Nr 662400 AFETR (ETBCA) Patrick AFB Florida 32925
F	Acctg Disb Sta Nr 503200 Sacramento Air Materiel Area McClellan AFB California 95652
G	Acctg Disb Sta Nr 504400 Ogden Air Materiel Area Hill AFB Utah 84401
H	Acctg Disb Sta Nr 503100 Oklahoma City Air Materiel Area Tinker AFB Oklahoma 73145
J	Acctg Disb Sta Nr 674800 AFMDC (MDBCA) Holloman AFB New Mexico 88330
K	Acctg Disb Sta Nr 503600 SAMSO Norton AFB California 92409*
L	Acctg Disb Sta Nr 503300 Warner Robins Air Materiel Area Robins AFB Georgia 31093

*Mail and messages pertaining to Re-entry System or Minuteman only

Code	Activity
M	Acctg Disb Sta Nr 503400 Mobile Air Materiel Area Brookley AFB Alabama 36615
N	Acctg Disb Sta Nr 503000 Headquarters Air Force Logistics Command Wright-Patterson AFB Ohio 45433
P	Acctg Disb Sta Nr 504300 San Antonio Air Materiel Area Kelly AFB Texas 78241
R	Acctg Disb Sta Nr 662300 AFSWC (SWBCA) Kirtland AFB New Mexico 87117
S	Acctg Disb Sta Nr 667300 AEDC (AEBCA) Arnold AFB Tennessee 37389
T	Acctg Disb Sta Nr 594100 AFWTR (WTSCA) Vandenberg AFB California 93437
U	Acctg Disb Sta Nr 528500 AMD (AMSCA) Brooks AFB Texas 78235
V	Acctg Disb Sta Nr 527900 APGC (PGBCA) Eglin AFB Florida 32542
W	Acctg Disb Sta Nr 599000 Headquarters Air Force Systems Command (SCCA) Andrews AFB Maryland 20331

Code	Activity
Y	Acctg Disb Sta Nr 594200 SAMSO AF Unit Post Office Los Angeles, California 90045

H-606.3 *Army Entries in Fund Code (Block 17--Manual) (Columns 52 and 53--Mechanical)(Shipping Document for GFM Turn-In, DD Form 1483).*

(a) When the fund account and the Army activity that financed the acquisition of the material is known, Army contractor activities shall, unless directed otherwise by the contracting officer, enter the fund code of the financing account (as provided by the contracting officer). In addition, these activities shall enter, in columns 45 and through 50, the activity address code of the financing Army activity (as provided by the contracting officer) and, in column 51, signal code "B."

(b) When the fund account or the Army activity that financed the acquisition of the material is not known, Army contractor activities shall, unless directed otherwise by the contracting officer, enter the appropriate fund code from the matrix below. In addition, these activities shall enter, in column 51, signal code "C."

Kind of Materiel	End Item in Which Materiel is Used				
	Aircraft	Ammunition	Missiles	Weapons & Tracked Combat Vehicles	Other
Communications or electronics	GB	--	GL	GM	GU
Aviation	HB	--	HL	--	HU
Tank or automotive	--	KI	--	KM	KU
Missile	LB	LI	LL	LM	LU
Armament	MB	MI	ML	MM	MU
Other	GB	KI	LL	MM	GU

(c) When the codes in (b) above are used with signal code C or L, the first-position entry designates one of the following Army activities

Code	*Activity*
G	Finance and Accounting Office US Army Communications and Electronics Materiel Readiness Command Fort Monmouth, NJ 07703
H	Finance and Accounting Office US Army Troop Support and Aviation Materiel Readiness Command 4300 Goodfellow Boulevard St. Louis, MO 63120
K	Finance and Accounting Office US Army Tank Automotive Materiel Readiness Command Warren, MI 48090
L	Finance and Accounting Office US Army Missile Command Redstone Arsenal, AL 35809
M	Finance and Accounting Office US Army Armament Materiel Readiness Command Rock Island, IL 61299

H–607 Advice and Status Codes (Block 22—Manual) (Columns 65 and 66—Mechanical).

H–607.1 *General.*

(a) The advice/status field is of dual use and its application and the coding structures are dependent upon the directional flow of the documents.

(b) Advice codes (see H–607.2) are numeric/alphabetic and flow from requisition originators to initial processing points and are thereafter perpetuated into passing actions and Release/Receipt documents. The purpose of advice codes is to provide coded instructions to supply sources when such data are considered essential to supply action and entry in narrative form is not feasible.

(c) Status codes (see H–607.3) are alphabetic/alphabetic and alphabetic/numeric and flow from supply sources to requisitioners or consignees and inform recipients of the status of requisitions.

H–607.2 *Advice Codes—Numeric/Alphabetic (From Requisitioner to Initial Processing Point).*

(a) *General Codes.*

Columns 65	66	
2	A	Item is not locally obtainable through manufacture, fabrication, or procurement.
2	B	Requested item only will suffice. Do not substitute/interchange. Also applies to "obsolete" items previously rejected with Status Code CJ.
2	C	Do not back-order. Reject unfilled quantity not available to meet Standard Delivery Date/Required Delivery Date. Suitable substitute acceptable.
2	D	Furnish exact quantity requested (*i.e.*, do not adjust to unit pack quantity).
2	J	Do not substitute or back-order any unfilled quantities.
2*	L	Quantity reflected in quantity field exceeds normal demands; however, this is a confirmed valid requirement.
2	N	Item required in one continuous length as expressed in cc 25–29 and Unit of Issue in cc 23–24.
2	T	Deliver to the ultimate consignee by the SDD or RDD entered hereon or cancel requirement.

*Requisitioners desiring to advise the supply source that the quantity requested exceeds the requisitioner's normal demand, will enter Advice Code 2L in block 22 or columns 65 and 66 of requisitions.

Part 5—Formats for Determinations and Findings

J-500 Scope of Part. This Part contains illustrative formats for D&Fs for authority to negotiate contracts under 10 U.S.C. 2304(a)(2), (7), (8), and (10) through (16). (See Section III, Parts 2 and 3).

J-501 General. In some instances (*e.g.*, J-502(d), J-502(e) Format (A), and J-503(a) Format (B)), a more detailed example is provided to better illustrate the structure and substance of the D&Fs. Also, in certain instances (*e.g.*, J-502(a) and J-502(f), alternate statements are provided in the body of the example to demonstrate the application or use of the authority under other circumstances. Modifications as appropriate shall be made in the formats when they are used for a class of contracts. Other modifications of a minor nature may be made in individual cases, as necessary. The statutory negotiation authority is hereafter referred to as "Exception (11)," "Exception (12)," etc.

J-502 Formats for Secretarial Determinations and Findings.

(a) *Format for D & F for Exception (11).*

(Military Department or Agency)

Determination and Findings

Authority To Negotiate an Individual Contract

Upon the basis of the following findings and determination which I hereby make as agency head, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 10 U.S.C. 2304(a)(11).[1]

Findings

1. The ____([2])____ proposes to procure by negotiation experimental, developmental or research work calling for the study and investigation of plastic material, the experimental fabrication and testing of four sonar domes from such material and the submission of technical reports thereon. The proposed contract will not call for quantity production within the meaning of paragraph 3-211.3 of the Armed Services Procurement Regulation.

[Alt: ". . . proposes to procure by negotiation experimental, developmental or research work calling for the design, development, fabrication and the furnishing of five prototype fighter aircraft; design data, test, drawings and mockup; structural and fatigue test articles and components; instrumentation and contractor flight tests and demonstration; contractor-augmented support (including spares, spare parts, special support equipment, repairs and technical services); publications and miscellaneous reports. The proposed class of contracts will not call for quantity production within the meaning of paragraph 3-211.3 of the Armed Services Procurement Regulation.]

2. Procurement by negotiation of the above described services and property is necessary because it is impossible to describe in precise detail or by definite drawings and specifications the nature of the work to be done under the proposed contract: only the ultimate objectives and the scope of the work can be outlined.

[Findings continued on next page]

Findings—continued

[Alt: (*for a class determination and findings*): ". . . because it is impossible to describe in precise detail or by definite drawings and specifications the nature of the work to be done under the proposed class of contracts; only the ultimate objectives and scope of the work can be outlined.]

3. Use of formal advertising for procurement of the above described services and property is impracticable because it is impossible to describe in precise detail or by any definite drawings and specifications, the nature of the work to be done; only the ultimate objectives and general scope of the work can be outlined.

Determination

The proposed contract is for experimental, developmental or research work.([3])

Date _____ _____

NOTES: ([1]) When determinations and findings under 10 U.S.C. 2304(a)(11) are made below the Secretarial level, they shall be made in the same format and contain justification similar to that in the above example except that the words "which I hereby make as agency head" in the preamble shall be omitted.

([2]) Procuring or contracting activity.

([3]) When appropriate in individual cases, this determination should be limited to the particular kinds of work under the proposed contract, as such work is described in 3-211.1.

CONTRACT FILE MAINTENANCE, CLOSEOUT, AND DISPOSITION (ASPR SUPPLEMENT NO. 2)

Part 1—Documentation of Contract Actions

S2-100 General.

(a) As provided in 1-308, each office performing purchasing, contract administration, or contract paying functions shall maintain official records of all actions with respect to solicitations and contracts, in accordance with the provisions of this Supplement, except that the application of these provisions to small purchases and other simplified procurements covered by Section III, Part 6, is optional.

(b) To the extent that retained copies of contractual documents and correspondence do not reflect all actions taken, suitable memoranda of the undocumented actions shall be prepared promptly and placed in the appropriate official contract file.

(c) Authenticated or conformed copies of contractual instruments and signed or official record copies of correspondence, memoranda, and other documents shall be used in compiling the official files. Authenticated copies are documents shown to be genuine by certification as a true copy by signature of an authorized person or by official seal. Except to the extent that contract clauses or specifications are incorporated by reference, conformed copies are complete and accurate copies of the contractual instrument, including the date of execution and the names and titles of signatories. Documents reproduced by fast-copy process that deteriorates when exposed to excessive heat or light shall not be included in the official file.

S2-101 Official Files. Official files shall consist of individual contract case files and contractor general files; also contract cross-reference/locator files when needed to facilitate contract file location.

S2-101.1 *Contract Case File.* The individual contract case file consists of the three files described in (a), (b), and (c) below, which normally will be kept separately. In a proper case, two or all of these files may be combined, as, for example, when all functions are performed by the same office, or when the contract administration office and the purchasing or paying office are the same, as in the case of most small purchases.

(a) The *purchasing office contract file* shall document the basis for the procurement and the award, the assignment of contract administration (including paying responsibilities), and any subsequent actions taken by the purchasing office.

(b) The *contract administration office contract file* shall document actions reflecting the basis for and the performance of contract administration responsibilities.

(c) The *paying office contract file* shall document actions prerequisite to, substantiating and reflecting contract payments.

S2-101.2 *Contractor General File.* This file consists of correspondence, reports, and other documents relating not to a specific contract but to several contracts or to the contractor generally (*e.g.*, concerning any general aspect of his capabilities, performance, procedures, or operations).

S2-101.3 *Contract Cross Reference/Locator File.* This file consists of information (mechanized or manual) needed to assure ready location of contract case files. (See S2-206.)

S2-102 Contents of Files.

S2-102.1 *Purchasing Office Contract File.* Each purchasing office contract file shall include (but is not limited to) such of the following as are applicable (the extent to which this listing shall apply depends upon the type of contract, dollar value, actions required, and functions assigned to the contract administration office):

(i) a copy of any procurement directives and purchase requests, or appropriate reference thereto, together with the procurement plan and other presolicitation documents;

(ii) on a negotiated procurement, any request for authority to negotiate and the original or a copy of the Determination and Findings, including Class Determination and Findings and statement of applicability;

(iii) evidence of availability of funds;

(iv) synopsis of proposed procurement or reference thereto;

(v) the list of sources solicited, approval of and justification for any limiting of the number of such sources, and a list of any firms or persons whose requests for copies of the solicitation were denied together with the reasons for denial;

(vi) any small business or labor surplus area set-aside determination or consideration given thereto (see 1-706 and 1-804);

(vii) Government estimates of contract price;

(viii) a copy of the solicitation, including a reference to the drawings and specifications or copies thereof;

(ix) the Contract Security Classification Specification (DD Form 254), and evidence of contractor clearance;

(x) one copy of each signed solicited or unsolicited bid, proposal or quotation received, together with an abstract thereof (DD Form 1501 series), including record of determination concerning late bids, proposals, or quotations (while unsuccessful bids, proposals, or quotations are a part of the official contract file, they may be maintained separately, cross-referenced to the contract file, and disposed of as provided in S2-501(i));

(xl) cross references to other pertinent documents which are filed elsewhere because they pertain to more than one contract or to the contractor generally;

(xli) correspondence, messages, memoranda of calls and visits, and additional documents on which action was taken or which reflect actions by the purchasing office pertinent to the contract; and

(xlii) a chronological list (with inclusive dates of responsibility), to be kept current, of all purchasing contracting officers.

S2-102.2 *Contract Administration Office Contract File.* Each contract administration office contract file shall include, but is not limited to, such of the following, as are applicable (the extent to which this list shall apply depends upon the type of contract, dollar value, and functions assigned to the administration office):

(i) copy of the contract and all modifications, including any recommendations thereon, together with signed or official record copies of documents supporting modifications executed by the contract administration office;

(ii) any document modifying the normal assignment of contract administration functions and responsibility;

(iii) Contract Security Classification Specification (DD Form 254) (see 16-811);

(iv) cost and pricing data, including Certificates of Current Cost or Pricing Data supporting contractual actions executed by the contract administration office;

(v) reference to pre-award survey, if any;

(vi) reference to purchasing system approval, if any;

(vii) consent to subcontract or purchase;

(viii) performance and payment bond, as appropriate, or reference thereto;

(ix) Post-Award Conference Record (DD Form 1484) (see 1-1805);

(x) orders issued under the contract;

(xi) notice to proceed and start or stop orders;

(xii) insurance policies or certificates of insurance, or reference thereto;

(xiii) documents supporting advance or progress payments;

(xiv) progressing, expediting, and production surveillance records (these are to be maintained separately to facilitate their early disposal as prescribed in S2-501 (ii)); they include such records as—

(A) production plans and delivery schedules,

(B) progress or status reports,

(C) advice of delays or delinquencies, and of corrective and production follow-up actions,

(D) documents reflecting deliveries or production completion;

(xv) quality assurance/control (inspection) records used in planning, conducting, and recording product verifications, testing,

reviewing quality programs and plans, evaluating procedures and processes or technical performance, and effecting corrective actions, where required (these records are to be maintained separately for earlier disposal); they include—

(A) quality assurance records, such as:

(I) reference to Contractor's Quality Program document, and disapproval if any;

(II) subcontract inspection control records (request for source inspection, and waiver of usual inspection procedure);

(III) inspection requests, agreements, and assignments;

(IV) requests for waivers and deviations, and copy of approvals or disapprovals, if any (including Material Review Board decisions);

(V) required inspection and test reports; and

(B) quality control (inspection) records, such as:

(I) quality program review reports (procedures and processes evaluation, periodic quality assurance survey);

(II) Government inspection and test reports;

(III) authority to ship and acceptance documents (*e.g.*, DD Form 1384, Transportation Control and Movement Document; DD Form 250, Material Inspection and Receiving Report; DD Form 1155, Order for Supplies or Services/Request for Quotations), routing requests and orders, and shipment copies of bills of lading (DD Form 250 may be excluded when maintained in paying office file and paying office is located at the contract administration office);

(IV) reports of unsatisfactory material and corrective actions, and reports of damaged or improper shipments, and;

(V) other papers necessary to document the quality control or inspection function;

Part 3—Closeout of Contract Files

S2-301 General. Purchasing, contract administration, and paying offices shall close out small purchase files upon determination by the office accumulating the file that the last action required of it has been completed. In all other instances, contract files shall be closed out in accordance with S2-302, S2-303, and S2-304.

S2-301.1 *Physically Completed Contracts.* A contract is physically completed when (i) the contractor has completed the required deliveries of supplies and the Government has inspected and accepted such supplies, (ii) the contractor has performed all services and the Government has accepted such services, (iii) in the case of contracts with option provisions, the option has expired, or (iv) notice of complete contract termination has been given the contractor by the Government. Facilities contracts and rental, use, and storage agreements shall be considered to be physically complete when a notice of complete termination has been issued or the contract period has expired.

S2-301.2 *Closed Contracts.* Firm Fixed Price Unilateral Purchase Orders are closed when evidence of physical completion is received by the PCO. All other contracts are closed when they are physically complete and when all administrative actions are taken, including the accomplishment of one of the two Contract Completion Statements, DD Form 1594 or MILSCAP Format Identifier PK9. However, a completed contract cannot be considered closed while it is in litigation, or an appeal is pending before the ASBCA.

S2-302 Closeout of Contract Files by Purchasing Office.

S2-302.1 *When Purchasing Office Administers the Contract.* When the purchasing office administers a contract, that office is responsible for insuring that all required purchase actions and contract administration have been completed, utilizing as necessary DD Form 1597, Contract Closeout Check List, and DD Form 1593, Contract Administration Completion Record. When all required actions have been completed the purchasing office shall prepare DD Form 1594, or MILSCAP Format Identifier PK9, Contract Completion Statement, for all contracts in excess of $10,000. The Contract Completion Statement shall be made a part of the official contract file. For all contracts not in excess of $10,000, the contracting officer shall include in the contract file a statement that all contract actions have been completed. The completed form or statement is authority for closing out of the contract file. The file shall be closed out as provided in S2-401(ii).

S2-302.2 *When Purchasing Office Does Not Administer the Contract.*

(a) When the purchasing office does not administer a contract, that office, upon receipt of DD Form 1594, or MILSCAP Format Identifier PK9, Contract Completion Statement, from the Contract Administration Office (see S2-303(a)(iii)), shall insure that all actions required of the

Purchasing Office have been completed, shall then complete Item 10 of the DD Form 1594, or where the MILSCAP PK9 is used, prepare a statement that all contract actions have been completed, and shall make the completed form or statement a part of the official contract file. The completed form or statement is authority for closing out the purchasing office contract file. Closeout of the file shall be effected as provided in S2-401(ii).

(b) The date in Item 9d of DD Form 1594, or Columns 59–65 of the MILSCAP Format Identifier PK9, Contract Completion Statement, shall be used as the closeout date for file purposes, except that the date in Item 10e of DD Form 1594 or the date of the closeout statement when the MILSCAP PK9 is received shall be used when completion of any pending significant purchasing office action extends more than three months beyond the date shown in Item 9d of DD Form 1594 or Columns 59–65 of the MILSCAP PK9. In the latter case, the purchasing office shall advise the contract administration office of the revised closeout date by sending a reproduced copy of the completed DD Form 1594, or by preparation of MILSCAP Format Identifier PKZ, Contract Closeout Extension.

S2-303 Closeout of Contract Files by Contract Administration Office.

(a) With respect to all contracts which the contract administration office administers, that office is responsible for insuring that all contract administration has been completed and for initiating closeout action (see S2-305 and S2-306). The organizational element to which this responsibility is assigned shall proceed as follows upon determination or advice (such as by final DD Form 250 or other final report) that the contract has been fully performed (including final payment) or has been terminated completely:

(i) prepare DD Form 1597, Contract Closeout Check List, when necessary to determine that all required actions have been accomplished;

(ii) if appropriate, initiate DD Form 1593, Contract Administration Completion Record, to obtain statements from other organizational elements certifying completion of actions required of each (normally a single copy should be routed in turn to offices concerned, but separate forms may be routed when necessary, such as when close-out actions may be complex and extensive or when offices are at different locations);

(iii) upon determination of final completion, process MILSCAP Format Identifier PK9 or complete Items 1 through 9 of DD Form 1594 certifying that all contract administration office actions have been fully and satisfactorily accomplished, and forward the original of the form to the purchasing office (which will utilize it to close out its contract file);

(iv) retain one copy of the completed form, which is authority for closing out the contract administration file; and

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2175-4]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The EPA announces final approval on a revision to the Michigan State Implementation Plan (SIP) for conditionally approved portions of its Iron and Steel SIP. On March 15, 1982 (47 FR 11045) EPA proposed a schedule for the State's correction of its deficiencies. During the 30-day public comment period EPA received no comments.

EFFECTIVE DATES: This action is effective September 24, 1982.

ADDRESSES: Copies of this SIP revision are available for review during normal business hours at the following addresses:

U.S. Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

Michigan Department of Natural Resources, Air Quality Division, State Secondary Government Complex, General Office Building, 7150 Harris Drive, Lansing, Michigan 48917

The Office of the Federal Register, 1100 L Street, N.W., Rm. 8401, Washington, D.C. 20408

FOR FURTHER INFORMATION CONTACT: Toni Lesser, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6037.

SUPPLEMENTARY INFORMATION: On May 22, 1981, EPA announced final rulemaking to conditionally approve certain revisions to Michigan's SIP (46 FR 27923). Michigan submitted these revisions pursuant to Part D of the Clean Air Act, as amended in 1977, as its control strategy for attainment of the total suspended particulates (TSP) standards in its nonattainment area containing iron and steel sources.

Pursuant to Part D of the Clean Air Act, as amended in 1977, the State was required to submit a revised control strategy to attain National Ambient Air Quality Standards (NAAQS) in designated nonattainment areas. On September 9, 1980, EPA published a notice of proposed rulemaking on that portion of Michigan's Part D Plan for attainment of TSP standards which specifically addressed iron and steel sources. EPA identified certain deficiencies in its rulemaking and proposed to disapprove certain regulatory provisions, conditionally approve others and conditionally approve the overall control strategy for the State's nonattainment area containing iron and steel sources. A discussion of conditional approval and its practical effect appears in the July 2, 1979 **Federal Register** (45 FR 38583) and the November 23, 1979 **Federal Register** (45 FR 67182). A conditional approval requires the State to remedy identified deficiencies by specified deadlines.

On November 26, 1980, EPA received from Michigan a commitment to remedy the deficiencies identified in the proposed rulemaking by additional state rulemaking according to a specified schedule. On March 31, 1981, the State of Michigan submitted a revision to that schedule. On May 22, 1981, pursuant to the State's commitment to remedy these deficiencies, EPA announced its final rulemaking conditionally approving the State's Part D Plan for the TSP nonattainment area containing iron and steel sources (46 FR 27923).

On March 3, 1982, the State of Michigan requested a second modification of the schedule for remedying the deficiencies of the plan. Proposed regulations addressing those deficiencies had been developed and submitted to the Michigan Air Pollution Control Commission (MAPCC) in July, 1981 and public hearings were held in September, 1981. However, extensive comments on the proposed regulations necessitated revisions and resubmission to MAPCC for additional public hearings.

EPA approves the following schedule for the State's correction of deficiencies in its Part D Plan for attainment of the TSP air quality standards in its nonattainment area containing iron and steel sources:

1. Revised proposed regulations developed and submitted to the Michigan Air Pollution Control Commission for purposes of public hearings—April 30, 1982;

2. Public hearings held on revised proposed regulations—May 31, 1982;

3. Regulations formally submitted to the Joint Committee on Administrative Rules—October 1, 1982;

4. Regulations filed with the Secretary of State and submitted to USEPA for approval—December 31, 1982.

All conditions promulgated in the May 22, 1981 **Federal Register** (46 FR 27923) listed in 40 CFR, Part 52, § 52.1173(b)(2)-(13) will be satisfied by December 31, 1982.

Under Executive Order 12291, today's action is not "Major". The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.) This action only approves the conditional approval schedule submitted by the State as a part of its overall Part D Plan for the TSP nonattainment area containing iron and steel sources.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 25, 1982. This action may not be challenged later in proceeding to enforce its requirements. (See sec. 307(b)(2).)

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

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particular matter, Carbon monoxide, Hydrocarbons.

This notice is issued under authority of Sections 110 and 172 of the Act, as amended (42 U.S.C. 7410 and 7502).

Dated: August 12, 1982.

John W. Hernandez, Jr.,

Acting Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter 1, Title 40, Code of Federal Regulations is amended as follows:

Subpart X—Michigan

1. Section 52.1170 is amended by adding paragraph (c)(57) as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(57) On March 3, 1982, the State of Michigan submitted a modification to its schedule for submitting by December 31, 1982 regulations developed to correct the State's deficiencies in its Part D State Implementation Plan for the attainment of the total suspended particulate air quality standards in its

nonattainment areas containing iron and steel sources.

[FR Doc. 82-23304 Filed 8-24-82; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 1F2560/R476; PH-FRL-2192-7]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; 2,3-Dihydro-5,6-Dimethyl-1,4-Dithiin-1,1,4,4-Tetraoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the harvest growth regulant 2,3-dihydro-5,6-Dimethyl-1,4-dithiin-1,1,4,4-tetraoxide in or on certain raw agricultural commodities. This regulation to establish the maximum permissible level for residues of the harvest growth regulant in or on the commodities was submitted pursuant to a petition by the Uniroyal Chemical Co.

EFFECTIVE DATE: Effective on August 25, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Rm. 245, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice of proposed rulemaking published in the **Federal Register** of July 29, 1982 (47 FR 32746) which announced that the Uniroyal Chemical Co., Division of Uniroyal, Inc., 74 Amity Rd., Bethany, CT 06525, had submitted pesticide petition 1F2560 to the EPA. The petition proposed that 40 CFR 180 be amended by establishing tolerances for residues of the harvest growth regulant 2,3-dihydro-5,6-dimethyl-1,4-dithiin-1,1,4,4-tetraoxide in or on the raw agricultural commodities cottonseed at 0.5 part per million (ppm) and potatoes at 0.1 ppm. The petitioner subsequently amended the petition by withdrawing the proposed tolerance on potatoes and adding tolerances in or on meat, fat and meat byproducts (mbyp) of cattle, goats, sheep, hogs, and horses at 0.02 ppm.

No comments or request for referral to an advisory committee were received in response to this notice of proposed rulemaking

The data submitted in the petition and other relevant material have been evaluated and discussed in the notice of proposed rulemaking.

The pesticide is considered useful for the purposes for which the tolerances are sought, and it is concluded that these tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice 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. If a hearing is requested, the objections must state the issues for the hearing 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.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2))).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 13, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR Part 180 is amended by establishing a new § 180.406 to read as follows:

§ 180.406 2,3-Dihydro-5,6-dimethyl-1,4-dithiin-1,1,4,4-tetraoxide; tolerances for residues.

Tolerances are established for residues of the harvest growth regulant 2,3-dihydro-5,6-dimethyl-1,4-dithiin-1,1,4,4-tetraoxide in or on the following commodities:

Commodities	Parts per million
Cottonseed, fat	0.5
Cattle, fat	0.02
Cattle, meat	0.02
Cattle, mbyp	0.02
Goats, fat	0.02
Goats, meat	0.02
Goats, mbyp	0.02
Hogs, fat	0.02
Hogs, meat	0.02
Hogs, mbyp	0.02
Horses, fat	0.02
Horses, meat	0.02
Horses, mbyp	0.02
Sheep, fat	0.02
Sheep, meat	0.02
Sheep, mbyp	0.02

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BILLING CODE 6560-50-M

40 CFR Part 180

[PP 1E2526/R469; PH-FRL 2195-2]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Carbofuran

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide carbofuran and its metabolites in or on the raw agricultural commodity cranberries. This regulation to establish a maximum permissible level for residues of carbofuran and its metabolites in or on the commodity was submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on August 25, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Rm. 3708, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs, Emergency Response Section (TS-767) Registration Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 716A, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA issued a notice of proposed rulemaking published in the **Federal Register** of July 7, 1982 (47 FR 29576) which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition number 1E2526 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of Washington.

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 insecticide carbofuran (2,3-dihydro-2,2-dimethyl-benzofuranyl-*N*-methylcarbamate), its carbamate metabolite 2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*N*-methylcarbamate, and its phenolic metabolites 2,3-dihydro-2,2-dimethyl-7-benzofuranol, 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol, and 2,3-dihydro-2,2-dimethyl-3,7-benzofurandiol in or on the raw agricultural commodity cranberries at 0.5 part per million (ppm) (of which no more 0.3 ppm is carbamates).

There were no comments or request for referral to an advisory committee received in response to the notice of proposed rulemaking.

The data submitted in the petition and other relevant material have been evaluated and discussed in the notice of proposed rulemaking. The pesticide is considered useful for the purpose for which the tolerance is sought.

Based on the above information considered by the agency the tolerance established by amending 40 CFR 180.254 would 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 notice 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. If a hearing is requested, the objections must state the issues for the hearing 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. (Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e))).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 13, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.254 is amended by adding and alphabetically inserting the raw agricultural commodity cranberries to read as follows:

§ 180.254 Carbofuran; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Cranberries (of which no more than 0.3 ppm is carbamates)	0.5
* * * * *	

[FR Doc. 82-23276 Filed 8-24-82; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 101

[FPMR Temp. Reg. D-66, Supp. 2]

Federal Property Management Regulations; Accommodations for the Physically Handicapped

AGENCY: General Services Administration.

ACTION: Temporary regulation.

SUMMARY: To continue the new "GSA Accessibility Standard" to accommodate the physically handicapped, this supplement extends the expiration date of FPMR Temporary Regulation D-66.

DATES: Effective date: August 25, 1982. Expiration date: July 30, 1983.

FOR FURTHER INFORMATION CONTACT: Kathleen Fields, Design Management Division, General Services Administration (202-566-0038).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or result in significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

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

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter D to read as follows:

Federal Property Management Regulations, Temporary Regulation D-66, Supplement 2

To: Heads of Federal agencies.

Subject: Accommodations for the physically handicapped.

August 7, 1982.

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation D-66.

2. *Effective date.* This regulation is effective August 25, 1982.

3. *Expiration date.* This regulation expires on July 30, 1983.

4. *Explanation of changes.* Pending investigation of a uniform standard in conjunction with the three other agencies with standard setting authority regarding accessibility for the physically handicapped, the expiration date in paragraph 3 of FPMR Temporary Regulation D-66 is extended.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 82-23285 Filed 8-24-82; 8:45 am]

BILLING CODE 6820-23-M

41 CFR Part 101-36

[FPMR Amendment F-54]

ADP Management; Hardware Standards

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation provides standard terminology for use in requirements documents, including solicitations, regarding the application of Federal Information Processing Standards Publications (FIPS PUBS) 89 and 91. The regulation is necessary to implement the Federal standards into Federal government ADP management procedures. The intent of these ADP hardware standards, regarding character positioning for optical character recognition (OCR) for printers, readers, and forms and certain digital magnetic tape cassette equipment and associated programs, is to ensure efficient interchange of information between different devices or systems when it is essential to do so.

EFFECTIVE DATE: August 25, 1982.

FOR FURTHER INFORMATION CONTACT: P. Patton, Procurement Policy and Regulations Branch, Office of Policy and Planning, ADTS (202-566-0194).

SUPPLEMENTARY INFORMATION: (a) FIPS PUBS are developed by the National Bureau of Standards (NBS) and are issued by the Secretary of Commerce. FIPS PUB 89, effective July 30, 1981, adopts American National Standard X3.93M-1981. FIPS PUB 91, effective

March 12, 1982, adopts American National Standard X3.59–1981.

(b) The General Services Administration has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in cost to consumers or others; or significant adverse effects. The General Services Administration's decisions are based on adequate information concerning the need for and consequences of this rule. This is a government-wide management regulation that will have little or no effect on society.

List of Subjects in 41 CFR Part 101–36

ADP, Computer technology, Government procurement, Government property management, and Security measures.

1. The table of contents of subchapter F is amended by adding three entries as follows:

PART 101–36—ADP MANAGEMENT

Sec.

101–36.1304–30 [Reserved]
101–36.1304–31 FIPS PUB 89, Federal Standard for Optical Character Recognition (OCR) Character Positioning
101–36.1304–32 FIPS PUB 91, Federal Standard for Magnetic Tape Cassettes for Information Interchange, Dual Track, Complementary Return-to-Bias (CRB), Four-States Recording on 3.81 mm (0.150 in) Tape

Subpart 101–36.13—Implementation of Federal Information Processing and Federal Telecommunication Standards into Solicitation Documents

2. Section 101–36.1304–30 is added and reserved as follows:

§ 101–36.1304–30 [Reserved]

3. Section 101–36.1304–31 is added to read as follows:

§ 101–36.1304–31 FIPS PUB 89, Federal Standard for Optical Character Recognition (OCR) Character Positioning.

(a) FIPS PUB 89 specifies the nominal and allowable tolerances of OCR characters (Styles A and B of FIPS PUB 32–1) in relation to other characters and reference points of a document or page. It adopts American National Standard X3.93M–1981, "Standard for Optical Character Recognition (OCR) Character Positioning," in its entirety. This standard is to be used in conjunction with FIPS 32–1, and is applicable to the acquisition of OCR printers, readers, and printed forms.

(b) The standard terminology for use in requirements documents (see §§ 101–35.203–4 and 101–35.205), including solicitations, is:

Applicability of FIPS PUB 89

(OCR Printers, Readers, and Printed Forms)

OCR printers, readers, and printed forms offered as a result of the requirements of which this is a part shall conform to the provisions of the Federal Standard for Optical Character Recognition (OCR) Character Positioning, as stated in FIPS PUB 89, when the interchange of machine sensible information between different systems is required as specified elsewhere in this requirements document (insert reference here).

(End of Requirements Provision)

4. Section 101–36.1304–32 is added to read as follows:

§ 101–36.1304–32 FIPS PUB 91, Federal Standard for Magnetic Tape Cassettes for Information Interchange, Dual Track, Complementary Return-to-Bias (CRB), Four-States Recording on 3.81 mm (0.150 in) Tape.

(a) FIPS PUB 91 specifies the recording characteristics for a 3.81 mm (0.150 in) wide magnetic tape cassette with data recorded on two tracks using complementary recordings and a return-to-bias method of encoding. This standard is another in a series of Federal Standards implementing the Federal Standard Code for Information Interchange (FIPS PUB 1–1) on magnetic tape media. The technical specifications are contained in American National Standard X3.59–1981, Magnetic Tape Cassettes for Information Interchange, Dual Tape, Complementary Return-to-Bias (CRB), Four-States Recording on 3.81 mm (0.150 in) Tape.

(b) The standard terminology to be used in requirements documents, including solicitations, is:

Applicability of FIPS PUB 91

(Digital Magnetic Tape Cassette Equipment and Associated Programs)

All digital magnetic tape cassette recording and reproducing equipment which employ dual track, complementary return-to-bias (CRB), four-states recording techniques on 3.81 mm (0.150 in) tape, including associated programs, offered as a result of the requirement of which this is a part shall provide the capability to accept and generate recorded tape cassettes in compliance with the requirements set forth in the Federal standard as stated in FIPS PUB 91 and as specified elsewhere in this requirements document (insert reference here).

(End of Requirements Provision)

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

Dated: July 23, 1982.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 82–23278 Filed 8–24–82; 8:45 am]

BILLING CODE 6820–25–M

41 CFR Part 101–45

[FPMR Amdt. H–134]

Federal Property Management Regulations; Sale of Personal Property

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation increases the dollar limitations to provide that a holding agency may sell personal property. This will expedite the sale of small lots of property, which will decrease the costs of storage and handling.

EFFECTIVE DATE: August 25, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Milton Herman, Chief, Sales Management Branch, Sales Division (202–535–7000).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and the consequence of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–45

Government property management, Reporting requirements, Surplus Government property.

PART 101–45—SALE, ABANDONMENT OR DESTRUCTION OF PERSONAL PROPERTY

Subpart 101–45.1—General

Section 101–45.105–3 is amended by revising paragraphs (b) and (c) to read as follows:

§ 101–45.105–3 Exemptions.

* * * * *

(b) After required screening under Parts 101–43 and 101–44 is completed a holding agency, upon notification to the appropriate GSA regional office, may elect to sell small lots of personal property where the estimated proceeds from a sale will not exceed $1,000 and perishable items regardless of the

estimated proceeds from a sale. Holding agencies are responsible for making or obtaining accurate estimates of the market value of small lots of personal property to ensure that the estimated proceeds of sale do not exceed $1,000. Optional Form 15, Poster, Sale of Government Property (see § 101–45.4903–15), and Optional Form 16, Sales Slip, Sale of Government Personal Property (see § 101–45.4903–16), are prescribed for use by holding agencies for the sale of this property. These forms may be obtained as stated in § 101–45.4903. Procedures for conducting these sales are set forth in § 101–45.304–3. Further information can be obtained from GSA regional offices.

(c) A holding agency may sell personal property, upon the approval of GSA, where the estimated proceeds from a sale exceed $1,000.

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

Dated: July 31, 1982.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 82-23282 Filed 8-24-82; 8:45 am]

BILLING CODE 6820-96-M

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41 CFR Part 101–47

[FPMR Amendment H–133]

Real Property Transfers Pursuant to Section 414 of the Housing and Urban Development Act of 1969; Utilization and Disposal

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending portions of 41 CFR Part 101–47 regarding the authority and general procedures for transferring real property pursuant to section 414 of the Housing and Urban Development Act of 1969 in order to implement Pub. L. 95–557 and 96–399.

Public Law 95–557 expands the scope of eligible housing assistance programs which may be used under section 414 dispositions, provides exceptions to the "veto power" of local governing bodies over dispositions to non-public bodies, and reduces the period of use restrictions in the case of dispositions to non-public bodies from 40 to 30 years. Public Law 96–399 amends section 414 to permit transfers to the Secretary of Agriculture in addition to the Secretary of Housing and Urban Development (HUD).

EFFECTIVE DATE: August 25, 1982.

FOR FURTHER INFORMATION CONTACT: James H. Pitts, Office of Real Property (202–535–7067).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–47

Surplus government property, Government property management.

PART 101–47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

Subpart 101–47.2—Utilization of Excess Real Property

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

1. Section 101–47.203–5 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 101–47.203–5 Screening of excess real property.

* * * * *

(b) Notices of availability for information of the Secretary of Health and Human Services and the Secretary of Education in connection with the exercise of the authority vested in them under the provisions of section 203(k)(1) of the Act, and for information of the Secretary of the Interior in connection with the exercise of the authority vested in him under the provisions of section 203(k)(2) of the Act or a possible determination under the provisions of section 203(k)(3) of the Act, will be sent to the offices designated by the Secretaries to serve the areas in which the properties are located. A similar notice of availability for the information of the Secretary of Housing and Urban Development and the Secretary of Agriculture in connection with a possible transfer (assignment) and disposal under section 414 of the Housing and Urban Development Act of 1969, as amended (40 U.S.C. 484b), will be sent to the central offices of the Department of Housing and Urban Development and the Farmers Home Administration of the Department of Agriculture, respectively.

(c) The Departments of Health and Human Services (HHS), Education, Interior, and Housing and Urban Development (HUD), and the Farmers Home Administration (FmHA) shall not attempt to interest a local applicant in a property until it is determined surplus, except with the prior consent of the General Services Administration (GSA) on a case-by-case basis. When such consent is obtained, the local applicant shall be informed that consideration of the application is conditional upon the property being determined surplus to Federal requirements and made available for the purposes of the application. However, these Departments are encouraged to advise the appropriate GSA regional office of those excess properties which are suitable for their programs.

(d) HUD or FmHA shall inform the appropriate GSA regional office within 30 calendar days from the date of the notice of availability of those particular excess properties which have potential for housing and for related public commercial or industrial facilities under section 414 of the 1969 HUD Act, as amended.

2. Section 101–47.204–1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101–47.204–1 Reported property.

* * * * *

(a) The holding agency, the Secretary of Health and Human Services, the Secretary of Education, and the Secretary of the Interior will be notified of the date upon which determination as surplus becomes effective. The Secretary of Housing and Urban Development and the Farmers Home Administration will also be notified, but only regarding those properties that the agency has identified as having potential for housing and related public commercial or industrial facilities under section 414 of the Housing and Urban Development Act of 1969, as amended. (See § 101–47.203–5.) Any Federal agency that has identified a property as being required for replacement housing for displaced persons under section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will also be notified of the date upon which determination as surplus becomes effective. The Secretary of the Department of Energy will be notified when real property is determined surplus and advised of any known interest in the property for its use or development for energy facilities. Appropriate steps will be taken to ensure that energy site needs are considered along with other competing needs in the disposal of surplus real property, since such property may

become available for use under sectioin 203(e)(3) (G) or (H) of the Federal Property and Administrative Services Act of 1949, as amended.

(b) The notices to the Secretary of Health and Human Services, the Secretary of Education, the Secretary of the Interior, and the Secretary of Energy will be sent to the offices designated by them to serve the area in which the property is located. The notices to the Secretary of Housing and Urban Development will be sent to the central office of HUD. The notices to the Department of Agriculture will be sent to the central office of the Farmers Home Administration. The notices to the Federal agencies having a requirement pursuant to section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will be sent to the office making the request unless another office is designated.

* * * * *

Subpart 101-47.3—Surplus Real Property Disposal

3. Section 101–47.308–6 is revised to read as follows:

§ 101-47.308-6 Property for housing and related facilities.

(a) Under section 414(a) of the Housing and Urban Development Act of 1969, as amended (40 U.S.C. 484b), the disposal agency may, in its discretion, transfer (assign) surplus real property to the Secretary of Housing and Urban Development or to the Secretary of Agriculture acting through the Farmers Home Administration (FmHA) at the request of either, for sale or lease by the appropriate Secretary at its fair value for use in the provision of housing to be occupied predominantly by families or individuals of low or moderate income and for related public commercial or industrial facilities approved by the appropriate Secretary.

(b) Upon receipt of the notice of determination of surplus (§ 101–47.204–1(a)), HUD or FmHA may solicit applications from eligible applicants.

(c) HUD or FmHA shall notify the disposal agency within 20 calendar days after the date of the notice of determination of surplus if it is able to interest an eligible applicant in acquiring the property under section 414(a) of the 1969 HUD Act, as amended.

(d) Both holding and disposal agencies shall cooperate, to the fullest extent possible, with representatives of HUD or FmHA in their inspection of such property and in furnishing information relating thereto.

(e) HUD or FmHA shall advise the disposal agency and request transfer of the property for disposition under section 414(a) of the 1969 HUD Act, as amended, within 25 calendar days after the expiration of the 20-calendar-day period specified in § 101–47.308–6(c).

(f) Any request submitted by HUD or FmHA pursuant to § 101–47.308–6(e) shall set forth complete information concerning the intended use, including: (1) Identification of the property; (2) a summary of the background of the proposed project, including a map or plat of the property; (3) whether the property is to be sold or leased to a public body or to an entity other than a public body which will use the land in connection with the development of housing to be occupied predominantly by families or individuals of low and moderate income, assisted under a Federal housing assistance program administered by the appropriate Secretary or under a State or local program found by the appropriate Secretary to have the same general purpose, and related public commercial or industrial facilities approved by the appropriate Secretary; (4) HUD's or FmHA's best estimate of the fair value of the property and the price at which it will be sold by HUD or FmHA; (5) how the property is to be used (i.e., single or multifamily housing units, the number of housing units proposed, types of facilities, and the estimated cost of construction); (6) an estimate as to the dates construction will be started and completed; and (7) what reversionary provisions will be included in the deed or the termination provisions that will be included in the lease. It is suggested that this information, except for the map or plat of the property, be furnished in the body of the letter transfer request signed by the Secretary of Housing and Urban Development or the Secretary of Agriculture or his designee.
The above data will be used by GSA in preparing and submitting a statement relative to the proposed transaction to the Senate Committee on Governmental Affairs and the House Committee on Government Operations prior to the transfer of the property to HUD or FmHA.

(g) In the absence of a notice under paragraph (c) of this section or a request under paragraph (e) of this section, the disposal agency shall proceed with the appropriate disposal action.

(h) If, after considering other uses for the property, the disposal agency determines that the property should be made available to HUD or FmHA under section 414(a) of the 1969 HUD Act, as amended, it shall transfer the property to the appropriate agency upon its request.

(i) The transferee agency shall bear the costs of any out-of-pocket expenses necessary to accomplish the transfer of the property, such as surveys, fencing, security, etc., of the remaining property or otherwise. In addition, the transferee agency shall be responsible for any protection and maintenance expenses after the property is transferred to the agency.

(j) The disposal agency, if it approves the request, shall transfer the property by letter or other document to HUD or FmHA for disposal under section 414(a) of the 1969 HUD Act, as amended. If the request is disapproved, the disposal agency shall so notify the appropriate Secretary. The disposal agency shall furnish the holding agency a copy of the transfer or notice of disapproval.

(k) The transferee agency shall prepare the disposal document and take all other actions necessary to accomplish the disposition of the property under section 414(a) of the 1969 HUD Act, as amended, within 120 calendar days after the date of the transfer of the property to the agency.

(l) If any property conveyed under section 414(a) of the 1969 HUD Act, as amended, to an entity other than a public body is used for any purpose other than the purpose for which it was sold or leased within a period of 30 years of the conveyance, it shall revert to the United States (or, in the case of leased property, the lease shall terminate) unless the appropriate Secretary and the Administrator of General Services, after the expiration of the first 20 years of such period, approve the use of the property for such other purpose.

(m) The transferee agency shall furnish the disposal agency two conformed copies of deeds, leases, or other instruments conveying property under section 414(a) of the 1969 HUD Act, as amended, and related documents containing reservations, restrictions, or

conditions regulating the future use, maintenance, or transfer of the property.

(n) In each case of reversion of title by reason of noncompliance with the terms and conditions of sale or other cause, HUD or FmHA shall, prior to or at the time of such reversion, provide GSA with an accurate description of the real and related personal property involved. Standard Form 118, Report of Excess Real Property, and the appropriate schedules shall be used for this purpose. Upon receipt of advice from HUD or FmHA that title has reverted, GSA will assume accountability therefor.

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

Dated: August 7, 1982.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 82-23279 Filed 8-24-82; 8:45 am]

BILLING CODE 6820-96-M

Proposed Rules

Federal Register
Vol. 47, No. 165
Wednesday, August 25, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1137, 1006, 1012, 1013, 1033, 1036, 1040, 1124, 1125, 1133, 1134, 1135, 1136 and 1139

[Docket Nos. AO-326-A21-RO1, et al.]

Milk in the Eastern Colorado and Certain Other Marketing Areas; Decision on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

7 CFR part	Marketing area	AO Nos.
1137	Eastern Colorado	AO-326-A21-RO1.
1006	Upper Florida	AO-356-A18.
1012	Tampa Bay	AO-347-A21.
1013	Southeastern Florida	AO-286-A29.
1033	Ohio Valley	AO-166-A50.
1036	Eastern Ohio-Western Pennsylvania.	AO-179-A45.
1040	Southern Michigan	AO-225-A34.
1124	Oregon-Washington	AO-368-A11.
1125	Puget Sound, Washington	AO-226-A29-RO1.
1133	Inland Empire	AO-275-A32-RO1.
1134	Western Colorado	AO-301-A17-RO1.
1135	Southwestern Idaho-Eastern Oregon.	AO-380-A2.
1136	Great Basin	AO-309-A23-RO1.
1139	Lake Mead	AO-374-A7.

SUMMARY: This decision would establish a new procedure for announcing Class II prices under the 14 milk orders involved in this proceeding. As adopted, a tentative Class II price for a particular month would be announced by the 15th day of the preceding month. The final Class II price would be announced by the 5th day after the month and would reflect, if applicable, the use of the Class III (or Minnesota-Wisconsin) price for that month as a "floor" under the Class II price. The adopted procedure is based on industry proposals considered at a public hearing held on February 3, 1982.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, 202-447-7311.

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.

Prior documents in this proceeding:

Notice of Hearing: Issued January 4, 1982, published January 7, 1982 (47 FR 814).

Recommended Decision: Issued June 18, 1982, published June 24, 1982 (47 FR 27342).

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the respective marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Denver, Colorado, on February 3, 1982, pursuant to the notice thereof issued on January 4, 1982 (47 FR 814).

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. Most parties subject to a milk order are considered to be a small business. No participants at the hearing testified about any potentially adverse impacts of the proposals on small businesses as a group.

Further, William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that the amendments adopted herein, which are based on the hearing record, would not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Program Operations, on June 18, 1982, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adoped and are set forth in full herein, subject to the following modifications:

Index of Changes

In the Issue, "Class II price announcement":

a. Two paragraphs have been added after the 7th paragraph.

b. A paragraph has been added after the 45th paragraph.

The material issue on the record of the hearing is whether to provide advance Class II price notice for the 14 milk orders included in the hearing proceeding.

Findings and Conclusions

The following findings and conclusions on the material issue are based on evidence presented at the hearing and the record thereof:

Class II price announcement. The 14 milk orders in this proceeding should provide that on or before the 15th day of the month the market administrators of the respective orders shall announce the tentative 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. The Class II price for any month should not be less than the Class III price for the month, except that in the Upper Florida, Tampa Bay, and Southeastern Florida orders the Class II price should not be less than the basic formula price for the month. The Class II differential, over time, should average out to about the Class III (or basic formula) price plus the current Class II differential of the respective orders. The use of the Class III (or basic formula) price as a floor would require that a final Class II price be announced by the respective market administrators on or before the 5th day of the following month when the Class III (or basic formula) price for the month is known and it can be determined whether such price would apply as a "floor."

Except for the few instances noted herein, the procedures adopted are identical to those that were provided for 29 markets in a decision issued July 8, 1981, and published in the Federal Register on July 14, 1981 (46 FR 36151).

In the Oregon-Washington, Puget Sound and Inland Empire orders, where

the Class II and Class III prices may be affected by a so-called butter-powder price snubber, a further adjustment should be made in the final Class II price. Whenever the Class III price in these three orders is based on the butter-powder snubber price, the final Class II price should be reduced by the amount that the Class III price is less than the basic formula price, but only to the extent such reduction does not cause the Class II price to be less than the Class III price. This adjustment should result in Class II prices in those three orders that approximate the same relationship between Class II and Class III prices that exists under the present orders.

To achieve the foregoing, the respective orders 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. Then, 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 average of the basic formula price plus the respective Class II differential of each order exceeds a 12-month moving average of the basic Class II formula prices. This should result in Class II prices that on the average exceed Class III (or basic formula) prices by the respective Class II differential now in each order.

The basic Class II formula price and the tentative Class II price would be computed by the Dairy Division, AMS, and transmitted to the market administrators of the respective orders on or before the 15th day of the preceding month, enabling each market administrator to announce by that time the tentative Class II price for the following month. The final Class II price would be announced on or before the 5th of the following month when it is determined whether such price would be "floored" by the Class III (or basic formula) price for the month and, in the 3 Pacific Northwest orders, whether or not the final Class II price would need to be reduced to reflect the effect of the butter-powder snubber.

Certain minor modifications of the order provisions set forth in the recommended decision are necessary to accommodate the transition from the present method of determining Class II prices for the respective orders to the use of the formula adopted herein for determining Class II prices. The modification, in essence, would merely extend the use of each order's present Class II pricing procedure for one additional month. The Class II price that would be applicable during the first month in which the amendments become effective would be the basic formula (or Class III) price for the month plus each order's respective Class II differential. The price would be announced on or before the 5th day of the following month. Therefore, it is necessary to revise in each order the "Class price" section and the section providing for the announcement of class prices to stipulate that the present Class II price procedure shall apply in determining the Class II price for the first month these amendments become effective.

Also, it is intended that the present Class II price announcement procedures would apply with respect to the Class II prices for the month preceding the effective date of this decision. On or before the 5th day of the month in which this new procedure becomes effective, the market administrator of each of the orders would announce the Class II price for the preceding month based on each order's present Class II price announcement procedure. The provisions set forth in the accompanying order amendments would apply to milk handled after the effective date.

At present, the 14 milk orders provide for the market administrator of each order to announce publicly on or before the 5th day of each month the Class II price for the preceding month. The present orders provide for Class II prices that are:

5 cents above the M–W price in Western Colorado.

10 cents above the M–W price in Ohio Valley, Eastern Ohio-Western Pennsylvania and Southwestern Idaho-Eastern Oregon.

15 cents above the M–W price in Southern Michigan, Eastern Colorado, Great Basin, Lake Mead, Upper Florida, Tampa Bay and Southeastern Florida. The Upper Florida and Tampa Bay orders provide for only two classes of utilization.

25 cents above the Class III price in Oregon-Washington, Puget Sound and Inland Empire. In these 3 orders the Class III price is the lower of the M-W price or a butter-powder snubber price.

The Milk Industry Foundation, the International Association of Ice Cream Manufacturers, and the National Milk Producers Federation proposed a procedure for announcing the Class II prices of the 14 milk orders that was largely the same as the procedure provided herein.

The Milk Industry Foundation (MIF) is a trade association representing fluid milk processors, some of which are regulated by the 14 milk orders in this proceeding. Members of the MIF operate some 750 milk processing plants and process about 75 percent of the fluid milk packaged in the United States. The MIF also represents members who manufacture various Class II products, including cottage cheese, yogurt, dips, dressings, and cream.

The International Association of Ice Cream Manufacturers (IAICM) is a trade association that represents manufacturers of frozen desserts, including some who are regulated by the 14 orders in question. Products processed include ice cream, ice milk, sherbets, mellorine, milkshakes and other Class II products. Members operate some 600 plants and manufacture about 85 percent of the frozen desserts manufactured in the United States.

The National Milk Producers Federation (NMPF) is an organization which represents dairy cooperative associations and federations of such associations. At the hearing NMPF represented 12 member cooperatives that market milk under 8 of the 14 milk orders in this proceeding.

The proposals. The MIF/IAICM proposed that the Class II prices of the 14 milk orders in this proceeding be announced by the market administrators of the respective orders on or before the 15th day of the month prior to the month in which they apply. The associations proposed that the Class II price be based on a formula that updates the M-W price of the second preceding month,

plus a Class II differential computed from a 12-month moving average of past Class II differentials to maintain a Class II price that averages the respective order Class II differential over the M-W price. Also, the resulting Class II price of any month could not be less than the Class III (or basic formula) price for that month.

The NMPF proposed a procedure for announcing Class II prices that was largely the same as the procedure proposed by the MIF/IAICM.

A witness for the MIF/IAICM said that the 14 milk orders need to be changed as proposed because handlers are having difficulty in making price changes under the prevailing marketing conditions. He outlined how price changes are made beginning with the notification of a milk price change by a handler and ending with a retail price change at a store. The witness said that the entire process requires at least 15 days from the time the Class II price is changed until it is reflected in the prices of Class II products at stores.

The witness said that providing advance notice of Class II prices has been an objective of the MIF/IAICM for many years. He noted that advance Class II pricing is now being provided for 29 federal milk orders and should be provided for the 14 milk orders in this proceeding. He said that the proposal for the 14 orders is identical to that which is already provided for the 29 orders except for some technical differences to accommodate certain pricing procedures such price snubbers and Class II differentials in some of the 14 orders.

The witness said that one aspect of the proposed formula is that a month's Class II price should not be lower than the same month's Class III or basic formula price. He said that for most of the orders that provide for 3 classes of utilization the Class III price and the basic formula price are identical (the M–W price). However, he noted, Final Decision—Eastern Colorado, et al., the Southeastern Florida milk order has a special Class III price, which is the Chicago Grade A butter price times 1.25, plus four cents, times 3.5. To be consistent with the provisions of the 29 milk orders, the handler groups proposed that for the Southeastern Florida order the floor be the basic formula price instead of the unique Class III price now provided for the order.

The second handler modification of the 29-market procedure involves the Puget Sound, Inland Empire and Oregon-Washington milk orders. Presently, the Class III price formulas for these orders contain a butter-powder snubber. The Class II prices are equal to the Class III prices plus 25 cents. In the computation of the Class II differential, the present 29-market procedure uses the term "basic formula price" rather than the Class III price in the calculation of the 12-month moving average. However, the basic formula price does not reflect the butter-powder snubber price. Accordingly, in the calculation of the 12-month moving average the handlers proposed that the term "basic formula price" be changed to "Class III price." The proponents would also have this change apply to the Western Colorado milk order which also provides for a butter-powder snubber.

The witness testified further that during the summer of 1981 a hearing was held to consider merging the Puget Sound and Inland Empire milk orders. He said that one of the proposals at that hearing would eliminate the snubber from the Class III price. The witness said that the MIF/IAICM takes no position in this reopened hearing on whether the snubber should or should not eliminated. He said that if the Department decides to eliminate the snubber, it should also be removed from the pricing of Class II milk under those orders, which would require a further modification of the order language proposed in this proceeding.

Concerning the need for advance Class II price notice, the spokesman for MIF/IAICM said that raw dairy product cost makes up from 30 percent to well over 80 percent of handlers' total cost for most of the products classified as Class II. He said that any change in this cost element is extremely important to handlers. He noted that currently the cost of milk bought at the beginning of the month is not known to the handler until up to 36 days later. The witness said that handlers have most often bought the raw milk, manufactured the various Class II products from it and sold them to their customers without even knowing the cost of the most important ingredient—the raw milk. In his view, this creates undue business risks and difficulties without generating any benefit to consumers or anyone else.

The spokesman for the MIF/IAICM said that regulated handlers would not be disadvantaged by the proposed advance Class II price notice. He said that it would provide a Class II price almost identical with the present Class II price. In his view, the variance in the price that would prevail under the proposed formula would be quite minimal. He stressed that the use of the moving average adjustment to the Class II differential would assure that over time the new formula and the present Class II pricing method would render almost identical results.

The witness testified that the proposed Minnesota-Wisconsin "floor" price would prevent regulated handlers from having any possible advantage over unregulated handlers. In his view the "floor" is akin to the present pricing practice wherein the Class III price is the minimum price level throughout the federal milk order system.

Another witness representing a proprietary handler testified in favor of the MIF/IAICM proposal. The handler operates six fluid milk plants regulated by orders included in the hearing. The plants are located at Miami, Winter Haven and Jacksonville, Florida; Cleveland and Findlay, Ohio; and Colorado Springs, Colorado. The plants are regulated by the Southeastern Florida, Tampa Bay, Upper Florida, Eastern Ohio-Western Pennsylvania, Ohio Valley and Eastern Colorado milk orders, respectively.

The witness said that advance Class II price notice is needed for a handler to know the cost of the raw material used to make a product in order to determine the selling price intelligently. He said that under present order provisions the handler must estimate the following month's price. He said that this has resulted in customers being undercharged at times and overcharged at other times relative to raw milk costs. He said further that in his view the fact that advance Class II price notice is now provided in 29 milk orders provides further reasons for adopting it in the 14 milk orders in this hearing. He testified that handlers regulated by the 29 milk orders have one basic advantage over handlers who are not regulated by those orders. They know the cost of Class II milk 15 days before the first sale of Class II products in a month instead of 35 days after. He testified further that month-to-month variations in the advance Class II prices relative to the present Class II prices were anticipated when the system was proposed and adopted for the 29 markets. He said that they can be expected to continue.

A third witness representing a proprietary handler testified in favor of the MIF/IAICM proposal. The handler distributes milk and dairy products in eight of the markets included in the hearing. He said that adoption of the proposal would be a great improvement over the 35-day "retroactive" announcement procedure that is now provided for the 14 milk orders in this hearing. He said that the practice of giving reasonable advance notice of impending cost changes is universally followed in the sale and purchase of

goods. He said that in their operation such practice provides for adequate time to prenotify their retail outlets to allow for necessary changes in advertising and pricing programs that affect the retail outlets and their customers. He wants the proposal to be adopted to prevent the artificial distortions that arise when any segment of an interdependent supply system operates on the basis of incomplete or inaccurate data.

The witness is associated with a proprietary handler that produces Class II dairy products at a regulated plant and then distributes them through retail stores to consumers. He presented testimony about the procedure. For example, on shipments of yogurt from a Salt Lake City plant to store outlets in Denver, the plant must compute the new product cost when a change in the raw milk price is announced. The new price is then applied to yogurt to be shipped to Denver. When the yogurt is received in Denver, the new price must be transmitted to the buying office. That office, in turn, transmits the new price information to the computer section where new price lists are printed. The new price lists are then mailed to retail stores. At the store, prices are changed on new inventory received; it is not changed on existing stock. Stores get twice-a-week shipments of yogurt, so they may have 3 days' inventory on hand. The witness testified that the entire process takes about two weeks.

A spokesman for another proprietary handler testified in favor of the MIF/IAICM proposal. The handler operates 12 dairy plants in six of the federal milk order markets in this hearing. Many of the plants are significant distributors of Class II products. The witness said that the adoption of the proposal would help all the handler's plants in knowing their costs accurately and in making price changes on a timely basis. The spokesman testified that the handler's plants that are operating under the 29 orders with advance Class II notice are enthusiastic about the benefits that have resulted from advance Class II price notice. He said that the plants had operated under the change for about 5 months and unanimously supported the provisions that were adopted. He said that the handler's plants at Topeka, Kansas, Champaign, Illinois, and Tulsa, Oklahoma, process substantial quantities of Class II products and have found that advance Class II price notice has been especially helpful for them.

The witness testified that adoption of the MIF/IAICM proposal will contribute to orderly marketing because handlers will be able to plan and effectuate production and marketing decisions more accurately than is now the case. He said that while the proposal will benefit handlers particularly, it will not be detrimental to producers or consumers.

A proprietary handler who is regulated by the Eastern Colorado milk order testified in favor of the MIF/IAICM proposal for advance Class II price notice. He said that it is now very difficult to determine costs and to price Class II products. He said that with the present order provisions concerning Class II price notice and requirements of the State of Colorado concerning advance notice of prices to customers, he has to project sales prices considerably into the future without knowing actual costs.

A witness for the National Milk Producers Federation testified on behalf of 12 member cooperatives that supply milk to eight of the 14 marketing areas in this proceeding. The witness supported the proposal to include advance Class II price notice in the eight orders. He expressed no position on the issue relative to the other six orders.

The witness said that a number of factors, such as class prices, utilization, and differentials, go into determining the farm price of milk. He indicated that most of the factors are not known to a dairy farmer when he is making his production decision, or to his cooperative when making its marketing decisions. The witness said that advance Class II price notice will give dairy farmers and their cooperatives an additional piece of factual information to use in making their management decisions. He said that if the proposal is adopted dairy farmer income would not be changed by it.

The representative of a cooperative that supplies milk to the Southwestern Idaho-Eastern Oregon market testified in favor of advance Class II price notice. The cooperative manufactures Class II products and considers the present delayed pricing of up to 35 days as a serious problem in timing price changes to customers. The witness said that since the provisions can be changed with no disadvantage to producers the proposal should be adopted. He testified that the provisions of the formula should not be different from those provided in the 29 orders. He indicated that if it is found later that a change in the formula is desirable it can be made for all the orders affected. The witness said that regardless of the month-to-month price changes that can occur from the formula, the provision for advance Class II price notice overrides whatever Class II price variation is likely to occur.

A witness for a cooperative that supplies milk to the Great Basin market also testified in favor of the proposal to provide advance Class II price notice. The cooperative manufactures Class II products and believes it is important to know the cost of raw milk used in Class II products before the products are priced to customers. In his view present provisions are not adequate in this respect.

A spokesman testified on behalf of three cooperatives that are the major suppliers of milk to the Upper Florida, Tampa Bay and Southeastern Florida milk orders. He said that the cooperatives do not have any strong objection to advance Class II price notice but that they have some reservations about it. The witness said that adoption of the proposal would interject a considerable degree of price instability into the program that is not the case with the Minnesota-Wisconsin price series. He said that the formula results would give false signals which would be more important to the major processors of Class II products than to dairy farmers because the quantity of Class II milk represents a small proportion of the total amount of milk sold. The witness said that a price series which shows much more volatility and much more movement plus and minus than the Minnesota-Wisconsin price series may not serve the purposes of the Act. Also, he stated, there is a risk factor involved in the reliability of what the new pricing formula would do in the future. He said that producers ought not to assume that responsibility.

The witness noted that the cooperatives he represents are not Class II manufacturers. He said that adoption of the formula would not affect blend prices to producers in any significant way. This is because Class II is such a minor element in the three markets. He said that the important issue is how reliable the formula will be, not whether the farmers are going to get a penny less or two cents more. He testified that handlers have a right to a relatively stable price, and that has been one of the benefits of the program over the years. The witness stated that if the proposed formula is adopted for the 14 orders, the final Class II price under the three Florida orders should be not less than the M–W price plus 15 cents.

A witness appeared on behalf of a federation of cooperatives supplying milk to markets in Oregon, Washington, Idaho and Montana, and a marketing agency for the federation. Also, he represented a cooperative association that supplies milk to the Puget Sound, Oregon-Washington and Inland Empire

markets. The marketing agency operates a pool plant under the Puget Sound milk order, two pool plants under the Inland Empire milk order and four pool plants under the Oregon-Washington order.

The witness testified in opposition to the proposal to provide advance Class II price notice for the three Northwest orders. He said that the limited experience with advance Class II pricing in the 29 milk markets where it was recently adopted demonstrates its undesirability. He claimed that the procedure was a failure in August and September of 1981 when the tentative Class II price exceeded the M–W plus 10 cents by 26 cents and 19 cents, respectively. He argued that there was no need to rush into a nationwide adoption of a procedure that, in his opinion, has such obvious weaknesses.

The witness said that the cooperative association handlers he represents feel more strongly about the need to know the Class III price in advance. In his view it makes no sense to predict one and not the other. He urged the Department to delay consideration of the proposal, at least in the three Northwest milk orders, until such time as a proposal can be developed for determining and announcing Class III prices in advance so the Class I and Class II prices can be determined from that price.

In opposing adoption of the MIF/IAICM proposal for the three Northwest milk orders, the witness said that the pricing and announcement provisions of the three orders are satisfactory and are not causing undue hardship to any handlers. In his view it is possible for handlers to estimate accurately the level of the Class II price for use in determining Class II product costs.

The witness testified that if the Department adopts advance Class II pricing for the three Northwest orders, some alternative provisions should be included. He said that any amended order should provide a Class II price at the same approximate level—Class III price plus 25 cents—as is currently provided by these three orders. He said that the butter-powder snubber price should be retained in the computation of the Class II price. He said that the M–W price for the past 33 months has been less than the snubber price and it is expected to continue that way for the foreseeable future. (The three orders provide that the Class III price shall be the lower of the M–W price or the snubber price.) The witness testified further that the three orders should provide that the Class II price shall be not less than the Class III price plus 15 cents per hundredweight.

The witness also opposed the modification of the Class II formula price that was made at the hearing by handlers for the three Northwest orders. As described previously, proponents stated that in calculating the monthly Class II differential for these three orders, the 12-month moving average should be based on the average Class III price plus 25 cents rather than the average basic formula (M–W) price plus 25 cents. The witness opposing this change claimed that the modification would have a "double-lowering" effect upon Class II prices in these three orders whenever the butter-powder snubber price was the Class III price. He said the butter-powder snubber price not only would reduce the Class II price for the month in which it was the effective price but that it also would reduce tentative Class II prices for the next 12 months if it was used in the calculation of the Class II differential.

The cooperative association that supplies milk to the three Pacific Northwest orders filed an exception to the recommended decision. In the exception it reiterated the position taken by its spokesman at the hearing, i.e., these three orders should not be amended to provide for the advance announcement of Class II prices and if, nonetheless, the orders are so amended then the Class II price should be floored at the Class III price plus 15 cents. These points were fully considered in formulating the recommended decision and where discussed in that decision. Also, the exception does not raise any new points that have not already been considered. Accordingly, the exception is denied for the reasons given in the recommended decision and that are set forth again in the following paragraphs.

Discussion of the issue. It is concluded from the testimony and data submitted by witnesses that the adoption of the proposal for advance notice of the Class II price is a reasonable means of assistance handlers in the marketing of milk. It was the view of most of the hearing witnesses that the dairy industry is somewhat unique in that regulated handlers process and sell products without knowing the cost of the raw materials. This causes them problems in adjusting 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 price notice under these orders will contribute to more orderly marketing for the processors of Class II products. They will be in a better position to plan their raw milk costs. Also, the advance price notice will enable the handlers to establish and adjust resale prices of Class II products more currently relative to changes in ingredient costs. This is in contrast to the present system whereby a multitude of handlers make numerous estimates with varying results of how anticipated milk costs should be reflected in the resale prices.

Concern was expressed by representatives of several cooperative associations in Florida and in the three Northwest markets that the advance price notice procedure would not maintain orderly marketing conditions for the industry. Their testimony was based on alleged price volatility that might result if the advance price notice procedure were adopted. In this connection, for 1981 the total fluctuation (21 cents) under the formula that was adopted for the 29 markets, as mentioned previously, would have been 1.6 percent of the average final Class II price in both the 15-cent and 25-cent differential markets, which encompass the Florida orders and those in the Northwest. The present Class II price formulas in these orders had the same 21-cent total fluctuation for 1981. This fluctuation was 1.6 percent of the average Class II price in the 25-cent differential markets and 1.7 percent of the average Class II price in the 15-cent differential markets. This cannot be considered the severe volatility or price instability about which the two witnesses were apprehensive.

There is no persuasive evidence in the record that the adoption of the procedures provided herein would adversely affect any handlers, producers or consumers in the 14-market area. The advance price notice will not impair the continued maintenance of orderly marketing conditions for producers and handlers. Instead, it will tend to effectuate the declared policy of the Act.

Adopted procedure. The procedure provided herein for announcing a tentative Class II price for a month on or before the 15th day of the previous month is the same as that proposed by most of the witnesses in this proceeding. It provides that the market administrator shall announce publicly on or before the 15th day of each month a tentative Class II price for the following month. Such price would be provided to the administrators of the respective orders by the Dairy Division and would be determined from the method of computation specified in the orders.

As provided in the attached order, the announced tentative 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-not-fat), 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 under the Dairy 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. At the time of the hearing, 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 that portion of the price of powder that exceeded 13.5 cents per pound. This was because the processing cost of drying the whey into powder was 13.5 cents. If the price of whey powder were less than 13.5 cents per pound, the processing costs would be absorbed in the price of cheddar cheese. If the price exceeded 13.5 cents, only that portion of the price that exceeded 13.5 cents would contribute to the gross value of milk. 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 Thursday morning. In the formula adopted herein, a price reported for Friday (or Thursday) would be applied to that day plus each work-day of the following week prior to the day the Exchange meets. When there are work-days 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 work-day that precedes the first Friday. A work-day would be each Monday through Friday, except national holidays. This definition of work-day would apply also to the other product prices described in the following paragraphs. 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.

2. The average daily price per pound of butter during the first 15 days 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 Thursday morning. Generally, the prices reported for each session establish the prices of butter sold by the dairy industry in the following week. In the formula provided herein, a price reported on Friday (or Thursday) would be applied to that day plus each work-day of the following week prior to the day the Exchange meets. When there are work-days 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 work-day 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 13.5 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 7-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 work-day through the preceding Friday, or Thursday if the previous price reported had been on a 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 factors presently used by the Price Support Program indicate 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 7-day period. When Thursday is a holiday, the prices are determined on Wednesday. In the formula provided herein, the average of the prices of high heat, low heat and Grade A nonfat dry milk determined for Thursday (or Wednesday) would be applied to that day plus each previous work-day 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 [1] produced in the two States combined, as reported and published by the Statistical Reporting Service of the Department, into their 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 first 15 days of the preceding month exceeds the corresponding value for the second preceding month, the M–W price would be increased. If it is lower, the M–W price would be reduced. The adjusted M–W price would be the basic Class II formula price for the month.

The amendatory language accompanying this decision contains a slight revision in the computation of the weighting factors described in the previous paragraph from that proposed at the hearing. Under the hearing proposal, as indicated in § .51a(c) (1) and (2) of the proposed order language, the total American cheese production and nonfat dry milk production for the States of Minnesota and Wisconsin for the third preceding month, as reported by the USDA Statistical Reporting Service (SRS), would have been used in computing the basic Class II formula price for a particular month. In that same section of the attached order language, the words "most recent preceding period" are used rather than the words "third preceding month". This revision is necessary because on March 10, 1982, SRS announced that the Dairy Products report which had been issued monthly, will be issued quarterly in the future.[2] The unavailability of these milk production data on a monthly basis necessitates the above revision in the computation of the weighting factors. Based on data contained in the hearing record, this change would have had virtually no impact on the level of basic Class II formula prices.

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 each month to yield a Class II price that, on average, would approximate the amount that the present Class II price in each order exceeds the respective order's Class III (or basic formula) 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.

In this regard, the provisions adopted herein reflect proposed changes in the levels of the current Class II differentials of the Eastern Colorado, Western Colorado and Great Basin milk orders. The changes are based on the record of a hearing held at Denver, Colorado, on February 2, 1982, under Docket Nos. AO–326–A21, AO–301–A17, and AO–309–A23. The findings and conclusions concerning the changes are discussed in a decision issued concurrently with this decision. The changes involved, which would establish a uniform Class II differential of 10 cents under each order, are noted in this decision for the convenience of interested parties.

For the 45-month period of February 1978 through October 1981, Class II differentials based on the 12-month average comparison that was proposed by proponents (using the M–W price plus 10 cents) would have ranged from a low of 11 cents to a high of 27 cents (a spread of 16 cents), with an average of 18 cents. The 18 cent average Class II differential results in part from inflation and from the updating techniques adopted herein, which caused the 12-month average of the M–W prices during this period to exceed the 12–month average of the basic Class II formula prices by 8 cents. The basic Class II formula price for a particular month is based on data for the preceding month and second preceding month and updates the Minnesota-Wisconsin price to only the 15th day of the preceding month. If inflation subsides in the future, the monthly Class II differentials would approach the intended Class II differential.

The proposed modification of the 29-market formula for the three Northwest orders that would use the 12-month average of the Class III price plus 25 cents in the calculation of the Class II differential rather than the 12-month average of the basic formula price plus 25 cents should be denied. As adopted herein, whenever the Class III price in these three orders is based on the butter-powder snubber price, the final Class II price would be reduced by the amount that the Class III price is less than the basic formula price, but only to the extent such reduction does not cause the Class II price to be less than the Class III price. If the Class III price that was based on the butter-powder snubber price was also used in the calculation of the Class II differential, it would tend to reduce the tentative Class II prices for the next 12 months. This would result in an overall reduction in Class II prices in these orders as

[1] Nonfat dry milk is used in the computation because butterfat that is excess to fluid milk operations also is made into butter.

[2] Official notice is taken of the press release (No. 272–82, 8608) issued by the U.S. Department of Agriculture on March 10, 1982, relative to the reporting changes by SRS.

compared to the present Class II-Class III price relationship. Such a reduction would be contrary to the intent of the proposed formula that over the long run it neither raise nor lower the Class II price level. Accordingly, the proposal is denied.

The proposed modification of the 29-market formula for a similar butter-powder price adjustment in the Western Colorado order also should not be adopted. The Class II price in the present Western Colorado order is not affected by the butter-powder snubber price because the monthly Class II price is the basic formula price for the month, plus 5 cents. It is noted, also, that the butter-powder snubber price would be deleted from the Class III price computation under changes based on the record of a hearing held at Denver, Colorado, on February 2, 1982, under Docket Nos. AO-326-A21, AO-301-A17 and AO-309-A23. A concurrent decision for that hearing was noted herein earlier.

The proposal by cooperative associations in the Northwest that the Class II prices in the three Northwest orders be floored at the Class III price plus 15 cents should be denied. There are no compelling reasons to floor the Class II price at any level except the Class III price level. The record evidence indicates that Class II prices should be floored at the Class III price level to assure handlers that supplies will be made available for Class II use. It is only at the Class III price level that producers lose this incentive to sell milk for Class II uses.

The suggestion by the cooperative associations in Florida that the monthly Class II price in the Florida orders not be less than the M-W price plus 15 cents should not be adopted. Such a provision would represent an increase in the Class II price level for these orders because Class II prices would never be less than the present prices but whenever the tentative Class II price exceeded the M-W price by more than 15 cents the tentative Class II price would be the final Class II price. There is no basis on this record to increase the Class II price level in these three orders. Accordingly, the suggestion is denied.

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.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

The following findings are made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, 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, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, 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.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a MARKETING AGREEMENT regulating the handling of milk, and an ORDER amending the orders regulating the handling of milk in the aforesaid marketing areas which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the **Federal Register**. The regulatory provisions of the marketing agreement are identical with those contained in the orders as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

February 1982 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the aforesaid marketing areas, except the Eastern Ohio-Western Pennsylvania marketing area, is approved or favored by producers, as defined under the terms of each of the orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the respective marketing area.

Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*), to determine whether the issuance of the attached order as amended and as hereby proposed to be amended, regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during the representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be February 1982.

The agent of the Secretary to conduct such referendum is hereby designated to be Myron R. McKinley.

List of Subjects in 7 CFR Parts 1137, 1006, 1012, 1013, 1033, 1036, 1040, 1124, 1125, 1133, 1134, 1135, 1136, and 1139

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on: August 17, 1982.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

Order [1] amending the orders, regulating the handling of milk in certain specified marketing areas.

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

The following findings are made with respect to each of the aforesaid orders:

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) 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 said marketing area, and the minimum prices specified in the order as hereby amended, are such prices was will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) the said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending each of the specific orders contained in the recommended decision issued by the Deputy Administrator, Marketing Program Operations, on June 18, 1982, and published in the **Federal Register** on June 24, 1982 (47 FR 27342), shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein, subject to modifications in §§1137.22, 1137.51, 1006.50, 1006.53, 1012.50, 1012.53, 1013.50, 1013.53, 1033.51, 1033.53, 1036.50, 1036.53, 1040.50, 1040.53, 1124.22, 1124.51, 1125.50, 1125.53, 1133.50, 1133.53, 1134.22, 1134.51, 1135.50, 1135.53, 1136.22, 1136.50, 1139.50, and 1139.53.

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. A new § 1137.17 is added to read as follows:

§ 1137.17 Product prices.

The following product prices shall be used in calculating the basic Class II price pursuant to § 1137.51a:

(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 work-day until the next price is reported. A work-day 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 work-day until the next price is reported. A work-day is each Monday through Firday 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 price 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 work-day until the day such prices were previously reported. A work-day until the day such prices were previously reported. A work-day 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 price (using the midpoint of any price range as one price) of edible whey powder of 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 and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1137.22(i) is revised to read as follows:

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

§ 1137.22 Additional duties of the market administrator.

* * * * *

(i) Publicly announce on or before:

(1) The 5th day of each month:

(i) The Class I price for the following month;

(ii) The Class I butterfat differential for the current month;

(iii) The Class III price for the preceding month;

(iv) The Class II and Class III butterfat differential for the preceding month; and

(v) The final Class II price for the preceding month, except that the Class II price announced for the first month during which this paragraph is effective shall be the price specified in the proviso in § 1137.51(b);

(2) The 12th day of each month, the uniform price and the producer butterfat differential, both for the preceding month; and

(3) the 15th day of each month, the tentative Class II price for the following month.

* * * * *

3. Section 1137.51(b) is revised to read as follows:

§ 1137.51 Class prices.

* * * * *

(b) *Class II price.* A tentative 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 tentative Class II price shall be the basic Class II formula price computed pursuant to § 1137.51a 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, except that in no event shall the final Class II price be less than the Class III price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the basic formula price for the month plus 10 cents.

(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 § 1137.50 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 § 1137.51a.

* * * * *

4. A new § 1137.51a is added to read as follows:

§ 1137.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1137.50 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 § 1137.17 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 subparagraphs is of the total of the data represented in paragraph (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 Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar chesse 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 Statistical Reporting Service of the Department for the most recent preceding period, 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 paragrah (c) of this section.

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

1. A new § 1006.19 is added to read as follows:

§ 1006.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1006.51a:

(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 work-day until the next price is reported. A work-day 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 work-day until the next price is reported. A work-day 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 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 work-day until the day such prices were previously reported. A work-day 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 work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1006.50(b) is revised to read as follows:

§ 1006.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class 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 tentative Class II price shall be the basic Class II formula price computed pursuant to § 1006.51a 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, except that in no event shall the final Class II price be less than the basic formula price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the basic formula price for the month plus 15 cents.

(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 § 1006.51 and add 15 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 § 1006.51a.

3. A new § 1006.51a is added to read as follows:

§ 1006.51a. Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1006.51 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 § 1006.19 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 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 subparagraphs is of the total of the data represented in paragraph (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 Statistical Reporting Service of the Department for the most recent preceding period, 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 Statistical Reporting Service of the Department for the most recent preceding period, 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.

4. Section 1006.53 is revised to read as follows:

§ 1006.53 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 and the final Class II price for the preceding month, except that the Class II price announced for the first month during which this section is effective shall be the price specified in the proviso in § 1006.50(b); and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

1. A new § 1012.19 is added to read as follows:

§ 1012.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1012.51a:

(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 work-day until the next price is reported. A work-day 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 work-day until the next price is reported. A work-day 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 work-day until the day such prices were previously reported. A work-day 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 work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1012.50(b) is revised to read as follows:

§ 1012.50 Class prices.

* * * * *

(b) *Class II price.* A tentative 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 tentative Class II price shall be the basic Class II formula price computed pursuant to § 1012.51a 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, except that in no event shall the final Class II price be less than the basic formula price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the basic formula price for the month plus 15 cents.

(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 § 1012.51 and add 15 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 § 1012.51a.

3. A new § 1012.51a is added to read as follows:

§ 1012.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1012.50 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 § 1012.19 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 subparagraphs is of the total of the data represented in paragraph (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 Statistical Reporting Service of the Department for the most recent preceding period, 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 Statistical Reporting Service of the Department for the most recent preceding period, 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.

4. Section 1012.53 is revised to read as follows:

§ 1012.53 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 and the final Class II price for the preceding month, except that the Class II price announced for the first month during which this section is effective shall be the price specified in the proviso in § 1012.50(b); and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

1. A new § 1013.19 is added to read as follows:

§ 1013.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1013.51a:

(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 work-day until the next price is reported. A work-day 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 work-day until the next price is reported. A work-day 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 work-day until the day such prices were previously reported. A work-day 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 work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1013.50(b) is revised to read as follows:

§ 1013.50 Class prices.

* * * * *

(b) *Class II price.* A tentative Class II price shall be computed by the Directed of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1013.51a 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, except that in no event shall the final Class II price be less than the basic formula price: *Provided,* That for the first month this paragraph is effectve the Class II price shall be the basic formula price for the month plus 15 cents.

(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 § 1013.51 and add 15 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 § 1013.15a.

* * * * *

3. A new § 1013.51a is added to read as follows:

§ 1013.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1013.51 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 § 1013.19 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 cmputation; 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 mnufacture 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 subparagraphs is of the total of the data represented in paragraph (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 Statistical Reporting Service of the Department for the most recent preceding period, 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 Statistical Reporting Service of the Department for the most recent preceding period, 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.

4. Section 1013.53 is revised to read as follows:

§ 1013.53 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 the final Class II price for the preceding month, except that the Class II price announced for the first month during which this section is effective shall be the price specified in the proviso in § 1013.50(b); and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

1. A new § 1033.21 is added to read as follows:

§ 1033.21 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1033.51a:

(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 work-day until the next price is reported. A work-day 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 work-day until the next price is reported. A work-day 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 work-day until the day such prices were previously reported. A work-day 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 work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1033.27(k) is revised to read as follows:

§ 1033.27 Additional duties of the market administrator.

* * * * *

(k) Publicly announce on or before:

(1) The 5th day of each month:

(i) The Class I price for the following month;

(ii) The final Class II price for the preceding month, except that the Class II price announced for the first month during which this paragraph is effective shall be the price specified in the proviso in § 1033.51(b);

(iii) The Class III price for the preceding month; and

(iv) The butterfat differential for the preceding month;

(2) The 12th day of each month, the uniform price for the preceding month; and

(3) The 15th day of each month, the tentative Class II price for the following month.

* * * * *

3. Section 1033.51(b) is revised to read as follows:

§ 1033.51 Class prices.

* * * * *

(b) *Class II price.* A tentative 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 tentative Class II price shall be the basic Class II formula price computed pursuant to § 1033.51a 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, except that in no event shall the final Class II price be less than the Class III price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the basic formula price for the month plus 10 cents.

(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 § 1033.50 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 § 1033.51a.

* * * * *

4. A new § 1033.51a is added to read as follows:

§ 1033.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1033.50 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 § 1033.21 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 subparagraphs is of the total of the data represented in paragraph (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 Statistical Reporting Service of the Department for the most recent preceding period, 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 Statistical Reporting Service of the Department for the most recent preceding period, 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.

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. A new § 1036.20 is added to read as follows:

§ 1036.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1036.51a:

(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 work-day until the next price is reported. A work-day 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 pubished 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 work-day until the next price is reported. A work-day 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 work-day until the day such prices were previously reported. A work-day 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 work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1036.50(b) is revised to read as follows:

§ 1036.50 Class prices.

* * * * *

(b) *Class II price.* A tentative 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 tentative Class II price shall be the basic Class II formula price computed pursuant to § 1036.51a 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, except that in no event shall the final Class II price be less than the Class III price: *Provided,* That the first month this paragraph is effective the Class II price shall be the basic formula price for the month plus 10 cents.

(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 § 1036.51 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 § 1036.51a.

* * * * *

3. A new § 1036.51a is added to read as follows:

§ 1036.51a Basic Class II formula price.

The "Basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1036.51 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 § 1036.20 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 chesse 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 subparagrahs is of the total of the data represented in paragraph (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 Statistical Reporting Service of the Department for the most recent preceding period, 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 Statistical Reporting Service of the Department for the most recent preceding period, 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.

4. Section 1036.53 is revised to read as follows:

§ 1036.53 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 the final Class II price for the preceding month, except that the Class II price announced for the first month during which this section is effective shall be the price specified in the proviso in § 1036.50(b); and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. A new § 1040.21 is added to read as follows:

§ 1040.21 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1040.51a:

(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 work-day until the next price is reported. A work-day 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 work-day until the next price is reported. A work-day 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 work-day until the day such prices were previously reported. A work-day 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 elible 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 work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1040.50(b) is revised to read as follows:

§ 1040.50 Class prices.

* * * * *

(b) *Class II price.* A tentative 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 tentative Class II price shall be the basic Class II formula price computed pursuant to § 1040.51a 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, except that in no event shall the final Class II price be less than the Class III price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the Class III price for the month plus 15 cents.

(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 § 1040.51 and add 15 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 § 1040.51a.

* * * * *

3. A new § 1040.51a is added to read as follows:

§ 1040.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1040.51 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 § 1040.21 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 use 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 subparagraphs is of the total of the data represented in paragraph (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 Statistical Reporting Service of the Department for the most recent preceding period, 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 Statistical Reporting Service of the Department for the most recent preceding period, 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.

4. Section 1040.53 is revised to read as follows:

§ 1040.53 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 the final Class II price for the preceding month, except that the Class II price announced for the first month during which this section is effective shall be the price specified in the proviso in § 1040.50(b): and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1124—MILK IN THE OREGON-WASHINGTON MARKETING AREA

1. A new § 1124.20 is added to read as follows:

§ 1124.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1124.51a:

(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 work-day until the next price is reported. A work-day 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 work-day until the next price is reported. A work-day 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 work-day until the day such prices were previously reported. A work-day 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 work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1124.22(i) is revised to read as follows:

§ 1124.22 Additional duties of the market administrator.

* * * * *

(i) Publicly announce on or before:

(1) The 5th day of each month:

(i) The Class I price for the following month;

(ii) The Class I butterfat differential for the current month;

(iii) The Class III price for the preceding month;

(iv) The Class II and Class III butterfat differentials for the preceding month; and

(v) The final Class II price for the preceding month, except that the Class II price announced for the first month during which this paragraph is effective shall be the price specified in the proviso in § 1124.51(b);

(2) The 14th day of each month, the uniform prices and the producer butterfat differential, both for the preceding month; and

(3) The 15th day of each month, the tentative Class II price for the following month;

* * * * *

3. Section 1124.51(b) is revised to read as follows:

§ 1124.51 Class prices.

* * * * *

(b) *Class II price.* A tentative 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 tentative Class II price shall be the basic Class II formula price computed pursuant to § 1124.51a 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, except that in no event shall the final Class II price be less than the Class III price. If the Class III price for the month is computed pursuant to paragraph (c)(1) through (3) of this section, the final Class II price shall be reduced by the amount that the Class III price is less than the basic formula price to the extent such reduction does not cause the Class II price to be less than the Class III price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the Class III price for the month plus 25 cents.

(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 § 1124.50 and add 25 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 § 1124.51a.

* * * * *

4. A new § 1124.51a is added to read as follows:

§ 1124.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1124.50 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross value per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1124.20 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 subparagraphs is of the total of the data represented in paragraph (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 Statistical Reporting Service of the Department for the most recent preceding period, 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 Statistical Reporting Service of the Department for the most recent preceding period, 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 proportion of milk determined pursuant to paragraph (c) of this section.

PART 1125—MILK IN THE PUGET SOUND, WASHINGTON MARKETING AREA

1. A new § 1125.19 is added to read as follows:

§ 1125.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1125.51a:

(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 the day and for each following work-day until the next price is reported. A work-day 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 work-day until the next price is reported. A work-day 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 work-day until the day such prices were previously reported. A work-day 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 work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1125.50(b) is revised to read as follows:

§ 1125.50 Class prices.

* * * * *

(b) *Class II price.* A tentative 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 tentative Class II price shall be the basic Class II formula price 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, except that in no event shall the final Class II price be less than the Class III price. If the Class III price for the month is computed pursuant to paragraph (c)(1) through (3) of this section, the final Class II price shall be reduced by the amount that the Class III price is less than the basic formula price to the extent such reduction does not cause the Class II price to be less than the Class III price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the Class III price for the month plus 25 cents.

(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 § 1125.51 and add 25 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 § 1125.51a.

* * * * *

3. A new § 1125.51a is added to read as follows:

§ 1125.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1125.51 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 § 1125.19 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 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 subparagraphs is of the total of the data represented in paragraph (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 Statistical Reporting Service of the Department for the most recent preceding period, 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 Statistical Reporting Service of the Department for the most recent preceding period, 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 mild determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1125.53 is revised to read as follows:

§ 1125.53 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 the final Class II price for the preceding month, except that the Class II price announced for the first month during which this section is effective shall be the price specified in the proviso in § 1125.50(b); and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1133—MILK IN THE INLAND EMPIRE MARKETING AREA

1. A new § 1133.19 is added to read as follows:

§ 1133.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1133.51a:

(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 work-day until the next price is reported. A work-day 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 work-day until the next price is reported. A work-day 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 work-day until the day such prices were previously reported. A work-day 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 work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1133.50(b) is revised to read as follows:

§ 1133.50 Class prices.

* * * * *

(b) *Class II price.* A tentative 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 tentative Class II price shall be the basic Class II formula price 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, except that in no event shall the final Class II price be less than the Class III price. If the Class III price for the month is computed pursuant to paragraph (c) (1) through (3) of this section, the final Class II price shall be reduced by the amount that the Class III price is less than the basic formula price to the extent such reduction does not cause the Class II price to be less than the Class III price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the Class III price for the month plus 25 cents.

(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 § 1133.51 and add 25 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 § 1133.51a.

* * * * *

3. A new § 1133.51a is added to read as follows:

§ 1133.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1133.51 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 § 1133.19 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 goss 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 subparagraphs is of the total of the data represented in paragraph (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 Statistical Reporting Service of the Department for the most recent preceding period, 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 Statistical Reporting Service of the Department for the most recent preceding period, 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.

4. Section 1133.53 is revised to read as follows:

§ 1133.53 Announcement of class prices and handler butterfat differentials.

The market administrator shall announce publicly on or before:

(a) The 5th day of each month:

(1) The Class I price for the following month;

(2) The Class I butterfat differential for the current month:

(3) The Class III price for the preceding month;

(4) The Class II and Class III butterfat differential for the preceding month; and

(5) The final Class II price for the preceding month, except that the Class II price announced for the first month during which this paragraph is effective shall be the price specified in the proviso in § 1133.50(b); and

(b) The 15th day of each month, the tentative Class II price for the following month.

PART 1134—MILK IN THE WESTERN COLORADO MARKETING AREA

1. A new § 1134.20 is added to read as follows:

§ 1134.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1134.51a:

(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 work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a 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 work-day until the next price is reported. A work-day 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 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 work-day until the day such prices were previously reported. A work-day 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 work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1134.22(i) is revised to read as follows:

§ 1134.22 Additional duties of the markets administrator.

* * * * *

(i) Publicly announce on or before:

(1) The 5th day of each month:

(i) The Class I price for the following month;

(ii) The Class I butterfat differential for the current month;

(iii) The Class III price for the preceding month;

(iv) The Class II and Class III butterfat differentials for the preceding month; and

(v) The final Class II price for the preceding month, except that the Class II price announced for the first month during which this paragraph is effective shall be the price specified in the proviso in § 1134.51(b);

(2) The 12th day of each month, the uniform price and the producer butterfat differential, both the preceding month; and

(3) The 15th day of each month, the tenative Class II price for the following month.

* * * * *

3. Section 1134.51(b) is revised to read as follows:

§ 1134.51 Class prices.

* * * * *

(b) *Class II price.* A tentative 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 tentative Class II price shall be the basic Class II formula price computed pursuant to § 1134.51a 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, except that in no event shall the final Class II price be less than the basic formula price: *Provided,* That the first month this paragraph is effective the Class II price shall be the basic formula for the month plus 10 cents.

(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 § 1134.50 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 § 1134.51a.

* * * * *

4. A new § 134.51a is added to read as follows:

§ 1134.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1134.50 for the second preceding month plus or minus the amount computed pursuant to paragraph (a) through (d) of this section:

(a) The gross value per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1134.20 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 Suport 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 subparagraphs is of the total of the data represented in paragraph (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 Statistical Reporting Service of the Department for the most rescent preceding period, 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 Statistical Reporting Service of the Department for the most recent preceding period, 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.

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

1. A new § 1135.19 is added to read as follows:

§ 1135.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1135.51a:

(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 work-day until the next price is reported. A work-day 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 work-day until the next price is reported. A work-day 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 work-day until the day such prices were previously reported. A work-day 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 work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1135.50(b) is revised to read as follows:

§ 1135.50 Class prices.

* * * * *

(b) *Class II price.* A tentative 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 tentative Class II price shall be the basic Class II formula price computed pursuant to § 1135.51a 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, except that in no event shall the final Class II price be less than the Class III price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the basic formula price for the month plus 10 cents.

(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 § 1135.51 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 § 1135.51a.

* * * * *

3. A new § 1135.51a is added to read as follows:

§ 1135.51a Basic Class II formula price.

The "Basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1135.51 for the second preceding month plus or minus the amount computed to paragraph (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 § 1135.19 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 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 subparagraphs is of the total of the data represented in paragraph (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 Statistical Reporting Service of the Department for the most recent preceding period, 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

Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, 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.

4. Section 1135.53 is revised to read as follows:

§ 1135.53 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 the final Class II price for the preceding month, except that the Class II price announced for the first month during which this section is effective shall be the price specified in the proviso in § 1135.50(b); and on or before the 15th day of each month the tentative Class II price for the following month.

PART 1136—MILK IN THE GREAT BASIN MARKETING AREA

1. A new § 1136.19 is added to read as follows:

§ 1136.19 Product prices.

The following product prices shall be used in calculating the basic Class II price pursuant to § 1136.51a:

(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 work-day until the next price is reported. A work-day 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 months, 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 work-day until the next price is reported. A work-day 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 work-day until the day such prices were previously reported. A work-day 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 power (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 work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1136.22(k) is revised to read as follows:

§ 1136.22 Additional duties of the market administrator.

* * * * *

(k) Publicly announce on or before:

(1) The 5th day of each month:

(i) The Class I price for the following month;

(ii) The Class I butterfat differential for the current month;

(iii) The Class III price for the preceding month;

(iv) The Class II and Class III butterfat differential for the preceding month; and

(v) The final Class II price for the preceding month, except that the Class II price announced for the first month during which this paragraph is effective shall be the price specified in the proviso in § 1136.50(b);

(2) The 12th day of each month, the uniform price and the producer butterfat differential, both for the preceding month; and

(3) The 15th day of each month, the tentative Class II price for the following month.

* * * * *

3. Section 1136.50(b) is revised to read as follows:

§ 1136.50 Class prices.

* * * * *

(b) *Class II price.* A tentative 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 tentative Class II price shall be the basic Class II formula price computed pursuant to § 1136.51a 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, except that in no event shall the final Class II price be less than the Class III price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the basic formula price for the month plus 10 cents.

(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 § 1136.51 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 § 1136.51a.

* * * * *

4. A new § 1136.51a is added to read as follows:

§ 1136.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1136.51 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 § 1136.19 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 subparagraphs is of the total of the data represented in paragraph (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 Statistical Reporting Service of the Department for the most recent preceding period, 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 Statistical Reporting Service of the Department for the most recent preceding period, 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.

PART 1139—MILK IN THE LAKE MEAD MARKETING AREA

1. A new § 1139.19 is added to read as follows:

§ 1139.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1139.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, or 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 work-day until the next price is reported. A work-day 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 work-day until the next price is reported. A work-day 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 work-day until the day such prices were previously reported. A work-day 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 work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

2. Section 1139.50(b) is revised to read as follows:

§ 1139.50 Class prices.

* * * * *

(b) *Class II price.* A tentative 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 tentative Class II price shall be the basic Class II formula price computed pursuant to § 1139.51a 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, except that in no event shall the final Class II price be less than the Class III price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the basic formula price for the month plus 15 cents.

(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 § 1139.51 and add 15 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 § 1139.51a.

* * * * *

3. A new § 1139.51a is added to read as follows:

§ 139.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1139.51 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 § 1139.19 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 subparagraphs is of the total of the data represented in paragraph (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 Statistical Reporting Service of the Department for the most recent preceding period, 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 Statistical Reporting Service of the Department for the most recent preceding period, 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.

4. Section 1139.53 is revised to read as follows:

§ 1139.53 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 the final Class II price for the preceding month, except that the Class II price announced for the first month during which this section is effective shall be the price specified in the proviso in § 1139.50(b); and on or before the 15th day of each month the tentative Class II price for the following month.

[FR Doc. 82-22910 Filed 8-24-82; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 1134, 1136 and 1137

[Docket Nos. AO-326-A21, AO-301-A17 and AO-309-A23]

Milk in the Eastern Colorado, Western Colorado and Great Basin Marketing Areas; Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts in each of the three milk marketing orders the uniform classification and order format provisions that were incorporated in a large number of other milk orders in 1974, including a 10-cent Class II differential and the use of a single butterfat differential. In Eastern Colorado milk order only, the decision also would permit a handler to consider all his distributing plants as a single unit for purposes of meeting the pooling standards. The amendments are based on industry proposals considered at a public hearing held on February 2, 1982.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-7311.

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.

Prior documents in this proceeding:

Notice of Hearing: Issued January 4, 1982; published January 7, 1982 (47 FR 778).

Recommended Decision: Issued June 18, 1982; published June 24, 1982 (47 FR 27299).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the respective marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Denver, Colorado, on February 2, 1982, pursuant to the notice thereof issued on January 4, 1982 (47 FR 778).

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. Most parties subject to a milk order are considered to be small business. No participants at the hearing testified about any potentially adverse impacts of the proposals on small businesses as a group.

Further, William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that the amendments adopted herein, which are based on the hearing record, would not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Program Operations, on June 18, 1982, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

In Issue No. 1.

a. Five paragraphs have been added after the 18th paragraph.

b. Two paragraphs have been added at the end of the issue.

The material issues on the record of the hearing relate to:

1. Classification of milk.
2. Class II differential.
3. Butterfat differential.
4. Unit pooling of distributing plants in the Eastern Colorado milk order.
5. Other changes.
6. Advance Class II price announcement.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Classification of milk.* The Eastern Colorado, Western Colorado and Great Basin milk orders should provide for the same uniform classification of skim milk and butterfat that is commonly provided in many other Federal milk orders.

The proposals for the uniform classification of milk in the three orders were made by two cooperative associations supplying milk to the Eastern and Western Colorado milk orders and by a proprietary handler regulated by the Great Basin milk order. Also, two proprietary handlers regulated by the Eastern Colorado milk order proposed that such classification be provided for that order. In the case of all proponents, the uniform classification plan that was proposed was that which was included in 39 Federal milk orders in 1974 following extensive hearings in 1971 on the issue of uniform classification and pricing provisions. The plan was modified slightly the following year.

The spokesman for the cooperative associations testified that uniform classification provisions are needed in the Eastern and Western Colorado marketing areas because competition for sales between the two markets and with other federal milk order markets has developed over the years since the two orders were promulgated. He testified that one of the cooperatives, through its bottling facilities in the Western Colorado area, distributes fluid milk products into the Eastern Colorado marketing area and takes back Class II and Class III products for distribution in the Western Colorado market. Also, he indicated that Eastern Colorado handlers distribute ice cream, cottage cheese and yogurt into the Western Colorado area.

The witness testified that there is distribution of products in all 3 classes into the Eastern Colorado area from the Scottsbluff, Nebraska, area of the Nebraska-Western Iowa order. Also, handlers regulated by the Wichita, Kansas, order distribute all 3 classes of milk and dairy products into the Eastern Colorado area. It was noted that both orders were included in the earlier classification proceedings.

The witness also testified that a handler regulated by the Great Basin milk order distributes sour cream and yogurt in the Eastern and Western Colorado areas and takes back cottage cheese from its plant regulated by the Eastern Colorado milk order for distribution in the Great Basin market.

The spokesman for the proponent cooperatives testified that the reasons for adopting uniform classification provisions are essentially the same as those reasons which were stated in the Department's decisions for the earlier classification proceedings. He said that the adoption of the uniform classification provisions for the Eastern and Western Colorado orders will provide competitive parity for the various dairy products being distributed between the two markets.

The spokesman for two handlers regulated by the Eastern Colorado order testified that the uniform classification provisions that have been provided by the Department in other orders should be provided for the Eastern Colorado order. He testified that when the Eastern Colorado order and other nearby orders were promulgated the classification plans adopted reflected the marketing conditions that prevailed at that time for the respective marketing areas. He stated that the classification plans varied from one order to another because local conditions and facilities were seldom alike from market to market. The witness indicated that as long as the markets remained relatively isolated from each other marketing problems resulting from the differences in the various classification plans were minimal.

The witness testified that in recent years the local character of the markets in the region have been disappearing. Intermarket movements of milk and dairy products have become commonplace as handlers have sought to find additional outlets for their products. He also indicated that such movements have been facilitated by developments such as health inspection reciprocity, improved highway networks, the virtual completion of the interstate highway system and the concentration of processing and packaging operations in large, specialized facilities.

The witness said that sour cream is being sold in the Denver area (Eastern Colorado order) by a handler regulated by the Indiana milk order. Also, cream products, including whipping cream and half and half, that are processed and packaged in Nebraska are presently being sold in the Eastern Colorado area, including Denver. In the above instances, he noted, the products are being classified under the uniform classification provisions previously cited. The witness stated that differences in classification among

markets can adversely affect competition for sales among regulated handlers. He said that such differences have little, if any, foundation in current marketing conditions.

A spokesman for a proprietary handler regulated by the Great Basin milk order testified that the uniform classification provisions cited previously should be adopted for the order. He indicated that the handler operates two pool plants under the Great Basin order and distributes dairy products from the plants into the Great Basin, Western Colorado, Eastern Colorado, Lake Mead, Black Hills and Southwestern Idaho-Eastern Oregon marketing areas. The spokesman stated that over 70 percent of the sour cream, yogurt, half and half and party dips produced by the handler's Salt Lake City plant under the Great Basin milk order are shipped to Denver and distributed in the Eastern Colorado, Western Colorado and Black Hills marketing areas.

The witness said that unless the Great Basin milk order is amended to provide the uniform classification provisions cited previously, the Salt Lake City plant will continue to operate at a disadvantage with competing products in the other orders. He said that the adoption of a uniform classification system will eliminate the pricing distortions that act as an artificial barrier to the free movement of dairy products.

It is apparent from the testimony presented by proponents that considerable intermarket competition for sales of all classes of milk has developed since the three orders involved in this proceeding were established (1958–1961). When the orders were promulgated, marketing conditions were generally local in nature. Now, handlers in one market compete extensively with handlers in another market where the classification of skim milk and butterfat are not the same. Also, the handlers regulated by the milk orders in this proceeding compete for sales with handlers regulated by the Indiana, Nebraska-Western Iowa, Wichita, and Eastern South Dakota milk orders which provide for the uniform classification provisions cited previously.

Exhibits introduced at the hearing indicated that handlers regulated under these three orders presently use milk to produce products that are classified as Class I or Class III, but under the proposals would be a Class II classification. Such products include cream (both sweet and sour), which is a Class I product under these orders (except that under the Eastern Colorado order sour cream not disposed of under a Grade A label is a Class III product), and yogurt, ice cream mix, eggnog and milk sold to commercial food processors, which are Class III uses under the orders. As described previously, these are all Class II products under those orders that provide for the uniform classification provisions.

These differences in the classification and the corresponding differences in prices of milk used to produce the same products are disruptive to the competitive relationships of handlers, and thus to the orderly marketing of producer milk, under these three orders in relation to handlers regulated under orders providing for the uniform classification provisions. It is concluded that uniformity is needed and that adoption of the uniform classification provisions in these three orders, along with uniform Class II pricing and uniform butterfat differentials, as discussed later, is appropriate.

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 respective orders. 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.

The proprietor of a cheese company at Logan, Utah, took exception to the provision adopted in the recommended decision that would provide Class I classification for sterilized products packaged in hermetically sealed containers. The basis for the exception was that the hearing record contained a void concerning the current building of a facility in the Great Basin market for the processing of ultra high temperature (UHT) sterilized products. Under the provisions adopted in the recommended decision, fluid milk products processed in this manner would be Class I. The exceptor asked that the classification be Class III, which is the classification that would apply under the existing order. In the alternative, the exceptor asked that further action in the proceeding be delayed until a new hearing can be held to consider the appropriate regulatory treatment of the new UHT facility not only under the Great Basin order but under the Eastern Colorado and Western Colorado orders as well.

We have considered the exceptions in light of the record evidence. We agree that the record contains no indication of the current development of the UHT facility in the market. However, this was chiefly because there was no representation of the cheese company at the hearing. No one from the firm appeared at the hearing to present such testimony. Yet, the industry in these three markets was appropriately notified of the hearing and the specific proposals to be considered.

Further, the exceptions filed with the Department by the cheese company contained the type of information that normally is presented at a hearing. Coming at this stage of the proceeding, it is new evidence that is not appropriate for consideration in connection with the final decision. The evidence was not presented at the hearing and subject to cross examination by participants at the hearing.

We must conclude that the record evidence supports proposals to adopt the classification provisions issued by the Department in 1974 which were adopted in the recommended decision. There is no reason on the basis of the record to change the provisions of the recommended decision or to delay the completion of the proceeding as requested by exceptor. The request to do so is denied.

We believe, however, that the issue raised by the exceptor should be considered at a new hearing, as the exceptor suggested. This would provide the cheese company the opportunity to submit its proposals concerning the new UHT facility being developed and for its representatives to testify about the facility. Accordingly, the Department

plans to provide the opportunity for such a hearing at a later date.

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 maufacturing 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 respective orders, "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 proponents and is identical to the uniform classification plan contained in many of the other Federal orders. 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 8202, 8452, 8712, 9012). Official notice was taken of this decision at the hearing for the current proceeding. 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 30-market decision. The record evidence indicates that the findings and conclusions of these decisions are equally applicable under current marketing conditions in the three markets involved in the current proceeding. The classification system adopted herein will be fully appropriate for the three orders. Adoption of the uniform classification plan in the respective orders will coordinate these essential provisions in the respective orders and with the same provisions under most other orders.

A spokesman for a cooperative association and one for an ice cream manufacturer testified that skim milk and butterfat used to make ice cream should continue to be classified as Class III in the Great Basin milk order, and not in Class II as proposed by proponents. They testified that ice cream made in Great Basin regulated plants competes with ice cream made in unregulated plants and from ungraded milk ingredients. However, the evidence in the record is not persuasive that any significant quantity of ungraded product competes with ice cream made by unregulated plants. Further, it is apparent that both regulated and unregulated plants making ice cream in the Great Basin area are using substantial quantities of Grade A milk for use in ice cream and that a large proportion of the ingredients for unregulated plant comes from Great Basin pool plants. The record established that handlers want a regular supply of Grade A milk for the prducts proposed for uniform Class II classification, including ice cream, and that such milk is not available from alternative sources for less than the proposed Class II price. It is concluded that the continued Class III classification of skim milk and butterfat used in ice cream in the Great Basin order should be denied.

A handler who operates distributing plants regulated by the Eastern Colorado and Great Basin milk orders filed an exception to the higher classification of skim milk and butterfat used to make ice cream in the Great Basin market from Class III to Class II milk. Exceptor said that a substantial quantity of ice cream made in the market is made from ungraded cream or milk. As described previously in this decision, the evidence in the record is not persuasive that any significant quantity of ungraded product competes with ice cream made by regulated plants. Although it was indicated in the hearing record that 30 percent of the ice cream in the market is made from ungraded cream and milk, that estimate was based on information that was obtained at least seven years ago. Further, even though ice cream made from ungraded cream and milk was alluded to on the record, there was no information that any of the ice cream plants in the market receive cream or milk from ungraded sources.

The exceptor also said that there was substantial testimony in the record in favor of keeping ice cream in Class III (including testimony by the proponent of the uniform classification provisions for the Great Basin market) and no testimony to make it a Class II product. Exceptor concluded that the decision to change the classification of milk used to make ice cream from Class III to Class II milk is not substantiated by the hearing record. We do not agree with exceptor. As described previously in this decision, adoption of the uniform classification plan will coordinate these essential provisions (including the clsssification of ice cream as a Class II product) in the respective orders and with the same provisions under most other orders. This objective was the chief purpose sought by participants at the hearing. Further, the witness who represented the proponent of the uniform classification provisions for the Great Basin market testified in favor of this change in classification of milk used to produce ice cream. The witness said that his company desired to have the same classification provisions in the Great Basin milk order that are effective in most other Federal milk orders even though his company realizes this change will increase the price of milk they use to make ice cream. The witness claimed that the need for uniformity is the important consideration. Accordingly, for the reasons set forth above, the exception is denied.

2. *Class II differential.* The Class II differential should be 10 cents for each of the three orders in this proceeding. The differential is added to the basic formula price for the month to yield the Class II price.

The two cooperatives supplying milk to the Eastern Colorado and Western Colorado markets proposed that the Class II differentials be 10 cents. Two proprietary handlers regulated by the Eastern Colorado order also proposed that the Class II differential be 10 cents. A proprietary handler regulated by the Great Basin order proposed that the

Class II differential of that order be 10 cents, and the cooperative association that supplies most of the milk to the Great Basin market supported the proposal.

At present, the Eastern Colorado and Great Basin orders provide for a Class II differential of 15 cents. The Western Colorado order provides for a Class II differential of 5 cents. In all three orders the differential is added to the basic formula price for the month. There was no proposal to change the basic formula price as the mover for the Class II price.

In conjunction with the adoption of the uniform classification provisions it also is appropriate to provide for the same Class II differential in these three orders that is provided presently in those orders that provide for the uniform classification provisions (i.e., the M–W price plus 10 cents). Both producer and handler witnesses claimed that the Class II differential in these three orders should be the M–W price plus 10 cents even though such a differential would represent a 5-cent reduction in Class II prices under the Eastern Colorado and Great Basin orders and a 5-cent increase in Class II prices under the Western Colorado order. To promote equity among handlers competing for the sale of similar products and the orderly marketing of milk by producers, it was previously found in this decision that the uniform classification provisions should be adopted in these three orders. To fully achieve this objective, it also is necessary to adopt in these three orders the same Class II differential that is provided in the other orders. Otherwise, the benefits of adopting the uniform classification provisions would be reduced because the prices of milk used to produce the Class II products would not be uniform. Accordingly, the Class II differential in each of the three orders should be the M–W price plus 10 cents.

3. *Butterfat differential.* The three orders should have a single butterfat differential equal to .115 times the average wholesale price of Grade A (92-score) bulk butter per pound at Chicago as reported by the Department for the month. This butterfat differential should be used to adjust prices to the actual butterfat content of the milk being priced.

Presently, the three orders provide for separate butterfat differentials (for each one-tenth percent of butterfat above or below 3.5 percent) for each of the three classes of milk utilization. For Class I milk, the butterfat differential in the Eastern Colorado order is the Chicago butter price for the preceding month multiplied by 0.13, while in the Great Basin and Western Colorado orders it is the preceding month's Chicago butter price multiplied by 0.12. For Class II and Class III milk, the butterfat differential in the Eastern Colorado and Western Colorado orders is the Chicago butter price for the current month multiplied by 0.12, while in the Great Basin order it is the current month's Chicago butter price multiplied by 0.115. The butterfat differential used in adjusting the uniform price in each order is the average of the butterfat differentials for each class weighted by the proportion of butterfat in producer milk allocated to each class.

Proponents of the uniform classification provisions in the three markets stated that using a single butterfat differential factor of .115 would result in a uniform adjustment of class prices for butterfat content among the three orders and also would promote competitive equity with handlers in other markets with whom they compete. There was no opposition.

The witness for the proprietary handler who proposed amending the Great Basin order testified that under present conditions, with separate class butterfat differentials, the handler's Salt Lake City plant is at a disadvantage when competing with handlers regulated under orders that provide for a single butterfat differential. To illustrate this, the witness said that based on current pricing formulas the difference in the cost at its Salt Lake City plant for half and half with 10.5 percent butterfat and the cost at plants subject to a single butterfat differential is $2.34 per hundredweight. This would take into consideration the different classification for half and half among the markets.

It is apporpriate to adopt the same butterfat differential in these three markets as is provided in the markets that contains the uniform classification provisions. As described previously, the record evidence indicates there is a need to incorporate the uniform classification provisions in these three orders because of the extensive competition among handlers regulated under these three orders, both between themselves and with handlers regulated under orders that already contain those classification provisions.

Further, a change in the relative values of the components of milk in Class I uses also has been occurring for some time. This has been related to the continuous decline, both nationally and locally, in the proportion of butterfat in Class I sales. An indication of this trend is the average test of fluid milk products sold in the Federal order marketing areas. In 1975 the average butterfat test in 55 Federal order markets for such sales was 2.75 percent. This percentage declined from year to year and in 1980 the comparable average butterfat test was 2.56 percent (official notice was taken at the hearing of the Annual Summaries for 1975 and 1980, Federal Milk Order Market Statistics, issued by the Dairy Division, AMS, USDA). On a percentage basis, the average butterfat content in these fluid milk products declined 7 percent from 1975 to 1980. It is anticipated that this decline will continue because of consumer's preference for low-fat products.

The average butterfat test of Class I sales in the three markets subject to the instant hearing also has been declining. The average test of Class I sales by handlers regulated under the Eastern Colorado order dropped from 2.63 percent in 1975 to 2.49 percent in 1980, a decline of 5 percent. For handlers regulated under the Great Basin order, the average test of Class I sales also declined 5 percent (from 2.54 percent in 1975 to 2.41 percent in 1980), while for handlers regulated under the Western Colorado order the average test declined 11 percent (from 2.83 percent in 1975 to 2.52 percent in 1980).

The increasing demand for fluid milk products with lower butterfat content can be expected to result in a continuing decline in the average butterfat test of Class I sales under each of the orders. Adopting the same butterfat differential for Class I milk as for other classes will give recognition to the reduced demand and the related lower market value of butterfat in Class I fluid milk products. By reflecting a lower value for butterfat in the returns to producers, there will be less incentive to produce high-test milk which consumers do not want.

Since the same butterfat differential would apply to all classes of milk, it is necessary under the orders to provide only for a producer butterfat differential. Under this procedure, there is no need to provide for a separate butterfat differential for adjusting class prices nor is there any need to pool the value of butterfat in each class. All producer "differential" butterfat received by handlers will be priced the same to all handlers regardless of the class in which the butterfat is used. Accordingly, each order should be modified to provide only for the announcement and use of a single producer butterfat differential.

4. *Unit pooling of distributing plants for the Eastern Colorado milk order.* The provisions of the order that relate to the basis for pooling a distributing plant should be revised.

Presently, the order provides that a distributing plant shall qualify as a pool plant if during the month it processes and packages fluid milk products and an amount of milk equal to 50 percent or more of the total receipts of Grade A

milk (except receipts from distributing pool plants) is disposed of as fluid milk products, except filled milk, on routes, and 10 percent or more of such receipts, or 12,000 pounds per day, whichever is less, are disposed of as fluid milk products, except filled milk, on routes in the marketing area. If a handler operates more than one distributing plant, each plant must qualify separately as a pool plant.

The order should be changed to permit a handler who operates two or more distributing plants to consider them as a unit for purposes of meeting the 50 percent total route disposition requirement. The order should continue to provide that the in-area distribution requirement be met by each plant separately.

The proposal was made by a cooperative association that supplies milk to the Eastern Colorado marketing area. The spokeman for the cooperative said that one of its chief customers has a fluid milk plant at Englewood, Colorado, and a plant at Greeley, Colorado, where it processes fluid milk products and where it also manufactures the majority of its Class II and Class III products. The plant at Greeley is operating close to the 50 percent route disposition requirement. If the Englewood plant increases its Class II manufacture to lessen the impact at Greeley, the cooperative probably would have to supply the milk at some cost to the association. The association believes that the unit pooling that it proposes would obviate the need to do that, would keep the Greeley plant pooled and would assure continued pool status for the association's member producers who are supplying milk to the Greeley plant.

A spokesman for the proprietary operator of the plants at Englewood and Greeley supported the proposal. He testified that both plants process fluid milk products and the Greeley plant packages sour cream, cottage cheese, whipping cream and half and half for the Eastern Colorado market. The Englewood plant packages ice cream, yogurt and buttermilk for the same market. The spokesman indicated that the two plants are about 60 miles apart and are coordinated to supply the Eastern Colorado market with a variety of milk and dairy products.

The witness stated that in the recent past the Greeley pool plant has encountered problems meeting the requirement that the plant distribute at least 50 percent of its receipts as fluid milk products on routes, particularly in the summer months. He noted that in June 1980 the plant failed to meet the requirement and it was depooled, with adverse consequences to other regulated handlers who bought fluid milk products from the Greeley plant. He indicated that such handlers incurred additional financial obligations to the order's producer-settlement fund. To avoid this, the witness said, the handler obtained a temporary suspension of the provision for July and August 1980. A similar suspension was obtained for July and August 1981.

The spokesman testified that the pooling problem for the Greeley plant will not be restricted to the summer months. The handler anticipates that the Greeley plant's Class I utilization will hover around 50 percent throughout the year because the cream products will become Class II if the uniform classification provisions are adopted.

The proposed change in the pool distributing plant definition should be adopted. Order provisions should not impede the ability of a multi-plant handler to achieve operational efficiencies by specializing in the processing of fluid milk products in one plant and by-products in another. With unit pooling, it will be possible for a multi-plant handler to confine certain specialized operations in one plant in order to achieve an economy of scale comparable to that which would be realized by maintaining this total operation in one plant.

Moreover, the need for shifting producer deliveries between the two plants solely to assure that each plant qualifies individually for pooling could be avoided under the proposal. Such practice would add unnecessarily to the cost of handling and transporting the milk to be pooled. Providing for unit pooling will remove the need to make uneconomic movements of milk solely for pooling purposes and will allow the assignment of producers to the plant where it is most practicable for them to deliver milk.

As indicated previously, each distributing plant in the pooling unit would still have to dispose of at least 10 percent of its receipts or 12,000 pounds per day, whichever is less, on routes in the marketing area. There was no proposal to change this requirement.

As a condition to qualify for unit pooling, a handler would be required to notify the market administrator in writing prior to the first month in which plants are to be considered as a unit for pooling purposes. Unit pooling would be continued in each following month without further notification. However, if other plants of the handler are added to or dropped from the unit, the handler would need to notify the market administrator prior to the month in which such change is to be effective.

The proposal by the multi-plant operator that notification to the market administrator be made during any month for which unit pooling is applicable, rather then prior to such month, should not be adopted. The handler said that such provision was needed if it were discovered during a month that unit pooling is needed. The evidence is that unit pooling may be needed in all months of the year, particularly with the adoption of uniform classification provisions. Accordingly, it is presumed that the market administrator will be notified in advance that automatic unit pooling is desired.

5. *Other changes.* If for any reason a price or pricing constituent needed by the market administrator in administering the three orders in this proceeding is not available, the market administrator should be authorized by the order to use an equivalent price or pricing constituent as determined by the Secretary. Including this identical provision in each of the three orders 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. This is the same provision that was adopted as part of the format of uniform provisions for the 39-market amendments cited previously. It is one of the several such provisions that were proposed by proponents in requesting uniform classification for the three orders in this proceeding, and all of such provisions are adopted herein for the reasons set forth in the previously cited 1974 decision.

The uniform format of order provisions that was incorporated into the 39 other Federal milk orders in 1974 also should be adopted in these three orders. In adopting this format no substantive changes have been made in the order provisions of the respective orders that were not under consideration at the hearing. All orders contain essentially the same categories of provisions, such as those relating to the definition of a pool plant or of other source milk, those setting forth the class price formulas, or those describing how the uniform price shall be computed. At present, the three orders of this proceeding are structured so that the provisions relating to these various categories do not appear in the same place in the orders or under the same section title as they do in those orders that contain the uniform classification provisions. Accordingly, for the reasons set forth in the previously cited 1974 decision these three orders should be

coordinated with those other orders in the respect.

6. *Advance Class II price notice.* This decision includes amendatory language for advance Class II price notice for the Eastern Colorado, Western Colorado and Great Basin milk orders. The adopted amendments are based on the record of a hearing held at Denver, Colorado, on February 3, 1982, under Docket Nos. AO–326–A21–RO1, AO–301–A17–RO1 and AO–309–A23–RO1 (47 FR 814). Such hearing, which involved 14 milk orders, was a reopening of the hearing on uniform classification provisions for the Eastern Colorado, Western Colorado and Great Basin orders. The findings, conclusions and adopted amendments based on the record of the 14-order hearing are being published simultaneously with this decision, and the adopted amendatory language of that decision is included herein as a convenience.

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.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

The following findings are made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, 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, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, 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.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the aforesaid marketing areas which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the orders as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

February 1982 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the aforesaid marketing areas is approved or favored by producers, as defined under the terms of each of the orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the respective marketing area.

List of Subjects in 7 CFR Parts 1137, 1134 and 1136

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D C. on: August 17, 1982.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

Order[1] amending the orders, regulating the handling of milk in certain specified marketing areas.

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

The following findings are made with respect to each of the aforesaid orders:

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) 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 said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in each of the aforesaid marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending each of the specific orders contained in the recommended decision issued by the Deputy Administrator, Marketing Program Operations, on June 18, 1982, and published in the **Federal Register** on June 24, 1982 (47 FR 27299), shall be and are the terms and provisions of this order, amending the orders and are set forth in full herein, subject to modifications in §§ .50(b) and .53 in each of the orders.

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

Subpart—Order Regulating Handling

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General Provisions

§ 1137.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

Definitions

§ 1137.2 Eastern Colorado marketing area.

"Eastern Colorado marketing area" hereinafter called the "marketing area" means all the territory within the perimetric boundaries of the counties listed below, including all territory (municipal, State, or Federal) installations, institutions and other establishments:

Colorado Counties

Adams, Arapahoe, Boulder, Cheyenne, Clear Creek, Crowley, Custer, Denver, Douglas, Elbert, El Paso, Gilpin, Huerfano, Jefferson, Kiowa, Kit Carson, Las Animas, Larimer, Lincoln, Logan, Morgan, Otero, Park, Phillips, Pueblo, Sedgwick, Teller, Washington, Weld, Yuma.

Kansas Counties

Cheyenne, Logan, Sherman, Wallace.

§ 1137.3 Route disposition.

"Route disposition" means any delivery to retail or wholesale outlets (including a delivery by a vendor or a sale from a plant or plant store) of any fluid milk product classified as Class I milk, other than a delivery to a pool plant or a nonpool plant: *Provided,* That packaged fluid milk products, except filled milk, that are transferred to a distributing plant from a plant with route disposition in the marketing area, and which are classified as Class I under § 1137.40(a), shall be considered as a route disposition from the transferor plant, rather than from the transferee plant, for the single purpose of qualifying it as a pool distributing plant under § 1137.7(a)(1).

§ 1137.4–1137.6 [Reserved]

§ 1137.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) Any plant, hereinafter referred to as a "distributing pool plant", in which during the month fluid milk products are processed or packaged and from which:

(1) An amount equal to 50 percent or more of the total receipts of Grade A milk (except receipts from distributing pool plants) is disposed of as route disposition, except filled milk. A unit consisting of two or more distributing plants operated by a handler shall be considered as one distributing plant for the purpose of meeting the requirements of this subparagraph if each plant separately meets the requirements of paragraph (a)(2) of this section and the handler notifies the market administrator in writing before the first day of the month that the plants should be considered as a unit. The unit shall continue from month to month thereafter without further notification. If, however, there is any change in the composition of the unit, the handler shall notify the market administrator in writing on or before the first day of the month such change is to be made; and

(2) Ten percent or more of such receipts, or 12,000 pounds per day, whichever is less, are disposed of as route disposition, except filled milk, in the marketing area.

(b) Any plant, hereinafter referred to as a "supply pool plant" from which during the month 50 percent of its dairy farm supply of Grade A milk is moved to distributing pool plant(s) as fluid milk products, except filled milk. Any supply plant which has qualified as a pool plant in each of the months of September

through February shall be a pool plant in each of the following months of March through August unless written request for nonpool status for any such month(s) is furnished in advance to the market administrator. A plant withdrawn from supply pool plant status may not be reinstated for any subsequent month of March through August unless it fulfills the shipping requirements of this paragraph for such month.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, 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, except that if such plant was subject to all provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(3) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(4) Any distributing plant from which there is less than average of 300 pounds of route disposition per day, except filled milk, in the marketing area during the month.

§ 1137.8 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 followsw:

(a) "Other order plant" means a plant that is fully subject to the pricing and pool 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 neither an other order plant nor a producer-handler plant, from which there is a route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant which is neither an other order plant nor a producer-handler plant from which fluid milk products are moved during the month to a pool plant.

§ 1137.9 Handler.

"Handler" means (a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to the milk of its member producers which it causes to be diverted for its account pursuant to § 1137.12;

(c) A cooperative association with respect to the milk of its member producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association, if the cooperative association notifies the market administrator and the operator of the pool plant to whom the milk is delivered, in writing prior to the first day of the month in which the milk is delivered, that it elects to be the handler for all such milk. Such milk shall be deemed to have been received by such cooperative association at the location of the pool plant to which delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other plant described in § 1137.7(c).

§ 1137.10 Producer-handler.

(a) "Producer-handler" means any person who operates a dairy farm and a milk processing plant from which there is route disposition in the marketing area and who:

(1) Receives no fluid milk products during the month from dairy farmers;

(2) Receives no fluid milk products during the month from any other source except by transfer from a pool plant; and

(3) Receives no other source milk for reconstitution into fluid milk products.

(b) Such Person must provide proof satisfactory to the market administrator that the care and management of all the dairy animals and other resources necessary to produce the volume of fluid milk products (excluding transfers from pool plants) and the operation of the processing and distribution business is the personnal enterprise of and at the personal risk of such person.

§ 1137.11 [Reserved].

§ 1137.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who producers milk eligible for distribution as Grade A milk in compliance with the fluid milk product requirements of a duly constituted health authority, whose milk is received at a pool plant or diverted to a nonpool plant that is not a producer-handler plant within the limits set forth in paragraph (a)(1) and (2) of this section:

(1) A cooperative association may divert for its account the milk of any member-producer from whom at least three deliveriers of milk are received during the month at a distributing pool plant. The total quantity of milk so diverted may not exceed 30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of its member producer milk received at distributing pool plants during the month. Diversions in excess of such percentages shall not be considered producer milk, and the diverting cooperative shall specify the dairy farmers whose milk is ineligible as producer milk. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers if each association has filed such a request in writing with the market administrator on or before the first day of the month the agreement is effective. This request shall specify the basis for assigning over-diverted milk to the producer members of each cooperative according to a method approved by the market administrator.

(2) A handler in his capacity as the operator of a distributing pool plant may divert for his account the milk of any producer, other than a member of a cooperative association which has diverted milk pursuant to paragraph (a)(1) of this section, from whom at least three deliveries of milk are received during the month at his distributing pool plant. The total quantity of milk so diverted may not exceed 30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of the milk received at such distributing pool plant during the month from producers who are not members of a cooperative association which has diverted milk pursuant to paragraph (a)(1) of this section. Diversions in excess of such percentages shall not be considered producer milk, and the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk.

(3) For the purposes of the requirements of § 1137.7, milk diverted for the account of the operator of a distributing pool plant, except an operator which is also a cooperative association diverting milk in the same month pursuant to paragraph (a)(1) of this section, shall be included in the receipts of the pool plant from which diverted.

(4) For purposes of location adjustments pursuant to §§ 1137.52 and 1137.75, milk diverted to a nonpool plant shall be considered to have been received at the location of the nonpool plant to which diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1137.44(a)(8)(iii) and the corresponding step of § 1137.44(b); and

(3) Any person with respect to milk produced by him 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.

§ 1137.13 Producer milk.

"Producer milk" means all skim milk and butterfat in milk produced by a producer.

(a) With respect to receipts at a pool plant for which the handler operating such plant is to be responsible pursuant to § 1137.60:

(1) Received directly from such producer; and

(2) Diverted from such pool plant to a nonpool plant for the account of the operator of the pool plant, subject to the limitations and conditions provided in § 1137.12;

(b) With respect to the additional receipts of a cooperative association:

(1) For which the cooperative association is the handler pursuant to § 1137.9(b), subject to the limitations and conditions provided in § 1137.12; and

(2) For which the cooperative association is the handler pursuant to §1137 .9(c).

§ 1137.14 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 § 1137.40(b)(1) from any source other than producers, handlers described in § 1137.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1137.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1137.40(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 § 1137.40(b)(1)) for which the handler fails to establish a disposition.

§ 1137.15 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 milkshape 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.

§ 1137.16 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.

§ 1137.17 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).

§ 1137.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members; and

(c) To be engaged in making collective sales, or maraketing milk or its products for its members.

§ 1137.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1137.51a:

(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 work-day until the next price is reported. A work-day 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 work-day until the next price is reported. A work-day 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 Daily 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 Services.

(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 work-day until the day such prices were previously reported. A work-day 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 work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

Handler Reports

§ 1137.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for the 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 his 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 by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1137.9(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 § 1137.40(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 § 1137.9 (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 his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1137.31 Payroll reports.

(a) On or before the 23rd day after the end of each month, each handler described in 1137.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His 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 § 1137.76(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.

§ 1137.32 Other reports.

(a) On or before the seventh day after the end of each month, each handler described in § 1137.9 (a) and (b) who diverted milk to nonpool plants shall report for the month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(1) The name of the plant to which diverted;

(2) The names of the individual dairy farmers so diverted;

(3) The pounds of skim milk and butterfat from each dairy farmer contained in the milk so diverted; and

(4) The number of days milk of the dairy farmer was received at a pool plant of the diverting order.

(b) In addition to the reports required pursuant to §§ 1137.30 and 1137.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deemes necessary to verify or establish such handler's obligation under the order.

Classification of Milk

§ 1137.40 Classes of utilization.

Except as provided in § 1137.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1137.30 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 that 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 § 1137.15; and

(6) In shrinkage assigned pursuant to § 1137.41(a) to the receipts specified in § 1137.41(a)(2) and in shrinkage specified in § 1137.41(b) and (c).

§ 1137.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1137.30, 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 paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph in amounts equal to 50 times the maximum amount that may be computed pursuant to paragraph (b)(1) through (6) of this section; and

(2) In other source milk not specified in paragraph (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 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 § 1137.9(c), 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 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 is 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 mild 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 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 paragraph (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 § 1137.9(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.

§ 1137.42 Classification of transfers and diversions.

(a) *Transfer to pool plants.* Except as provided in paragraph (e) of this section, skim milk or butterfat transferred in the form of a fluid milk product or a bulk cream product from a pool plant to another pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfer 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 § 1137.44(a)(12) and the corresponding step of § 1137.44(b);

(2) If the transferor-plant receiving during the month other source milk to be allocated pursuant to § 1137.44(a)(7) or the corresponding step of § 1137.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1137.44(A) (11) or (12) or the corresponding steps of § 1137.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts or 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) *Tranfers and diversions to other other plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or 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 a 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 § 1137.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred 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 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 his 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 or a producer-handler 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 paragraph (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 set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1137.30 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 for 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 extend 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 paragraph.

(3) *Transfers by a cooperative association to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1137.9(c) and from a pool plant operated by a cooperative association to another handler's pool plant shall be classified pursuant to § 1137.44 pro rata with producer milk received at the transferee-plant and the value thereof at the class prices shall be included in his value of milk pursuant to § 1137.60.

§ 1137.43 General classification rules.

In determining the classification of producer milk pursuant to § 1137.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed puruant to § 1137.30 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 § 1137.9 (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 §§ 1137.40, 1137.41, and 1137.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1137.9 (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 for which a cooperative association is the handler pursuant to § 1137.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1137.44 Classification of producer milk.

For each month the market administator shall determine for each handler described in § 1137.9(a) for each of his pool plants separately the classification of producer milk and milk subject to the provisions of § 1137.42(e) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Substract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1137.41(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 substracted 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 § 1137.40(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) Substract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1137.40(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 paragraph 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 § 1137.40(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 § 1137.40(b)(1) that was not subtracted pursuant to paragraph (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;

(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 paragraph (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 paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (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 subject to the provisions of § 1137.42(e), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted prusuant 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 § 1137.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (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 paragraph (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 paragraph (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. For purposes of this subtraction at a pool plant operated by a cooperative association, skim milk in fluid milk products transferred to the pool plant of another handler shall be added to the remaining pounds of skim milk in each class prorata to the market average utilization announced pursuant to § 1137.45(a):

(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 paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (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 § 1137.45(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). For purposes of such computation at a pool plant of a cooperative association, the pounds remaining shall include any remainder of the quantity added pursuant to paragraph (a)(11) of this section;

(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 § 1137.42(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 subject to the provisions of § 1137.42(e), 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 subject to the provisions of § 1137.42(e) 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.

§ 1137.45 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 § 1137.44(1)(12) and the corresponding step of § 1137.44(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 another order plant, the class to which such receipts are allocated pursuant to § 1137.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors diclosed 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 of 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 amount and class utilization of producer milk delivered by members of such association to 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

§ 1137.50 Class prices.

Subject to the provisions of § 1137.52, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.30.

(b) *Class II price.* A tentative 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 tentative Class II price shall be the basic Class II formula price computed pursuant to § 1137.51a 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, except that in no event shall the final Class II price be less than the Class III price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the basic formula price for the month plus 10 cents.

(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 the § 1137.51 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 § 1137.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ § 1137.51 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. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1137.51a Basic Class II formula price.

The "Basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1137.51 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 chedder cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1137.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agriculture 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 chedder cheese shall be the sum of the following computations:

(i) Multiply the chedder cheese price by the yield factor used under the Price Support Program for chedder 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 and 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) Multiple 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 chedder 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 valued 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 subparagraphs is of the total of the date represented in paragraph (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 Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price

Support Program for chedder cheese to determine the quantity of milk used in the production of American chedder cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, 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.

§ 1137.52 Plant location adjustments for handlers.

(a) For milk received from producers and from handlers described in § 1137.9(c) at a pool plant, or diverted to a nonpool plant, located more than 50 miles by shortest highway distance as measured by the market administrator, from the plant to the nearest County Courthouse located in Denver, Colo.; Pueblo, Colo.; or Colorado Springs, Colo., and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1137.50(a) shall be reduced by 10 cents if such plant is located more than 50 miles but not more that 75 miles from such courthouse, and by an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 75 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1137.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(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.

§ 1137.53 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 the final Class II price for the preceding month, except that the Class II price announced for the first month during which this section is effective shall be the price specified in the proviso in § 1137.50(b); and on or before the 15th day of each month the tentative Class II price for the following month.

§ 1137.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes in 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

§ 1137.60 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 of each handler with respect to each of his pool plants and of each handler described in § 1137.9 (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 subject to the provisions of § 1137.42(e) that were classified in each class pursuant to §§ 1137.43(a) and 1137.44(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 § 1137.44(a)(14) and the corresponding step of § 1137.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1137.74, that are applicable at the location of the pool plant;

(c) Add the following:

(1) 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 for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1137.44(a)(9) and the corresponding step of § 1137.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1137.44(a)(9) and the corresponding step of § 1137.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III after the computations pursuant to § 1137.44(a)(12) and the corresponding step of § 1137.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section;

(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 § 1137.44(a)(7)(i) through (iv) and the corresponding step of § 1137.44(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 § 1137.44(a)(7)(v) and (vi) and the corresponding step of § 1137.44(b);

(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 § 1137.44(a)(11) and the corresponding step of § 1137.44(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; and

(g) For the first month that this paragraph is effective, subtract 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, both the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1137.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1137.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1137.60 for all

handlers who filed the reports prescribed by § 1137.30 for the month and who made the payments pursuant to §§ 1137.71 and 1137.73 for the preceding month;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1137.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1137.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" per hundredweight of producer milk of 3.5 percent butterfat content delivered to plants at which no location adjustment is applicable.

§ 1137.62 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 12th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1137.70 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 §§ 1137.71, 1137.76, and 1137.77, subject to the provision of § 1137.78 and out of which he shall make all payments pursuant to §§ 1137.72, and 1137.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1137.71 Payments to the producer-settlement fund.

(a) On or before the 14th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total 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 § 1137.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1137.75, of such handler's receipts of producer milk and milk subject to the provisions of § 1137.42(e). In the case of a cooperative association which is a handler, less the amount due from other handlers pursuant to § 1137.73(c), exclusive of differential butterfat values; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1137.60(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.

§ 1137.72 Payments from the producer-settlement fund.

On or before the 15th 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 § 1137.71(a)(2) exceeds the amount computed pursuant to § 1137.71(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 funds are available.

§ 1137.73 Payments to producers and to cooperative associations.

Except as provided in paragraphs (b) and (c) of this section, each handler except a cooperative association shall make payment as specified in paragraph (a) of this section to each producer from whom milk is received:

(a)(1) On or before the last day of each month, to each producer who had not discontinued shipping milk to such handler before the 18th day of the month, a partial payment with respect to milk received during the first 15 days of the month at the Class III price for the preceding month.

(2) On or before the 16th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1137.61, as adjusted by the butterfat differential specified in § 1137.74 and location adjustments specified in § 1137.75, plus or minus adjustments for errors made in previous payments to such producers and less:

(i) Payments made pursuant to paragraph (a)(1) of this section;

(ii) Deductions for marketing services pursuant to § 1137.86; and

(iii) Proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment for such delivery period pursuant to § 1137.72 he may reduce his total payment to all producers uniformly by not more than the amount of reduction in payment from the market administrator; the handler shall, however, complete such payments not later than the date for making such payments pursuant to this paragraph next following receipt of the balance from the market administrator.

(b)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the second day prior to the date of payment to producers in lieu of payments pursuant to paragraph (a) of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk to each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association; and

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion

through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(c) For milk received from a pool plant operated by a cooperative association or from a cooperative association that is a handler pursuant to § 1137.9(c), each handler shall on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(1) A partial payment for milk received during the first 15 days of the month at not less than the Class III price for the preceding month; and

(2) A final settlement equal to the value of such milk at the uniform price pursuant to § 1137.61, as adjusted pursuant to §§ 1137.74 and 1137.75, less payment made pursuant to paragraph (c)(1) of this section.

(d) In making the payments to producers pursuant to paragraphs (a)(2) and (b) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

(1) The month and identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount, or the rate per hunderweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer.

§ 1137.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price 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 simply 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.

§ 1137.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price to be paid for milk received at a pool plant from producers, in bulk from pool plants operated by cooperative associations, and from handlers described in § 1137.9(c) may be reduced by the amount of the location adjustment applicable at the location of the pool plant at which such milk was first physically received from producers, and the uniform price for producer milk diverted to a nonpool plant shall be reduced according to the location of such nonpool plant, each at the rates set forth in § 1137.52; and

(b) For purposes of computations pursuant to §§ 1137.71 and 1137.72 the uniform price shall be adjusted at the rates set forth in § 1137.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price).

§ 1137.76 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 § 1137.30(b) and § 1137.31(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 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 and 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 shim 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 uniform price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform 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 § 1137.60 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 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;

(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 § 1137.60 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 § 1137.60 for such handler shall include, in lieu of the value of other source milk

specified in § 1137.60(f) less the value of such other source milk specified in § 1137.71(a)(2)(ii) a value of milk determined pursuant to § 1137.60 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 § 1137.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ 1137.30(b) and 1137.31(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 § 1137.60 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 § 1137.74, 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 § 1137.74, 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.

§ 1137.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or other verification discloses errors resulting in moneys due a producer, a cooperative association, or the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§ 1137.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1137.71 or 1137.77 relative to payments to the producer settlement fund shall be increased one-half of 1 percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

Administrative Assessment and Marketing Service Deduction

§ 1137.85 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 14th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including milk subject to the provisions of § 1137.42(e) but excluding such milk in the case of a cooperative association which is a handler of milk subject to the provisions of § 1137.42(e)) and such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1137.44(a)(7) and (11) and the corresponding steps of § 1137.44(b), except such other source milk that is excluded from the computations pursuant to § 1137.60(d) and (f); and

(c) route dispostion in the marketing area from a partially regulated distributing plant during the month that exceeds the skim milk and butterfat subtracted pursuant to § 1137.76(a)(2).

§ 1137.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers for milk (other than milk of his own production) pursuant to § 1137.73, shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 14th 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 services 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 make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and its members, and on or before the 16th day after the end of each month, the handler shall pay the aggregate amount of such deductions to the cooperative association, furnishing a statement showing ghe amount of the deductions and the quantity of milk on which the deduction was computed from each producer.

PART 1134—MILK IN THE WESTERN COLORADO MARKETING AREA

Subpart—Order Regulating Handling

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

General Provisions

§ 1134.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

Definitions

§ 1134.2 Western Colorado marketing area.

"Western Colorado marketing area", hereinafter called the "marketing area", means all the territory within the outer boundaries of the following counties in the State of Colorado:

Delta, Garfield, Mesa, Montrose.

§ 1134.3 Route disposition.

"Route disposition" means any delivery to retail or wholesale outlets (including a delivery by a vendor or a sale from a plant or plant store) of any fluid milk product classified as Class I milk, other than a delivery to a pool plant or a delivery in bulk to a nonpool plant.

§ 1134.4 [Reserved]

§ 1134.5 Distributing plant.

"Distributing plant" means any plant at which fluid milk products are pasteurized or packaged and from which there is route disposition of Grade A fluid milk products in the marketing area.

§ 1134.6 Supply plant.

"Supply plant" means any plant at which Grade A milk is received from dairy farmers and from which fluid milk products are moved to a pool distributing plant.

§ 1134.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) Any plant, hereinafter referred to as a "distributing pool plant", in which during the month fluid milk products are processed or packaged and from which:

(1) An amount equal to 50 percent or more of the total receipts of Grade A milk (except receipts from distributing pool plants) is disposed of as route disposition, except filled milk; and

(2) Ten percent or more of such receipts, or 2,000 pounds per day, whichever is less, are disposed of as route disposition, except filled milk, in the marketing area.

(b) Any plant, hereinafter referred to as a "supply pool plant" from which during the month 50 percent of its dairy farm supply of Grade A milk is moved in the form of fluid milk products, except filled milk, to distributing pool plants. Any supply plant which has qualified as a pool plant in each of the months of September through February shall be a pool plant in each of the following months of March through August, unless written request for nonpool status for any such month(s) is furnished in advance to the market administrator. A plant withdrawn from supply pool plant status may not be reinstated for any of the following months of March through August unless it fulfills the shipping requirements of this paragraph for such month(s).

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any distributing plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraph (a) of this section and there is more route disposition (except filled milk) in this marketing area than in the marketing area defined under such other order;

(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of March through August, inclusive, that the milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act; and

(4) Any distributing plant from which there is less than an average of 200 pounds of route disposition per day, except filled milk, in the marketing area during the month.

§ 1134.8 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 neither an other order plant nor a producer-handler plant, 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 neither an other order plant nor a producer-handler plant from which fluid milk products are moved during the month to a pool plant.

§ 1134.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to the milk of its member producers which it causes to be diverted for its account pursuant to § 1134.12;

(c) A cooperative association with respect to milk of its member producers which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by the association or by a hauler under contract to the association;

(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 § 1134.7(c); and

(g) A vendor (any person who does not operate a plant described in paragraph (a), (d), (e) or (f) of this section but who engages in the business of receiving fluid milk products for resale and distributes to retail and wholesale outlets, via a mobile delivery vehicle, packaged fluid milk products received from such a plant).

§ 1134.10 Producer-handler.

"Producer-handler" means any person who is an individual, partnership or corporation and who meets all the following conditions:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by him in accordance with the conditions set forth in paragraph (b) of this section, and

provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is his sole risk and under his complete and exclusive management and control;

(2) Each such farm is owned or operated by him, at his sole risk, and under his complete and exclusive management and control; and

(3) Only he and no other person (except a member of his immediate family, or a stockholder in the case of a corporate farm) employed on such farm(s) own, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced;

(b) Operates a plant in which milk approved by a duly constituted health authority for fluid consumption is processed or packaged and from which there is route disposition during the month in the marketing area: *Provided,* That:

(1) No fluid milk products are received at such plant or by him at any other location except:

(i) From dairy farm(s) as specified in paragraph (a) of this section; and

(ii) From pool plants or other order plants in an amount that is not in excess of the lesser of 5,000 pounds or 5 percent of his Class I sales during the month;

(2) Such plant is operated under his complete and exclusive management and control and at his sole risk, and is not used during the month to process, package, receive or otherwise handle fluid milk products for any other person; and

(3) For the purpose of this section, all fluid milk products disposed of as route disposition or at stores operated by him or by any person (including the operator of a plant, or a vendor) who controls or is controlled by him (e.g., as an interlocking stockholder) or in which he (including, in the case of a corporation, any stockholder therein) his a financial interest, shall be considered as having been received at his plant; and the utilization for such plant shall include all such route and store dispositions; and

(c) Disposes of no other source milk (except that represented by nonfat solids used in the fortification of fluid milk products) as Class I milk.

§ 1134.11 [Reserved]

§ 1134.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the inspection requirements for fluid consumption of a duly constituted health authority, whose milk is received at a pool plant or diverted to a nonpool plant that is not a producer-handler plant within the limits set forth in paragraph (a) (1) and (2) of this section:

(1) A cooperative association may divert for its account the milk of any member-producer from whom not less than 3 days' production was received during the month at a distributing pool plant. The total quantity of milk so diverted may not exceed 60 percent in the months of March, April, May, June, July, and August and 30 percent in other months of its member-producer milk received at pool plants during the month. Diversions in excess of such percentages shall not be considered producer milk, and the diverting cooperative shall specify the dairy farmers whose milk is ineligible as producer milk, Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers if each association has filed a request in writing with the market administrator on or before the first day of the month the agreement is effective. Such request shall specify the basis for assigning overdiverted milk to the producer-members of each cooperative association, at a time and in a manner approved by the market administrator.

(2) A handler may divert for his account the milk of any producer, other than a member of a cooperative association which has diverted milk pursuant to paragraph (a)(1) of this section, from whom not less than 3 days' production was received during the month at the pool plant. The total quantity of milk so diverted may not exceed 60 percent in the months of March, April, May, June July, and August and 30 percent in other months of the milk received at such distributing pool plant during the month from producers who are not members of a cooperative association which has diverted milk pursuant to paragraph (a)(1) of this section. Diversions in excess of such percentages shall not be considered producer milk, and the diverting handler, at a time and in a manner approved by the market administrator, shall specify the dairy farmers whose milk is ineligible as producer milk.

(3) For the purpose of the requirements of § 1134.7, milk diverted for the account of the operator of a distributing pool plant, except an operator who is also a cooperative association diverting milk in the same month pursuant to paragraph (a)(1) of this section, shall be included in the receipts of the pool plant from which diverted.

(4) For purpose of location adjustments pursuant to §§ 1134.52 and 1134.75, milk diverted to a nonpool plant shall be considered to have been received at the location of the pool plant from which diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) isued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1134.44(a)(8)(iii) and the corresponding step of § 1134.44(b); and

(3) Any person with respect to milk produced by him 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.

§ 1134.13 Producer milk.

"Producer milk" means all skim milk and butterfat in milk prodcued by a producer.

(a) With respect to receipts at a pool plant for which the handler operating such plant is to be responsible pursuant to § 1134.60:

(1) Received directly from such producer: and

(2) Diverted from such pool plant to a nonpool plant for the account of the operator of the pool plant, subject to the limitations and conditions provided in § 1134.12;

(b) With respect to the additional receipts of a cooperative association:

(1) For which the cooperative association is the handler pursuant to § 1134.9(b), subject to the limitations and conditions provided in § 1134.12; and

(2) For which the cooperative association is the handler pursuant to § 1134.9(c). If the milk received at a pool plant from a handler described in § 1134.9(c) is purchased on a basis other than farm weights, the amount by which the total farm weights of such milk exceed the weights on which the pool plant's purchases are based shall be producer milk received by the handler described in § 1134.9(c) at the location of the pool plant.

§ 1134.14 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 § 1134.40(b)(1) from any source other than producers,

handlers described in § 1134.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1134.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1134.40(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 § 1134.40(b)(1)) for which the handler fails to establish a disposition.

§ 1134.15 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.

§ 1134.16 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 of more butterfat, with or without the addition of other ingredients.

§ 1134.17 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).

§ 1134.18 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";

(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 its products for its members; and

(c) Has its entire activities under the control of its members.

§ 1134.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1134.51a:

(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 work-day until the next price is reported. A work-day 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 work-day until the next price is reported. A work-day 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 work-day until the day such prices were previously reported. A work-day 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 work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

Handler Reports

§ 1134.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for the 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 his 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 by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1134.9(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 § 1134.40(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 § 1134.9 (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 his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1134.31 Payroll reports.

(a) On or before the 23rd day after the end of each month, each handler described in § 11.34.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His 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 § 1134.76(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.

§ 1134.32 Other reports.

(a) On or before the seventh day after the end of each month, each handler described in § 1134.9 (a) and (b) who diverted milk to nonpool plants shall report for the month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(1) The name of the plant to which diverted;

(2) The name of the individual dairy farmers so diverted;

(3) The pounds of skim milk and butterfat from each dairy farmer contained in the milk so diverted; and

(4) The number of days milk of the dairy farmer was received at a pool plant of the diverting order.

(b) In addition to the reports required pursuant to §§ 1134.30 and 1134.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

Classification of Milk

§ 1134.40 Classes of utilization.

Except as provided in § 1134.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1134.30 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 specificaly accounted for as Class I 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 that specified in paragraph (c)(l)(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:

(l) 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 § 1134.15; and

(6) In shrinkage assigned pursuant to § 1134.41(a) to the receipts specified in § 1134.41(a)(2) and in shrinkage specified in § 1134.41 (b) and (c).

§ 1134.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1134.30, 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 paragraph (b)(1) through (6) of this section, the maximum pounds computed

pursuant to such paragraph divided by 0.02; and

(2) In other source milk not specified in paragraph (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, 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 § 1134.9(c), 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 subparagrph 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 paragraph (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 § 1134.9 (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.

§ 1134.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Except as provided in paragraph (e) of this section, 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 both handlers request the same classification in another class. In either case, the classification of such transfers 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 § 1134.44(a)(12) and the corresponding step of § 1134.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1134.44(a)(7) or the corresponding step of § 1134.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1134.44(a)(11) or (12) or the corresponding steps of § 1134.44(b), the skim milk or butterfat so transferred 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 paragrph (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 a 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 § 1134.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred 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 his 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 or a producer-handler 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 paragraph (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 paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transfer-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1134.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintans 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 regualted 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 paragraph.

(e) *Transfers by a cooperative association to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1134.9(c) and from a pool plant operated by a cooperative association to another handler's pool plant shall be classified pursuant to § 1134.44 pro rata with producer milk received at the transferee-plant and the value thereof at the class prices shall be included in his value of milk pursuant to § 1134.60.

§ 1134.43 General classification rules.

In determining the classification of producer milk pursuant to § 1134.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1134.30 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 § 1134.9 (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 §§ 1134.40, 1134.41, and 1134.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1134.9 (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 for which a cooperative association is the handler pursuant to § 1134.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1134.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1134.9(a) for each of his pool plants separately the classification of producer milk and milk subject to the provisions of § 1134.42(e) by allocating the handler's receipts of skim milk and butterfat to his utilization 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 § 1134.41(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 another 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 § 1134.40(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 § 1134.40(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 paragraph 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 § 1134.40(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 § 1134.40(b)(1) that was not subtracted pursuant to paragraph (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;

(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 paragraph (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 paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (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 adjust 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 subject to the provisions of § 1134.42(e), 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 § 1134.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (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 paragraph (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 paragraph (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 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) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (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 § 1134.45(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 than 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 § 1134.42(a); and

(14)(a) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk subject to the provisions of § 1134.42(e), 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 subject to the provisions of § 1134.42(e) 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.

§ 1134.45 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 § 1134.44(a)(12) and the corresponding step of § 1134.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectivley, 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 another order plant, the class to which such receipts are allocated pursuant to § 1134.44 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 another order plant, the class to which such shipments were allocated by the market administrator of the other order on the basis of the report of 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 amount and class utilization of producer milk delivered by members of such association to 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

§ 1134.50 Class prices.

Subject to the provisions of § 1134.52, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.00.

(b) *Class II price.* A tentative 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 tentative Class II price shall be the basic Class II formula price computed pursuant to § 1134.51a 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, except that in no event shall the final Class II price be less than the Class III price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the basic formula price for the month plus 10 cents.

(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 § 1134.51 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 § 1134.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1134.51 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 reprted 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. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1134.51a Basic Class II formula price.

The "Basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1134.51 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 § 1134.19 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 subparagraphs is of the total of the data represented in paragraph (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 Statistical Reporting Service of the Department for the most recent preceding period, 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 Statistical Reporting Service of the Department for the most recent preceding period, 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.

§ 1134.52 Plant location adjustments for handlers.

(a) For milk received from producers and from handlers described in § 1134.9(c) at a pool plant, located more than 100 miles by shortest highway distance as measured by the market administrator, from the courthouse in Grand Junction, Colorado, and which is classified as Class I milk assigned Class I location adjustment credit under paragraph (b) of this section, the price computed pursuant to § 1134.50(a) shall be reduced by 15 cents if such plant is located more than 100 miles but not more than 110 miles from such courthouse, and by an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1134.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(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.

§ 1134.53 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 the final Class II price for the preceding month, except that the Class II price announced for the first month during which this section is effective shall be the price specified in the proviso in § 1134.50(b); and on or before the 15th day of each month the tentative Class II price for the following month.

§ 1134.54 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

§ 1134.60 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 of each handler with respect to each of his pool plants and of each handler described in § 1134.9 (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 subject to the provisions of § 1134.42(e) that were classified in each class pursuant to §§ 1134.43(a) and 1134.44(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 § 1134.44(a)(14) and the corresponding step of § 1134.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1134.74, 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 § 1134.44(a)(9) and the corresponding step of § 1134.44(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 § 1134.44(a)(7) (i) through (iv) and the corresponding step of § 1134.44(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 § 1134.44(a)(7) (v) and (vi) and the corresponding step of § 1134.44(b);

(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 §1134.44(a)(11) and the corresponding step of § 1134.44(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; and

(g) For the first month that this paragraph is effective, subtract 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, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1134.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1134.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1134.60 for all handlers who filed the reports prescribed by § 1134.30 for the month and who made the payments pursuant to §§ 1134.71 and 1134.73 for the preceding month;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1134.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1134.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1134.62 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 12th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1134.70 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 §§ 1134.71, 1134.76, and 1134.77, subject to the provision of § 1134.78 and out of which he shall make all payments pursuant to §§ 1134.72 and 1134.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1134.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total 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 § 1134.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1134.75, of such handler's receipts of producer milk and milk subject to the provisions of § 1134.42(e). In the case of a cooperative association which is a handler, less the amount due from other handlers pursuant to § 1134.73(e), exclusive of differential butterfat values; and

(ii) The value at the uniform price applicable at the location of the plant from which received (not to be less than the Class III price) of other source milk for which a value is computed pursuant to § 1134.60(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.

(c) Each vendor shall pay the market administrator on or before the 25th day after the end of the month at the difference between the value of the skim milk and butterfat in fluid milk products received from a producer-handler during the month at the Class I price applicable at the location of the producer-handler's plant (but not less than the Class III price) and its value at the Class III price subject to the following conditions:

(1) The quantities of skim and butterfat in fluid milk products on which payments shall be made pursuant to this section shall not exceed the vendor's Class I disposition in the marketing area during the month; and

(2) This section shall not apply to a vendor whose total Class I disposition is obtained from a producer-handler, or whose total receipts and disposition of fluid milk products are considered as a part of the receipts and disposition of the producer-handler pursuant to § 1134.10(b)(3).

§ 1134.72 Payments from the producer-settlement fund.

On or before the 14th 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 § 1134.71(a)(2) exceeds the amount computed pursuant to § 1134.71(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 funds are available.

§ 1134.73 Payments to producers and to cooperative associations.

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer from whom milk is received as follows:

(a) Not later than the last day of the month, to each producer from whom he received milk during the first 18 days of the month, a partial payment for the milk received during the first 15 days of the month, at the Class III price for the preceding month.

(b) Not later than the 16th day of the month, for milk received during the preceding month, an amount computed at not less than the uniform price, per hundredweight, pursuant to § 1134.61, as adjusted by the butterfat differential specified in § 1134.74, location adjustment specified in § 1134.75 and adjustments for errors made in previous payments minus:

(1) Payments made pursuant to paragraph (a) of this section;

(2) Deductions for marketing services pursuant to § 1134.86; and

(3) Deductions approved by the market administrator and authorized in writing by the producer. If the handler has not received full payment for the delivery period from the market administrator pursuant to § 1134.72, he may reduce his total payments to all producers uniformly by the amount owing to him by the market administrator. The handler shall, however, complete all payments not later than the 16th day of the month following receipt of the balance from the market administrator.

(c)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk, and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim by the cooperative association, each handler shall pay to the cooperative association on or before the second day preceding the dates set out in paragraphs (a) and (b) of this section an amount equal to the sum of the individual payments otherwise payable to the producer members of such organization. This payment shall be made for all milk of such producer certified by the cooperative association as a member, beginning the first day of the month following receipt of the certification and ending the last day of the month next preceding the date on which a written notice from the cooperative association terminating the membership was received.

(2) A copy of the request for payment, promise to reimburse, and certified list of members, shall be filed simultaneously with the market administrator. He may verify the information by auditing the records of the cooperative association. Exceptions to the accuracy of the membership certification, by a producer or by a handler, shall be made in writing to the market administrator for his determination.

(d) In making the payments to producers under paragraphs (b) and (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk, a supporting statement which shall show for each month:

(1) The month and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required under this part;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer.

(e) For milk received from a pool plant operated by a cooperative association or from a handler described in § 1134.9(c), each handler shall on or before the second day prior to the date payments are due individual producers, pay such cooperative association for milk as follows:

(1) A partial payment for milk received during the first 15 days of the month at not less than the Class III price for the preceding month; and

(2) A final settlement equal to the value of such milk at the uniform price, as adjusted pursuant to §§ 1134.74 and 1134.75, less payment made pursuant to paragraph (e)(1) of this section.

§ 1134.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price 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.

§ 1134.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price to be paid for milk received at a pool plant from producers, in bulk from a pool plant operated by a cooperative association, and from a handler described in § 1134.9(c) may be reduced by the amount of the location adjustment applicable at the location of the pool plant at which such milk was first physically received from producers, and the uniform price for producer milk diverted to a nonpool plant shall be reduced according to the location of the pool plant from which diverted, each at the rates set forth in § 1134.52; and

(b) For purposes of computations pursuant to §§ 1134.71 and 1134.72 the

uniform price shall be adjusted at the rates set forth in § 1134.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price).

§ 1134.76 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 § 1134.30(b) and § 1134.31(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 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 uniform price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform 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 § 1134.60 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 or an other order plan shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(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 § 1134.60 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 § 1134.60 for such handler shall include, in lieu of the value of other source milk specified in § 1134.60(f) less the value of such other source milk specified in § 1134.71(a)(2)(ii), a value of milk determined pursuant to § 1134.60 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 § 1134.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ 1134.30(b) and 1134.31(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 § 1134.60 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 § 1134.74, 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 § 1134.74, 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 if paragraph (b)(1)(iii) of this section applies.

§ 1134.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or other verification discloses errors resulting in moneys due a producer or the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§ 1134.78 Charges on overdue accounts.

The unpaid obligation of a handler pursuant to §§ 1134.71, 1134.76, 1134.77, 1134.85 and 11.34.86 shall be increased 1 percent for each month or portion thereof beginning with the third day following the date by which such obligation was payable: *Provided*, That:

(a) The amounts payable pursuant to this section shall be computed monthly

on each unpaid obligation, which shall include any unpaid interest charges previously made pursuant to this section; and

(b) For the purpose 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.

Administrative Assessment and Marketing Service Deduction

§ 1134.85 Assessment for order adminstration.

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 13th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including milk subject to the provisions of § 1134.42(e) but excluding such milk in the case of a cooperative association which is a handler of milk subject to the provisions of § 1134.42(e)) and such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1134.44(a)(7) and (11) and the corresponding steps of § 1134.44(b), except such other source milk that is excluded from the computations pursuant to § 1134.60(b) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant during the month that exceeds the skim milk and butterfat subtracted pursuant to § 1134.76(a)(2).

§ 1134.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers for milk (other than milk of his own production) pursuant to § 1134.73, shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 13th 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 services from a cooperative association.

(b) For 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 make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and its members, and on or before the 14th day after the end of each month, the handler shall pay the aggregate amount of such deductions to the cooperative association, furnishing a statment showing the amount of the deductions and the quantity of milk on which the deduction from each producer was computed.

PART 1136—MILK IN THE GREAT BASIN MARKETING AREA

Subpart—Order Regulating Handling

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

Subpart—Order Regulating Handling

General Provisions

§ 1136.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporatred by reference and made part of this order.

Definitions

§ 1136.2 Great Basin marketing area.

"Great Basin marketing area" hereinafter called the "marketing area" means all the territory, including all government reservations and installations and all municipalities, within the places listed below:

Utah Counties

Box Elder, Cache (city of Logan only), Carbon, Daggett, Davis, Duchesne, Emery, Grand, Juab, Millard, Morgan, Salt Lake, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Weber.

Nevada Counties

Elko, White Pine.

Wyoming Counties

Uinta (town of Evanston only).

Idaho Counties

Bannock, Bear Lake, Bingham, Bonneville, Franklin, Jefferson, Madison.

§ 1136.3 Route disposition.

"Route disposition" means any disposition of fluid milk products (including through a vendor or disposition from a plant or plant store) classified as Class I milk, except in bulk form to fluid milk plants and except

Class II and Class III milk disposition to plants which are not fluid milk plants.

§ 1136.4 [Reserved]

§ 1136.5 Fluid milk plant.

"Fluid milk plant" means a plant:

(a) In which milk or milk products (including filled milk) are processed or packaged and from which there is route disposition during the month in the marketing area, or

(b) In which milk is received or processed and from which milk or skim milk is shipped during the month to a plant described in paragraph (a) of this section.

§ 1136.6 [Reserved]

§ 1136.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A fluid milk plant from which not less than 50 percent in any month of September through February, not less than 45 percent in any month of March and April, and not less than 40 percent in any month of May through August of the fluid milk products, except filled milk, approved by a duly constituted health authority for fluid consumption that are physically received at such plant (excluding milk received at such plant from other order plants or dairy farms which is classified in Class III under this order and which is subject to the pricing and pooling provisions of another order issued pursuant to the Act) or diverted therefrom as producer milk to a nonpool plant pursuant to § 1136.13 are disposed of as route disposition, and not less than 15 percent of such receipts are disposed of as route disposition in the marketing area.

(1) For the purpose of determining the qualification pursuant to this paragraph of a fluid milk plant pursuant to § 1136.5(a) operated by a cooperative association, producer milk which such cooperative association causes to be delivered to the pool plant of another handler or diverted therefrom shall be included with receipts of producer milk at such cooperative's plant and the quantity of such milk assigned to Class I pursuant to § 1136.45(d) shall be included as route disposition from such cooperative's plant;

(i) If such a cooperative association operates more than one fluid milk plant as defined in § 1136.5(a), such producer milk and Class I milk shall be included in the computation for whichever plant the cooperative association requests in writing to the market administrator; and

(ii) If no such written request is made, such producer milk and Class I milk shall be prorated among the plants; and

(2) If a handler operates more than one fluid milk plant, the combined receipts and fluid milk products disposition, except filled milk, of any such plants may be used as the basis for qualifying the respective plants pursuant to the preceding computations specified in this paragraph if a handler in writing so requests the market administrator.

(b) A fluid milk plant from which during the month fluid milk products, except filled milk, equal to not less than 50 percent of the total of receipts at the plant from dairy farmers meeting the inspection requirements described in § 1136.12, milk diverted pursuant to § 1136.13 by the handler operating the plant and other fluid milk products, except filled milk, qualified for distribution for fluid consumption received at the plant are shipped to a plant described in paragraph (a) of this section: *Provided,* That a plant which so qualifies in each of the months of August through January as a pool plant shall be a pool plant in each of the following months of February through July unless the operator requests in written notice to the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such notice and thereafter until the plant qualifies as a pool plant on the basis of shipments.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant; and

(3) Any plant described in paragraph (c)(3)(i) or (ii) of this section shall be exempt from paragraph (a) or (b) of this section, unless the Secretary determines otherwise, if it would be fully regulated subject to the classification and pooling provisions of another order issued pursuant to the Act if not so subject to this part:

(i) Any plant from which there is less route disposition, except filled milk, in the Great Basin marketing area than in the marketing area regulated pursuant to such other order if not so subject to this part; or

(ii) Any plant during the months of February through July which qualifies as a pool plant only pursuant to the proviso of paragraph (b) of this section.

§ 1136.8 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 fluid milk plant that is neither an other order plant, a producer-handler plant, nor an exempt plant from which there is route disposition in consumer-type packages or dispenser units (other than to a pool plant) in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant which is neither an other order plant, a producer-handler plant nor an exempt plant from which fluid milk products qualified for fluid consumption are shipped during the month to a pool plant.

(e) "Exempt plant" means a governmental agency, Brigham Young University or any approved plant from which the total route disposition is to individuals or institutions for charitable purposes and is without remuneration from such individuals or institutions.

§ 1136.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to the milk of its member producers which it causes to be diverted for its account pursuant to § 1136.13;

(c) A cooperative association with respect to the milk of its member producers which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association, if the cooperative association notifies the market administrator and the handler to whom the milk is delivered, in writing prior to the first day of the month in which the milk is delivered, that it wishes to be the handler for the milk. In this case the milk is received from producers by the cooperative association;

(d) Any person who operates a partially regulated distributing plant; and

(e) Any other person who operates a fluid milk plant described in §1136.5(a).

§ 1136.10 Producer-handler.

"Producer-handler" means any person who is an individual, partnership or corporation and who meets all the following conditions:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by him in accordance with the conditions set forth in paragraph (b) of this section, and provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is his sole risk and under his complete and exclusive management and control;

(2) Each such farm is owned or operated by him, at his sole risk, and under his complete and exclusive management and control; and

(3) Only he and no other person (except a member of his immediate family or a stockholder in the case of a corporate farm) employed on such farm(s) own, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced;

(b) Operates a plant in which milk approved by a duly constituted health authority for fluid consumption is processed or packaged and from which there is route disposition during the month in the marketing area: *Provided,* That:

(1) No fluid milk products are received at such plant or by him at any other location except:

(i) From dairy farm(s) as specified in paragraph (a) of this section; and

(ii) From pool plants or other order plants in an amount that is not in excess of the larger of 3,000 pounds, or 5 percent of his Class I sales, during the month;

(2) Such plant is operated under his complete and exclusive management and control and at his sole risk, and is not used during the month of process, package, receive, or otherwise handle fluid milk products for any other person; and

(3) For the purpose of this section, all fluid milk products disposed of as route disposition or at stores operated by him or by any person (including the operator of a plant, or a vendor) who controls or is controlled by him (e.g., as an interlocking stockholder) or in which he (including, in the case of a corporation, any stockholder therein) has a financial interest, shall be considered as having been received at his plant; and the utilization for such plant shall include all such route and store dispositions; and

(c) Disposes of no other source milk (except that represented by nonfat solids used in the fortification of fluid milk products) as Class I milk.

§ 1136.11 [Reserved]

§ 1136.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means a dairy farmer who produces milk in compliance with the inspection requirements of a duly constituted health authority for fluid consumption (as used in this subpart, compliance with inspection requirements shall include production of milk acceptable for fluid consumption of agencies of the United States Government located in the marketing area) which milk is delivered to a pool plant during the month or diverted to a nonpool plant within the limits set forth in §1136.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to §1136.44(a)(8)(iii) and the corresponding step of §1136.44(b); and

(3) Any person with respect to milk produced by him 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.

§ 1136.13 Producer milk.

"Producer milk" means only that skim milk and butterfat contained in milk from producers (in an amount determined by weights and measurements for individual producers, as taken at the farm in the case of milk moved from the farm in a tank truck) which is:

(a) Received from the producers at a pool plant but not including milk received from a handler described in § 1136.9(c);

(b) Received by a handler described in § 1136.9(c); or

(c) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant or an exempt plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the location of the plant to which diverted;

(2) Not less than 6 days' production of the producer whose milk is diverted is physically received at a pool plant;

(3) A cooperative association may divert for its account only the milk of member producers: *Provided,* That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at all pool plants from member producers in any month of March through August, and that exceeds 20 percent of such receipts in any month of September through February, shall not be producer milk;

(4) The operator of a pool plant other than a cooperative association may divert for his account only the milk of producers who are not members of a cooperative association: *Provided,* That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at such plant from producers who are not members of a cooperative association in any month of March through August, and that exceeds 20 percent of such receipts in any month of September through February, shall not be producer milk;

(5) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (c)(3) and (4) of this section. If the handler fails to make such designation, no milk diverted by him shall be producer milk; and

(6) Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their members if each association has filed such a request in writing with the market administrator on or before the 1st day of the month the agreement is effective. The request shall specify the basis for assigning over-diverted milk to the producer members of each cooperative association according to a method approved by the market administrator.

§ 1136.14 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 § 1136.40(b)(1) from any source other than producers, handlers described in § 1136.9(c), or pool plants;

(b) Receipts in packaged form from other plants or products specified in § 1136.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1136.40(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 § 1136.40(b)(1)) for which the handler fails to establish a disposition.

§ 1136.15 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.

§ 1136.16 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 of more butterfat, with or without the addition of other ingredients.

§ 1136.17 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).

§ 1136.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales, or marketing milk or its products for its members; and

(c) To have its entire activities under the control of its members.

§ 1136.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1136.51a:

(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 work-day until the next price is reported. A work-day 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 work-day until the next price is reported. A work-day 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 work-day until the day such prices were previously reported. A work-day 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 work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

Handler Reports

§ 1136.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for the 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 his 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 by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1136.9(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 § 1136.40(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 § 1136.9 (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 his receipts and utilization of milk, filled milk, and

milk products in such manner as the market administrator may prescribe.

§ 1136.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1136.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His 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 § 1136.76(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.

§ 1136.32 Other reports.

In addition to the reports required pursuant to §§ 1136.30 and 1136.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

Classification of Milk

§ 1136.40 Classes of utilization.

Except as provided in § 1136.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1136.30 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 that 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 § 1136.15; and

(6) In skrinkage assigned pursuant to § 1136.41(a) to the receipts specified in § 1136.41(a)(2) and in shrinkage specified in § 1136.41 (b) and (c).

§ 1136.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1136.30, 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 paragraph (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 paragraph (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 excesss 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 § 1136.9(c), 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 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 paragraph (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 § 1136.9 (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.

§ 1136.42 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 both handlers request the same classification in another class. In either case, the classification of such transfers 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 § 1136.44(a)(12) and the corresponding step of § 1136.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1136.44(a)(7) or the corresponding step of § 1136.44(b), the skim milk or butterfat so transferred shall be classifed so as to allocate the least possible Class I utilization to such other source milk; and

(3) It the transferor-handler received during the month other source milk to be allocated pursuant to § 1136.44(a) (11) or (12) or the corresponding steps of § 1136.44(b), the skim milk or butterfat so transferred 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 a 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 § 1136.40.

(c) *Transfers to producer-handlers and to exempt plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or an exempt plant shall be classified:

(1) As Class I milk, if transferred 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 his 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 an exempt 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 paragraph (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 paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1136.30 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 paragraph.

(e) *Transfers by a handler described in § 1136.9(c) to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1136.9(c) to another handler's pool plant shall be classified pursuant to § 1136.44 pro rata with producer milk received at the transferee-plant and the value thereof at the class prices shall be included in his value of milk pursuant to § 1136.60.

§ 1136.43 General classification rules.

In determining the classification of producer milk pursuant to § 1136.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1136.30 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 § 1136.9 (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 §§ 1136.40, 1136.41, and 1136.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1136.9 (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 for which a cooperative association is the handler pursuant to § 1136.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1136.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1136.9(a) for each of his pool plants separately the classification of producer milk and milk received from a handler described in § 1136.9(c) by allocating the handler's receipts of skim milk and butterfat to his utilization 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 § 1136.41(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 § 1136.40(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 § 1136.40(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 paragraph 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 § 1136.40(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 § 1136.40(b)(1) that was not

subtracted pursuant to paragraph (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 or from an exempt 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 another 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 paragraph (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 paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (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 § 1136.9(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)(iv) 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)(iv) 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 § 1136.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (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) Subtract to the provisions of paragraph (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 paragraph (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 paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (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 § 1136.45(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 § 1136.42(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 froma handler described in § 1136.9(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 § 1136.9(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.

§ 1136.45 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 § 1136.44(a)(12) and the corresponding step of § 1136.44(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 § 1136.44 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 of 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 amount and class utilization of producer milk delivered by members of such association to 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

§ 1136.50 Class prices.

Subject to the provisions of § 1136.52, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.90.

(b) *Class II price.* A tentative 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 tentative Class II price shall be the basic Class II formula price computed pursuant to § 1136.51a 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, except that in no event shall the final Class II price be less than the Class III price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the basic formula price for the month plus 10 cents.

(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 § 1136.51 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 § 1136.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1136.51 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. For the purpose of computing the

Class I price, the resulting price shall be not less than $4.33.

§ 1136.51a Basic Class II formula price.

The "Basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1136.51 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 § 1136.19 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 subparagraphs is of the total of the data represented in paragraph (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 Statistical Reporting Service of the Department for the most recent preceding period, 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 Statistical Reporting Service of the Department for the most recent preceding period, 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.

§ 1136.52 Plant location adjustments for handlers.

(a) For milk which is received from producers at a pool plant, or is diverted therefrom, or is delivered by a handler described in § 1136.9(c) to a pool plant and which is assigned to Class I milk, subject to the limitations pursuant to paragraph (b) of this section, the price computed pursuant to § 1136.50(a) shall be reduced as follows:

Distance (miles)	Rate per hundredweight (cents)
150 but not more than 160	22.0
For each additional 10 miles or fraction thereof in excess of 160	1.5

Such distance to be the shortest hard-surfaced highway distance as determined by the market administration from the plant to the County Courthouse of Salt Lake County, Utah;

(b) In applying such credits to transfers of fluid milk products between pool plants, a Class I location adjustment credit for the transferor-plant shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) From the pounds of skim milk remaining in Class I at the transferee-plant after the computations are made pursuant to § 1136.44(a)(12) subtract the pounds of skim milk in receipts of milk at the transferee-plant from producers and handlers described in § 1136.9(c);

(2) Assign any remaining pounds of skim milk in Class I at the transferee-plant to the skim milk in receipts of fluid milk products from other pool plants, first to the transferor-plants at which no location adjustment applies and then in sequence beginning with the plant at which the least location adjustment applies:

(3) Compute the total amount of location adjustment credits to be assigned to transferor-plant pursuant to paragraph (b)(2) of this section by the applicable adjustment rate for each such 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 § 1136.42(a), in sequence beginning with the plant at which the least location adjustment 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 received from such plants; and

(5) Class I 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.

§ 1136.53 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 the final Class II price for the preceding month, except that the Class II price announced for the first month during which this section is effective shall be the price specified in the proviso in § 1136.50(b); and on or before the 15th day of each month the tentative Class II price for the following month.

§ 1136.54 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

§ 1136.60 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 of each handler with respect to each of his pool plants and of each handler described in § 1136.9 (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 § 1136.9(c) that were classified in each class pursuant to §§ 1136.43(a) and 1136.44(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 § 1136.44(a)(14) and the corresponding step of § 1136.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1136.74, 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 § 1136.44(a)(9) and the corresponding step of § 1136.44(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 § 1136.44(a)(7)(i) through (iv) and the corresponding step of § 1136.44(b), excluding receipts of bulk fluid cream products from another 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 § 1136.44(a)(7) (v) and (vi) and the corresponding step of § 1136.44(b);

(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 § 1136.44(a)(11) and the corresponding step of § 1136.44(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; and

(g) For the first month that this paragraph is effective, subtract 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, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1136.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1136.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1136.60 for all handlers who filed the reports prescribed by § 1136.30 for the month and who made the payments pursuant to § 1136.71 for the preceding month;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1136.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1136.60(f); and

(e) Subtract not less than 5 cents nor more than 6 cents per hundredweight. The result shall be known as the uniform price.

§ 1136.62 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 12th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1136.70 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 §§ 1136.71, 1136.76, and 1136.77, subject to the provision of § 1136.78 and out of which he shall make all payments pursuant to §§ 1136.72 and 136.77: *Provided,* That any payments due to any handler shall be offset by any payments due from such handler.

§ 1136.71 Payments to the producer-settlement fund.

(a) On or before the 14th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total 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 § 1136.60.

(2) The sum of:

(i) The value at the uniform rice, as adjusted pursuant to § 1136.75, of such handler's receipts of producer milk and milk received from a handler described in § 1136.9(c). In the case of a cooperative association which is a handler, less the amount due from other handlers pursuant to § 1136.73(d), exclusive of differential butterfat values; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1136.60(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 adminstrator 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.

§ 1136.72 Payments from the producer-settlement fund.

On or before the 15th 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 § 1136.71(a)(2) exceeds the amount computed pursuant to § 1136.71(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 funds are available.

§ 1136.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraphs (b), (d), or (e) of this section, each handler shall make payment to each producer from whom milk is received as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month, at not less than 1.2 times the Class III price for the preceding month; and

(2) On or before the 17th day of the following month, for producer milk received during the month, at not less than the uniform price pursuant to § 1136.61 adjusted by the butterfat differential specified in § 1136.74 and location adjustment specified in § 1136.75, subject to the following adjustments:

(i) Less deductions for marketing services pursuant to § 1136.86;

(ii) Less the payment made pursuant to paragraph (a)(1) of this section;

(iii) Plus or minus adjustments for errors made in previous payments to such producer and proper deductions authorized in writing by such producer; and

(iv) If by the date specified, such handler has not received full payment from the market administrator pursuant to § 1136.72 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 this paragraph next following after the receipt of the balance due from the market administrator.

(b) In the case of a cooperative association which is authorized by its members to collect payment for their milk and which has requested such payment from any handler in writing and has so notified the market administrator, payment for milk received during the month by such handler(s) from producer-members of such association shall be accomplished as follows:

(1) On or before the third day prior to the last day of each month such handler shall pay to such cooperative association not less than 1.2 times the Class III price for the preceding month for the hundredweight of such milk received during the first 15 days of the month; and

(2) On or before the 16th day of the following month such handler shall pay to such cooperative association the sum of the payments computed at the appropriate uniform price with respect to deliveries by producer-members of such association to handlers from whom payments have been requested, less the amounts of payments made to such association pursuant to paragraph (b)(1) of this section, and less the amount retained by handlers as authorized deductions.

(c) Each handler who received milk from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association and to the market administrator on or before the 7th day of the following month, as follows:

(1) The total pounds of milk received during the month, and if requested, the pounds received from each member-producer;

(2) The amount of payment made pursuant to paragraph (b)(1) of this section and the quantity of milk to which such payment applied; and

(3) The amount or rate and nature of any proper deductions authorized to be made from payments.

(d) Each handler shall pay a cooperative association for milk received by him from such cooperative in its capacity as a handler described in § 1136.9(c) as follows:

(1) On or before the second day prior to the last day of each month, for milk received during the first 15 days of the month an amount per hundredweight not less than 1.2 times the Class III price for the preceding month; and

(2) On or before the 15th day of the following month for milk received during the month, not less than the value of such milk at the applicable uniform price, less payment made pursuant to paragraph (d)(1) of this section.

(e) Each handler shall pay a cooperative association for milk received by him from a pool plant operated by such association as follows:

(1) On or before the second day prior to the end of each month, for milk received during the first 15 days of the month an amount per hundredweight not less than 1.2 times the Class III price for the preceding month; and

(2) On or before the 15th day of the following month for milk received during the month, not less than an amount computed by multiplying the minimum prices for milk in each class subject to the applicable location adjustment provided in § 1136.52 and the butterfat differential provided by § 1136.74, by the hundredweight of milk in each class pursuant to § 1136.44, such amount to be reduced in the amount of the payment made pursuant to paragraph (e)(1) of this section.

§ 1136.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price 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.

§ 1136.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price to be paid for milk received at a pool plant shall be reduced according to the location of the pool plant, at the rates set forth in § 1136.52; and

(b) For purposes of computations pursuant to §§ 1136.71 and 1136.72 the uniform price shall be adjusted at the rates set forth in § 1136.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price).

§ 1136.76 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 § 1136.30(b) and § 1136.31(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 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 uniform price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform 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 § 1136.60 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 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;

(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 § 1136.60 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 § 1136.60 for such handler shall include, in lieu of the value of other source milk specified in § 1136.60(f) less the value of such other source milk specified in § 1136.71(a)(2)(ii), a value of milk determined pursuant to § 1136.60 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 § 1136.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ 1136.30(b) and 1136.31(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 § 1136.60 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 § 1136.74, 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 § 1136.74, 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.

§1136.77 Adjustment of accounts.

Whenever audit by the market administrator of any reports, books, records, or accounts or other verification discloses errors resulting in moneys due (a) the market administrator from a handler; (b) a handler from the market administrator; or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§1136.78 Charges on overdue accounts.

The unpaid obligation of a handler pursuant to §§ 1136.71, 1136.76, 1136.77 and 1136.85, shall be increased 1 percent for each month or portion thereof beginning with the third day following the date by which such obligation was payable: *Provided*, That:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid interest charges previously made pursuant to this section; and

(b) For the purpose 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.

Administrative Assessment and Marketing Service Deduction

§1136.85 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 14th day after the end of the month 4 cents per

hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including milk received from a handler described in § 1136.9(c) but excluding in the case of a cooperative association which is a handler pursuant to § 1136.9(c), milk which was received at the pool plant of another handler) and such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1136.44 (a)(7) and (11) and the corresponding steps of § 1136.44(b), except such other source milk that is excluded from the computations pursuant to § 1136.60(d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant during the month that exceeds the skim milk and butterfat subtracted pursuant to § 1136.76(a)(2).

§1136.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers for milk pursuant to § 1136.73,(other than milk of his own production) shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 14th 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 services 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 make deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and its members. On or before the 15th day after the end of each month, the handler shall pay the aggregate amount of such deductions to the cooperative association, furnishing a statement showing the amount of the deductions and the quantity of milk on which the deduction was computed from each producer.

[FR Doc. 82-22909 filed 8-24-82; 8:45 a.m.]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

Proposed Amendment Relating to Restrictions on Nondeposit Obligations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend section 329.10(b)(2) of FDIC regulations, relating to obligations other than deposits, by eliminating the requirement that retail repurchase agreements ("repos" or "RPs") be issued for less than 90 days. This proposed amendment would permit state nonmember banks to issue repos in any denomination without regard to maturity date.

DATE: Comments must be received on or before October 12, 1982.

ADDRESS: Interested persons are invited to submit comments regarding this proposal to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Carol Galbraith, Attorney, 202–389–4171.

SUPPLEMENTARY INFORMATION: Part 329 of FDIC's regulations prescribes interest rates that may be paid on deposits by FDIC-supervised banks. (12 CFR 329 (1982)). Prior to August 1, 1979, § 329.10(b)(2) of FDIC's regulations exempted from the coverage of Part 329 any obligation other than a deposit obligation of an insured nonmember bank that:

> (2) Evidence an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof, that the bank is obligated to repurchase.

In August 1979, the FDIC and the Federal Reseve Board ("FRB") issued final rules narrowing the exemption for "retail" repos by requiring that repos for less than $100,000 mature in less than 90 days and not be automatically renewed or extended (12 CFR 329.10(b)(2) and 12 CFR 217.1(f)(2)). The Federal Home Loan Bank Board ("FHLBB") issued a similar rule (12 CFR 531.12). These amendments are referred to generically hereinafter as "the 1979 Amendments".

On May 30, 1979, the FDIC proposed that all RPs of less than $100,000 be subject to interest rate ceilings (44 FR 32397 (1979)). Because most of those who commented objected that such a rule would preclude market rate returns on funds of small businesses and municipalities, the final rule exempted from interest rate ceilings "retail repos," RPs of less than $100,000, provided that they matured in less than 90 days and could not be automatically renewed or extended. In defining retail RPs, the conditions of less than 90 days and no automatic renewal or extensions were fashioned as integral restrictions so that these conditions would discourage widespread offering of consumer RPs and thereby limit the extent of interest rate circumvention, particularly at the interest rate levels prior to the last quarter of 1979.

Numerous pertinent changes have occurred in the financial environment since August 1979. In March 1980, the Depository Institutions Deregulation Act of 1980 was enacted, mandating the extinction of interest rate ceilings by March 31, 1986. (Depository Institutions Deregulation Act of 1980 12 U.S.C. 3501–3509 (1980)). During 1981, a greatly increasing number of banks began marketing repurchase agreements in denominations of less than $100,000. Federal and State supervisory agencies began issuing specific guidance on the issuance of these retail repos. The FDIC adopted its statement of policy on retail repurchase agreements on September 28, 1981 (Statement of Policy, 46 FR 49197 (1981)).

On May 20, 1982, after having published a proposed rule (47 FR 8204 (1982) (proposed February 18, 1982)) the FHLBB adopted a final rule which eliminates the prohibition against automatic renewal (47 FR 23140 (1982) (to be codified at 12 CFR 563.8–4)). Subsequently, a number of bankers and the American Bankers Association asked the FDIC to eliminate the prohibition against automatic renewal as a matter of competitive fairness to banks. On August 16, 1982, the FDIC adopted a final rule eliminating the prohibition against automatic renewal, and adopted for public comment, this proposed rule that the restriction of less than 90-day maturity be eliminated. The FDIC's statement of policy on retail repurchase agreements continues to apply to all repos in denominations of less than $100,000.

If adopted as a final rule, this proposed amendment would permit state nonmember banks to issue repos in any denomination without regard to maturity date, as was permitted prior to the 1979 Amendments.

PART 329—INTEREST ON DEPOSITS

This proposed rule would relieve a restriction and would not entail additional expense to any affected bank. Thus, the Regulatory Flexibility Act (5

U.S.C. 601–612 (Supp. 1982)) is not applicable. This proposed rule would not entail any reporting or recordkeeping requirements; thus, the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520 (Supp. 1982)) is not applicable.

List of Subjects in 12 CFR Part 329

Banks, banking.

In consideration of the foregoing, it is proposed to amend 12 CFR 329 (1982) by eliminating footnote 17a and revising § 329.10(b)(2) to read as follows:

§ 329.10 Obligations other than deposits.

* * * * *

(b) *Exceptions.* The provisions of this Part 329 shall not apply to any obligation other than a deposit obligation of an insured nonmember bank that:

* * * * *

(2) Evidences an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof, that the bank is obligated to repurchase;

* * * * *

By Order of the Board of Directors, August 16, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 82-23229 Filed 8-24-82; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[811-0158]

Canada Cement Lefarge, Ltd., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require, among other things, a Montreal, Canada producer of cement to fully divest itself of a Chattanooga, Tenn. cement manufacturing plant and specified terminals associated with it within eighteen (18) months of the date the order becomes final to a Commission-approved purchaser. For five years, the respondent must offer to sell to the purchaser of the plant and terminals, twenty thousand tons of cement annually. Further, respondent must offer technical assistance for operation of the plant and terminals. Respondent is required to offer specific tonnages of clinker and cement to independent buyers on an annual basis for five years. Should respondent fail to divest itself of the Tennessee plant within the specified time period, it must then sell an Alabama plant and associated terminals within a twelve (12) month period.

DATE: Comments must be received on or before October 25, 1982.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/CS 7, Richard L. Rosen, Assistant Director for Transportation, Washington, D.C. 20580. (202) 724–1155.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Cement.

Before Federal Trade Commission

In the matter of Canada Cement Lafarge Ltd., a corporation, and Lafarge Coppee S.A., a corporation, File No. 811–0158, agreement containing consent order.

The Federal Trade Commission having initiated an investigation of the proposed acquisition of General Portland Inc. By Canada Cement Lafarge Ltd. and Lafarge Coppee S.A., and it now appearing that Canada Cement Lafarge Ltd. and Lafarge Coppee S.A., hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order with respect to the proposed acquisition being investigated,

Whereas, the purpose of this agreement is to preserve and increase competition in the sale of portland and oilwell cement in the states of Alabama, Florida, Georgia, Louisiana, Mississippi, Tennessee and Texas; and

Whereas, the parties hereto intend to meet this purpose by entering into this consent agreement;

It is hereby agreed by and between Canada Cement Lafarge Ltd. and Lafarge Coppee S.A., by their duly authorized officers and attorneys, and counsel for the Federal Trade Commission that:

1. Canada Cement Lafarge Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of Canada, with its office and principal place of business located at 606 Cathcart, Montreal, Quebec, Canada H3B 1L7.

2. Lafarge Coppee S.A. is a French corporation with its principal executive offices at 28, rue Emile-Menier, 75116 Paris, France. Lafarge Coppee S.A. owns approximately 54% of the voting capital stock of Canada Cement Lafarge Ltd.

3. General Portland Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its principal executive offices located at 12700 Park Central Place, Dallas, Texas 75251.

4. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

5. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the postal authorities of the complaint and decision containing the agreed-to order to the address

of Canada Cement Lafarge Ltd. as stated in this agreement shall constitute service on the proposed respondents. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the terms of the order or this agreement may be used to vary or contradict the terms of the order.

9. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order:

a. "Respondents" means Canada Cement Lafarge Ltd., a corporation organized, existing and doing business under the laws of Canada with its office and principal place of business located at 606 Cathcart, Montreal, Quebec, Canada H3B 1L7; Lafarge Coppee S.A., a French corporation with its principal executive offices located at 28, rue Emile-Menier, 75116 Paris, France; and their subsidiaries and the successors and assigns of their businesses.

b. "Subsidiary" means any corporation in which Respondents own, either directly or indirectly, more than fifty percent (50%) of the outstanding shares of a class of securities having voting power to elect a majority of the Board of Directors of the corporation (whether or not any other class of security has or might have voting powers by reason of the happening of a contingency).

c. "Chattanooga Plant" means the cement manufacturing plant located at Chattanooga, Tennessee, presently owned or leased by General Portland Inc., and all assets associated with the plant as may be necessary for the plant to operate as a going concern and a viable competitor in the production and sale of cement. It does not include the Specified Terminals defined in (e) below.

d. "Demopolis Plant" means the cement manufacturing plant presently owned or leased by Respondents at Demopolis, Alabama (and divestiture of the Demopolis plant shall include the granting of option(s) to acquire any or all of the associated distribution terminals at Birmingham, Alabama; Mobile, Alabama; Doraville, Georgia; Atlanta, Georgia; Bainbridge, Georgia; and New Orleans, Louisiana) and all other assets associated with the plant as may be necessary for the plant to operate as a going concern and a viable competitor in the production and sale of cement.

e. "Specified Terminals" means the distribution terminals in Knoxville, Tennessee; Atlanta, Georgia; Columbus, Georgia; and Tallahassee, Florida, all presently owned or leased by General Portland Inc., and the distribution terminal in Birmingham, Alabama presently owned or leased by Respondents.

f. "Cement" means portland cement Types I through V, as specified by the American Society for Testing and Materials.

g. "Oilwell cement" means class H oilwell cement as defined in Specification 10A of the American Petroleum Institute.

h. "Clinker" means the intermediate product in the cement manufacturing process produced by crushing raw materials (primarily limestone, shale, clay, slate, silica, sand or iron ore) and then burning the mixture in high temperature rotary kilns.

i. "Plant Area" means each area in the United States within a 300 mile radius of any cement plant owned or leased by Respondents in either the United States or Canada. For any acquisition(s) of assets subject to Paragraph IX of this Order, "Plant Area" shall be determined as of the date of such acquisition(s).

j. "Independent Buyer" means any cement manufacturer other than Respondents.

I

It is ordered that Respondents, their officers, directors, agents, representatives, and employees, within eighteen months from the date on which this Order becomes final, shall divest themselves, absolutely, in good faith, of all right, title and interest in the Chattanooga Plant together with all additions and improvements thereto. If, at the expiration of eighteen months from the date on which this Order becomes final, respondents have not divested the Chattanooga Plant, and no application for approval by the Commission of the divestiture of the Chattanooga Plant is pending, then Respondents shall either (1) divest the Chattanooga Plant within three months; or (2) divest the Demopolis Plant within twelve months; *provided, however,* that if at the expiration of eighteen months from the date on which this Order becomes final, an application for divestiture of the Chattanooga Plant is pending, the additional time that Respondents have to divest the Chattanooga Plant (three months) or the Demopolis Plant (twelve months) shall not begin to run, and an obligation to sell the Demopolis Plant shall not accrue, until and unless the pending application is finally disapproved by the Commission. Divestiture shall be made to an acquirer approved by the Commission.

II

It is further ordered that as part of any divestiture of the Chattanooga Plant, Respondents shall offer to the proposed acquirer option(s) to acquire Respondents' rights, title and interest in the Specified Terminals and all of their right, title and interest to the surface and mineral rights to, and all improvements upon, the approximately 3,000 acres of land located in McMinn County near Calhoun, Tennessee, on the Hiawassee River and presently owned or leased by General Portland Inc.

III

It is further ordered that for a period of five years from the date of their divestiture of the Chattanooga Plant, Respondents shall offer to sell at commercially reasonable wholesale prices, terms and conditions 20,000 tons of cement annually to the acquirer of the Chattanooga Plant.

IV

It is further ordered that for a period of five years from the date of their divestiture of the Chattanooga Plant, Respondents shall offer to provide technical assistance to the acquirer of that plant at commercially reasonable prices, terms and conditions. If an acquirer of the Chattanooga Plant requests technical assistance within a three year period from the date of his acquisition of the Chattanooga Plant for a modernization or replacement project extending beyond the five year period, and agrees to commercially reasonable prices, terms and conditions, Respondents shall provide that technical assistance for a reasonable time to complete the project.

V

It is further ordered that for a period of five years from the date that this Order becomes final, Respondents shall offer to sell, or sell, including sales pursuant to contracts in force at the time this Order becomes final, to Independent Buyers with a cement manufacturing or grinding plant or distribution terminal in Florida for shipments to or delivery in Florida at commercially reasonable wholesale prices, terms and conditions: (1) At least 250,000 tons of cement annually; and (2) at least 250,000 tons of clinker annually.

VI

It is further ordered that for a period of five years from the date that this Order becomes final, Respondents shall offer to sell, or sell, to Independent Buyers with a cement distribution terminal (but not a cement manufacturing plant) in Louisiana for shipment to or delivery in Louisiana at commercially reasonable wholesale prices, terms and conditions 50,000 tons of oilwell cement annually. Respondents shall agree to store such oilwell cement at its New Orleans terminal upon any such buyer's prior and commercially timely request for commercially reasonable charges, terms and conditions and for a commercially reasonable period of time.

VII

It is further ordered that Respondents shall not be required to divest the Demopolis Plant in the event that, as a result of events beyond the control of Respondents, the said Chattanooga Plant has ceased to exist physically or to be operable as a plant for the production of cement.

VIII

It is further ordered that pending divestiture of the properities required by Paragraph I of this Order, or that may be divested under Paragraph II of this Order, Respondents shall not cause or permit the wasting or deterioration of such properties, in any manner which may impair the marketability or viability of any such properties, except for normal wear and tear or in the ordinary course of operation.

IX

It is further ordered that for a period of ten years Respondents shall not acquire, without the prior approval of the Commission, any cement manufacturing or grinding plant or distribution terminal in South Carolina, Georgia, Alabama, Tennessee and Florida or in any Plant Areas in which Respondents, at the time of the acquisition, are then engaged in the manufacture of cement.

X

It is further ordered that within one hundred and twenty days from the date on which this Order becomes final, and every one hundred and twenty days thereafter until they have fully complied with Paragraphs I and II of this Order, Respondents shall submit in writing to the Commission a verified report setting forth in such detail as the Commission staff shall request the manner and form in which they intend to comply, are complying or have complied therewith.

XI

It is further ordered that within sixty days from the date on which this Order becomes final, and annually thereafter upon each anniversary of the date on which this Order becomes final until the expiration of the prohibitions in Paragraph IX of this Order, Respondents shall submit in writing to the Commission verified reports listing all acquisitions of any equity interest in, and mergers with, any business entity, corporate or non-corporate, engaged in the production of cement in the United States, the date of each such acquisition or merger, and such additional information relating thereto as may from time to time be requested.

XII

It is further ordered that with respect to Paragraphs III, V and VI of this Order, Respondents shall maintain adequate records to be furnished upon request of the staff of the Commission, which evidence compliance with the provisions of this Order, including, but not limited to records showing: the amount of cement, oilwell cement or clinker sold pursuant to Paragraphs III, V or VI of this Order, the identity of the purchasing persons and the prices, terms and conditions of the sale of such cement, oilwell cement or clinker.

XIII

It is further ordered that Respondents shall notify the Commission at least thrity days prior to any proposed corporate changes which may affect compliance obligations arising out of this Order, such as dissolution, assignment or sale resulting in the emergence of successor corporations.

Canada Cement Lafarge Ltd. and General Portland, Inc.; Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission accepted an agreement to a proposed consent order from Canada Cement Lafarge Ltd. ("Canada Cement Lafarge") in settlement of a complaint issued against Canada Cement Lafarge.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement's proposed order.

The complaint underlying the proposed consent order alleges that Canada Cement Lafarge's acquisition of all of the outstanding common stock of General Portland, Inc. ("General Portland") violates Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. Essentially, the complaint alleges that the effect of the acquisition may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of cement in the Inland Market, the Gulf Coast Market and the Florida Market, which are all located in the southeastern part of the United States. Cement is a vital building material that is principally used in the production of concrete. Prior to the acquisition, Canada Cement Lafarge and General Portland were direct competitors, both engaged in manufacturing and selling cement in these three markets. The proposed consent order discussed here is intended to lessen any anticompetitive effect that might have resulted because of the loss of a competitor in these areas of the country.

To accomplish this goal, the requirements contained in the proposed order focus primarily upon the acquisition of the Chattanooga plant and certain cement distribution terminals located in Tennessee, Georgia, and Florida which serve the Inland market. If the order is accepted, Canada Cement Lafarge will be required to find a suitable buyer (or buyers) for that plant and those specified terminals within eighteen (18) months of the date the order is entered. The buyer's suitability will be determined by the Federal Trade Commission and will depend upon whether the buyer will be capable of maintaining the Chattanooga plant and/or associated terminals as a competitive entity. To further assure that the Chattanooga plant will continue to provide competition in the area, the proposed order requires that for five years, Canada Cement Lafarge must offer to sell to the purchasers of the plant and terminals twenty thousand tons of cement annually. Similarly, Canada Cement Lafarge is required to offer to sell to the purchasers 3,000 acres of land in Tennessee, as well as technical assistance for operation of the plant and terminals. In the event that Canada Cement Lafarge fails to sell its Chattanooga plant to a suitable buyer within the specified time period, it must then sell its Demopolis plant within the following twelve months. While Canada Cement Lafarge still has possession of these plants and terminals, it is required to maintain them in good operating condition.

The proposed order also requires Canada Cement Lafarge to offer to sell 250,000 tons of clinker and 250,000 tons of cement in Florida each year for five years to ensure that independent buyers have needed supply.

The proposed order also prohibits Canada Cement Lafarge from acquiring any cement manufacturing or grinding plant or terminal in the affected geographic markets for a period of ten years, without prior approval of the Federal Trade Commission. In addition, if the order is accepted, Canada Cement Lafarge will be required to submit periodic reports to the Commission which detail its compliance with the order to divest, to offer to sell cement, land, and technical assistance, and to refrain from acquiring other cement plants and terminals.

The provisions of the proposed order are intended to maintain at least as much competition between cement producers in the Inland, Gulf Coast, and Florida markets as presently exists there. By requiring the divestiture of the Chattanooga plant and terminals or the Demopolis plant as a viable competitor, the intended effects of the proposed order should be accomplished.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 82-23382 Filed 8-24-82; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. 9018]

AMREP Corporation; Proposed Agreement Containing Order re General Development Corporation

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: This agreement contains an order as to General Development Corporation and was entered into by General Development and FTC Complaint Counsel in the matter of

AMREP Corporation, FTC Docket No. 9018. The AMREP complaint alleges that AMREP and its subsidiary, Silver Springs Shores, Inc. have used unfair and deceptive practices in the sale of undeveloped land. General Development Corporation, a Miami, Fla. company which is not affiliated with AMREP and is not a party to Docket No. 9018, has agreed to purchase all remaining Silver Springs Shores properties conditioned upon the Federal Trade Commission's assurance that it will not be considered as a successor or assign of AMREP within the meaning of the Federal Trade Commission Act, or subject to any order or judgment stemming from Docket No. 9018. The agreement, accepted subject to final Commission approval, offers such assurance in exchange for General Development's good faith and performance of duties set forth in the accompanying order. The proposed order would require, among other things, that General Development offer to buy back or exchange certain Silver Springs Shores lots in accordance with terms specified in the order, and emphasize in its sales representations and promotional materials that lots in the Silver Springs Shores should be purchased for use by the buyer rather than as an investment. The order would further require that the company undertake a continuous surveillance program designed to ensure that unauthorized sales representations are not made in land sales presentations.

DATES: Comments must be received on or before September 24, 1982.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/PP, Amanda Pedersen, Deputy Director, Bureau of Consumer Protection, Washington, D.C. 20580; (202) 523–3983.

SUPPLEMENTARY INFORMATION: None.

List of Subjects in 16 CFR Part 13

Land sales.

In the matter of AMREP Corporation, a corporation, Docket No. 9018, agreement containing order re General Development Corporation.

This agreement is entered into by and between General Development Corporation, a corporation, by its duly authorized officer, and its attorney, and complaint counsel for the Federal Trade Commission in Docket No. 9018, to secure an order by the Commission that, in exchange for specified consumer benefits to be provided by General Development, would terminate a controversy and remove uncertainty over General Development's possible status as a successor or assign to the respondent in this matter, AMREP Corporation. The agreement contemplates the issuance of the order contained herein pursuant to the authority granted by the Federal Trade Commission Act ("FTCA"), the Commission's Rules of Practice, and the Administrative Procedure Act (at 5 U.S.C. 554(e)). In accordance therewith, the parties hereby agree that:

1. General Development Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and is a wholly-owned subsidiary of GDV, Inc., a Delaware corporation. GDV, Inc. is a majority-owned subsidiary of City Investing Company. General Development Corporation has its office and principal place of business located at 1111 South Bayshore Drive, in the City of Miami, State of Florida 33131.

2. General Development Corporation has been given a copy of the complaint issued by the Federal Trade Commission in D–9018 and a copy of Administrative Law Judge Paul R. Teetor's Initial Decision in D–9018, which decision contains findings of fact and recommendations for action against AMREP Corporation arising, in part, out of its alleged sales practices in regard to the subdivision of Silver Springs Shores in Marion County, Florida. General Development is aware that this matter is now pending before the Commission after appeals by the parties.

3. General Development Corporation does not contest any of the jurisdictional facts set forth in the Commission's complaint in D–9018.

4. General Development and AMREP have negotiated an agreement for General Development to purchase from AMREP and its subsidiary, Silver Springs Shores, Inc., all remaining unsold lots and tracts in Silver Springs Shores, together with the water and sewer utility. Execution of the agreement negotiated between General Development and AMREP is conditioned upon General Development receiving assurance from the Federal Trade Commission that, in purchasing Silver Springs Shores properties, General Development Corporation will not be held or considered by the Commission as a successor or assign to AMREP Corporation in any respect, and particularly in regard to any order or action by the Commission in Docket No. 9018, and will not be subject to any order or judgment in any related civil action brought by the Commission under Section 19 of the Federal Trade Commission Act, 15 U.S.C. 57b.

5. Complaint Counsel in the matter of AMREP Corporation, Docket No. 9018, and General Development have negotiated this agreement to provide these assurances to General Development and to provide for certain benefits to be offered by General Development to the purchasers of property at Silver Springs Shores.

6. Nothing in this agreement shall be construed to relieve General Development Corporation of liability for its own acts or practices under any law enforced by the Federal Trade Commission.

7. This agreement does not constitute an admission by General Development Corporation of its legal status vis-a-vis the question of being a successor or assign to AMREP Corporation, or that there has been any violation of law.

8. General Development Corporation waives:

(a) Any further procedural steps;

(b) Any requirement that the Commission's decision or order contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

9. If this agreement is accepted by the Commission it will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify General Development Corporation, in which event it will take such action as it may consider appropriate, or issue and serve its order.

10. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission as set forth herein, the Commission may without further notice to General Development Corporation, (1) issue its decision containing the following order and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to-order to General Development Corporation's address as stated in this agrteement shall constitute service. General Development Corporation waives any right it might have to any other manner of service. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

11. Notwithstanding the provisions of paragraph 10 above, this agreement shall not take effect until the closing of the transaction by which General Development is acquiring substantially all the property owned by Silver Springs Shores, Inc. at Silver Springs Shores.

12. General Development Corporation understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order.

13. This agreement is not enforceable through civil penalties, but it otherwise may be enforced by the Commission in the same manner as other Commission orders, or by either party bringing an action in a court of competent jurisdiction wherein it may seek injunctive or other appropriate relief to require compliance.

Order

I. It is ordered that, in return for General Development Corporation's good faith and substantial performance of the duties set forth in this order, General Development shall not be held or considered to be a successor or assign of AMREP Corporation or its subsidiary, Silver Springs Shores, Inc.,

assign of AMREP Corporation or its subsidiary, Silver Springs Shores, Inc., within the meaning of the Federal Trade Commission Act or any rules or regulations adopted thereunder, and shall not be subject to any cease and desist order, other order, action, or judgment by the Commission in Docket No. 9018 by virtue of General Development purchasing property at Silver Springs Shores; and additionally General Development shall not be subject to any order or judgment entered in any related civil action brought by the Federal Trade Commission under Section 19 of the Federal Trade Commission Act (FTCA), 15 U.S.C. 57b.

II. It is further ordered that: A. General Development will offer to buy back the lots of Silver Springs Shores deeded lot owners at a purchase price of Two Thousand Dollars ($2,000.00) for each single family residential lot. Lot owners will be offered their choice of the following terms: the payment by General Development of the $2,000 principal amount over an eight (8) year period at six percent (6%) interest; payment at three percent (3%) interest over a six (6) year period; or payment over a four (4) year period with no interest. General Development will extend its initial buy-back offer without limitation to all lot owners who are origingal purchasers from Silver Springs Shores, Inc. and who were issued their deed by Silver Springs Shores, Inc. at least sixty (60) days prior to the date when the offer is extended. The offer to purchase will be extended annually for a period of five (5) years to those persons receiving deeds from Silver Springs Shores, Inc. after the cut-off date of the initial offering. In addition, General Development shall extend the same offer, using the same procedures, to persons who were not the original purchasers from AMREP but who purchased a lot or who executed their assignment of the installment contract for a lot prior to March 31, 1982.

A written buy-back offer will be extended to each such eligible person listed by name and address on a true and accurate list of all current and past deeded lot owners that Silver Springs Shores, Inc., is required to provide under its sales agreement with General Development. The mailing of the offer shall be by first-class mail, postage-prepaid, address correction requested, return receipt requested, with delivery to addressee only. Within sixty (60) days after the mailing, for any addressee for whom no return receipt has been received, General Development shall attempt to obtain a current or more recent address for the lot owner by examining the records of the Marion County, Florida, assessor's office. If a current or more recent address is found through these procedures, a copy of the offer shall be sent within twenty (20) days after such finding to the new address using the same means described herein.

General Development will, for informational purposes, send out a letter describing the impending repurchase offer within sixty (60) days of the closing of its purchase from Silver Springs Shores. It may include in its announcement its description of additional programs described in this agreement. General Development and Complaint Counsel have agreed on the form of the announcement letter which is set forth in Exhibit A attached hereto. No contact shall be made by GDC with any above-listed purchaser prior to this announcement.

The actual offer to purchase will be extended initially by General Development within eighteen (18) months after the date of the closing of its purchase from Silver Springs Shores, Inc. The actual offer shall convey the terms of the offer in a neutral manner, neither recommending nor discouraging the offeree's acceptance. The offer communication shall contain the same recitation of the alternative programs that is set forth in Exhibit A; however, the offer to repurchase shall be set forth on the first page of the communication and shall be the only offer or description on that page. The communication shall refer in any manner to the Federal Trade Commission or ot this agreement or order. At least thirty (30) days prior to the proposed mailing date, GDC shall submit a draft of the communication to Commission staff for determination of its conformity to Exhibit A.

Those to whom the actual offer is extended will have a period of one hundred twenty (120) days from the date of the mailing to accept the offer of purchase. The first installment payment to those lot owners who accept the offer shall be mailed not later than ninety (90) days after the expiration of the 120 day acceptance period. Subsequent installments shall be paid annually on the anniversary of the initial payment. The buy-back program will not be available to any employees or relatives thereof of either AMREP, General Development, or any of their subsidiaries.

B. To be effective thirty (30) days after the mailing of Exhibit A, General Development will also offer to deeded lot owners at Silver Springs Shores the right to transfer their ownership of property from the lot originally purchased to an available comparable or higher priced lot in Silver Springs Shores or in General Development's projects of Port Charlotte, Port St. Lucie, Port Malabar, Port LaBelle, Vero Shores, Vero Beach Highlands, Sebastian Highlands and Port St. John. This offer shall remain effective for a period of ten years, but is limited to owners of SSS lots that were sold originally by AMREP. It is not available to those who purchase at SSS from General Development. The purchaser shall receive a credit for the principal paid in under his purchase contract, plus the difference between the price he originally paid and the current sales price for that lot. The sales price of the lot traded in and the sales price of the lot received will be set at that amount at which the respective lots are currently priced by General Development utilizing its then current standard pricing formula which it applies equally to all properties. For example:

Trade to comparable new lot

Current selling price—Old lot	$10,295
Original purchase price—Old lot	3,595
Lot price increase	6,700
Current selling price—New lot	10,295
Less price increase applied	−6,700
Less principal paid on original purchase	−3,595
Balance due on new lot	

Trade to higher priced new lot

Less principal paid on original purchase	−3,595
Balance due on new lot	
Current selling price—New lot	$12,500
Less lot price increase applied	−6,700
Less principal paid on original purchase	−3,595
Balance due on new lot	2,205

C. General Development will, at all times during which it is engaged in either the sale of lots or homes at Silver Springs Shores, but in no event for less than ten (10) years from the initial date of the actual offer to purchase, extend to all deeded lot owners in Silver Springs Shores the right to trade in their lot and receive a credit of the principal paid in under their purchase contract, plus the difference between the price they originally paid and the current sales price for that lot, toward the purchase of a General Development home and lot in any available shelter building area in Silver Springs Shores. "Shelter building area" is defined for the purposes of this agreement and order as those home construction areas where General Development only sells homes and lots as a unit or package. General Development will always make available to deeded Silver Springs Shores lot owners shelter building lots in a shelter building area where there exist at least twenty-five (25) homes already constructed. In addition, General Development will extend to all deeded lot owners in Silver Springs Shores the right to trade in their lot towards a General Development home and lot in General Development's projects of Port Charlotte, Port St. Lucie, Port Malabar, Port LaBelle, Vero Beach Highland, Vero Shores, Sebastian Highlands, or Port St. John. In any trade to one of these additional projects, the lot owner will be credited for the principal paid in under his purchase contract, plus a credit for the difference between the price he originally paid and the current sales price for that lot, such latter credit not to exceed 5% of the sales price of the General Development home and lot.

For example, a trade for a home and lot in Silver Springs Shores would work as follows:

Single lot trade on home purchase in SSS

Assumption on lot traded in:	
Current selling price	$10,295
Original purchase price	3,595
Increase in selling price	6,700
Total credit applied	10,295
Terms of $76,985 home sale (home $58,990, lot $17,995):	
Deposit	1,500
Lot credit applied	10,295
Cash at closing	7,490
Mortgage loan	57,700
Total	76,985

D. General Development shall provide lot owners in Silver Springs Shores a public offering statement if they desire to exchange or trade in their lot for a lot in another of General Development's projects or for one in another area of Silver Springs Shores not covered by the public offering statement they originally received.

E. General Development will, at all times during which it is engaged in either the sale of lots or homes at Silver Springs Shores, but in no event for less than ten (10) years from the initial date of the actual offer to purchase, maintain an inventory of building lots in Silver Springs Shores within one-half mile of an existing shelter building area. This inventory of building lots will be made available to outside builders and to owners of Silver Springs Shores lots who wish to trade in their current lots and use an independent builder to construct a dwelling. These building lots will contain the same provisions for water and sewage disposal as are contained in General Development's shelter building areas. The building lots will be offered at the same price placed on comparable building lots by General Development in the marketing of its home and lot packages. The trade-in credit will be computed in the same manner as in the example given above for a house and lot package at Silver Springs Shores. The sale or trade of these building lots may contain a provision mandating the commencement of constructioni of a home within a specified period of time, not to be less than 90 days from the consummation of the lot trade-in or purchase. General Development shall have approximately twenty five (25) of these building lots available at all times under this program. Up to a total of five hundred (500) building lots will be made available under this program.

F. General Development shall provide to the Commission, upon request, an affidavit executed by its Chief Financial Officer certifying that lots being traded-in, and those traded-for, pursuant to this agreement, are priced under the same pricing formula General Development is using to price comparable Silver Springs Shores properties it is offering for sale. General Development will further, upon request, provide sufficient information to establish such equality of pricing. The Commission shall treat all such information provided as confidential commercial or financial information entitled to all protections against disclosure to third parties under the Freedom of Information Act.

G. Commencing thirty days after the mailing of Exhibit A, and at all times during which General Development is engaged in either the sale of lots or homes at Silver Springs Shores, but in no event for less than ten (10) years from the initial date of the actual offer to purchase, Florida Home Finders, Inc., General Development's resale subsidiary, will maintain an office in Silver Springs Shores and will actively list and market deeded lots and resale homes in Silver Springs Shores. Florida Home Finders, Inc. will maintain a block listing in the local Marion County multiple listing service indicating that it has available for resale Silver Springs Shores lots listed with it. The listing service will be maintained at no charge to Silver Springs Shores lot owners. In soliciting listings for the service, General Development shall advise the lot owners in Exhibit A and in any subsequent mailings on the subject that the current resale activity is very limited and that the solicitation should not be construed as indicating any increased demand.

H. General Development will emphasize in its sales presentations and promotional materials that the purchase of lots in Silver Springs Shores should be for use by the purchaser and will make no representation that the purchase of a lot at Silver Springs Shores should be considered an investment by the purchaser. General Development shall also continuously undertake internal surveillance programs of its marketing and sales personnel to ensure that no unauthorized investment sales representations in regard to lots are made orally by its salesman in their presentations. General Development's current programs are described in Exhibit B attached hereto.

I. General Development shall make no use or mention of this agreement or order in any of its advertising or sales promotional literature or programs, written or oral. General Development will, however, respond in a factual manner to any inquiries received from a customer or potential customer, or from the press. If the agreement with the Commission is required to be disclosed in any property report or other document by another government agency, General Development shall include the required information.

J. General Development will limit initial construction of shelter units in the existing shelter core areas of Silver Springs Shores to two thousand (2,000) shelter units. General Development will then go in succession to two remote areas and there develop active shelter construction and sales programs. These remote area shelter programs will be established in Units 24 and 25, and in Unit 42.

III. It is further ordered that General Development Corporation shall within one (1) year after service upon it of this order, and annually thereafter until it is no longer engaged in either the sale of homesites or homes at Silver Springs Shores, but in no event for less than ten (10) years, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IV. It is further ordered that General Development Corporation notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

"Exhibit A"

This letter contains important information concerning the options available to you as a Silver Springs Shores lot owner, including an offer to repurchase your lot and a variety of exchange and building options. Please read this letter carefully and completely.

General Development Corporation is pleased to announce the acquisition of Silver Springs Shores, Ocala, Florida. General Development has seven projects situated on the East and West Coasts, as well as in South Central Florida. A brief description follows.

Port Charlotte/North Port is the company's oldest and largest projects. It is located on the Gulf Coast, 25 miles north of Fort Myers and 45 miles south of Sarasota. Port Charlotte has 40,000 residents; North Port 12,500. The project borders Charlotte Harbor and its two tributaries, the Peace and Myakka Rivers.

Port LaBelle was acquired in 1973 and is General Development's newest project. It comprises 31,700 acres along the southern bank of the Caloosahatchee River in south-central Florida. Lying 30 miles east of Fort Myers, Port LaBelle currently has about 1,600 residents.

Port St. Lucie's 28,000 residents celebrated the incorporated city's 20th anniversary in 1981. This project encompasses 48,000 acres straddling the North Fork of the St. Lucie River. Port St. Lucie is located 45 miles north of West Palm Beach. The paths of Florida's Turnpike and I–95, the two major East Coast roadways, pass through the project.

Port Malabar's 43,000 acres make up about 90 per cent of the city of Palm Bay. Lying south of and adjacent to Melbourne on the East Coast, Port Malabar's population totals some 20,000.

Vero Shores/Vero Beach Highlands are on either side of Highway U.S. 1 about a half-hour's drive north of Port St. Lucie and five miles south of Vero Beach. Vero Shores' 411 acres front on the Indian River; west of U.S. 1, Vero Beach Highlands comprises 1,175 acres. Highlands population exceeds 1,500.

Sebastian Highlands also is on U.S. 1, about halfway between Vero Shores/Vero Beach Highlands and Port Malabar. Its 5,060 acres make up most of the city of Sebastian and its 3,500 residents are three-quarters of the city's population.

Port St. John is in Brevard County north of Port Malabar. Residents total over 2,000. Composed of some 5,500 acres, Port St. John is midway between Cocoa and Titusville.

Although you did not purchase your property from us, we are happy to welcome you into the General Development family. As a result of our acquisition, we are extending to you the ability to participate fully in the programs described in this letter, which include changing the location of your lot, using your lot as an exchange towards a house and lot package, using your lot as an exchange towards a lot in our immediate building areas, listing your lot for resale, or selling your lot back to us. Of course, there is no cost or obligation on your part since these privileges are being extended to you by virtue of your previous lot purchase at Silver Springs Shores.

Site Transfer Privilege

Your first benefit is the opportunity to trade the location of your Silver Springs Shores lot for another available lot of equal or greater value, in Silver Springs Shores or in any of our projects around the state, at any time during the next ten years. If you elect to do so, you will receive full credit for payments you have made and any increase in the sales price of your lot. The following example illustrates how the cost of a trade would be calculated.

Trade to Comparable new lot

Current lot site selling price	$10,295
Original SSS lot purchase price	3,595
Sale price increase	6,700
Current selling price—New lot	10,295
Less original lot price increase	−6,700
Less principal paid on original lot	−3,595
Balance due	

Trade to Higher-priced lot

Current selling price—New lot	$12,500
Less original lot price increase	−6,700
Less principal paid on original lot	−3,595
Balance due	2,205

Housing Transfer Privilege

Alternatively, for a minimum of ten years and for as long as General Development is engaged in the sale of home and lot packages at Silver Springs Shores, you may trade your Silver Springs Shores lot towards the purchase of a home and lot package in a designated housing area in Silver Springs Shores or in any of General Development's other Florida projects.

Again, a trade-in at Silver Springs Shores allows you full credit for the sale price increase on your lot plus all principal paid since the date of your purchase from Silver Springs Shores. The following example illustrates what this means to you.

Trade for home purchase at SSS

Current SSS lot selling price	$10,295
Original SSS lot purchase price (Assumes Paid-in-full)	3,595
Original lot price increase	6,700
Total credit applied	10,295
Example of $76,985 home sale (home: $58,990, lot: $17,995):	
Deposit	1,500
Lot credit (from above)	10,295
Cash at closing	7,490
Mortgage loan	57,700
Total	76,985

A trade for a home and lot package at any of General Development's other projects works the same except that the credit for the increase in the original lot selling price may be limited to 5% of the value of the house and lot package. In the example above, if this was a trade for a house and lot package at another project, the credit for the $6,700 price increase of the original lot would be limited to 5%×$76,985, or $3,849.25. Thus, the total credit would be:

Original lot purchase price (paid)	$3,595.00
Original lot price increase (5% limit)	3,849.25
Total credit	7,444.25

Housing Area "Independent" Trade-in

This option is also available for at least ten years or for as long as General Development is engaged in the sale of home and lot packages at Silver Springs Shores. You may trade in your Silver Springs Shores lot towards the purchase of a lot in a designated housing area at Silver Springs Shores on which you may have a home constructed by a builder of your choice. Construction must start within a specified period of time after the trade, not to be less than ninety (90) days nor more than 180 days. The trade-in credit will be the same as in the example given above for a house and lot package at Silver Springs Shores.

Listing Service

Commencing thirty days from the date of this letter, and continuing for the time period described in the above option, General Development's resale subsidiary, Florida Home Finders, Inc., will maintain an office in Silver Springs Shores and will list and market lots and homes in Silver Springs Shores. It will maintain a block listing (not identifying individual lots) in the local Marion County multiple listing service indicating that it has available for resale Silver Springs Shores lots that have been listed with it. You may have your lot listed at no charge to you. You are cautioned that there is currently very little resale activity and our offering of this service should not be construed as an indication of increased demand.

Buy-Back Program

In addition to the programs described above, General Development Corporation will offer to buy back your lot for the sum of two thousand ($2,000) dollars. This offer will be extended in a separate letter you will receive within the next eighteen months.

We will extend the offer to all lotowners who purchased directly from Silver Springs Shores (AMREP) and who will have had their deed issued by Silver Springs Shores at least sixty (60) days prior to the date of the offer. Additionally, we will extend the offer to persons who were not the original purchasers from Silver Springs Shores who purchased their lot or who assumed the payments on the installment contract prior to March 31, 1982. They must also be deeded as set forth above.

The offer will be extended annually for a period of five (5) years to qualified purchasers who receive deeds from Silver Springs Shores after the cutoff date of our original offering.

Once you receive the offer, you will have a period of one hundred and twenty (120) days from the date of mailing to accept the offer of repurchase. If you choose this program, you may select one of three payment plans:

(1) Payments made to you over an eight-year period at a 6% annual interest rate—approximately $252/year plus interest.

(2) Payments made to you over a six-year period at a 3% annual interest rate—approximately $336/year plus interest.

(3) Payments made to you over a four-year period with no interest—$500/year.

We plan to add a new dimension and stimulus to Silver Springs Shores. We welcome you to the General Development family and look forward to serving you.

We are anxious to hear from you and invite you to write or call our Customer Service Department concerning additional information you desire or questions you might have concerning your rights and privileges. You may contact us by calling:

Silver Springs Shores Information Service,
Telephone # ,

or by writing:

Director of Customer Service, General Development Corporation, 1111 South Bayshore Drive, Miami, Florida 33131

Sincerely,

Robert F. Ehrling,

President.

Draft Notes.—All amounts shown are based on 1982 prices and no representation is made that such prices or amounts will remain the same. All are subject to change to reflect prices current when the letter is issued. GDC plans to include one of its color-photo advertising brochures when mailing this letter.

(This paragraph will be omitted from the actual letter.)

General Development Corporation Surveillance Program

General Development's Surveillance Program utilizes a private detective agency to do surveillance on a random basis at every General Development's sales office. The program is designed to have every sales source shopped at least twice a year (every six months). Additionally, special surveillance reports are done upon request of senior management in General Development's sales offices and also in broker affiliate offices. Currently General Development is using the Burns Detective Agency.

The investigator has been trained in the elements that constitute a proper sales presentation. He is asked to comment on the sales representative's appearance, general manner, content of the presentation and specific references to areas which might be considered of a problem nature, i.e.; does the salesman offer the property on an investmant basis in his sales presentation? Are there any promises to buy back the property, etc.?

When we receive a favorable report from the investigator, we award the salesman with a gift. We call this the Sales Performance Review Awards Program. Those who receive unfavorable reports are dealt with in three ways:

1. Remedial work or retraining may be required if the infraction is of a minor nature or indicates a lack of knowledge.

2. Disciplinary action—If the infraction is of a minor but serious nature, the sales representative could be suspended for a period of time.

3. Termination will be recommended in all cases where serious infractions are involved.

In addition to the Surveillance Program, General Development's Legal Department keeps abreast of complaints regarding improper activities by

salesmen and regularly requests investigation of any alleged improper activity which comes to the Legal Department's attention. Through these efforts all levels of management and the sales force are made aware of the Company's strong policy against any improper sales practices.

The result of these efforts is that General has found that the great majority of sales personnel shopped have done adequate to excellent jobs in their sales presentations. Disciplinary action has been instituted in cases where abuses where found and the program appears to be accomplishing what it was set up to do in controlling improper oral sales presentations.

Carol M. Thomas,

Secretary.

[FR Doc. 82-23383 Filed 8-24-82; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286b

[OSD Admin. Inst. No. 81]

Privacy Act of 1974; Personal Privacy and Rights of Individuals Regarding Their Personal Records

AGENCY: Defense Department.

ACTION: Proposed rule.

SUMMARY: The Office of the Secretary of Defense proposes to amend its rule regarding the implementation of the Privacy Act of 1974 by deleting the exemption rule for one system of records and adding a specific exemption rule for a new system of records.

DATE: Comments must be received on or before September 24, 1982.

ADDRESS: Forward any comments to: OSD Privacy Act Officer, Office of the Deputy Assistant Secretary of Defense (Administration), Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT: Norma Cook, telephone: 202-697-2501.

SUPPLEMENTARY INFORMATION: System of records DGC 03, entitled: "General Administrative Files" was deleted by FR Doc. 81-20404 (46 FR 35963), July 13, 1981. System of records DMRA&L 02.0 entitled: "Educator Applicant Files" was identified in FR Doc. 81-28992 (46 FR 49179), October 6, 1981 and amended Parts of system DMRA&L 02.0 which fall within 5 U.S.C. 552a(k)(5) are proposed to be exempted from Subsections (c) (3) and (d) of 5 U.S.C. 552a. In FR Doc. 80-19461, (45 FR 43409) June 27, 1980, the Office of the Secretary of Defense published its final rule exemption rules (32 CFR 286b.11). The Office of the Secretary of Defense proposes to amend these rules by revising § 286b.11 to delete the present entry for 286b.11(c)(5)-SYSID-DGC 03, SYSNAME, General Administrative File; and to insert a new specific exemption for system DMRA&L 02.0, SYSNAME, Educator Application Files which will read as follows.

List of Subjects in 32 CFR Part 286b

Privacy.

PART 286b—PERSONAL PRIVACY AND RIGHTS OF INDIVIDUALS REGARDING THEIR PERSONAL RECORDS

§ 2866.11 Exemptions.

* * * * *

(c) Specific exemptions.

* * * * *

(5) SYSID-DMRA&L 02.0, SYSNAME. Educator Application Files.

Exemption—All portions of this system which fall within 5 U.S.C. 552a(k)(5) may be exempt from the following provisions of Title 5 U.S.C. 552a: (c)(3); (d).

Authority: 5 U.S.C. 552a(k)(5).

Reasons—It is imperative that the confidential nature of evaluation and investigatory material on teacher application files furnished the Department of Defense Dependent Schools (DoDDS) under promises of confidentiality be exempt from disclosure to the individual to insure the candid presentation of information necessary to make determinations involving applicants suitability for DoDDS teaching positions.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

August 18, 1982.

[FR Doc. 82-23239 Filed 8-24-82; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[OPTS-00035; TSH-FRL 2194-6]

Administrator's Toxic Substances Advisory Committee; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule related notice.

SUMMARY: There will be a meeting of the Administrator's Toxic Substances Advisory Committee (ATSAC) to discuss matters related to EPA's implementation of the Toxic Substances Control Act Pub. L. 94-569). The meeting will be open to the public.

DATE: The meeting will begin at 10:30 a.m. and adjourn by 4 p.m. on Thursday, September 9, 1982.

ADDRESS: The meeting will be held in: Rm. 3906-3908, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Phyllis B. Hetrick-Bennett, Executive Secretary, Administrator's Toxic Substances Advisory Committee (TS-779), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-228, 401 M St., SW., Washington, D.C. 20460, (202-382-3721).

SUPPLEMENTARY INFORMATION Dr. John A. Todhunter, Assistant Administrator for the Office of Pesticides and Toxic Substances, will discuss accomplishments of the Office of Toxic Substances since the last meeting. The Committee will present its thinking on the implementation plan for TSCA section 8(c). During the afternoon session, Mr. A. E. Conroy II, Director of the Pesticides and Toxic Substances Enforcement Division, will speak about enforcement issues.

The meeting will be open to the public. Time will be set aside for public comments concerning the work of the Committee. Any member of the public wishing to present a formal oral or written statement relating to the Committee's work should contact Dr. Phyllis Hetrick-Bennett at the address or phone number listed above.

Dated: August 18, 1982.

Don R. Clay

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 82-23273 Filed 8-24-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2E2584/P244; PH-FRL 2193-8]

Chlorpyrifos; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for the combined residues of the insecticide chlorpyrifos and its metabolite 3,5,6-trichloro-2-pyridinol in or on the raw agricultural commodity grapes. The proposed amendment to establish a maximum permissible level for residues of the insecticide in or on the commodity

was submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments must be received on or before September 24, 1982.

ADDRESS: Written comments to: Emergency Response Section (TS–767C), Process Coordination Branch, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703–557–1192) at the above address.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experimental Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition number 2E2584 to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Stations of Alabama, Arkansas, Georgia, Missouri, North Carolina, and South Carolina.

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 insecticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6, trichloro-2-pyridyl) phosphorothioate and its metabolite 3,5,6, trichloro-2-pyridinol in or on the raw agricultural commodity grapes at 0.5 part per million (ppm). In addition IR–4 has submitted a related Feed Additive Petition (2H5344) proposing to amend 21 CFR 561.98 by establishing a regulation permitting residues of the insecticide in dried grape pomace at 2.0 ppm, resulting from application to the growing crop.

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 included a 2-year rat feeding study with a red blood cell (RBC) acetylcholinesterase (AChE) no-observed-effect level (NOEL) of 0.1 milligram (mg)/kilogram (kg)/day, a systemic NOEL of 3.0 mg/kg/day (highest dose tested) and negative oncogenicity; a 2-year dog feeding study with an RBC AChE NOEL of 0.1 mg/kg/day and a systemic NOEL of 3.0 mg/kg/day (highest dose tested); a 2-year mouse oncogenicity study which was negative at 15 ppm (highest dose tested); a 3-generation rat reproduction study with a NOEL for reproductive effects at 1.0 mg/kg/day (highest dose tested); an acute delayed neurotoxicity (hen) study which was negative for neurotoxic potential at 100 mg/kg; and a mouse teratogenicity study with no teratogenic effects up to 25 mg/kg/day (highest dose tested).

The acceptable daily intake (ADI), based on the 2-year rat feeding study (AChE NOEL of 0.1 mg/kg/day) and using a 10-fold safety factor, is calculated to be 0.01 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.6 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5 kg daily diet is calculated to be 0.4753 mg/day; the current action will utilize 1.5 percent of the ADI.

The nature of the residues is adequately understood and an adequate analytical method (gas chromatography with a flame photometric detector in the phosphorus mode) is available for enforcement purposes. All residue data are from tests conducted in New York and South Carolina. There are precently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency and the fact that currently established tolerances for meat and milk are adequate to cover any residues resulting from grapes or dried grape pomace used as animal feed, the tolerance established by amending 40 CFR Part 180 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide ACT (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, "[PP2E2584/P244]". All written comments filed in response to this petition will be available in the Emergency Response Section (TS–767C), at the address given above, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances of raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests.

Dated: August 13, 1982

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, it is proposed that 40 CFR 180.342 be amended by adding and alphabetically inserting the raw agricultural commodity grapes to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Grapes	0.5
* * * * *	

[FR Doc. 82–23150 Filed 8–24–82; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP OE2278/P245; PH–FRL 2194–2]

2-Chloro-N-Isopropylacetanilide; Proposed Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that tolerances be established for the combined residues of the herbicide 2-chloro-*N*-isopropylacetanilide and its metabolites (calculated as 2-chloro-*N*-isopropylacetanilide) in or on the raw agricultural commodities flax seed and straw. The proposed amendment to establish a maximum permissible level for residues of the herbicide in or on the named commodities was submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments must be received on of before September 24, 1982.

ADDRESS: Written comments to: Emergency Response Section (TS–767C), Process Coordination Branch, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703–557–1192) at the above address.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition number 0E2278 to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Stations of Minnesota, North Dakota and South Dakota.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined residues of the herbicide 2-chloro-*N*-isopropylacetanilide and its metabolites (calculated as 2-chloro-*N*-isopropylacetanilide) in or on the raw agricultural commodities flax seed at 3.0 parts per million (ppm) and straw at 11 ppm. The petition was later amended decreasing the tolerance level for flax straw to 10 ppm.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerances included a rat acute oral LD_{50} of 1.2 grams (gm)/kilograms (kg); a rabbit acute dermal LD_{50} of 380 milligrams (mg)/kg; subacute 90-day feeding studies (dog and rat) with a no-observed-effect level (NOEL) of 13.3 mg/kg.

The acceptable daily intake (ADI), based on the 90-day rat feeding study (NOEL of 13.3 mg/kg/day) and using a 2000-fold safety factor, is calculated to be 0.0067 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.3990 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5 kg daily diet is calculated to be 0.0198 mg/day. The current action will increase the TMRC by 0.0014 mg/day. Published tolerances utilize 4.96 percent of the ADI; the current action will utilize an additional 0.30 percent. Thus the tolerances that will be established by this proposed rule are considered to pose a negligible increment in risk since dietary exposure will not be significantly increased.

The nature of the residues is adequately understood and an adequate analytical method, gas-liquid chromatography with hydrogen flame detector, is available for enforcement purposes. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency and the fact that currently established tolerances for meat and milk are adequate to cover any residues resulting from flax seed and straw used as animal feed, the tolerances 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 on or before September 24, 1982, 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 OE2278/P245]". All written comments filed in response to this petition will be available in the Emergency Response Section (TS–757C), at the address given above, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 13, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, it is proposed that 40 CFR 180.211 be amended by adding and alphabetically inserting the raw agricultural commodities flax seed and straw to read a follows:

§ 180.211 2-Chloro-N-isopropylacetanilide; tolerance for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Flax, seed	3.0
Flax, straw	10.0
* * * * *	

[FR Doc. 82–23147 Filed 8–24–82; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 761

[OPTS 211006 TSH–FRL 2180–8]

Polychlorinated Biphenyls (PCBs); Denial of Citizen's Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule related notice; denial of citizen's petition.

SUMMARY: This notice announces the EPA's decision to deny a citizen's petition submitted by the Dow Chemical Company (Dow) under section 21 of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2620). Dow requested that EPA amend its polychlorinated biphenyl (PCB) regulations (40 CFR Part 761) to exclude monochlorobiphenyls (MCBs).

ADDRESS: Copies of the petition and all related information are located in: Document Control Office (TS–793), Environmental Protection Agency, Rm. E–107, 401 M St., SW., Washington, D.C. 20460.

They are available for viewing and copying from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–509, 401 M St., SW., Washington, D.C. 20460, Toll free: (800–424–9065). In

Washington, D.C. (554–1404), Outside the USA: (Operator-202–554–1404).

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1982, EPA received a citizen's petition under section 21 of TSCA, from the Dow Chemical Company, Midland, Michigan, requesting that EPA amend its PCB regulations to exclude MCBs (40 CFR Part 761, recodified in the Federal Register of May 6, 1982 (47 FR 19526)). Section 761.3(s) (formerly § 761.2(s)) defines "PCB" as "any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degress. * * *"

Dow requests that EPA change this definition to exclude MCBs. Dow argues that MCBs pose less hazard to human health and the environment than PCBs with higher degrees of chlorination, and that the Congress did not intend to regulate MCBs under TSCA.

This petition is the most recent in a series of administrative and judicial actions involving Dow and EPA concerning the control of MCBs under EPA's regulations. On May 13, 1980, the Director of EPA's Pesticides and Toxic Substances Enforcement Division issued an administrative complaint against Dow for violations of the marking and recordkeeping provisions of the PCB regulations under 40 CFR 761.20, 761.45 (now §§ 761.40, 761.180). The subject of the complaint was a Dow product, Dowtherm G, which contained MCBs. Dow raised the affirmative defense that MCBs are not PCBs under TSCA or its regulations. According to Dow, since Dowtherm G does not contain other chlorinated biphenyls in concentrations greater than 50 ppm, the company did not violate the law by selling its product.

On September 22, 1980, the late Herbert L. Perlman, EPA's Chief Administrative Law Judge, found that (1) MCBs are PCBs under EPA's PCB regulations issued pursuant to section 6(e) of TSCA, and (2) MCBs are PCBs as a matter of law under section 6(e) of TSCA. Dow subsequently appealed this decision to the EPA Judicial Officer. On July 28, 1982, the Judicial Officer dismissed Dow's appeal on the basis that Dow cannot challenge the validity of a regulation in an administrative civil penalty hearing. In this Federal Register notice, EPA has not addressed issues regarding the Agency's authority and available discretion in regulating MCBs.

Decision

EPA has reviewed the contents of Dow's petition and believes that Dow's views concerning the relative risk of MCBs and and other chlorinated biphenyls may have some technical merit. However, for the reasons stated below, EPA does not intend to (in the language of section 21 of TSCA) "promptly commence an appropriate proceeding" to amend the PCB regulations to exclude MCBs from all the provisions of the regulations. Because EPA is not commencing a rulemaking to consider granting the relief specifically requested by Dow, the petition is being denied. However, the Agency does plan to undertake a forthcoming rulemaking that would deal with the situation that appears to have motivated Dow to submit this petition.

EPA understands Dow's primary concern to be the manufacture of MCBs as byproducts during the production of other substances in Dow's manufacturing processes. EPA believes it will be dealing with issues related to this concern in the context of rulemaking required by an October 30, 1980 decision by the U.S. Court of Appeals for the District of Columbia Circuit, which overturned portions of the Agency's PCB regulations. See *Environmental Defense Fund v. Environmental Protection Agency*, 636 F. 2d. 1267 (D.C. Cir. 1980). As a result of this decision, EPA will be conducting a rulemaking dealing with the manufacture, processing and distribution in commerce of certain PCBs that are produced as byproducts or impurities of various chemical processes. EPA is required to submit a plan for this rulemaking to the Court by November 1, 1982.

Dow's manufacturing processes, which generate MCBs as a byproduct in the production of other chemical substances, will fall within the scope of this rulemaking. The Agency will consider any relevant information presented by Dow during that rulemaking proceeding. EPA believes that the rulemaking will provide flexibility for the Agency to evaluate and consider a variety of alternatives leading to promulgation of a rule that will meet the requirements of TSCA, protect human health and the environment, and minimize the burdens on the affected industries.

This rulemaking on PCBs will affect hundreds of companies in addition to Dow and will be a major undertaking. Therefore, at this time, to avoid duplication of regulatory efforts, EPA will not initiate a separate action to address Dow's concerns. Doing so would be an inefficient use of Agency resources. If the major rulemaking on PCBs does not address all of Dow's concerns, Dow can resubmit its petition or submit another petition after this major rulemaking is completed.

Accordingly, Dow's petition for an amendment of the PCB regulations to exclude MCBs is denied.

Official Record for the Petition

The following documents constitute the record for this action.

1. Dow Petition to the Environmental Protection Agency, dated May 13, 1982.
2. *In the Matter of The Dow Chemical Company*, Decision of EPA Judicial Officer McCallum, Docket No. TSCA (16(a))–1, July 28, 1982.
3. *In re Dow Chemical Company*, Decision of EPA Chief Administrative Law Judge Perlman, Docket No. TSCA (16(a))–1, September 22, 1980.
4. In re Dow Chemical Company, Order of Certification of Appeal, Docket No. TSCA (16(a))–1, September 28, 1980.
5. *Environmental Defense Fund v. EPA*, 598 F. 2d 62 (D.C. Cir. 1978).
6. *Dow Chemical Co. v. Costle*, 484 F. Supp. 101, (D. Del. 1980) (appeal pending).
7. *Environmental Defense Fund v. EPA*, 636 F. 2d 1267 (D.C. Cir. 1980) and subsequent orders issued by the court in this case.

These documents are available in the Document Control Office for viewing and copying from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

List of Subjects in 40 CFR Part 761

Hazardous materials, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Environmental protection.

Dated: August 18, 1982.

John W. Hernandez, Jr.,

Acting Administrator.

[FR Doc. 82–23272 Filed 8–24–82; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service

41 CFR Part 105–61

[ADM 7900.2 CHGE]

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

AGENCY: National Archives and Records Service, GSA.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the statement of "general restrictions" on access to records accessioned by the National Archives and Records Service (NARS). This revision is necessitated by

the passage of the Freedom of Information Act (FOIA) and the 1974 and 1976 amendments thereto, which establish nine exemption categories as the only valid bases for restricting access to accessioned federal records of the Executive Branch. Five general restrictions are substituted for seventeen general restrictions currently imposed by the Archivist of the United States. A statement of general restrictions is intended to highlight those general categories of information found among the records of many federal agencies which NARS is most likely to withhold from public use. NARS also imposes "specific restrictions" on access to designated records of a single federal agency, provided that the restrictions are consistent with the amended FOIA.

DATE: Comments must be received on or before: September 24, 1982.

ADDRESS: Comments should be addressed to national Archives and Records Service (NNB), Attn: William H. Leary, Washington, DC 20408.

List of Subjects in 41 CFR Part 105–61

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

FOR FURTHER INFORMATION CONTACT: William H. Leary (202–523–3081).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Accordingly, GSA proposes to amend 41 CFR Part 105–61 as follows:

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

1. The table of contents for Part 105–61 is amended by adding § 105–61.5302–1 through 105–61.5302–5 and deleting § 105–61.5302–8 and § 105–61.5302–18 as follows:

Sec.
105–61.5302–1 National security information.
105–61.5302–2 Information exempted from disclosure by statue.
105–61.5302–3 Trade secrets and commercial or financial information.
105–61.5302–4 Information which would invade the privacy of an individual.
105–61.5302–5 Information related to law enforcement investigations.

* * * * *

2. Section 105–61.5302 is amended by adding new § 105–61.5302–1 through § 105–61.5302–5 to read as follows:

§ 105–61.5302–1 National security information.

(a) Records. Records containing information regarding national defense or foreign policy and properly classified under an Executive order.

(b) Restrictions. Such Records may be disclosed only in accordance with the provisions of such Executive order and its implementing directive.

(c) Imposed by. Archivist of the United States in accordance with 5 U.S.C. 552 and 44 U.S.C. 2104.

§ 105–61.5302–2 Information exempted from disclosure by statute.

(a) Records. Records containing information which is specifically exempted from disclosure by statute.

(b) Restrictions. Such records may be disclosed only in accordance with the provisions of such statute.

(c) Imposed by. Archivist of the United States in accordance with 5 U.S.C. 552 and 44 U.S.C. 2104.

§ 105–61.5302–3 Trade secrets and commercial or financial information.

(a) Records. Records not restricted by statute but which contain trade secrets and commercial or financial information submitted to the government with an expressed or implied understanding of confidentiality.

(b) Restrictions. Such records may be disclosed only if:

(1) The party that provided the information agrees to its release; or

(2) In the judgment of the Archivist of the United States, the passage of time is such that release of the information would not result in substantial competitive harm.

(c) Imposed by. Archivist of the United States in accordance with 5 U.S.C. 552 and 44 U.S.C. 2104.

§ 105–61.5302–4 Information which would invade the privacy of an individual.

(a) Records. Records containing information about a living individual which reveal details of a highly personal nature that the individual could reasonably assert a claim to withhold from the public to avoid a clearly unwarranted invasion of privacy, including but not limited to information about the physical or mental health or the medical or psychiatric care or treatment of the individual, and that: (1) Contain personal information not known to have been previously made public, and (2) relate to events less than 75 years old.

(b) Restrictions. Such records may be disclosed only: (1) To those officers and employees of the agency that transferred the records to the National Archives who have a need for the record in the performance of their official duties;

(2) To those officers and employees of the agency that originated the information in the records who have a need for the records in the performance of their official duties;

(3) To researchers for the purpose of statistical or quantitative research when such researchers have provided the National Archives with adequate written assurance that the record will be used solely as a statistical research or reporting record and that no individually identifiable information will be disclosed; or

(4) To the subject individual or his duly authorized representative (the individual requesting access will be required to furnish reasonable and appropriate identification). Access will not be granted, however, to records containing the following categories of information: (i) Investigatory material compiled for law enforcement purposes or for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, or Federal contracts if the identity of the source who furnished the information to the government under an expressed or implied promise of confidentiality is revealed; (ii) evaluation material used to determine potential for promotion in the armed services if the identity of the source who furnished the information to the government under an expressed or implied promise of confidentiality is revealed; and (iii) security classified material.

(c) Imposed by. Archivist of the United States in accordance with 5 U.S.C. 552 and 44 U.S.C. 2104.

§ 105–61.5302–5 Information related to law enforcement investigations.

(a) Records. Records containing information related to or compiled during a law enforcement investigation.

(b) Restrictions. Such records may be disclosed only: (1) If the release of the information does not interfere with

ongoing litigation or enforcement proceedings, and

(2) If confidential sources and/or confidential information are not revealed, and

(3) If the release of the information would not constitute an unwarranted invasion of personal privacy, and

(4) If confidential investigative techniques are not described, and

(5) If the release of the information would not endanger the safety of law enforcement personnel, or

(6) If, in the judgment of the Archivist of the United States the passage of time is such that:

(i) The safety of persons is not endangered and

(ii) The public interest in disclosure outweighs the continued need for confidentiality.

(iii) Imposed by. Archivist of the United States in accordance with 5 U.S.C. 552 and 44 U.S.C. 2104.

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

Dated: April 1, 1982.

Robert M. Warner.

Archivist of the United States.

[FR Doc. 82-23294 Filed 8-24-82; 8:45 am]

BILLING CODE 6820-26-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 536 and 538

[Docket No. 82-36]

Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States; Requirements for Filing Currency Adjustment Factors Reflecting Changes in the Exchange Rate of Tariff Currencies

AGENCY: Federal Maritime Commission.

ACTION: Denial of enlargement of time.

SUMMARY: Request for enlargement of time to comment on proposed rules relating to procedures and requirements for currency adjustment factors is denied. Sufficient time for comment was originally provided and there is inadequate basis for extension offered by requesting parties.

DATE: Comments due on or before September 20, 1982.

ADDRESS: Comments (original and fifteen copies) and inquiries to: Francis C. Hurney, Secretary, Federal Maritime Commission, Room 11101, 1100 L Street NW., Washington, D.C. 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, (202) 523-5325.

SUPPLEMENTARY INFORMATION: Counsel for various conferences of shipping lines has requested a 30 day enlargement of time to comment on proposed rules published in this proceeding July 20, 1982 (47 FR 31408). As grounds therefor, counsel cites the traditional summer vacation period and the fact that this matter need be considered at Conference meetings scheduled for the week of September 20, 1982.

A sixty day period was provided for comment by the Commission's original notice. This is ample time under most circumstances and the grounds offered for extension here are not persuasive that an exception is warranted. The instant request, and various others recently proffered in Commission rulemaking proceedings, if granted would have the Commission defer regulatory activity concerning foreign shipping lines during the month of August to accommodate traditional and anticipated vacation schedules. Such is neither necessary nor good policy, and absent any other valid basis for an enlargement of time the instant request is denied. By the Commission [1]

Francis C. Hurney,

Secretary.

[FR Doc. 82-23247 Filed 8-24-82; 8:45 am]

BILLING CODE 6730-01-M

[1] Commissioner Richard J. Daschbach dissenting:

I would grant the instant request to extend for 30 days the comment period in this proceeding. The Commission has been attempting to establish comprehensive CAF rules for well over two years, and has never acted with dispatch to resolve this matter. A 30 day extension at this point certainly cannot be seen as unduly delaying the Commission's process, particularly if it affords the requesting conferences the time necessary to formulate and submit constructive comments.

Notices

Federal Register
Vol. 47, No. 165
Wednesday, August 25, 1982

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

Office of the Secretary

Forms Under Review by Office of Management and Budget

August 20, 1982.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Comments and questions about the items in the listing should be directed to the agency person named at the end of each entry. If you anticipate commenting on a form but find that preparation time will prevent you from submitting comments promptly, you should advise the agency person of your intent as early as possible.

Copies of the proposed forms and supporting documents may be obtained from: Richard J. Schrimper, Statistical Clearance Officer, (202) 447-6201.

New

• Rural Electrification Administration
Central Office Equipment Engineering Information
REA 810
On occasion
Businesses or other institutions: 200 responses; 200 hours; not applicable under 3504(h)
John D. Soma (202) 382-8529

• Rural Electrification Administration
Fundamental Plan Information
REA 809
On occasion
Businesses or other institutions: 100 responses; 200 hours; not applicable under 3504(h)
John D. Soma (202) 382-8529

• Rural Electrification Administration
Progress Report of Telephone Construction and Engineering Services
REA 521
Bi-Weekly
Businesses or other institutions: 3,400 responses; 1,700 hours; not applicable under 3504(h)
John D. Soma (202) 382-8529

• Food and Nutrition Service
7 CFR Part 230—Food Service Equipment Assistance Program—Recordkeeping
On occasion
State or local governments and businesses or other institutions: 37,272 responses; 21,549 hours; not applicable under 3504(h)
Chris Lipsey (703) 756-3600

Revised

• Food and Nutrition Service
7 CFR Part 230—Food Service Equipment Assistance Program—Reporting
On occasion
State or local governments and businesses or other institutions: 5,162 responses; 3,443 hours; not applicable under 3504(h)
Chris Lipsey (703) 756-3600

Extension

• Rural Electrification Administration
Accounting System Requirements for REA Telephone Borrowers—Recordkeeping
On occasion
Businesses or other institutions: 929 responses; 3,864,640 hours; not applicable under 3504(h)
Roland S. Heard (202) 382-8227

• Animal and Plan Health Inspection Service
Federal Plant Pest and Noxious Weed Regulations
PPQ 525,526
On occasion
Individuals, state or local governments, farms, businesseses or other institutions: 4,300 responses; 608 hours; not applicable under 3504(h)
L. Sedgwick (301) 436-8584.

Richard J. Schrimper,
Statistical Clearance Officer.

[FR Doc. 82-23200 Filed 8-24-82; 8:45 am]
BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Agriculture Subcommittee of the President's Export Council; Open Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The President's Export Council was initially established by Executive Order 11753 of December 20, 1973. The Council was reconstituted by Executive Order 12131 of May 4, 1979, and continued by Executive Order 12258 of December 31, 1980. The Council's purpose is to advise the President on matters relating to United States export trade. The Agriculture Subcommittee was formed by the Council to study ways to effectively integrate agriculture into the total export picture.

TIME AND PLACE: September 13, 1982 from 9:00 am to 5:00 pm. The meeting will be held in the Midlands room at: The Red Lion Inn, 1616 Dodge Street, Omaha, Nebraska 68102, 402-346-7000.

AGENDA:

Opening remarks—Governor Thone, Chairman
American Agriculture in the World—Honorable John Block, Secretary of Agriculture
Agricultural Export Issue—Senator Charles Grassley
Agricultural Export Legislation—Congressman Thomas Hagedorn
Market Opportunities in the Pacific Rim—A. E. Michon, Burlington Northern, Inc.
Market Opportunities in the Middle East—Wales Madden, Council Member
Market Opportunities in the Carribean—Representative from Inter-North
Use of Export Subsidies by the U.S.—Don Nelson, Assistant U.S. Trade Representative for Agriculture Affairs and Commodity Policy.

Cost Benefit Analysis of Market Development—B. B. Spratling and Dr. Ken Bader, American Soybean Association
Export Contract Sanctity—Mike Hall, National Corn Growers Association
Japan-U.S. Agriculture Trade—Don Lerch, Consultant, Glenn Tussey, American Farm Bureau Federation.

FOR FURTHER INFORMATION OR COPIES OF THE MINUTES CONTACT:
Elizabeth Dougherty, President's Export Council Staff, Room 3213, U.S. Department of Commerce, Washington, D.C. 20230, 202–377–1124.

Dated: August 19, 1982.

Henry Misisco,

Acting Director.

[FR Doc. 82–23175 Filed 8–24–82; 8:45 am]

BILLING CODE 3510–25–M

[Docket No. 2820–159]

Notification of Electronic Edition of the Commerce Business Daily

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Contract.

SUMMARY: As of August 2, 1982, a magnetic tape of daily editions of the Commerce Business Daily is being made available by the Department of Commerce.

Parties interested in acquiring these magnetic tapes should contact:

U.S. Department of Commerce, Room 1513, 14th & E Streets, NW., Washington, D.C. 20230, (202) 377–0632

or

U.S. Department of Commerce, Room 1304, 433 West Van Buren Street, Chicago, Illinois 60607, (312) 353–2950.

Contracts for the magnetic tapes will be executed for an experimental period uniformly expiring on December 31, 1982. Provisions of the contract include a $50 per day magnetic tape charge FOB Chicago and an $8 per hour user fee. Parties are advised that they must develop the application software. Inquiries of qualified parties are solicited.

EFFECTIVE DATE: August 25, 1982.

FOR FURTHER INFORMATION CONTACT:
Anthony J. Steinhauser, U.S. Department of Commerce, Director, Commerce Business Daily, Room 1515, Washington, D.C. 20036, (202) 377–0632.

Dated: August 19, 1982.

Michael Potterf,

Director, Commercial Service Information Center, International Trade Administration, Department of Commerce.

[FR Doc. 82–23231 Filed 8–24–82; 8:45 am]

BILLING CODE 3510–25–M

International Trade Administration Cotton Yarn From Peru; Postponement of Preliminary Countervailing Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Postponement of preliminary countervailing Duty determination.

SUMMARY: The preliminary determination on cotton yarn from Peru is being postponed, and we intend to issue it not later than November 12, 1982.

EFFECTIVE DATE: August 25, 1982.

FOR FURTHER INFORMATION CONTACT:
Michael Haudak, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 377–3530.

SUPPLEMENTARY INFORMATION: On July 6, 1982, we announced our initiation of a countervailing duty investigation to determine whether the government of Peru is giving its producers, manufacturers, or exporters of cotton yarn certain benefits that are bounties or grants within the meaning of the countervailing duty law (47 FR 30274). The notice stated that we would issue a preliminary determination by September 8, 1982.

As detailed in the notice of initiation of the countervailing duty investigation, the petition alleges five subsidy programs that the government of Peru provides to producers and exporters of cotton yarn including eleven different provisions of Peru's Law for the Promotion of export of Non-Traditional Goods. We have never investigated any of these programs before. We have determined that the government of Peru and the other parties concerned are cooperating and that additional time is necessary because of the number and complexity of the alleged subsidy practices, the novelty of the issues presented, the need to determine the extent to which the alleged subsidy programs are used by Peruvian manufacturers, producers, and exporters, and the number of firms involved. For these reasons we determine that this case is extraordinarily complicated in accordance with section 703(c)(1)(B) of the Tariff Act of 1930, as amended ("the Act"), and we intend to issue a preliminary determination not later than November 12, 1982.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: August 18, 1982.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82–23266 Filed 8–24–82; 8:45 am]

BILLING CODE 3510–25–M

Preliminary Determination of Sales at Less Than Fair Value; Certain Steel Pipes and Tubes From Japan

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value; certain steel pipes and tubes from Japan.

SUMMARY: We have preliminarily determined that certain steel pipes and tubes from Japan are being sold, or are likely to be sold, in the United States at less than fair value. Therefore, we have notified the United States International Trade Commission (ITC) of our determination, and we have directed the United States Customs Service to suspend the liquidation of all entries (except as noted below) of the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. We have also preliminarily determined that one of the four manufacturers investigated should be excluded from this preliminary determination because we found a 0.02 percent weighted-average margin for exports by that manufacturer of seamless stainless pipes and tubes. This margin is *de minimis*.

If this investigation proceeds normally, we will make a final determination by November 1, 1982.

EFFECTIVE DATE: August 25, 1982.

FOR FURTHER INFORMATION CONTACT:
Stuart Keitz, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377–1769.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that there is a reasonable basis to believe or suspect that certain steel pipes and tubes from Japan are being sold, or are likely to be sold, in the United States at less than fair value, as

provided in section 733 of the Tariff Act of 1930, as amended (the Act).

For heat resisting pipes and tubes we have found that the foreign market value exceeded the United States price on 7 percent of sales. These margins ranged from 0.72 percent to 54.30 percent. The overall weighted-average margin on all sales compared is 1.7 percent.

For stainless pipes and tubes, we have found that the foreign market value exceeded the United States price on 19 percent of sales. These margins ranged from 0.01 percent to 186.57 percent. The overall weighted-average margin on all sales compared is 6.02 percent.

The weighted-average margins for individual companies investigated are given for each product in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by November 1, 1982.

Case History

On January 20, 1982, we received a petition from counsel for Babcock & Wilcox Company, filed on behalf of the United States industry producing certain seamless steel pipes and tubes. The petitioner alleged certain seamless pipes and tubes from Japan are being, or are likely to be, sold in the United States at less than fair value, and that such sales are materially injuring, or threatening to materially injure, a United States industry. The petitioner also alleged that seamless stainless tube sales in the home market were made at prices below the cost of production.

After reviewing the petition, we determined it contained sufficient grounds to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on February 8, 1982 (47 FR 6457). The ITC subsequently found, on March 2, 1982, that there is a reasonable indication that imports of seamless heat resisting and seamless stainless pipes and tubes are materially injuring, or are threatening to materially injure, a United States industry.

We determined this case to be "extraordinarily complicated", as defined in section 733(c) of the Act. Therefore, we extended the period for making the preliminary determination by 50 days until August 18, 1982 (47 FR 22999).

Questionnaires were presented to Kobe Steel Ltd. (Kobe), Nippon Kokan Kaisha (NKK), Sanyo Special Steel Company, Ltd. (Sanyo) and Sumitomo Metal Industries, Ltd. (SMI) on February 10, 1982. Questionnaires were also presented to Sumitomo Corporation (SC) on April 9, 1982 and Sumitomo Corporation of America (SCA) on April 7, 1982. Responses were received from NKK on April 5, 1982 and from Kobe, Sanyo and SMI on April 19, 1982. A response was received from SC on June 1, 1982. SCA responded on June 25, 1982.

Scope of the Investigation

The products covered by this investigation are:

- Seamless heat resisting pipes and tubes
- Seamless stainless pipes and tubes

This investigation covers the period August 1, 1981 to January 31, 1982.

The products are fully described in Appendix A which follows this notice.

Since Kobe, NKK, Sanyo and SMI manufacture approximately 90 percent of all seamless heat resisting pipes and tubes and seamless stainless pipes and tubes exported from Japan to the United States, we limited our investigation to these companies.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by all four companies because the merchandise was sold to unrelated purchasers prior to its importation into the United States. Prices to unrelated exporters who resell the merchandise to United States importers were used to represent purchase price, since the manufacturers knew at the time of sale that the merchandise was destined for the United States.

We calculated the purchase price based on the f.o.b. or f.a.s. Japan packed price, to unrelated exporters who resell the merchandise to the United States customer. We made deductions, where appropriate, for inland freight in Japan, insurance, commissions, stowing and trimming charges, and customs clearance charges.

Foreign Market Value

In accordance with section 773 of the Act, we calculated foreign market value based on home market sales or, where appropriate, on constructed value. For purposes of determining similar merchandise under section 771(16) of the Act, we made comparisons based on similarities in finish, specification and grade, and size.

The petitioner alleged that sales in the home market of seamless stainless tubes were at prices below the cost of production. For Sanyo and SMI, we examined production costs related to this product, including materials, labor, and general expenses. For all categories of seamless stainless pipes and tubes exported by Sanyo and SMI, there were sufficient sales above the cost of production over an extended period of time, in substantial quantities and at prices permitting the recovery of all costs within a reasonable period of time, to provide a basis for the determination of foreign market value. Therefore, we used home market sales prices to determine foreign market value.

We could not determine whether Kobe's home market sales were made below the cost of production, as the firm did not satisfactorily identify the allocation method for selling, general and administrative expenses used in its development of cost data. Therefore, we used constructed value to determine foreign market value for seamless stainless tubes exported by this firm.

For all sales by Kobe of seamless stainless pipes, all sales by NKK of seamless heat resisting pipes and tubes, all sales by Sanyo of seamless stainless pipes and tubes, and all sales by SMI of seamless heat resisting pipes and tubes and seamless stainless pipes and tubes, we used home market sales prices to determine foreign market value.

Kobe—Constructed Value

For Kobe we caluclated constructed value in accordance with section 773(e) of the Act. We added to Kobe's cost of materials and fabrication the statutory minimum of ten percent of the sum of material and fabrication costs for general expenses, since Kobe's reported actual expenses were lower than the statutory minimum. We added Kobe's profit to the constructed value, as it was higher than the statutory minimum eight percent. We also added Kobe's packing costs.

Kobe, NKK, Sanyo and SMI—Home Market Price

Where appropriate, home market prices were based on delivered, packed prices to unrelated purchasers. We made deductions where appropriate, for inland freight, insurance, and commissions. We also made adjustments, where appropriate, for warehousing expenses, credit costs and packing costs.

All four firms investigated claimed a circumstance of sale adjustment for differences in the cost of credit. In their computation of credit costs three of the four firms, Kobe, NKK and SMI claimed an effective corporate borrowing rate

which was the weighted-average of rates incurred on both short- and long-term funds. In addition, all four firms claimed a net interest benefit on export sales to the United States based on the preshipment advance of funds by customers at below-market interest rates. Their rationale was that the advanced funds made it unnecessary to borrow at commercial rates, thereby providing a benefit equal to the difference in rates. We disallowed the use of long-term funds in the calculation of interest rates because only short-term financing of receivables is under consideration in our investigation. We also disallowed the claim for the amount of interest earned on prepayments in excess of the interest cost on export sales to the United States. We disallowed this adjustment because such an imputed cost of credit cannot be employed when the actual experience of cost exists.

Three of the four firms, Kobe, NKK and Sanyo, employed offsetting compensatory balances for short-term credits in their credit cost calculations. We allowed the interest offset on the basis that it may be viewed as the price borrowers pay for the bank's commitment under a line of credit to extend a loan and, as such, it is a directly related selling expense, since it relates to the financing of receivables.

Sanyo asked for an adjustment for physical differences in the merchandise based on random length cutting. The adjustment was disallowed because we did not receive the information in time for proper evaluation. If verified, we will consider this information for our final determination.

Sanyo also claimed a level of trade adjustment based on sales to a trading firm, Kanematsu-Gosho, Ltd. Sanyo claimed that the trading firm buys in large quantities and sells only to wholesalers. We disallowed this claim. We did not view this as a claim for level of trade adjustment, since all sales were made to trading firms. We viewed this instead as a claim for differences in quantities purchased and, as such, disallowed it as it did not not conform to the requirements of § 353.14 of the Commerce Regulations.

SMI claimed an adjustment for differences in prices where sales were made in small quantities. We did not make this adjustment as cost justification data were not presented. If the evidence is presented in a form which can be evaluated by the Department of Commerce, it will be considered for our final determination if verified.

All four of the firms claimed adjustments for physical differences in the merchandise being compared. We did not make these adjustments as no information was provided on the cost of the physical differences. If such evidence is presented in a form which can be evaluated by the Department of Commerce, it will be considered for our final determination if verified.

Supplemental Data Requested

Kobe

During the verification of Kobe's response to our antidumping questionnaire on June 12, 1982 and again on July 15, 1982, we asked for information concerning the specific methodology used in the allocation of selling, general and administrative expenses in Kobe's cost of production calculations. On both occasions the response was incomplete and provided no opportunity for the Commerce Department to ascertain the veracity of that segment of the cost information. Consequently, for purposes of this preliminary determination, we used the statutory minimum of 10 percent as described in the section on foreign market value. We will once again ask Kobe for this information so that we may consider it for our final determination. We will also ask Kobe for United States selling expense information which will be used if constructed value is used as our basis for foreign market value for our final determination.

In addition, Kobe claimed an adjustment for physical differences in the merchandise being compared. They claimed that certain groups of sizes of the merchandise had virtually identical costs of production within each group. They claimed to be unable to provide us with the cost differences of individual sizes. Consequently, we made no allowance for physical differences. We once again will ask Kobe for information on a size-by-size basis so that the requested adjustments can be considered.

If the information requested of Kobe is not received by September 15, 1982, we may use only some or none of the partial information that has already been submitted in making our final determination. In these instances we may resort to using the best information otherwise available according to section 776(b) of the Act for our final determination.

NKK

NKK requested an adjustment for physical differences in the merchandise. NKK claimed to be unable to break down the cost of the differences on a specific size basis. Instead, they suggested the use of price ratios developed from actual price lists to arrive at size adjustment factors. We have not made any adjustment for physical differences in the merchandise and we once again will ask NKK for the information necessary to adjust for differences in size on a cost basis.

In addition, NKK claimed they had insufficient time to prepare information regarding technical services. We are providing them with a final opportunity to supply this informaiton.

If the information requested of NKK is not received by September 15, 1982, we may use only some or none of the partial information that has already been submitted in making our final determination. In these instances we may resort to using the best information otherwise available according to section 776(b) of the Act for our final determination.

Sanyo

Sanyo claimed a cost differential for random-cut pipes and tubes, but furnished no cost information to support the claim. We will once again ask Sanyo for such data so that we can properly evaluate their claim.

Sanyo also claimed an adjustment for physical differences in the merchandise similar to that of Kobe. Since the data provided did not quantify the differences between specific sizes, no adjustment was made. We will once again ask Sanyo for the cost information necessary to make adjustments for size.

If the information requested of Sanyo is not received by September 15, 1982, we may use only some or none of the partial information that has already been submitted in making our final determination. In these instances we may resort to using the best information otherwise available according to section 776(b) of the Act for our final determination.

SMI

SMI claimed an adjustment for differences in quantity in the form of an additional charge for small quantities. if the firm can provide specific cost justification for this adjustment in time for proper evaluation and verification, we will consider it in making our final determination.

SMI claimed an adjustment for size differential similar to that made by NKK. We made no adjustment in our comparisons for differences in the merchandise and we will once again ask SMI to provide the information to justify an adjustment for differences in size on a cost basis.

If the information requested of SMI is not received by September 15, 1982, we may use only some or none of the partial information that has already been submitted in making our final determination. In these instances we may resort to using the best information otherwise available according to section 776(b) of the Act for our final determination.

Verification

In accordance with section 776(a) of the Act, we verified, to the extent possible, all information used in this determination. We were granted access to the books and records of the four foreign manufacturers and one trading firm investigated.

We used standard verification procedures, including on-site inspection of the manufacturer's operations and examination of accounting records and selected documents containing relevant information. We will verify all data used in reaching the final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of the seamless heat resisting pipes and tubes and seamless stainless pipes and tubes from Japan, with the exception of entries of seamless stainless pipes and tubes from Kobe Steel Ltd., which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average margin by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Firm product	Weighted-average margin (percent)
Seamless heat resisting pipes and tubes:	
NKK	1.30
SMI	1.96
Other manufacturers/producers/exporters	1.96
Seamless stainless pipes and tubes:	
Kobe	[1] 0.00
Sanyo	0.62
SMI	10.14
Other manufacturers/producers/exporters	10.14

[1] Imports of this product from Kobe are excluded from this preliminary determination. As the weighted-average margin for this product was 0.02 percent, which is *de minimis*, we are listing this cash deposit or bonding rate as 0.00 percent for purposes of this preliminary determination.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 353.47 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 10 a.m. on September 27, 1982 at the United States Department of Commerce, Room 3080, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs must be submitted to the Deputy Assistant Secretary by September 20, 1982. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within thirty days of publication of this notice, at the above address and in at least ten copies.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

August 18, 1982.

Appendix A

The merchandise covered by this investigation includes the following two categories of products:

1. Seamless heat-resisting pipes and tubes classifiable under item numbers 610.5209, 610.5229, and 610.5234 of the Tariff Schedules of the United States Annotated (TSUSA).

2. Seamless stainless pipes and tubes classifiable under item numbers 610.5205, 610.5229 and 610.5230 of the TSUSA.

The products, however, exclude oil and gas well casing and tubing, oil and gas field drill pipes, and oil and gas line pipe which are manufactured according to API standards.

The products are produced in compliance with certain country standards, for example, American Society for Testing and Material Standards (ASTM), American Society of Mechanical Engineers (ASME), or Japan Industrial Standards (JIS).

Seamless heat resisting pipes and tubes consist of ASTM designations A199, A200, A213 for tubes and A335 for pipes. Heat resisting steel refers to alloy steel which contains by weight less than 0.3 percent carbon and 4.0 percent to 11.5 percent inclusive chromium.

Seamless stainless pipes and tubes consist of ASTM designations A213, A268, A269, A271 and A511 for tubes and A312 and A376 for pipes. Stainless steel refers to alloy steel which contains by weight less than 1 percent of carbon and over 11.5 percent of chromium.

The principal determinants of the price and cost of production are:

1. Type of Finish—Hot or Cold
2. Specification and Grade
3. Outside Diameter (O.D.) and Wall Thickness (W.T.)

The products are used in the chemical, petrochemical and oil refining industries and by electric utilities for conveyance of gases and liquids at high pressures and/or at high temperatures in heat exchangers, boilers and other industrial equipment.

[FR Doc. 82-23264 Filed 8-24-82; 8:45 am]

BILLING CODE 3510-25-M

Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments

The following is a consolidated decision on applications for duty-free entry of accessories for foreign instruments pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No.: 82-00183. Applicant: Sandia National Laboratories, Division 5111, 1515 Eubank SE, Albuquerque, NM 87185. Article: Specimen Holder for Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended use of article:

See Notice on page 24166 in the **Federal Register** of June 3, 1982. Advice submitted by: Department of Health and Human Services: July 7, 1982.

Docket No.: 82–00189. Applicant: University of Chicago, Operator of Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. Article: Straining Stage for EM 7 Electron Microscope. Manufacturer: Materials Management, United Kingdom. Intended use of article: See Notice on page 27389 in the **Federal Register** of June 24, 1982. Advice submitted by: Department of Health and Human Services: July 7, 1982.

Comments: No comments have been received with respect to either of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for the purposes for which the articles are intended to be used, is being manufactured in the United States. Reasons: The applications relate to compatible accessories for instruments that have been previously imported for the use of the applicant institutions. The accessories are being manufactured by the manufacturers which produced the instruments with which they are intended to be used. We are advised by Department of Health and Human Services in its respectively cited memoranda that the accessories are pertinent to the applicant's intended uses and that it knows of no comparable domestic accessories.

The Department of Commerce knows of no similar accessories manufactured in the United States which are interchangeable with or can be readily adapted to the instruments with which the foreign accessories are intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Program Manager, Florence Agreement Program, Statutory Import Programs Staff.

[FR Doc. 82–23268 Filed 8–24–82; 8:45 am]

BILLING CODE 3510–25–M

Cotton Sheeting and Sateen From Peru; Postponement of Preliminary Countervailing Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Postponement of preliminary countervailing duty determination.

SUMMARY: The preliminary determination of cotton sheeting and sateen from Peru is being postponed, and we intend to issue it not later than November 12, 1982.

EFFECTIVE DATE: August 25, 1982.

FOR FURTHER INFORMATION CONTACT: Michael Hudak, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 377–3530.

SUPPLEMENTARY INFORMATION: On July 6, 1982, we announced our initiation of countervailing duty investigation to determine whether the government of Peru is giving its producers, manufacturers, or exporters of cotton sheeting and sateen certain benefits that are bounties or grants within the meaning of the countervailing duty law (47 FR 30273). The notice stated that we would issue a preliminary determination by September 8, 1982.

As detailed in the notice of initiation of the countervailing duty investigation, the petition alleges five subsidy programs that the government of Peru provides to producers and exporters of cotton sheeting and sateen including eleven different provisions of Peru's Law for the Promotion of Export of Non-Traditional Goods. We have never investigated any of these programs before. We have determined that the government of Peru and the other parties concerned are cooperating and that additional time is necessary because of the number and complexity of the alleged subsidy practices, the novelty of the issues presented, the need to determine the extent to which the alleged subsidy programs are used by Peruvian manufacturers, producers, and exporters, and the number of firms involved. For these reasons we determine that this case is extraordinarily complicated in accordance with section 703(c)(1)(B) of the Tariff Act of 1930, as amended ("the Act"), and we intend to issue a preliminary determination not later than Novermber 12, 1982.

This notice is published pursuant to section 703(c)(2) of the Act.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

August 18, 1982.

[FR Doc. 82–23267 Filed 8–24–82; 8:45 am]

BILLING CODE 3510–25–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Hearing

AGENCY: National Oceanic and Atmospheric Administration, (NOAA), Commerce.

ACTION: Notice of public hearing.

SUMMARY: The Gulf of Mexico fishery Management Council (council) will hold the first in a series of public hearings for the purpose of gathering information on the cumulative effects of coastal development on the shrimp and other fishery resources over which it has management authority. This hearing has particular reference to the proposed Corpus Christi Inner Harbor Ship Channel Project and its impact. These and other fishery resources are managed under fishery management plans developed by the Council. The Council also seeks views on possible amendment of its shrimp plan which may be necessary as a result of this project and others along the Gulf Coast.

DATES: Written comments on the effects of these projects on the shrimp resources from members of the public may be submitted no later than October 20, 1982. Individuals, agencies, or organizations wishing to comment on this matter may do so at a public hearing to be held as follows: September 20, 1982, Corpus Christi, Texas. The hearing will start at 1:00 p.m., and it will recess at 5:00 p.m. The meeting will reconvene at 7:00 p.m. and adjourn at 11:00 p.m. The hearing will be tape recorded and the tapes will be filed as an official transcript of the proceedings. A written summary will be prepared on the hearing.

ADDRESS: Send comments to: Wayne E. Swingle, Executive Director Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609.

HEARING LOCATION: September 20, 1982, Bayfront Auditorium, Bayfront Plaza, 1901 North Shoreline, Corpus Christi, Texas.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy boulevard, Tampa, Florida 33609; (813) 228–2815.

SUPPLEMENTARY INFORMATION: The hearings will deal with the need to amend the Shrimp FMP, as a result of cumulative losses of habitat adjacent to the Gulf of Mexico, as well as the proposed habitat modification by the Corpus Christi Inner Harbor Ship Channel Project, and the possibility of resultant irretrievable, permanent losses of fishery resources.

The FMP is based largely on the

premise that the restraint of the harvest of small shrimp until they reach a more optimum size will produce more pounds of shrimp and a greater total value. To accomplish this the Council established a seasonal closure for brown shrimp in the fishery conservation zone. The closure has for the last two years increased shrimp production.

The Council seeks views of the public on the proposed removal of shrimp habitat and whether amendment to the plan is appropriate as a result of loss of habitat and the resultant reduced production of shrimp.

(16 U.S.C. 1201, e.t. sea.)

Dated: August 19, 1982.

David Rand,

Chief, Budget Operations Staff, National Marine Fisheries Service.

[FR Doc. 82-23262 Filed 8-24-82; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, Commerce.

SUMMARY: The New England Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265), will meet to discuss scallop regulations, the herring fishery; introduce new members, elect Council officers, and discuss other Council matters as necessary.

DATES: The public meetings will convene on Thursday, September 16, 1982, at approximately 10 a.m., and will adjourn on Friday, September 17, 1982, at approximately 1 p.m. The meetings may be lengthened or shortened or agenda items rearranged, depending upon progress on the agenda.

ADDRESS: The meetings will take place at the Samoset Inn, Rockport, Maine.

FOR FURTHER INFORMATION CONTACT: New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route One), Saugus, Massachusetts 01906; Telephone (617) 231-0422.

Dated: August 20, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-23263 Filed 8-24-82; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increasing the Import Levels for Certain Apparel Products From Sri Lanka

August 20, 1982.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing the levels of restraint for men's and boys' cotton trousers in Category 347 to 475,000 dozen and for wool sweaters in Category 445/446 to 135,000 dozen, produced or manufactured in Sri Lanka and exported during an extended restraint period which began on November 23, 1981 and will now extend through April 30, 1983.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (47 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), and May 13, 1982 (47 FR 20654))

SUMMARY: Pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 7, 1980, as amended, between the governments of the United States and Sri Lanka, consultations have been held and agreement reached to increase the levels of restraint for cotton and wool textile products in Categories 347 and 445/446 which have been exported during an extended period of restraint which began on November 23, 1981 and will extend through April 30, 1983. The previous restraint period was the twelve-month period which began on November 23, 1981 and would have terminated on November 22, 1982.

EFFECTIVE DATE: August 25, 1982.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On November 20, 1981, there was published in the **Federal Register** (46 FR 57105) a letter dated November 18, 1981 from the Chairman of the Committee for the Implementation of Textile Agreements, to the Commissioner of Customs which established levels of restraint for cotton and wool textile products in Categories 347 and 445/446 during the twelve-month period which began on November 23, 1981. In the letter published below the levels of restraint previously established for the two categories are being increased for an extended period which began on November 23, 1981 and extends through April 30, 1983.

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 20, 1982.

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of November 18, 1981 from the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of cotton and wool textile products in Categories 347 and 445/446, produced or manufactured in Sri Lanki and exported during the twelve-month period which began on November 23, 1981.

Effective on August 25, 1982, paragraph 1 of the directive of November 18, 1981 is amended to include the following adjusted levels of restraint for Categories 347 and 445/446 which have been exported during an extended period of restraint which began on November 23, 1981 and extends through April 30, 1983:

Category and Adjusted Level of Restraint [1]

347 475,000 dozen
445/446 135,000 dozen

The action taken with respect to the Government of Sri Lanka and with respect to cotton and wool textile products from Sri Lanka has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-23280 Filed 8-24-82; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF EDUCATION

National Institute of Handicapped Research; Funding Priorities for FY 1983

AGENCY: Education Department.

ACTION: Final funding priorities for the National Institute of Handicapped Research for fiscal year 1983.

SUMMARY: The Secretary announces final priorities for research to be supported by the National Institute of Handicapped Research (NIHR) in fiscal year 1983. NIHR program regulations authorize the Secretary to establish

[1] The levels of restraint have not been adjusted to reflect any imports after November 22, 1981.

priorities by reserving funds to support particular research activities. Departmental administrative regulations require that if priorities are not already established within program regulations, they must first be proposed for public comment before they are finalized and announced. Proposed priorities were published in the **Federal Register** on May 19, 1982. These final priorities inform potential grant applicants and others of the research areas in which NIHR intends to hold grant competitions during fiscal year 1983.

EFFECTIVE DATE: Unless the Congress takes certain adjournments, these priorities will take effect 45 days after publication in the **Federal Register**. If you want to know the effective dates of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Edythe Glazer, National Institute of Handicapped Research, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone (202) 245–0555, TTY for deaf individuals (202) 472–4217.

SUPPLEMENTARY INFORMATION: A total of 47 priorities were proposed in the **Federal Register** on May 19, 1982, (47 FR 21567) for public comment.

In that Notice, interested parties were asked to comment on both the merits of the proposed priorities, including suggested modifications to the priorities, and on the program authority considered most appropriate for funding research in each of the priority areas. In that Notice, it was also made clear that the final funding priorities would be selected on the basis of public comment, the availability of funds, and any other relevant Departmental considerations.

Thirty-five priorities are being announced for funding. In response to public comment, some of the proposed priorities have been eliminated entirely, some have been consolidated with other priorities, and some have been revised in terms of the nature of the research to be conducted and/or the program authority under which it is to be funded. These changes are discussed in more detail in the "Summary of Comments and Responses" section of this Notice. Two of the proposed priorities have been determined to be more appropriately supported through the contract mechanism and NIHR plans to publish RFPs in these areas.

Program Information: NIHR is authorized to support research and related activities in a variety of areas and through several program authorities. The priorities identified in this Notice cover research and related activities to be conducted through Research and Training Centers, Rehabilitation Engineering Centers, Research and Demonstration Projects, and Knowledge Dissemination and Utilization Projects. Following are brief overview descriptions of these four programs.

Research and Training Centers (RTCs) conduct coordinated and advanced programs of rehabilitation research, and provide training to rehabilitation personnel engaged in research or the provision of services. RTCs must be operated in collaboration with institutions of higher education and must be associated with a rehabilitation service program. Ideally each center conducts a program of research, scientific evaluation, and training activities in an area which contributes substantially to the solution of problems in that area, advances the state-of-the-art, and becomes a recognized Center of excellence in a given subject area. Each Center is encouraged to develop practical applications for all of its research findings through a scientific evaluation process which tests and validates its findings, as well as related findings of other Centers. Center training programs generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as development of or contribution to undergraduate and graduate texts and curricula, in-service training, and continuing education.

Rehabilitation Engineering Centers (RECs) conduct coordinated programs of advanced research of an engineering or technological nature. RECs are also encouraged to develop systems for the exchange of technical and engineering information and to improve the distribution of technological devices and equipment to handicapped. Each REC must be located in a clinical rehabilitation setting and is encouraged to collaborate with institutions of higher education.

Ideally each REC conducts a program of research scientific evalaution, and training that advances the state-of-the-art in technology or its application, contributes substantially to the solution of rehabilitation problems and becomes and acknowledged Center of excellence in a given subject area. RECs are encouraged to develop practical applications for their research through scientific evaluation activities that validate their findings as well as related findings of other Centers. RECs generally conduct training programs to disseminate and encourage utilization of new rehabilitation engineering knowledge through such means as development of or contribution to undergraduate and graduate texts and curricula, in-service training, continuing education, and distribution of information and appropriate technology.

Research and Demonstration Projects (R&D) conduct research and/or demonstrations in single project areas on solutions to problems encountered by handicapped individuals in their daily activities. These research and demonstration projects focus primarily on rehabilitation techniques, devices and services affecting the rehabilitation of handicapped individuals.

Knowledge Dissemination and Utilization Projects are supported to insure that rehabilitation knowledge generated from projects and Centers funded by NIHR and other sources is fully utilized to improve the lives of handicapped persons.

The following priorities are grouped by research program. Following each identification research area is a brief statement of national need and a description of the specific research activities that must be conducted.

Funding Priorities: The Secretary announces that the following research areas are funding priorities for NIHR for fiscal year 1983:

Funding Priorities for Research and Training Centers (13)

Research and Training Centers will be funded for periods up to 60 months.

- *Improved Rehabilitation Modalities for Musculoskeletal Impairments, Arthritis, and Low Back Syndrome*

Arthritis directly affects almost every American and is often desabling as well as painful. While the incidence of arthritis increases enormously with age, the disease also affects tens of thousands of children, often with devastating consequences. The Arthritis Foundation estimates that the cost of arthritis exceeds $13 billion in medical care and implications of lost work alone. There are few reliable indicators of the efficacy of various treatment regimes, given the variability of the course of the illness and the unpredictability of the responses to therapy. Disabilities from other musculoskeletal impairments, including trauma, and low back pain affect millions of Americans and limit their productivity.

The center to be funded must investigate the efficacy and benefits of current physical rehabilitation modalities for these impairments and develop and evaluate new, improved rehabilitation approaches and treatment techniques. Functional performance appraisal strategies must be developed for use in quantification and measurement of therapeutic intervention. Comprehensive research

on approaches to rehabilitation of individuals with these sever impairments is needed and may include psychosocial adjustment, vocational adaptation, and potential for independent living as well as physical restoration.

The Secretary intends to fund at least two RTCs in this priority area, in an amount up to $725,000 each.

- *Rehabilitation of the Cardiac Patient*

Each year approximately 200,000 of those who survive coronary infraction will experience repeated cardiac symptoms and psychological complications affecting regular life activities. Exercise is regarded as a major factor in assessment and improvement of physiological and psychological functioning after infraction.

Cardiac rehabilitation research must definitively evaluate established rehabilitation and early ambulation techniques. Exercise regimens, stress tests, and other objective methods for quantification of cardiopulmonary—respiratory function must be refined and improved. new rehabilitation and work-hardening modalities to improve physical, psychosocial, and vocational function and adaptation are to be developed as well as studies of the causes of failure to achieve normal exercise performance following definitive heart repair.

The Secretary intends to fund at least one RTC in this area in an amount up to $500,000.

- *Improving Rehabilitation Potential in Brain Trauma and Stroke Victims*

Severe brain injury is a major catastrophic occurrence resulting in a costly and significant impairment of neurological function, behavior, mobility, cognition, and perception. To date, the clinical course of severe head trauma has not been understood and documented. Rehabilitation needs and service delivery methods have not been identified. The available literature yields few insights into appropriate and effective rehabilitation modalities. Stroke rehabilitation is hampered by lack of knowledge of how to increase rehabilitation potential.

Such a Center must study the return and plateau of all aspects of function in both stroke and brain injury, including language, cognition, perception, and motor activity and must investigate innovative rehabilitation techniques to enhance early return of function in all areas. Research to develop and evaluate prognostic instruments and to document the possible stages of recovery is to be conducted by the Center, as is the investigation of new approaches essential to cost-effective rehabilitation of brain injury and stroke victims. This may include investigation of behavioral, vocational, and independent living rehabilitation needs.

The Secretary intends to fund at least two RTCs in this area, in an amount up to $725,000 for each.

- *Comprehensive Rehabilitation Management of Neuromuscular Diseases, Including Multiple Sclerosis and Related Neuropathies*

Multiple sclerosis afflicts as many as 500,000 persons in the United States. Although there is now no cure for multiple sclerosis, there is a substantial need for effective, comprehenisve rehabilitation modalities to restore or maintain physical function and retard the disabling effects of this disease. Many other chronic debilitating neuromuscular diseases and peripheral neuropathies are also included for investigation.

The Center must establish a research program to quantify and standardize methods of evaluating disease activity and remission and pathologic function. The Center must also undertake research to develop means to enhance physical functioning in all areas of impaired performance, and may also include studies on psychosocial, vocational, and independent living complications of, and adjustment to, severe neuromuscular disease.

The Secretary intends to fund at least one RTC in this area in an amount up to $725,000

- *Improving Methods and Techniques for Rehabilitation Management of Spinal Cord Dysfunction*

Between 175,000 and 200,000 persons have incurred spinal cord injuries (SCI), with new incidences occurring at a rate of 8,000 to 10,000 annually. The high cost of care (estimated at $2.3 to $3 billion annually) is attributable to several factors: early age of onset; involvement of multiple body systems; improved survival rates among very severely handicapped persons; and need for prolonged, sophisticated treatment regimens.

Major areas of research to be undertaken by the Center in this area include the identification of pathophysiologic mechanisms of secondary complications, development of new rehabilitation techniques for prevention, control and treatment of secondary complications, the development of innovative rehabilitation management methods, and the assessment of appropriate strategies to achieve psychosocial adjustment and productive lives for those with spinal cord dysfunction. Also required of the Center is an evaluation of model systems of care, including the retrospective analysis of the National Spinal Cord Injury Data Base. Researchers may also investigate psychosocial, vocational and independent living rehabilitation needs of this population.

The Secrearty intends to fund at least two RTCs in this area, in amounts up to $725,000 each.

- *Improving Management of Vocational Rehabilitation Services*

Improved management of service programs for the handicapped including vocational rehabilitation and independent living, and development of new service delivery mechanisms are needed to improve the effectiveness of individual service programs and the coordination between these service programs.

Two major areas requiring research are (1) rehabilitation counseling, and (2) rehabilitation organization, evaluation, and management. Among required counseling-related research and training activities are those addressing the effects of program reduction, methods of improving productivity, and use of client co-management in rehabilitation. Among required organizational, evaluation, and management research and training activites are those directed to evaluating specific services such as client followup and post-employment services, agency planning techniques, and management information systems for assessing organizational structure and performance.

Important issues which must be studied include the deployment of administrative and supervisory personnel, development of skills for supervision and management, and the optimum use of human resources to enhance agency function and service delivery.

Improved mechanisms are also needed for facilitating communications between the research and rehabilitation service delivery communties on research issues in the management of services programs and the Center must address research on these needed mechanisms.

The Secretary intends to fund at least one RTC in this area in an amount up to $725,000.

- *Enhancing Employability of Handicapped Individuals*

Research is needed to improve the entire continuum of employability development from client assessment through training, job development, job placement, and followup. Traditional service delivery approaches for

stimulating jobs for handicapped persons and for placement assistance are changing rapidly.

Research in this Center must assist the rehabilitation services delivery system to adopt, adapt, and evaluate new techniques for improving employment outcomes for handicapped individuals.

Some groups of handicapped individuals are underserved in vocational rehabilitation due in part to basic weaknesses in rehabilitation methods and materials for addressing their specific employment-related functional needs. Research and training activities of the Center must utilized and/or develop functional assessment criteria to identify and distinguish target groups where the need to improve access to employment is greatest.

Employment-related research and training activities must assess the special vocational needs of underserved group while presenting an overall program of research on needed employment-enhancing mechanisms such as job development and placement techniques; work study; work-training and retraining; technical assistance outreach to employes to meet goals for the successful employment of handicapped individuals; and post-employment followup service methods.

The Secretary intends to fund at least one RTC in this area in an amount up to $725,000.

- *Improving Sheltered, Transitional, and Protected Employment and Alternative Employment Solutions*

There is a need to improve the economic viability of sheltered workshops and other rehabilitation facilities, as well as to develop innovative forms of semi-sheltered or alternative employment. This research must focus on improving basic services provided in such settings, including vocational evaluation, work adjustment, and placement services. Training and dissemination activities must provide for transmittal of information and technical materials to rehabilitation facilities, workshops, and other appropriate settings in a systematic way so as to encourage their use, considering that many such facilities have very limited capabilities for internal research and staff or program development. Research topics which must be considered include: the management, procurement practices, and production factors correlated with successful business operations in sheltered workshops; alternatives to sheltered facility employment and new forms of employment in the public and private sectors; and the implications of computers and related new technology for productive homebound employment.

The Secretary intends to fund at least one RTC in this area in an amount up to $650,000.

- *Improving Vocational Rehabilitation at the Worksite*

Adaptation at the worksite to improve functional capacities for mobility, self-care, endurance, communication, dexterity, and social interaction is an extremely important factor in successful employment outcomes for disabled individuals. Research must include both early rehabilitation intervention for individual adjustment and accommodation at the worksite. Particular attention shall be given to rehabilitation services and job accommodation techniques which involve employers and are aimed at reducing the number of employees retiring under the Social Security Disability Insurance System and aiding an increased number of beneficiaries and SSDI applicants to return to work.

The project must identify disability target populations and industry settings with both high rates of disability and low rates of return to work; identify factors in successful early intervention; and through research, technical assistance, and training, design and implement model early intervention programs, and evaluate their impact on employment outcome.

The Secretary intends to fund at least one RTC in this area in an amount up to $400,000.

- *Enhancing Psychosocial and Linguistic Development for Deaf Individuals*

Deaf persons experience serious communication deprivation which may have an impact upon their psychosocial development and mental health. Modalities of measurement and therapy must be based on factors different from those for a hearing population. Not enough is known about the implications of the interpreting process and interpreters for the psychosocial development of deaf individuals.

Developmental norms for the physical, cognitive, social, and emotional growth of deaf children, youth and adults, as well as diagnostic instruments to assess deaf infants and children, are to be developed. The effects of deafness on the mother-infant bonding process, on family interaction, on marital relationships, on sibling behavior, on neighborhood integration, and on work adjustment are to be studied, along with the process of linguistic maturation in young deaf adults in the post-secondary years. Current techniques to enhance communication competency in deaf children, that emphasize alternatives to English language competencies, are to be evaluated. Research into the entire process of both manual and oral interpreting, including aptitude, attitude, language processing, training techniques, evaluation-certification, and the effective utilization of the interpreter by deaf individuals is to be conducted.

The Secretary intends to fund at least one RTC in this area in an amount up to $400,000.

- *Improving Employability for Mentally Retarded Individuals*

The economic and social costs resulting from the limitation on functional independence and vocational competence of mentally retarded individuals dictate the establishment of a comprehensive research and training program in this area. Mentally retarded persons are frequently relegated to custodial care, are unemployed, underemployed, or outside the labor force, and often dependent on public assistance.

The Center shall conduct research to improve vocational performance through improving prevocational and vocational assessment, training techniques, placement strategies, followup and employer assistance, and job-related social and interpersonal skills.

The research shall identify factors that enhance productivity, job security, and job satisfaction for severely retarded persons in settings involving various types and levels of social support, and also identify actual costs and benefits of various service delivery and income support models for retarded persons with various functional deficits and assets.

The Secretary intends to fund at least one RTC in this area in an amount up to $600,000.

- *Improving the Psychosocial Environment and Eliminating Social and Attitudinal Barriers*

Social, attitudinal and legal barriers limit the full participation of handicapped individuals in society. Research is needed to provide an improved understanding of the psychosocial environment relevant to handicapped individuals, and to develop methods for increasing the acceptance of handicapped individuals as full-fledged members of society.

Not enough is known about processes of psychosocial adjustment in handicapped individuals. The application of knowledge of developmental psychology based on able-bodied individuals has not provided sufficient understanding of psychological development and social

adjustment in the disabled population. Investigations in this area will not only add to our understanding of the effects of handicapping conditions on the process of psychosocial development but will provide information for developing more effective remedial and treatment programs.

Research must be conducted to develop a comprehensive theory which describes and measures the physical, social and psychological ecology most relevant to handicapped individuals and to develop theory-based techniques to modify psychosocial environments.

Research will also be directed at improving our understanding of social, attitudinal, legal and political barriers limiting full participation of handicapped individuals in society, and could include the development of a program to assess attitudes of the general public and specific target populations toward handicapped individuals and to increase the readiness to accept persons with impairments, disabilities, and chronic illness.

Programmatic research must be undertaken to create a "developmental psychology of disabled persons," including the design and conduct of a comprehensive, longitudinal study of the processes of psychological responses to the existence or acquisition of a disability, including emotional, cognitive, social, and environmental factors; the relation of adjustment patterns to disability type; and the personal and environmental factors conducive to effective coping for disabled men and women.

The Secretary intends to fund at least one RTC in this area in an amount up to $500,000.

- *Improving Community Integration of Mentally Retarded Individuals*

As retarded persons leave school or are released into the community from institutions, new problems of individual adjustment, work, daily living, and use of appropriate resources emerge. Successful, sustained living in the community will require some manipulation of the social environment for these individuals.

The Center must undertake a program of research to develop approaches to optimize use of community resources and strategies to manipulate the environment and to improve adjustment and daily living skills.

Research and related activities must be directed toward improving adjustment and daily living skills, identifying multiple measures of successful living in the community, and devising instruments to assess needs and predict adjustment outcomes. The research should also idenfify those characteristics of individuals which correlate with successful adjustment in various types of social environments, with emphasis on residential alternatives and social support systems.

Such a Center shall also focus on development of interagency linkages, to improve services and ease transitional problems and on strategies to improve community capacity to accept and support mentally retarded individuals, to reduce attitudinal barriers and modify the psychosocial environment.

The Secretary intends to fund at least one RTC in this area in an amount up to $600,000.

Funding Priorities for Rehabilitation Engineering Centers (10)

Rehabilitation Engineering Centers will be funded for periods up to 60 months.

- *Improved Wheelchair Systems and Specialized Seating*

Approximately three-quarters of a million handicapped persons use the wheelchair as their primary mode of mobility. The problems of wheelchair reliability, durability, and versatility are constant sources of frustration to the user and prevent the achievement of true independence. The average lifespans of both manual and power wheelchairs are brief, while the major repair problems differ somewhat. Pressure on unsupported human tissue creates problems that should also be addressed in this context.

Research and development must be conducted to develop new designs with emphasis on more durable and lightweight chairs; maneuverability, stability, and ease of use in both manual and powered chairs; improved performance and safety characteristics; new materials; improved power systems; and reliable energy-efficient controls.

The Center must also develop cost effective methods to provide modular seating with appropriate tissue pressure distribution and body positioning supports that can be customized and used independently or as integral parts of standard or new design wheelchairs.

The Secretary intends to fund at least one REC in this area in an amount up to $725,000.

- *Improved Techniques of Functional Electrical Stimulation*

Several million persons have neuro-musculoskeletal impairments that cause abnormal limb and/or spinal functions that can be emeliorated by functional electrical stimulation, alone or in conjunction with other technological systems.

Research and development are needed in the area of functional electrical stimulation (FES). This research must include the design and development of devices and modes of therapy utilizing FES and biofeedback for central and peripheral nervous system impairments. Other required research objectives are the design and development of devices utilizing FES in combination with passive or active orthotic systems; and devices and modes of therapy utilizing FES to restore or assit bowel and/or bladder function.

The Secretary intends to fund at least one REC in this area in an amount up to $725,000.

- *Improved Methods of Quantification of Function/Performance*

At present, therapeutic treatment of physically impaired individuals is usually prescribed and evaluated subjectively by clinicians on the basis of experience. More accurate diagnostic systems based on current technology could redirect resources to more effective therapeutic treatment, resulting in cost and time savings as well as more successful outcomes.

The REC in this area must develop instrumentation to measure function and performance of appropriate body systems individually or in combination; validate the instruments; establish performance criteria with respect to functional requirements for performing various activities; and prepare this instrumentation for use by appropriate service providers in the rehabilitation process.

The Secretary intends to fund at least one REC in this area in an amount up to $725,000.

- *Improving Personal Licensed Vehicles and Transportation*

Mobility for handicapped persons is seriously impaired by problems of accessibility to mass transit. Alternative transportation resources are often the only viable option. Personal vehicles can be an option for many handicapped individuals, but there are many issues of design, operation, cost, and safety to be resolved.

A Center in this area must design equipment to modify personal vehicles; establish safety and performance criteria for vehicular equipment matched to the capabilities of disabled drivers (especially the most severely disabled); study access and safety systems to determine the most appropriate devices and combinations of devices for disabled drivers; and initiate a program of training of disabled drivers to utilize

appropriate equipment and modifications best suited to their needs.

The Secretary intends to fund at least one REC in this area in an amount up to $500,000.

- *Stimulation of Industry and Evaluation of Technology*

To meet the challenge of providing devices and technological products for the handicapped community there is a need to encourage and facilitate greater business involvement in the development and distribution of these devices and equipment to take advantage of the marketing and distribution resources available in private industry.

Research and development to be done in this REC include: A study of the market nationwide for rehabilitation technology; a study of incentives such as low cost loans or grants, tax credits, and government set-asides to promote business investment in rehabilitation technology; and a comprehensive study of disincentives to business investment, including but not limited to such issues as patent policy, product liability, and third party payment problems.

In addition, a national evaluation and testing program (both engineering laboratory and clinical, including a computerized information system) must be established to assess suitability of rehabilitation equipment and establish minimum performance standards for products to be marketed for handicapped persons.

The Secretary intends to fund at least one REC in this area in an amount up to $500,000.

- *Improving Rehabilitation of Low Back Pain*

Disability as a result of low back pain is one of the most common handicapping conditions affecting millions of Americans and limiting their productivity. Very little systematic, coordinated research has been focused upon the rehabilitation of persons with chronic low back syndrome. It is anticipated that a substantial improvement of low-back-related disability can result from concentrated, coordinated research which combines the efforts of medical and engineering scientists.

The REC in this area will design and develop methods and equipment to quantify low back pain; evaluate existing, and design new orthotic systems, including electrical stimulation for the mitigation of back and neck pain; evaluate the effectiveness of electrical stimulation for the control of low back pain and for increasing muscular strength to stabilize the low back; and evaluate existing exercise regimens and design new ones to reduce the incidence of low back pain.

The Center must also develop new equipment and methods for training persons to manage low back pain, including electrical and biofeedback systems, and develop modified seating and other components to reduce low back pain.

The Secretary intends to fund at least one REC in this area in an amount up to $500,000.

- *Improved Prostheses, Orthoses, and Total Joint Replacement*

Several million persons have neuromusculoskeletal impairments that cause abnormal limb and/or spinal functions which can be ameliorated by technological systems. Current devices are often cumbersome, uncomfortable, unattractive and expensive. Replacement of total joints is frequently the most promising approach to restore and maintain function.

The proposed Center is to conduct research to develop innovative approaches to the fitting of prosthetic and orthotic devices to human tissue. Research must determine which materials and fabrication methods provide the best means for efficiently producing orthotic systems that are lighter in weight, more comfortable, and more cosmetic, with practical joint motion that conforms to anatomical motion, and which maximize function without undue negative side effects.

Research and development activities must also examine simple control approaches for body-powered, externally-powered, and hybrid control systems; investigate sensory and proprioceptive aspects of control of function; and develop improved spinal orthoses which are effective in reducing or limiting spinal deformity while being comfortable and cosmetically acceptable.

Reliable internal prostheses and implantation techniques are needed to decrease the incidence of implant failure and extend the benefits of total joint replacement to an expanded disabled population. The REC should determine the type, relative frequency, and cause of implant failure; develop new methods and materials for implant fixation; determine relative differences in the biomechanics of normal joints and prostheses; establish more effective methods to transfer information to clinicians on new implant techniques, component designs, and materials; evaluate performance of current implants; and develop new implants designed for greater longevity.

The Secretary intends to fund at least on REC in this area in an amount up to $725,000.

- *Modifying the Work Site to Enhance Employability*

Employability for handicapped persons could be greatly enhanced by technological modifications to the work site. These can include adaptations of equipment and work stations, improved access to work sites and auxiliary locations, relocation of workers, or other modifications to the environment. Work site modification can be useful in maintaining employability for the worker who acquires a disability as well as for unemployed handicapped populations.

Such a Center must develop standards and criteria for effective work site modification; classify and describe work sites in terms related to client functional assessment indicators; design and develop innovative equipment and work station modifications; document the most effective means of adapting work environments in competitive industry; develop technology to mechanize and automate production systems in sheltered workshops and transitional and competitive work settings; and develop training programs for vocational rehabilitation counselors in the use of workplace modification and special equipment.

The Secretary intends to fund at least one REC in this area in an amount up to $725,000.

- *Development of New Generation Hearings Aids*

Hearing aids can be used to various degrees of satifaction by those persons impaired by conductive, sensorineural, mixed and central hearing losses.

Hearing aid technology has advanced to a state where it could benefit from additional research to improve the quality of amplification and frequency responses produced and the clarity of sound perceived by the user.

Such a Center shall develop performance evaluation standards and evaluate all currently available hearing aids systems for quantity and quality of amplification and frequency responses relating to conductive, sensorineural, mixed and central hearing losses; develop new concepts in hearing aids using the latest technologies for sound reproduction and pattern recognition of messages; develop diagnostic and prescriptive instruments and common prescritive criteria to optimize use of residual hearing and hearing enhancement; and evaulate newly-developed hearing aids.

The Secretary intends to fund at least one REC in this area in an amount up to $400,000.

- *Development of Nonvocal Communication Assistance*

The loss of speech, or the inability to speak in an easily understood manner, may quickly isolate an individual. The inability to communicate in a natural and expressive way disrupts the normal educational process, makes employment difficult, and leaves the speech-impaired person unable to complete the communicative cycle. The loss of effective speech can be caused by birth defect, childhood diseases, cancer, stroke, or other neuropathies.

Research and development must be conducted to establish priority needs for augmentative communications technology; to study methods of interfacing communications aids used by persons with different disabilities; to improve access for the severely handicapped to electronic devices such as typewriters, computer learning stations, synthesized voice recorders, environmental control systems, and powered mobility. Research must also be conducted to determine appropriate devices and techniques for aphasic and other speech-and-language-disabled preschool children and for adults with severe language dysfunctions.

The Secretary intends to fund at least one REC in this area in an amount up to $400,000.

Funding Priorities for Research and Demonstration Projects (10)

- *Enhanced Understanding of the Economics of Disability*

Among the reasons more advanced economic analysis of the impact of rehabilitation is needed now are: (1) major economic initiatives now underway require study as to their impact on disabled people; (2) the value of rehabilitation programs in economic terms is a vital ingredient in formulating public policy about the nature of future rehabilitation programs and the level of support; and (3) advances in economic analysis, and other methodological approaches are now available.

Research must examine expeditures for rehabilitation services and compare such costs with the costs of transfer payments including medical care and subsistence from private and/or public sources, as well as lost productivity and tax contributions of non-rehabilitated individuals. The project must also evaluate the impact on handicapped individuals of changes in the organization of intergovernmental rehabilitation efforts and determine the impact in economic terms of recent trends in rehabilitation services and transfer payments.

The Secretary intends to fund at least one project in this area at an amount up to $200,000. The award will be made for a period of up to 60 months.

- *Improved Rehabilitation Care and Treatment for Individuals with Severe Burns*

It is estimated that more than two million persons per year receive burns requiring medical attention. Approximately 70,000 of those require hospitalization, and another 9,000 die. Recent studies indicate that successful rehabilitation is possible for 95 percent of burn victims, provided treatment during the acute-care and first year post-burn period is adequate to prevent contractures and severe hypertrophic scarring.

The research project must study the natural course of severe burn trauma to identify rehabilitation problems, to develop a comprehensive rehabilitation model, and to improve reconstruction and both physical and physchosocial rehabilitation. Emphasis should be on the prevention of long-term complications and on shortening the characteristically long process of recovery. Special attention must be given to the rehabilitation needs of adolescents and young adults burned in childhood, including study of the relationship of age-at-onset to the adjustment process. The research must explore the relationship of medical preventive rehabilitation (splints, pressure) and surgical reconstruction to outcome measures including function, mobility, dexterity, and wound healing.

The Secretary intends to fund at least one project in this area at an amount up to $200,000. The award will be made for a period of up to 36 months.

- *Improving Functional Assessment for Employment*

Rehabilitation research in recent years has supported development of a number of functional assessment instruments for use in measuring client needs and outcomes, facilitating comparisons of populations over time and at various locations, analyzing problems and promising techniques in rehabilitation technology, and developing comprehensive demographic and client data files which include information on individual functional capacities in various areas.

Specific research must be conducted to increase the validity and reliability of functional assessment instruments related to employment and to conduct studies of their effectiveness in improving job opportunities for severely handicapped persons. Training methods require analysis to identify successful approaches. Research must (1) develop and refine functional assessment techniques including tests for validity and reliability and determining effective combinations of techniques, and (2) develop techniques to synthesize and correlate data from functional assessment measures to identify strengths and problems of rehabilitation clients in employment-related settings. The study must also review existing assessment instruments and provide a state-of-the-art analysis.

The Secretary intends to fund at least one project in this area at an amount up to $150,000. The award will be made for a period of up to 36 months.

- *Enhancing Rehabilitation and Family Adjustment for Handicapped Children and Youth*

Disabilities incurred in infancy and childhood may have pervasive effects on all aspects of the handicapped child: developmental processes; learning; phychosocial adjustment and interpersonal and familial interactions. Handicapped children require a range of services from many different delivery systems and often need special conditions in home and family life. The difficulty of providing for the child's diverse needs often creates stresses that jeopardize the emotional stability of the home and strain parental coping skills.

The project must assess the psychosocial adjustment of the handicapped child and the factors affecting the development of successful coping mechanisms in the child. The focus of the project is to be upon handicapped school age children and their families.

Successful rehabilitation of the child is heavily dependent on the ability of the family to deal with needs of the child and the many service providers. The project must conduct research to develop strategies to help families meet the unique social and emotional needs of their handicapped children as well as the needs of the total family unit. The project must include developing or refining instruments that measure family interaction patterns in order to identify families most vulnerable to adjustment problems. The project must also develop effective strategies to help parents and other family members cope with the demands created by a handicapped child. The research is to identify factors and enabling characteristics associated with effective parental coping behavior.

The Secretary intends to fund at least one project in this area in an amount up to $200,000. The award will be made for a period of up to 48 months.

• *Improving Vocational Rehabilitation in Postsecondary Education Programs for Deaf Individuals*

Approximately fifty junior/community, technical/vocational, and four year college/university programs in the United States have a special service focus for deaf students, in addition to the two major national post secondary centers at Gallaudet College (Liberal Arts) and the National Technical Institute for the Deaf (Technical).

Little information is available about the majority of these programs, the career goals of the students, their vocational preparation and rehabilitation and their eventual job placement, advancement, job satisifaction, and job retention.

The project must focus upon the vocational rehabilitation aspects of the postsecondary programs for deaf individuals. The criteria for evaluation should include job development, placement, retention, and overall success in the competitive labor market. The study population must include some deaf individuals with additional disabilities.

The research is to address: The state-of-the-art in the provision of postsecondary vocational opportunities for deaf individuals; the determination of which of the existing programs provides the best return for clients in terms of success in the labor market; and the development of a comprehensive plan for the dissemination of results to appropriate rehabilitation and special education service personnel.

The Secretary intends to fund at least one project in this area in an amount up to $200,000. The award will be made for a period of up to 36 months.

• *Improving Vocational Rehabilitation of Learning Disabled Adults*

A learning disability may be characterized by perceptual and/or auditory deficits, language disorders, aggressivenes, hyperactivity, and academic problems. The disability may last throughout life, making it difficult to succeed in school, in interpersonal relationships, and in employment. It is necessary to investigate specific areas relating to the impact a severe learning disability has on the vocational rehabilitation and employment needs of the learning disabled population.

The research project is to identify the unique vocational rehabilitation needs for persons with severe learning disabilities and to identify the existing and potential barriers to the provision of services to this population.

In addition, the research must identify the factors that result in successful job placement and job maintenance. Diagnostic instruments and testing, training, and evaluation strategies and materials that are adapted for different learning styles and modalities (such as visual, auditory, kinesthetic, and/or tactile approaches) are to be developed so that appropriate services may be provided to this population.

The target population consists of adults with severe learning disabilities.

The Secretary intends to fund at least one project in this area in an amount up to $200,000. The award will be made for a period up to 48 months.

• *Improving Services to Minority Populations*

It is apparent that minority populations have unique handicapping problems and have been inadequately served in rehabilitation programs. There apprears to be a differential distribution of handicapping conditions among various minority populations, although documentation is inadequate. Further, it is clear that vocational rehabilitation services are underutilized for reasons that are not documented and there are no known systems to improve service delivery.

To begin to address the issue of underserved handicapped black Americans and in response to Executive Order 12320 on Historically Black Colleges and Universities, a research project is to be conducted by, or in conjuction with, a historically black college on the unique handicapping problems and rehabilitation needs of black Americans.

The research must identify the variables significant to disabilities and rehabilitation among black persons, and design, implement, and evaluate a model service delivery program for this population.

The Secretary intends to fund at least one project in this area at an amount up to $200,000. The award will be made for a period of up to 36 months.

• *Improving Vocational Rehabilitation Opportunities for Railroad Workers*

Approximately 515,000 railroad workers in the United States when injured have no guaranteed access to a rehabilitation services delivery system. Unlike workers in other industries, railroad workers as such do not participate in the Social Security Disability Retirement System with its rehabilitation components and they are not covered by workers' compensation legislation. Present laws have many disincentives and barriers which prevent return to work or independent living for the disabled railroad worker. These facts were presented in a Feasibility Study conducted by the Rehabilitation Institute of Chicago (synopses available from NIHR). The research project must analyze legislation relating to rehabilitation of railroad workers at State and Federal levels; review rehabilitation efforts in the industry; and develop effective service models for this population. Research must be directed to these ends involving appropriate medical and vocational rehabilitation services components.

It is expected that the research results will have some implications for other groups of workers who may have similar problems in accessing vocational rehabilitation programs.

The Secretary intends to fund at least one project in this area at an amount up to $150,000. The award will be made for a period of up to 24 months.

• *Aids To Improve Mobility for Individuals With Low Vision*

Independent orientation and mobility are necessary for legally blind and partially sighted persons to be fully rehabilitated. The dog guide, long cane, and sighted guide are the only systems with universal acceptability. Increasingly, low vision aids have become available for use, but research is needed on individual acceptance and use, cost effectiveness, contribution to independence, and level of information provided.

The research project must identify the factors which enable a visually handicapped person to travel both independently and safely, including through a focus upon the performance of visually impaired persons judged to be competent travelers. Development of a theory of mobility which will be one outcome of the project is to be used as a basis for the design of a system for providing such orientation and mobility. The project will also study the diverse elements involved in making visually impaired persons safe and independent travelers. Emphasis is to be placed upon the law vision population. Factors of adjustment to mobility are to be studied, and specific guides for mobility training are to be developed.

The Secretary intends to fund at least one project in this area at an amount up to $200,000. The award will be made for a period of up to 24 months.

• *Improving Usefulness of Functional Electrical Stimulation*

Several million persons have neuro-musculoskeletal impairments that cause abnormal limb and/or spinal functions which can be ameliorated by functional electrical stimulation, alone or in conjunction with other technological systems.

The project is to include research and development in the area of functional electrical stimulation (FES) and biofeedback focusing on the improved design of devices and modes of therapy for individuals with upper and lower extremity functional deficits.

The Secretary intends to fund at least one project in this area in an amount up to $300,000. The award will be made for a period of up to 60 months.

Funding Priorities for Knowledge Dissemination and Utilization Projects (2)

- *Improving Service Delivery in Rural Areas*

Severly handicapped persons in rural areas are hampered in their ability to live independently by remoteness from services and resources. At the same time, there are existing outreach networks which could be used to benefit this population.

The project purpose is to develop and test innovative models for using existing outreach networks such as Home Demonstration Agents or rural Mail Carriers for the delivery of independent living services to deinstitutionalized and other severely handicapped persons in rural areas.

The Secretary intends to fund at least one project in this area with a funding level up to $200,000. The project will be funded for a period of up to 36 months.

- *Improving Utilization of Research Results*

There is a need to promote the widespread adoption of new, tested and validated practices and exemplary programs resulting from rehabilitation research and training that will improve and generally enhance the service delivery system for disabled individuals.

The project must develop regionally-based programs to provide technical assistance and access to research information on exemplary programs and training opportunities provided by NIHR, its grantees, or other governmental entities; establish and maintain a screening activity to select those innovations in the field with the greatest potential for improving rehabilitation practice; and develop materials to disseminate validated results of research, training, and exemplary programs.

The Secretary intends to fund at least one project in this area with a funding level up to $250,000. The project will be for a period of up to 60 months.

Summary of Comments and Responses

On May 19, 1982, the Secretary published proposed priorities in the **Federal Register** for public comment. Summaries of the public comments received and the Secretary's responses to these comments are printed below. This summary is divided into three sections: one dealing with general comments on the priorities and their assignment to various program authorities; one dealing with suggestions for additional priorities; and one section dealing with comments on each of the published priority areas, in the order in which they appeared in the **Federal Register.**

General Comments

Comment: Many commenters, mostly researchers, contended that many of the priorities, especially those in the medical area, were too narrow and restrictive in scope and should be broadened to include related rehabilitation problems.

Response: Some change has been made. It is the intention of the Secretary to intensify the focus of NIHR-sponsored research and to some extent limit its breadth. However, in many cases the Secretary believes the comments were sound and has expanded those priorities as appropriate. NIHR has attempted to present the priorities in a less restrictive manner and to give each priority a somewhat broader scope.

Comment: A large number of commenters from State vocational rehabilitation agencies suggested that the priorities should focus exclusively on populations of work age and on improvement of vocational rehabilitation services, and that NIHR should delete most priorities concerned with physical and mental restoration.

Response: No change has been made. The Secretary notes that NIHR has legislative authorization and purpose to include a broader spectrum of rehabilitation research encompassing all age groups.

Comment: Many commenters expressed concern that NIHR's priorities in physical restoration areas appeared to be in the province of other agencies such as NIH, NIMH, or Special Education, and maintained that NIHR should not focus on medical or educational research, but on a more limited vocational rehabilitation priority.

Response: No change has been made other than one of clarification. The Secretary agrees that the focus of research sponsored by NIHR should be on the rehabilitation aspects of treatment. However, proposed research programs in such areas as neuromuscular impairment, major trauma, and central nervous system problems have been planned in conjunction with relevant NIH Institutes to avoid duplication and to assure that NIHR focuses on rehabilitation aspects of the problems which would not be included in NIH research.

Comment: Many commenters stated that the assignment of priorities to specific program authorities for funding purposes is too restrictive and that applicants should be permitted to respond to any priority under any of the program authorities.

Response: Some changes have been made. However, regulations prohibit adopting this suggestion in its entirety. NIHR regulations specify different selection criteria for the evaluation of applications under the different program authorities. Thus it is not possible for applications under different program authorities to compete against each other. NIHR must establish the competitive area by specifying the program authority as well as the priority. However, the final funding priorities have been revised to permit Center applicants to include as a secondary and minor part of their work, research issues from the total list of priorities regardless of the program authority under which they are announced.

Comment: A number of respondents commented that the priorities should be revised to permit recipients to investigate behavioral and vocational aspects of the impairments under study.

Response: Some change has been made. The final funding priorities permit Center applicants to include related research issues or activities from other priorities as secondary research areas. Also, those priorities in which this type of research is most relevant have been amended to specify its inclusion.

Suggested Additional Priorities

Comment: Several commenters suggested that NIHR establish a priority for research on handicapped elderly persons.

Response: No change has been made. NIHR is currently funding two Research and Training Centers on problems of elderly handicapped persons and prefers to await the findings of these Centers, before undertaking additional research in the area.

Comment: A number of commenters stressed the importance of research on high risk infants and early intervention programs.

Response: No change has been made. NIHR is currently funding four research grants in the area, plus component projects within an RTC. These research and demonstration projects expire between September 1983 and December 1985. NIHR believes it is sound strategy

to await the findings of these endeavors in order to set a course for future NIHR-supported research in this area.

Comment: Many commenters from a variety of organizations stressed the value of functional assessment, specifically as implemented by the Rehabilitation Indicators project, and urged a continuing funding priority in this area. Other commenters discussed the need for functional assessment research in other contexts.

Response: No change has been made. The Secretary notes that NIHR (and previously the Rehabilitation Services Administration) has provided funding for the development of Rehabilitation Indicators for many years because of the important nature of this project. The most recent grant is a dissemination grant to spread the use of the developed system throughout the field. It is NIHR's belief that the extensive endorsement of the system in the rehabilitation field, as evidenced by the many supportive comments, plus the accomplishments under the dissemination grant should ensure the adoption of this type of functional assessment without further NIHR support. It is not the purpose of NIHR to fund continued application of a new device or technique, but rather to fund research, development and initial implementation. However, it is noted that research on functional assessment for employment is included as a priority under the Research and Demonstration Projects program.

Comment: Many respondents commented that total joint replacement is an important area for continued rehabilitation research.

Response: A change has been made. The Secretary agrees that this area is very significant to the rehabilitation of handicapped individuals and it has been incorporated within a Rehabilitation Engineering Center funding priority.

Comment: A large number of persons commented that research on rehabilitation of individuals with stroke and related disorders should be a high priority.

Response: A change has been made. The Secretary recognizes the importance of this area of research and has incorporated it into the funding priority on severe head injury under the Research and Training Centers program.

Comment: Many commenters requested that NIHR fund a rehabilitation engineering demonstration and training center, without any research program.

Response: No change has been made. Within the Rehabilitation Engineering Center concept, training is secondary to research and must derive from the research techniques and methodologies as well as the products and findings of the Center's basic research program.

Comment: Several researchers and others urged NIHR to establish a funding priority for pediatric rehabilitation, contending that the client need, potential benefit, and the state-of-the-art all confirm the need for such a priority.

Response: A change has been made. The Secretary agrees that this is an area which NIHR should continue to support. The option for pediatric research has been incorporated in several appropriate priorities, such as those on arthritis, deafness and burns.

Comment: Many commenters recommended a fellowship program or a funding priority on training rehabilitation researchers.

Response: No change has been made. These announced priorities apply to activities NIHR desires to support through grants and cooperative agreements, and these funding mechanisms do not apply to fellowships. Further, a principal purpose of the training component of all RTCs is training of rehabilitation researchers.

Comment: Several respondents urged NIHR to establish a funding priority on demographic studies, which are mandated in the legislation establishing NIHR.

Response: No change has been made. The Secretary agrees that demographic activities are important but expects to continue to support work in this area on a contract basis and thus it is not appropriate to propose demographic as a priority in the context of this Notice.

Comment: A few respondents urged a priority in research on end-stage-renal-disease (ESRD).

Response: No change has been made. NIHR is currently funding research in this area and will await the findings of that research to determine a prudent course for future research activities in ESRD.

Comment: Several commenters suggested that a funding priority be established on neurotological research.

Response: No change has been made. The Secretary believes that this may be a worthwhile suggestion but that further preliminary investigation is needed, including coordination with relevant components of the National Institutes of Health, to determine whether this should be a priority area for NIHR.

Comments on Specific Proposed Priorities

The proposed priorities are discussed individually in the order in which they appeared in the Federal Register.

Chronic Obstructive Pulmonary Disease (COPD)

Comment: Many commenters stated that the orientation of this priority was toward primary medical care and that this research should be sponsored by units of the National Institutes of Health.

Response: A change has been made. The Secretary believes that research on the rehabilitation of persons with COPD is needed and is appropriate for NIHR sponsorship at some point. However, in view of limited resources and the need to more clearly delineate the NIHR objectives in this area, the Secretary has decided not to fund new research in this area at this time.

Arthritis

Comment: Many comments were received from medical and rehabilitation researchers contending that this priority was too restrictive and should be expanded to include other musculoskeletal disabilities and total joint replacement as well as employment-related consequences of arthritis. One commenter urged a focus on chronic care needs.

Response: A change has been made. The priority has been broadened to include other musculoskeletal impairments and low back pain and investigation of vocational and other rehabilitation needs of this group. Total joint replacement is included in an REC priority on prosthetics and orthotics. However, the Secretary believes that chronic care needs is not an appropriate priority for NIHR in this area.

Cardiac Rehabilitation

Comment: Several researchers suggested that vocational aspects of recovery from infarctions were important issues in this area.

Response: A change has been made to clearly indicate the inclusion of vocational issues in the scope of the research.

Severe Head Trauma

Comment: A number of respondents commented that stroke or similar central nervous system problems should be included in the NIHR priorities and some noted that research needs and techniques were similar to those used in research on head injury. Many commented on lack of knowledge about vocational and independent living potentials of head injury victims.

Response: A change has been made. This priority has been expanded to include stroke rehabilitation research and research on vocational and

independent living potential following head injury or stroke.

Multiple Sclerosis

Comment: Many researchers commented that the priority was too restrictive as worded and should include all neuromuscular diseases. One person commented that the disease should be studied in an REC setting to enable evaluation through a comprehensive battery of sensory and motor tests. Another suggested examining functional limitations and work restrictions in multiple sclerosis.

Response: A change has been made. The priority has been expanded to encompass neuromusclular diseases, including mutliple sclerosis and related neurophathies, and to include all aspects of psychosocial and vocational adjustment, and independent living. The priority has not been listed under the REC program because NIHR does not anticipate that this research will be primairly technological in nature; the suggested comprehensive testing could be accomplished within the scope of an RTC.

Spinal Cord Injury

Comment: Many commenters suggested that the scope of the priority not be limited to pathophysiology of secondary neurological complications, but should include all appropriate complications, and that the priority should encompass vocational rehabilitation and psychosocial and community adjustment as well. Several other respondents proposed alternative or additional specific research topics.

Response: Some change has been made. The priority now specifically includes vocational and psychosocial adjustment and independent living as well as all appropriate complications of spinal cord injury. However, rather than attempt to specify all possible single research topics, the priority is written in terms of broad objectives which would encompass most specific topics proposed.

Improving Delivery of Vocational Rehabilitation Services

Comment: A very large number of commenters wrote in support of this priority, although many argued that there was no reason to specify railroad workers as a target population. Some commenters indicated that some of the proposed research could best be done outside an RTC setting. There were comments supporting a focus on management issued and others arguing for a focus on counselor and supervisor skills and training.

Response: Some change has been made. The topic dealing with railroad workers has been made a separate Research and Demonstration project. The Secretary believes that this group does require special attention because railroad retirement provisions include unusual disincentives to rehabilitation. This creates a costly situation and policy research is necessary to determine advisable means to deal with this problem. In addition, the research issues dealing with postsecondary education for the deaf are being announced under a separate priority for a Research and Demonstration Project. Both management and counseling improvement are included in the scope of the RTC priority.

Increasing Employability

Comment: Some commenters urged particular emphasis on client functional assessment instruments and their use in facilitating employment. A few argued this work could best be done outside an RTC environment. Some commented that identifying a large number of underserved groups was too restrictive.

Response: Some change has been made. The topic relating to client assessment has been made a separate project, announced as a Research and Demonstration Project, not as part of a Center. The applicants are now asked to scientifically identify underserved populations as target groups of the research.

Vocational Rehabilitation at the Worksite

Comment: Many commenters supported this priority without suggestions for change.

Response: No change has been made.

Sheltered and Protected Employment

Comment: Many commenters supported this priority. One suggested that the work should be conducted by a State rehabilitation agency and one suggested the addition of homebound employment. Many commenters also noted the need for development of management materials and broad dissemination of information to workshops and facilities.

Response: Some change has been made. Homebound employment has been included as a specific focus, as has an emphasis on materials development and dissemination. However, the Secretary rejects the idea that a particular type of agency should receive this award and believes that the scope of the required research is sufficient to warrant retention as an RTC.

Community Services for the Mentally Retarded

Comment: Several commenters noted the vocational and employability development needs of mentally retarded persons need more emphasis.

Response: A change has been made. The topic on employability development for mentally retarded persons has been announced as a priority for a separate RTC.

Comprehensive Services for Handicapped Children and Youth

Comment: Many commenters supported this priority but suggested extensive additions or changes in emphasis and focus.

Comment: A change has been made. The Secretary has decided to reduce the scope of this priority to that of a Research and Demonstration project on a topic of known need, family adjustment. Meanwhile, NIHR will further examine the need for any additional NIHR-supported research in this area and determine what the scope and focus of that research should be.

Specific Learning Disability

Comment: Several commenters suggested that the priority was too broad as written. Many commenters stressed emphasis on vocational needs.

Response: A change has been made. The scope of the priority has been narrowed to focus on vocational needs of adults with severe learning disabilities and the priority is announced under the program authority for Research and Demonstration Projects.

Psychiatric Disabilities

Comment: The majority of those who discussed this priority were opposed to its inclusion. Many argued that this research should more appropriately be funded by NIMH.

Response: A change has been made. The Secretary has decided not to announce funding in this area at this time.

Psychosocial Development

Comment: Several commenters suggested specific approaches to carrying out the work but all of these were already within the scope of the priority as stated.

Response: No change has been made.

Communication/Mobility for the Blind and Partially Sighted

Comment: Many respondents urged that the focus be on low vision individuals. Several others suggested

various specific approaches to the research.

Response: A change has been made. The priority is now one for "Aids to Improve Mobility for Individuals with Low Vision" and is announced under the authority for Research and Demonstration grants. Suggestions for specific approaches to the work were considered to be allowable under the priority, but too restrictive to impose on all applicants.

Communication Controls and Interfaces of Assistive Devices

Comment: Very few comments were received on this proposed priority.

Response: A change has been made. The Secretary has decided not to announce this priority for funding at this time.

Improved Wheelchair Systems

Comment: Some commenters suggested a greater emphasis on improved seating and others suggested that transportation research be included with an emphasis on modular seating components.

Response: A change has been made. The priority now reads, "Improved Wheelchair System and Specialized Seating," and modular seating components are included.

Nonvocal Communication Assistance

Comment: A few commenters suggested changes in wording to make the priority less specific. Another suggested that aphasic adults be included as a target population, while several suggested that changes in specific wording.

Response: A change has been made. The priority is stated in more general terms so that many of the specific approaches proposed by the commenters would be encompassed. The priority specifically includes adults who may be aphasic or have other language dysfunction resulting from central nervous system impairment.

Stimulation of Industry

Comment: One commenter pointed out the need for testing and evaluation of products as a means to stimulate industry. Another suggested that this work be done in an RTC and another suggested study of tax incentives to increase employability of handicapped individuals.

Response: A change has been made. The proposed priority on Technology Evaluation has been incorporated into this Center priority. Particularly with this addition, the Secretary believes the REC authority is most appropriate for this priority. The purpose of this priority is to increase industrial involvement in the development, manufacture, and distribution of products, and thus a focus on tax incentives for employment is not appropriate in this Center.

Transportation

Comment: Many respondents argued that public transit is an unproductive or inappropriate research focus.

Response: A change has been made. The priority now focuses on personal licensed vehicles and other alternatives to mass transit.

Prostheses, Orthoses, and Functional Electrical Stimulation

Comment: Many commenters argued that functional electrical stimulation is a significant area requiring separate attention from prostheses and orthoses. Several proposed total joint replacement be added as a priority.

Response: A change has been made. Functional electrical stimulation is being announced as a separate priority for both an REC and an R&D project. Total joint replacement has been added to the REC priority on prostheses and orthoses and may be examined in the RTC priority on arthritis as well. The Department of Education has determined that the work desired on orthopedic shoes would be more appropriately obtained by contract, so that component has been deleted from the priority.

New Generation Hearing Aid Research

Comment: One respondent suggested including research on cochlear prostheses and one recomended research on hearing aid implants.

Response: No change has been made. The Secretary believes that NIHR should not duplicate funding support being given to those areas by the National Institute of Neurological and Communicative Diseases.

Work Site Modification

Comment: This priority received support from many commenters but there were a number representing State rehabilitation agencies who contended that it was not closely enough tied to rehabilitation counseling concerns.

Response: No change has been made. The Secretary believes there is demonstrated need for this type of research and that it has a direct impact on increasing employability.

Low Back Pain

Comment: A number of commenters suggested that low back pain should be examined in an RTC as well as an REC environment. Many commenters from State rehabilitation agencies suggested its deletion on the grounds that it is too remote to the vocational rehabilitation service process.

Response: No change has been made in this priority. The Secretary believes there is ample evidence to support the need for rehabilitation research in this area and that the problem is directly related to employability and productivity. However, other priorities have been revised to include the study of low back pain with RTCs.

Quantification of Motor Performance

Comment: Some commenters suggested that quantification of funtions research should not be limited to motor function. Others suggested that it be conducted within an RTC and one commenter said the focus should be on analysis of the pathology of skilled behavior.

Response: Some change has been made. The priority has been revised to include more than just motoric function. The Secretary believes that a technological approach to this problem is needed at this time and, therefore, is announcing this priorty under the REC authority. Quantification of performance has also been incorporated into some specific Research and Training Center priority areas.

Interpreters for the Deaf

Comment: Several respondents suggested funding this priority under other program authorities, e.g., RTCs, specific grants to State interpreter associations. One suggested that the effectiveness of the interpreting process be evaluated.

Response: A change has been made. This priority has been incorporated into the scope of the announced priority for an RTC in Deafness and Psychosocial Development, so that it can be the focus of ongoing, programmatic research. The scope of the priority is such that study of the interpreting process could be included.

Rural Outreach

Comment: This proposed priority received generally favorable comment, with stress on the model implementation and utilization aspect.

Response: Some change has been made. Because of that stress on model implementation and utilization aspects, the Secretary is announcing this project as a Knowledge Dissemination and Utilization Project and the applications will be evaluated according to the selection criteria governing that research program.

Private Sector Rehabilitation

Comment: A large number or commenters, mostly from State vocational rehabilitation agencies, suggested that this priority be deleted due to need to allocate limited resources to endeavors which would more immediately benefit a larger number of handicapped individuals.

Reponse: A change has been made. The Secretary is not announcing funding for this priority at this time. Further investigation will be done to ascertain what aspects of this issue may be viable research priorities for NIHR.

Economics of Disability

Comment: A number of commenters supported this priority.

Response: No change has been made.

Work-Study Program for Disabled Students

Comment: A large number of commenters, mostly from State rehabilitation agencies, objected to further research in this area. A number of other commenters endorsed research on programs at the postsecondary level.

Response: A change has been made. The content of the comments clearly indicated that the intent of the priority was not understood. The Secretary believes that this priority areas should be reviewed and revised to accurately reflect NIHR's intent and role in this area. Therefore, The Secretary is not announcing funding for this priority at this time.

Developmental Processes as Indicators of Learning Disabilities

Comment: A number of commenters emphasized the probable high pay-off from research in this area. Several others questioned whether it has sufficient relevance to vocational services.

Response: A change has been made. The Secretary is not announcing funding for this priority at this time. Rather, NIHR will review the approach suggested and seek sources of joint funding with the intention of funding this priority later in the year.

Mental Health in Mental Retardation

Comment: This priority received very few comments. A few individuals contended to would be more appropriately supported by NIMH.

Response: A change has been made. The Secretary is not announcing funding for this priority at this time in order that issues of overlaps, duplication, and collaboration can be reviewed.

Recretation

Comment: This priority received very little comment.

Response: A change has been made. The Secretary is not announcing funding for this priority at this time.

Use of Adaptive Devices

Comment: Few comments were received on this priority; those received were basically positive.

Response: A change has been made. The Secretary is not announcing funding for this priority at this time due to limited funds.

Independent Living

Comment: Many commenters supported this priority, although some said that prior NIHR research in this area was not helpful to service providers. Many urged the funding of the priority under other program authorities and a number urged that it be focused on different research issues.

Response: Some change has been made. The Secretary is not announcing funding for this priority at this time. Instead, the Secretary proposes that independent living aspects be included throughout the RTC research program. Independent living for rural residents is included in the priority on Improving Service Delivery in Rural Areas. NIHR currently funds an RTC in independent living which will be continuing in fiscal year 1983.

Severe Burns

Comment: Some commenters objected to this priority as too oriented toward medical care, although many others supported the need for research in this area.

Response: No change has been made. The Secretary points out that the focus of the project is on the *rehabilitation* of burn victims.

Chronic Obstructive Pulmonary Disease (COPD)

Comment: A large number of individuals commented that this priority dealt too much with primary medical research and was more appropriately the concern of NIH.

Response: A change has been made. Although the focus of the priority is on rehabilitation of COPD sufferers, the Secretary is not announcing funding for this priority at this time due to limited funds.

Multiple Sclerosis

Comment: A number of respondents questioned why this priority area was announced under two authorities and suggested that the RTC was the more appropriate funding mechanism.

Response: A change has been made. The Secretary is announcing funding for this priority under the RTC mechanism only.

Spinal Cord Injury

Comment: A number of respondents supported work in this area, with preference for the RTC program authority as a funding mechanism.

Response: A change has been made. The Secretary is announcing funding for this priority only under the RTC program authority.

Technology Evaluation

Comments: The only substantive comments on this priority were that it should be conducted under the REC authority.

Response: A change has been made. The Secretary is announcing this priority in conjuncton with Stimulation of Industry under the REC authority.

Deaf Communication Systems and Telecommunication

Comment: This area received very little comment and there were suggestions for locating it in RECs, for focusing on a telecommunications network for relocation of professionals, and for various types of visual displays.

Response: A change has been made. The Secretary is not announcing funding for this priority at this time due to need to review the focus of NIHR interest in this area.

Intergenerational Self-Sufficiency Services

Comment: This priority received considerable criticism as being too peripheral to the area of rehabilitation research.

Response: A change has been made. The Secretary is not announcing funding for this area at this time.

Special Populations

Comment: Respondents suggested inclusion of a special focus on women and on the elderly, a special RTC on Hispanic populations, the deletion of references to Historically Black Colleges as grantees, the augmentation of the number of grants to black colleges, and focus on black Americans.

Response: Some change has been made. The Secretary continues to consider this an important priority, but is announcing funding this year only for a priority on rehabilitation needs of black Americans to be done at or in conjunction with a Historically Black College. This determination is in response to Executive Order Number

12320 on Historically Black Colleges and Universities.

International Information Exchange

Comment: There was a little support for this priority and some opposition arguing that the benefit to be derived does not justify the use of limited funds in the current economy.

Response: A change has been made. The Secretary is not announcing funding for this priority at this time.

Improved Dissemination of Information

Comment: A large number of commenters gave strong support to this priority.

Response: No change has been made other than the change in title to read "Improved Utilization of Research Results."

(Catalog of Federal Domestic Assistance No. 84.133—National Institute of Handicapped Research)

Dated: August 20, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82-23274 Filed 8-24-82; 8:45 am]

BILLING CODE 4000-01-M

Research and Training Centers, Rehabilitation Engineering Centers, Research and Demonstration Projects, and Knowledge Dissemination and Utilization Projects for FY 1983

AGENCY: Education Department.

ACTION: Application notice for fiscal year 1983.

SUPPLEMENTARY INFORMATION: Applications are invited for awards for new Research and Training Centers, Rehabilitation Engineering Centers, Research and Demonstration Projects, and Knowledge Dissemination and Utilization Projects for Fiscal Year 1983.

Authority for these programs is contained in Section 204(a), 204(b)(1), and 204(b)(2) of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602. (29 U.S.C. 762(a), 762(b)(1), and 762(b)(2)).

Closing date for transmittal of applications: Applications for grant awards must be mailed or hand-delivered by October 15, 1982.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.133, Washington, D.C. 20202.

An applicant must show proof of mailing, consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considerd. Amendments received after the closing date also will not be considered in the review of the application.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program information: Under these programs, awards are issued to States and public or private agencies and organizations, including institutions of higher education. NIHR is permitted to make awards for periods up to 60 months. It is the intention of NIHR to provide financial assistance to successful applicants through grants or cooperative agreements. At the time of award NIHR will select from among the funding priorities several research areas where it believes that substantial Federal programmatic involvement is warranted, and will negotiate cooperative agreements with the successful applicants in these areas.

The purpose of the awards is for planning and conducting research, demonstrations, and related activities. These activities have a direct bearing on the development of methods, procedures, and devices to assist in the provision of vocational and other rehabilitation services to handicapped individuals, especially those with the most severe handicaps.

NIHR is authorized to support research and related activities in a variety of areas and through several program authorities. Proposals are being solicited for Research and Training Centers, Rehabilitation Engineering Centers, Research and Demonstration Projects, and Knowledge Dissemination and Utilization Projects. Descriptions of each of these programs are contained in the Notice of Final Funding Priorities for Fiscal Year 1983 published in this issue of the **Federal Register.**

Available funds: During Fiscal Year 1983 the National Institute of Handicapped Research expects to fund new Centers and projects that address each of the priority research areas listed by title below. A full description of each priority is contained in the Notice of Final Funding Priorities for Fiscal Year 1983 which is published in this issue of the **Federal Register.**

NIHR has earmarked funds to enable it to make at least one award in each announced research area. NIHR specifies the minimum number of awards it expects to make under each funding priority. In the event that there is no proposal in a given area deemed worthy of funding, NIHR may make additional awards in other areas.

Applicants responding to any of the priorities for Research and Training Centers and Rehabilitation Engineering Centers may, in addition to addressing comprehensively the selected priority, choose to investigate certain related research issues or activities contained in any of the other funding priorities. This option is available to Center applicants because they are expected to conduct comprehensive programs of research rather than pursue a discrete research project. This does not mean that Center applicants can apply for funding under more than one priority in the same application.

Center applicants are advised that they are responsible for demonstrating in their applications the relatedness of these subsidiary research issues or activities to the priority they have selected. Related research issues should occupy a very minor part of the proposal since applications will be evaluated on the basis of quality and thoroughness of approach to the selected priority.

All applicants must describe a program of research and related activities to cover the entire period of the award, not only the first year of support. It is generally understood that the earlier year's activities will be presented in greater detail.

Applicants for support under the Research and Training Centers program should, in addressing selected NIHR

research priorities, take into consideration the particular needs of handicapped individuals in their geographic areas.

The selection criteria to be used for evaluating proposals under each of the programs are specified in the NIHR regulations (34 CFR 350–356). This information will also be included in the application kits.

Funding Priorities for Research and Training Centers (13)

Improved Rehabilitation Modalities for Musculoskeletal Impairments, Arthrities, and Low Back Syndrome; Rehabilitation of the Cardiac Patient; Improving Rehabilitation Potential in Brain Trauma and Stroke Victims; Comprehensive Rehabilitation Management of Neuromuscular Diseases, including Multiple Sclerosis and Related Neuropathies; Improving Methods and Techniques for Rehabilitation Management of Spinal Cord Dysfunction; Improving Management of Vocational Rehabilitation Services; Enhancing Employability of Handicapped Individuals; Improving Employability for Mentally Retarded Individuals; Improving the Psychosocial Environment and Eliminating Social and Attitudinal Barriers; and Improving Community Integration of Mentally Retarded Individuals.

Funding Priorities for Rehabilitation Engineering Centers (10)

Improved Wheelchair Systems and Specialized Seating; Improved Techniques of Functional Electrical Stimulation; Improved Methods of Quantification of Function/Performance; Improving Personal Licensed Vehicles and Transportation; Stimulation of Industry and Evaluation of Technology; Improving Rehabilitation of Low Back Pain; Improved Prosthese, Orthoses, and Total Joint Replacement; Modifying the Worksite to Enhance Employability; Development of New Generation Hearing Aids; and Development of Nonvocal Communication Assistance.

Funding Priorities for Research and Demonstration Project (10)

Enhanced Understanding of the Economics of Disability; Improved Rehabilitation Care and Treatment for Individuals with Severe Burns; Improving Functional Assessment for Employment; Enhancing Rehabilitation and Family Adjustment for Handicapped Children and Youth; Improving Vocational Rehabilitation in Postsecondary Education Programs for Deaf Individuals; Improving Vocational Rehabilitation of Learning Disabled Adults; Improvement of Services to Minority Populations; Improving Vocational Rehabilitation Opportunities for Railroad Workers; Aids to Improve Mobility for Individuals with Low Vision; and Improving Usefulness of Functional Electrical Stimulation.

Funding Priorities for Knowledge Dissemination and Utilization Projects (2)

Improving Service Delivery in Rural Areas; and Improving Utilization of Research Results.

Application forms: Application forms and further information may be obtained by writing to or calling the National Institute of Handicapped Research, U.S. Department of Education, Switzer Office Building, Room 3511, 400 Maryland Avenue SW., Washington, D.C. 20202. (Attention: Peer Review Unit.) Telephone (202) 245–0555.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. Applicants are urged not to submit information that is not requested.

Applicable regulations: The following regulations are applicable to these programs:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

(b) National Institute of Handicapped Research Regulations (34 CFR Parts 350, 351, 352, 353, and 355); and

(c) The Final Funding Priorities for the National Institute of Handicapped Research for Fiscal Year 1983 which are published in this issue of the **Federal Register.**

Applicants for Fiscal Year 1983 grants should based their applications on Sections 204(a), 204(b)(1), and 204(b)(2) of the Act, applicable NIHR regulations, and EDGAR.

FOR FURTHER INFORMATION CONTACT: Ms. Edythe Glazer, National Institute of Handicapped Research, U.S. Department of Education, Switzer Office Building, Room 3511, 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone (202) 245–0555; TTY for Deaf Individuals (202) 472–4216.

(20 U.S.C. 760–762)

(Catalog of Federal Domestic Assistance No. 84.133, National, Institute of Handicapped Research)

Dated: August 20, 1982.

Jean S. Tufts,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 82-23275 Filed 8-24-82; 6:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. PP-48-A]

El Paso Electric Co.; Amendment of Export Authorization

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Amendment of Export Authorization in DOE Docket No. PP-48-A: EL Paso Electric Company (El Paso); Opportunity to Comment.

SUMMARY: DOE has amended the El Paso export authorization to permit El Paso to export electric energy to the Comision Federal de Electricidad (CFE) as short-term firm capacity energy deliveries (defined as periods not to exceed 45 consecutive days) and emergency assistance (defined as periods not to exceed 72 continuous hours). El Paso previoulsy was authorized to export electric energy to CFE in the form of long-term firm sales. Because El Paso has not asked for a change in the amount or rate of transmission of electric energy to be exported, but simply in the type of sales or exchanges that will occur, DOE has decided to grant the requested amendment immediately, with a subsequent opportunity for comment. If any comments are filed raising issues which should be considered by DOE, this docket may be reopened.

FOR FURTHER INFORMATION CONTACT: Garet Bornstein, Office of Energy Emergency Operations (EP-42), Department of Energy, Forrestal Building, Mail Stop GB-270, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-1714.

Lise Courtney M. Howe, Office of General Counsel (GC-11); Department of Energy, Forrestal Building, Mail Stop 6F-094, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2900.

COMMENTS: Comments are due on October 1, 1982, and should be addressed to Garet Bornstein, Office of Energy Emergency Operations (EP-42), Department of Energy, Forrestal Building, Mail Stop GB-270, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

SUPPLEMENTARY INFORMATION:

Order Amending Export Authorization

Issued in Federal Power Commission Docket No. IT-5762.

El Paso Electric Company (El Paso) filed an application with the Department of Energy on May 28, 1982, for a

supplemental order, pursuant to section 202(e) of the Federal Power Act, authorizing a change in the type of electric energy which El Paso may transmit to Mexico. On October 9, 1970, the Federal Power Commission (FPC) in FPC Docket No. IT–5762 authorized El Paso to export electric energy in an amount not to exceed 450,000,000 kwh per year at a transmission rate not to exceed 80,000 kw. According to El Paso, the electric energy to be exported was to be used by the Comision Federal de Electricidad (CFE) for the purpose of supplementing its own generation of energy to meet the expanding energy requirements of its customers in Ciudad Juarez, Chihuahua, Mexico, and vicinity. El Paso now requests that the previous order which authorized long-term firm sales be amended to authorize, in addition, short-term firm capacity energy deliveries and emergency assistance, as set forth in Exhibit A of the application, "Interchange Agreement Between Comision Federal de Electricidad and El Paso Electric Company". El Paso did not request modification of the previously authorized annual maximum quantity or of the previously authorized transmission rate of exported electric energy.

Because no changes were requested in the amount of electric energy to be exported or in the transmission rate thereof, DOE has determined that it is appropriate to grant immediately the requested amendment. However, any person desiring to be heard or to protest this amendment may file a petition to intervene or protest with the Office of Energy Emergency Operations (EP–42), Department of Energy, Forrestal Building, Mail Stop GB–270, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in accordance with §§ 1.8 and 1.10 of the Rules of Practice and Procedure (18 CFR 1.8 and 1.10) on or before October 1, 1982. If any comments are filed raising significant issues which should be considered, DOE may reopen this docket for reevaluation.

The Department of Energy Finds:

(1) The proposed transmission of electric energy from the United States to Mexico, as limited herein and as hereinafter authorized, will not impair the sufficiency of electric supply within the United States and will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of DOE.

(2) The period of public notice given in this matter is reasonable.

The Department of Energy Orders:

(A) El Paso hereby is authorized to transmit electric energy from the United States to Mexico in accordance with the Order issued in Docket No. IT–5762, as herein amended.

(B) Paragraph (B) of the Order issued in FPC Docket No. IT–5762 hereby is amended to read as follows:

The electric energy which El Paso hereby is authorized to transmit from the United States to Mexico shall be in an amount not to exceed 450,000,000 kWh per year at a transmission rate not to exceed 80,000 kW. Sales and exchanges of such electric energy shall be made as long-term firm sales, short-term firm capacity energy deliveries (defined as periods not to exceed 45 consecutive days), and emergency assistance (defined as periods not to exceed 72 continuous hours). The exports authorized herein shall be transmitted over the facilities specified in the Presidential Permit signed by the President of the United States on May 21, 1946, as amended by the Amendment thereto signed by the Chairman of the Federal Power Commission on October 9, 1970.

Issued in Washington, D.C., August 16, 1982.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 82–23232 Filed 8–24–82; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Privacy Act of 1974; Exixtance and Character of Systems of Records

Issued: August 19, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Publication of existence and type of systems of records.

SUMMARY: The Federal Energy Regulatory Commissioin, under the requirements of the Privacy Act of 1974, amends its listing and description of the systems of records it maintains.

FOR FURTHER INFORMATION CONTACT: Ellen Schall, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 4308E, Washington, D.C 20426, (202) 357–5762.

SUPPLEMENTAL INFORMATION:

A. Background

The Privacy Act of 1974, 5 U.S.C. 552a(e)(4), requires that each agency publish at least annually a notice of the existence and character of each "system of records" the agency maintains, as defined in 5 U.S.C. 552a(a)(5). Such notice is to contain for each system of records a description of the name; location; categories of individuals about whom the records are maintained; the categories of records; each routine use of the records, as defined in 5 U.S.C. 552a(a)(7); the policies and practices governing storage, retrievability, access controls, retention, and disposal of the records; the title and business address of the agency official responsible for the system of records; agency procedures for notification and access, and provisions for contesting access procedures and content of records in each system; and the sources of the records in each system.

The Federal Energy Regulatory Commission amends its previous listing of systems of records, which was published in the **Federal Register** on October 24, 1980, to reflect the following changes: System number FERC–12 (Mailing List for Official Publications) is deleted because it no longer exists. One new system of records, which was implemented by the Commission by notice in the **Federal Register** on May 10, 1982, is added. This system is described under the heading "FERC–13, Time Distribution Reporting System (TDRS)." System number FERC–4 (Applications for Interlocking Directorates) has been computerized, and the description of information contained in FERC–6 (Biographical Material on Commissioners and Key Staff Members) includes photographs. (An updated table and list of current systems are attached.)

The Commission's authority for this Notice and the Systems of Records it maintains is found in Section 552a(e)(4) of the Privacy Act of 1974; Section 309 of the Federal Power Act, as amended (49 Stat. 858–859), 16 U.S.C. 825h; Section 16 of the Natural Gas Act, as amended (52 Stat. 830), 15 U.S.C. 717o; and the Department of Energy Organization Act, 42 U.S.C. 7172(a)(2).

Kenneth F. Plumb,

Secretary.

B. Systems of Records

The Commission maintains, as of August 15, 1982, 12 systems of records under the Privacy Act of 1974. These systems, and their corresponding designator, are set forth in the following table.

Title	Designation
Regulatory Evaluation and Docketed Information System (READI).	FERC–1.
Appeals, Grievances, and Complaints Records.	FERC–2.
Applications For Interlocking Directorates Under the Federal Power Act, Public Files.	FERC–3.

Title	Designation
Applications For Interlocking Directorates Under the Federal Power Act, Security Files.	FERC–4.
Biographical Material on Chairmen, Vice Chairmen and Commissioners of the Federal Energy Regulatory Commission.	FERC–5.
Biographical Material on Commissioners and Key Staff Members of the Federal Energy Regulatory Commission.	FERC–6.
Congressional Correspondence File, Office of Electric Power Regulation.	FERC–7.
Congressional Correspondence File, Office of the Executive Director.	FERC–8.
Correspondence File, Office of Pipeline and Producer Regulation.	FERC–9.
Employee Conduct Records	FERC–10.
Mailing List for Information Concerning Applications For Interlocking Directorates.	FERC–11.
Time Distribution Reporting System (TDRS)	FERC–13.

C. Amendments to Listing of Current Systems

The following changes should be noted to reflect the current status of the Commission's systems of records as published in the *Federal Register* (October 24, 1980). Where there are changes within an existing system, the entire paragraph containing the change, with the change underlined, is shown below.

FERC–4

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

These records are maintained in file folders in metal file cabinets and in a secured room. *The information contained in these records has also been stored in a computerized data base with on-line retrieval capabilities.*

FERC–6

Categories of records in the system:

This system of records contains biographical material on Commissioners and key staff members of the Commission including: *an official photograph,* date and place of birth, marital status, number of children, educational background, past work experience, honors or awards, published materials, and military experience and honors.

FERC–12

This system is no longer in existence and, therefore, all information relating to it is deleted.

FERC–13

System name:

Time Distribution Reporting System (TDRS)

System Location:

Commission computer facilities, Washington, D.C., and Boeing Computer Services, Inc., Vienna, Virginia.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Commissioners; Administrative Law Judges; attorneys; technical, environmental, managerial and all other staff personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains the following information relating to the individuals named above: name, organizational component, position, grade, dates of Commission employment, and time expended on designated activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 717; 16 U.S.C. 825h; 42 U.S.C. 7172(a)(2); 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records and information contained in this system may be used by authorized Commission personnel to identify the distribution of Commission staff time by work product, by organization, and by budget decision unit; to extract manpower processing requirements for determination of fees to be charged for certain filings with the Commission; to allocate manpower and make staff resource adjustments for the effective management of the Commission workload; to forecast staff requirements for development of budget requests; to produce management reports; to monitor and analyze Commission productivity. In addition, the system issued as a data source for management information, for production of summary statistics and analytical studies in support of the function for which these records are collected and maintained, or for related personnel management functions or manpower studies compiled by the staff or a contractor of the Commission. The system is used by members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or Congress in connection with their official designated functions; by any person with whom the Commission contracts to reproduce by typing, photocopy or other means, any record within this system for use by the Commission and its staff in connection with their official duties or by any person who is utilized by the Commission to perform clerical or stenographic functions relating to the official business of the Commission. The system is used to respond to inquiries from members of Congress, other federal agencies, the press, and the public.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained on magnetic tape and computer disk files.

RETRIEVABILITY:

Records are retrieved by work product identity elements (product category, docket number, task code, budget decision unit), organizational component (office, division, branch, section), report period, and position identifier. Records may be retrieved by an individual's name only during the calendar quarter for which the information is collected.

SAFEGUARDS:

The records are stored in a secured computer facility, with access limited to selected authorized TDRS project management personnel.

RETENTION AND DISPOSAL:

Records will be maintained by employee and activity for the current or most recent calendar quarter. All employee staff hours will then be compiled into organizational level records and tranferred to a history file for permanent retention, with all references to individual staff hours removed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Program Management, Fedeal Energy Regulatory Commission, Room 3311, 825 North Capital Street, N.E., Washington, D.C. 20426.

NOTIFICATION PROCEDURE:

See Appendix A.

RECORDS ACCESS PROCEDURES:

See Appendix A.

CONTESTING RECORD PROCEDURES:

See Appendix A.

RECORD SOURCE CATEGORIES:

Individuals covered by the system.

Appendix A

Notification procedure: All requests to determine whether this system contains a record pertaining to a requesting individual should be made in accordance with the Commission's Rules of Practice and Procedure, 18 CFR 3b.220(a). Individuals should provide the

appropriate identifying information as required by 18 CFR 3b.220(b).

Record access procedure: Requests for access to records in this system should be made in accordance with 18 CFR 3b.221. Individuals should provide the appropriate identifying information as specified in 18 CFR 3b.222.

Contesting record procddures: Requests to amend records should be made in accordance with 18 CFR 3b.224

[FR Doc. 82-23033 Filed 8-24-82; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50573A, PH-FRL 2194-8]

1,2-Dibromo-3-Chloropropane; Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit to Amvac Chemical Corporation for the use of 1,2-dibromo-3-chloropropane (DBCP) on peaches. This permit is in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of May 5, 1982 (47 FR 19446) announcing a receipt of application from Amvac Chemical Corporation requesting approval of the experimental use of 1,2-dibromo-3-chloropropane on peaches to identify and quantify residues of the active ingredient in the raw agricultural commodity peaches. No overriding comments or new information were received in response to the receipt of application. The Agency has approved the proposed program. The experimental use permit, 5481-EUP-1, allows the use of 534 pounds of the fungicide, 1,2-dibromo-3-chloropropane on peaches to identify and quantify residues of the active ingredient in the raw agricultural commodity peaches. The program involves fewer than 10 acres in the State of South Carolina. The experimental use permit is effective from June 10, 1982 to December 31, 1982. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only.

Persons wishing to review this experimental use permit are referred to the designated product manager listed above. Inquiries concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: Aug. 17, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-23236 Filed 8-24-82; 8:45 am]
BILLING CODE 6560-50-M

[OPP-50581; PH-FRL 2195-1]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the folowing applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

100-EUP-64. Amendment. Ciba-Geigy Corporation, P.O. Box 11422, Greensboro, NC 27409. A notice was published in the **Federal Register** of November 12, 1980 (45 FR 74773) pertaining to the issuance of an experimental use permit, 100-EUP-64, to Ciba-Geigy Corporation. At the request of the company, the permit has been amended to include peaches and add 10 pounds of the active ingredient, 10 acres, and the States of Massachusetts and Ohio to the program. This experimental use permit now allows the use of 2,325 pounds of the fungicide 1-[[2-(2,4-dichlorophenyl)-4-ethyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole on almonds, almond hulls, apples, cherries, peaches, and plums (fresh prunes) to evaluate the control of blossom blight, brown rot, cherry leafspot, fruit brown rot, peach scab, and powdery mildew. A total of 3,430 acres are involved; the program is authorized in the States of Alabama, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. The experimental use permit is effective from October 7, 1980 to December 31, 1982. A temporary tolerance for residues of the active ingredient in or on almonds, almond hulls, apples, cherries, peaches, and plums (fresh prunes) has been established. (Henry Jacoby, PM 21, Rm. 227,CM#2, (703-557-1900))

464-EUP-75. Issuance. Dow Chemical Company, P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 880 pounds of the insecticide chlorpyrifos on cotton to evaluate the control of insects infesting cotton. A total of 180 acres are involved; the program is authorized only in the States of Arizona and Mississippi. The experimental use permit is effective from June 28, 1982 to June 28, 1983. A permanent tolerance for residues of the active ingredient in or on cottonseed has been established (40 CFR 180.342). (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703-557-2386))

464-EUP-76. Issuance. Dow Chemical Company, P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 1,440 pounds of the insecticide chlorpyrifos on cotton to evaluate the control of insects infesting cotton. A total of 490 acres are involved; the program is authorized only in the States of Arizona, California, and Mississippi. The experimental use permit is effective from June 28, 1982 to June 28, 1983. A permanent tolerance for residues of the active ingredient in or on cottonseed has been established (40 CFR 180.342). (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703-557-2386))

37100-EUP-1. Issuance. Duphar, B.V., P.O. Box 695, Lake Mary, FL 32746. This experimental use permit allows the use of 22 pounds of the insecticide 1-(2,6-difluorobenzoyl)-3-(4-trifluoromethylphenyl)urea on forests to evaluate the control of the western spruce budworm. A total of 600 acres are involved; the program is authorized only in the State of New Mexico. The experimental use permit is effective from June 25, 1982 to June 25, 1983. (Franklin Gee, PM 17, Rm. 207, CM#2, (703-557-2690))

476–EUP–100. Issuance. Stauffer Chemical Company, 1200 South 47th St., Richmond, CA 94804. This experimental use permit allows the use of 14 pounds of the insecticide 0,0-dimethyl 0-(4-nitro-m-tolyl)phosphorothioate in food and non-food areas of food manufacturing, processing, and servicing establishments to evaluate the control of cockroaches. A total of seven establishments are involved; the program is authorized only in the States of Connecticut, Delaware, Maryland, New Jersey, New York, Pennsylvania, and Virginia. The experimental use permit is effective from June 17, 1982 to June 17, 1983. A food additive regulation for residues of the active ingredient in food items has been established (21 CFR 193.156). (William Miller, PM 16, Rm. 211, CM#2, (703–557–2600))

46946–EUP–1. Issuance. The Agriculture and Nutrition Company, P.O. Box 2700, Kansas City, KS 66110. This experimental use permit allows the use of 22 pounds of the insecticide diflubenzuron on forests to evaluate the control of the western spruce-budworm. A total of 600 acres are involved; the program is authorized only in the State of New Mexico. The experimental use permit is effective from June 25, 1982 to June 25, 1983. (Franklin Gee, PM 17, Rm. 207, CM#2, (703–557–2690))

1023–EUP–35. Extension. The Upjohn Company, 7171 Portage Rd., Kalamazoo, MI 49001. This experimental use permit allows the use of 9,900 pounds of the insecticide amitraz on grapefruits, kumquats, lemons, limes, oranges, tangelos, and tangerines to evaluate the control of mites. A total of 4,800 acres are involved; the program is authorized only in the States of Arizona, California, Florida, and Texas. The experimental use permit is effective from July 8, 1982 to July 8, 1983. Temporary tolerances for residues of the active ingredient in or on grapefruits, kumquats, lemons, limes, oranges, tangelos, and tangerines; milk; and meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep have been established. A feed additive regulation for residues of the active ingredient in or on dried citrus pulp has been established (21 CFR 561.195). (Jay Ellengerber, PM 12, Rm. 202, CM#2, (703–557–2386))

42634–EUP–2. Extension. Department of Agriculture, Washington, DC 20250. This experimental use permit allows the use of the remaining supply of the originally authorized 49.5 pounds of the insect growth regulator 1-(8-methoxy-4,8-dimethylnonyl)-4-(1-methylethyl)benzene on rangelands to evaluate the control of the red imported fire ant. A total of 4,110 acres are involved; the program is authorized only in the States of Georgia, Louisiana, and Texas. The experimental use permit is effective from September 30, 1982 to September 30, 1983. This permit is being issued with the limitation that none of the treated material will enter the food chain. (Franklin Gee, PM 17, Rm. 207, CM#2, (703–557–2690))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits shoud be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: August 16, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82–23234 Filed 8–24–82; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59095A; TSH–FRL 2195–6]

Substituted Cycloaliphatic Hydroxyalkyl Ether Ester; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA received an application for a test marketing exemption (TM–82–34) under section 5 of the Toxic Substances Control Act (TSCA) on July 21, 1982. Notice of receipt of the application was published in the **Federal Register** of July 30, 1982 (47 FR 33234). EPA has granted the exemption.

EFFECTIVE DATE: This exemption is effective on August 18, 1982.

FOR FURTHER INFORMATION CONTACT: Anna Coutlakis, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. M–2610, 401 M St., SW., Washington, D.C. 20460, (202–755–9190).

SUPPLEMENTARY: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemptions", contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirements of section 5(a) or section 5(b), and to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of this disposition in the **Federal Register.** If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

On July 21, 1982, EPA received an application for an exemption from the requirements of sections 5(a) and 5(b) of TSCA to manufacture a new chemical substance for test marketing purposes. The application was assigned test marketing exemption number TM–82–34. The submitter, Celanese Specialty Operations, claimed the specific chemical identity, process information, use, and production volume of the new substance as confidential business information. The generic name of the new substance is substituted cycloaliphatic hydroxyalkyl ether ester. It will be used in an open use. The potential for dermal exposure during manufacture and processing will be to 19 workers. The test marketing period is not to exceed 2 months. A notice published in the **Federal Register** of July 30, 1982 (47 FR 33234) announced receipt of this application and requested comment on the appropriateness of granting the exemption. The Agency did not receive any comments concerning the application.

EPA has established that the test marketing of the substance described in TM–82–34, under the conditions set out in the application, will not present any unreasonable risk of injury to health or the environment. No significant systemic health effects or significant environmental effects were identified for the TME substance. Any exposure will be minimized with the use of proper clothing, safety equipment, and proper exhaust.

This test marketing exemption is granted based on the facts and information obtained and reviewed, but is subject to all conditions set out in the exemption application and, in particular, those enumerated below.

1. This exemption is granted solely to this manufacturer.

2. The applicant must maintain records of the date(s) of shipment(s) to the customers, and the quantities shipped in each shipment, and must make these records available to EPA upon request.

3. Each bill of lading that accompanies a shipment of the substance during the test marketing period must state that the use of the substance is restricted to that described to EPA in the test marketing exemption application.

4. The production volume of the new substance may not exceed that described in the test marketing exemption application.

5. The test marketing activity approved in this notice is limited to a period of 2 months commencing on the date of signature of this notice by the Director of the Office of Toxic Substances.

6. The number of workers exposed to the new chemical should not exceed that specified in the application, and the duration of exposure should not exceed those specified. Exposed workers must wear equipment specified in the application.

The Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which casts significant doubt on the Agency's conclusion that the test marketing of this substance under the conditions specified in the application will not present an unreasonable risk of injury to human health or the environment.

Dated: August 18, 1982.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 82-23237 Filed 8-24-82; 8:45 am]

BILLING CODE 6560-50-M

[PH-FRL-2192-5; PF-290]

Certain Companies; Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide, feed, and food additive petitions relating to the establishment and amendment of tolerances for residues of certain pesticide chemicals in or on certain commodities.

ADDRESS: Written comments to: Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Written comments may be submitted while the petitions are pending before the Agency. The comments are to be identified by the document control number "[PF-290]" and the specific petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: PM 21, Henry Jacoby, (703-557-1900) at the address given above.

SUPPLEMENTARY INFORMATION: EPA gives notice that the Agency has received the following pesticide (PP) and food and feed (FAP) petitions relating to the establishment and amendment of tolerances for residues of certain pesticide chemicals in or on certain commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

FAP 2H5361. Mobay Chemical Corp., Agricultural Chemical Division, P.O. Box 4913, Hawthorn Road, Kansas City, MO 64120. Proposes amending 21 CFR 561.232 by establishing a regulation permitting residues of nematicide ethyl 3-methyl-4-(methylthio) phenyl (1-methylethyl) phosphoramidate and its cholinesterase-inhibiting metabolites in the commodity grape pomace at 1.0 part per million (ppm) and raisin waste at 3.0 ppm.

FAP 2H5361. Mobay Chemical Corp. Proposes amending 21 CFR Part 193 by establishing a regulation permitting residues of nematicide ethyl 3-methyl-4-(methylthio) phenyl (1-methylethyl) phosphoramidate and its cholinesterase-inhibiting metabolites in the commodity raisins at 0.3 ppm.

FAP 2H5364. Penwalt Corp., Agrochemicals Division, Three Parkway, Philadelphia, PA 19102. Proposes amending 21 CFR Part 193 by establishing a regulation permitting the combined residues of the fungicide thiophanate-methyl (dimethyl [(1,2,phenylene) bis (iminocarbonothioyl)] bis [carbamate]), its oxygen analogue, dimethyl-4,4'-0-phenylenebis (allophanate), and its benzimidazole-containing metabolites (calculated as thiophanate-methyl) in or on the raw commodities raisin at 50.0 ppm and pineapple at 35.0 ppm.

FAP 2H5364. Penwalt Corp. Prpposes amending 21 CFR Part 561 by establishing a regulation permitting the combined residues of the fungicide thiophanate-methyl in or on the commodities dried grape pomace at 125.0 ppm and rice hulls at 20.0 ppm.

PP 2F2729. Penwalt Corp. Proposes amending 40 CFR 180.371 by establishing tolerances for the combined residues of fungicide thiophanate-methyl in or on the raw commodities cucumbers, melons, pumpkins, and squash at 1.0 ppm; grapes (fresh) at 10.0 ppm; rice at 5.0 ppm, and rice straw at 15.0 ppm. Proposed analytical methods for determining residues are ultra violet spectrophotometry for thiophanate methyl and high pressure liquid chromatography for allophanate.

(Secs. 408(d)(1), 68 Stat. 512 (7 U.S.C. 136)) (Sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348))

Dated: August 13, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-22959 Filed 8-24-82; 8:45 am]

BILLING CODE 6560-50-M

[PH-FRL-2192-6; PP OG2360/T388]

Ethephon; Extension of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended a temporary tolerance for residues of the plant regulator ethephon in or on the raw agricultural commodity sugarcane.

DATE: This temporary tolerance expires July 16, 1984.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA isued a notice, that was published in the **Federal Register** of April 2, 1981 (46 FR 19986), announcing the establishment of a temporary tolerance for residues of the plant regulator ethephon [(2-chloroethyl) phosphonic acid] in or on the raw agricultural commodity sugarcane at 0.6 part per million (ppm). This temporary tolerance was issued in response to pesticide petition (PP OG2360), submitted by Union Carbide Agricultural Products Co. Inc., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. Notice of the

extension of a related food additive regulation for residues of the plant regulator in molasses at 7.0 ppm was published in the **Federal Register** of July 28, 1982 (47 FR 32525).

This temporary tolerance has been extended to permit the continued marketing of the raw agricultural commodity named above when treated in accordance with the provisions of experimental use permit (264–EUP–59), which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other releveant material were evaluated, and it was determined that the extension of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Union Carbide must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires July 16, 1984. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicates that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981, (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: August 10, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82–22958 Filed 8–24–82; 8:45 am]

BILLING CODE 6560–50–M

[PP 5G1623/T387; PH–FRL 2193–3]

Extension of Temporary Tolerances; Amitraz

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the insecticide amitraz and its metabolites in or on certain raw agricultural commodities.

DATE: These temporary tolerances expire July 8, 1983.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, that was published in the **Federal Register** of September 9, 1975 (40 FR 41836), announcing the establishment of temporary tolerances for the combined residues of the insecticide amitraz, N'-(2,4-dimethyl-phenyl)-N-[[2,4-dimethylphenyl) imino] methyl]-N-methyl-methanimidamide, and its metabolites containing 2,4-dimethylanaline moiety (calculated as the parent compound) in or on the raw agricultural commodities grapefruits, lemons, oranges and tangerines at 1.0 part per million (ppm); and meat, milk and fat and meat byproducts of cattle, goats, hogs, horses and sheep at 0.01 ppm. Most recently, these tolerances were extended, as published in the **Federal Register** of October 2, 1981 (46 FR 48756). These tolerances were issued in response to pesticide petition PP 5G1623, submitted by The Upjohn Company, 7171 Portage Road, Kalamazoo, MI 49001. At the request of the company, these temporary tolerances are being extended again. Also, temporary tolerances are being established on the raw agricultural commodities kumquats, limes and tangelos at 1.0 ppm. A related food additive regulation is being extended for residues of the active ingredient in dried citrus pulp at 7.0 ppm, notice of which appears elsewhere in this issue of the **Federal Register.**

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit (1023–EUP–35), which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. The Upjohn Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire July 8, 1983. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981, (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: August 13, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-23055 Filed 8-24-82; 8:45 am]

BILLING CODE 6560-50-M

[PH-FRL2187-5; PF-289]

Certain Companies; Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide and food or feed additive petitions relating to the establishment and amendment of tolerances for residues of certain pesticide chemicals in or on certain raw commodities.

ADDRESS: Written comments to the product manager (PM) cited in each specific petition at the address below: Registration Division (TS-767C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Written comments may be submitted while the peititions are pending before the Agency. The comments are to be identified by the document control number "[PF-289]" and the specific petition number. All written comments filed in response to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager (PM) cited in each petition at the telephone number provided.

SUPPLEMENTARY INFORMATION: EPA gives notice that the Agency has received the following pesticide petitions (PP) and food or feed additive petitions (FAP) relating to the establishment and amendment of tolerances for residues of certain pesticide chemicals in or on certain commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

PP 2F2715. Mobay Chemical Corp., Agricultural Chemical Division P.O., Box 4913, Kansas City, MO., 64120. Proposes amending 40 CFR 180.374 by establishing tolerances for residues of insecticide *O*-ethyl *O*-[4-(methylthio) phenyl] S-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites in or on the raw commodities soybeans at 0.5 part per million (ppm), soybeans, green forage at 20.0 ppm, soybean hay at 11.0 ppm. Cattle fat, meat, and meat by-products (mbyp) at 0.01 are increased to 0.06 ppm. Proposed analytical method for determining residues is by gas chromatography. (Jay Ellenberger, PM 12, 703-557-2386).

FAP 2H5358. Mobay Chemical Corp. Proposes amending 21 CFR 561.233 by establishing a regulation permitting residues of insecticide *O*-ethyl *O*-[4-(methylthio) phenyl] S-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites on the commodity soybean hulls at 0.75 ppm. (Jay Ellenberger, PM 12, 703-557-2386).

PP 2F2722. Shell Oil Co., Suite 200, Conn. Ave., NW Wash. D.C. 20036. Proposes amending 40 CFR 180.362 by establishing tolerances for the combined residues of insecticide hexakis (2-methyl-2 phenylpropyl) distannoxane and its organotin metabolites calculated as hexakis (2-methyl-2-pehnylpropyl) distannoxane, in or on the raw commodities walnuts and pecans at 0.5 ppm. Proposed analytical method for determining residues is gas-liquid chromatography using a tin selective flame photometric detector. (Jay Ellenberger, PM 12, 703-557-2386).

PP 2F2725. Sandoz, Inc., Crop Protection, 480 Camino Del Rio South, Suite 204, San Diego, CA, 92108. Proposes amending 40 CFR 180.356 by establishing tolerances for the residues of herbicide norflurazon [4-chloro-5-(methylamino)-2-(alpha,alpha,alpha-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone], and its desmethyl metabolite [4-chloro-5-amino-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone in or on the raw commodity pecans at 0.1 ppm. Proposed analytical method for determining residues is gas chromatography using an electron capture detector. (Richard Mountfort, PM 23, 703-557-1830).

PP 2F2720. Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC, 27419. Proposes to amend 40 CFR 180.368 by increasing and/or establishing tolerances for the residues of herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl) acetamide] and its metabolites determined as 2-[(2-ethyl-6-methylphenyl)-amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as parent metolachlor, in or on the raw commodities as follows:

(1) Increase the level from 1.0 ppm to 6.0 ppm in or on corn fodder and forage and peanut hulls; from 0.1 to 0.2 in or on soybeans; from 0.1 to 0.5 ppm in or on peanuts; from 2.0 to 6.0 ppm in or on soybean fodder and forage; and from 3.0 to 30.0 ppm in or on peanut forage and hay.

(2) Establish tolerances for residues in or on liver and kidney of cattle, goats, hogs, horses, poultry, and sheep at 0.05 and 0.2 ppm respectively.

The proposed analytical method for determining residues is gas chromatography. (Richard Mountfourt, PM 23, 703-557-1830).

PP 2F2670. In the **Federal Register** of June 16, 1982, (47 FR 26019), EPA issued a notice which announced that BASF Wyandotte Corp., P.O. Box 181, Parsippany, NJ 07054, had filed a pesticide petition proposing to establish tolerances for residues of herbicide 2-(1-(ethoxymino)butyl)-5-(2-(ethylthio)propyl)-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 5-(2-(ethylthio)propyl)-3,5-dihydroxy-2-cyclohexen-1-one moiety and 5-(2-ethylthio)propyl)-3-hydroxy-2-cyclohexen-1-one moiety and the their several thioxidation products (calculated as the herbicide) in or on certain raw commodities. In the FR Doc. 82-15839, appearing at page 260191 under PP 2F2670, third column, lines 17 through 19, the tolerance levels for the commodities fat, meat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep are corrected to read: "fat, meat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; milk and eggs at 0.05(N)".

Proposed analytical method for determining residues is gas chromatography using sulfur-specific FDP detector. (Robert Taylor, PM 25, 703-557-1800).

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136)), (sec. 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: August 5, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-22229 Filed 8-24-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Notice of Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated for each application.

A. **Federal Reserve Bank of New York.** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays Bank PLC* and its subsidiary, *Barclays Bank International Limited*, London, England (consumer finance; insurance activities; Richmond, Virginia and Memphis, Tennessee): To engage through their subsidiaries, BarclaysAmerican/Financial Services, Inc. and BarclaysAmerican/Financial, Inc., in making direct consumer loans, including loans secured by real estate, and purchasing sales finance contracts representing extensions of credit such as would be make or acquired by a consumer finance company, and wholesale financing (floor planning) and acting as agent for the sale of directly related credit life, credit accident and health and credit property insurance. Credit life and credit accident and health insurance sold as agent may be underwritten or reinsured by BAC's insurance underwriting subsidiaries. These activities would be conducted from offices of BAC located in Richmond, Virginia, and Memphis, Tennessee, serving customers, respectively, in Richmond and surrounding areas in Virginia and Memphis and surrounding areas in Tennessee. This notification is for the relocation of two existing offices located in Richmond, Virginia and Memphis, Tennessee. Comments on this application must be received not later than September 20, 1982.

2. *Horizon Bancorp*, Morristown, New Jersey (trust activities; New Jersey): To engage through is subsidiary Horizon Trust Company, N.A. in activities that may be carried on by a trust company, including activities of a fiduciary, agency or custodian nature. These activities would be conducted from an office in Mount Laurel, New Jersey, serving Burlington, Camden and Gloucester Counties in New Jersey. Comments on this application must be received not later than September 20, 1982.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NCNB Corporation*, Charlotte, North Carolina (sale of money orders; Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee): To engage through its subsidiary, TranSouth Financial Corporation, in the sale at retail of money orders having a face value of not more than $1,000. These activities will be conducted by TranSouth Financial Corporation through its offices and through the offices of its subsidiary, TranSouth Financial Corporation of Florida. These activities will be conducted at the following locations: TranSouth Financial Corporation: Alexander City, Auburn, Eufaula, Greenville, Prattville, and Troy, Alabama; Albemarle, Asheville, Brevard, Canton, Concord, Elizabethtown, Forest City, Gastonia, Goldsboro, Hendersonville, Laurinburg, Morehead City, Rockingham, Sanford, Siler City, Sylva, Wallace, and Weldon, North Carolina; Aiken, Anderson, Beaufort, Bennettsville, Camden, Charleston Heights, Cheraw, Columbia, Conway, Dillion, Florence, Gaffney, Georgetown, Greenwood, Kingstree, Lexington, Manning, Mullins, Myrtle Beach, North Myrtle Beach, Orangeburg, Rock Hill, Seneca, Spartanburg, Sumter, Union, Walterboro, and Winnsboro, South Carolina; Athens, Cleveland, Columbia, Covington, Dickson, Dyersburg, Franklin, Greeneville, Hendersonville, Humboldt, Huntingdon, Knoxville, LaFollette, Lawrenceburg, Lewisburg, Lexington, Livingston, Manchester, McMinnville, Newport, Paris, Pulaski, Rogersville, Savannah, Springfield, Union City, and Winchester, Tennessee. TranSouth Financial Corporation of Florida: Bartow, Brandon, Brooksville, Dade City, Deland, Gainesville, Jacksonville, Lakeland, Leesburg, Melbourne, Miami, Naples, New Port Richey, Oakland Park, Orange Park, Orlando, Palatka, Panama City, Pensacola, Port Charlotte, Sarasota, St. Petersburg, Tallahassee, Tampa, Temple, West Palm Beach, Winter Haven, and Winter Park, Florida; Albany, Columbus, Savannah, and Statesboro, Georgia; Chattanooga, and Nashville, Tennessee. The geographic areas intended to be served by the above offices will generally be those areas contiguous to each office consisting of approximately a 25-mile radius. Comments on this application must be received not later than September 20, 1982.

2. *NCNB Corporation*, Charlotte, North Carolina, (consumer finance and insurance activities; Georgia): To engage, through its subsidiary, TranSouth Financial Corporation of Florida, in making direct loans for consumer and other purposes, purchasing retail installment notes and contracts and acting as agent for the sale of credit life, credit accident and health and physical damage insurance directly related to its extensions of credit and through its subsidiary, TranSouth Mortgage Corporation of Florida, in making direct loans for consumer and other purposes under the general usury statues, purchasing retail installment notes and contracts, making direct loans to dealers for the financing of inventory (floor planning) and working capital purposes and acting as agent for the sale of credit life, credit accident and health and physical damage insurance directly related to its extensions of credit from a common office to be located in Savannah, Georgia. Serving an area consisting of a 25 mile radius of said office. This notification is for the relocation of an existing office in Savannah, Georgia. Comments on this application must be received not later than September 20, 1982.

Board of Governors of the Federal Reserve System, August 19, 1982.

James McAfee,

Associate Secretary of the Borad.

[FR Doc. 23201 Filed 8-24-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the

applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Ravalli County Bankshares, Inc.*, Hamilton, Montana; to become a bank holding company by acquiring 86.1 percent of the voting shares of Ravalli County Bank, Hamilton, Montana. Comments on this application must be received not later than September 17, 1982.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California, 94120:

1. *Pacific National Bancshares*, Eureka, California, to become a bank holding company by acquiring 80 percent or more of the voting shares of The First National Bank of Willows, Willows, California. Comments on this application must be received not later than September 15, 1982.

Board of Governors of the Federal Reserve System, August 19, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-23202 Filed 8-24-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Notice of Meetings

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory bodies scheduled to assemble during the month of September 1982.

National Advisory Mental Health Council
September 21–23
Open—September 21; 9:30 a.m.
National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20205
Closed—September 22–23
Parklawn Building, Conference Room G, 5600 Fishers Lane, Rockville, Maryland 20857
Contact: Ms. Helen W. Garrett, Committee Management Officer, Parklawn Building, Room, 17C–26, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333
Purpose: The National Advisory Mental Health Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications, for, and amount of, these grants.
Agenda: On September 21, the meeting will be open for discussion of NIMH policy issues and will include current administrative, legislative, and program developments. Attendance by the public for the open session will be limited to space available. Otherwise, the Council will conduct a final review of applications for assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

• National Advisory Council on Drug Abuse
September 21–22; 9:00 a.m.
National Institutes of Health, Building 31C, Conference Room 7, Bethesda, Maryland 20205
Open—September 21; 9:00 a.m.–12 Noon
September 22, 9:00 a.m.–5:00 p.m.
Closed—Otherwise
Contact: Mrs. Bee Hamlin, Parklawn Building, Room 10A–03, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6460
Purpose: The National Advisory Council on Drug Abuse advises and makes recommendations to the Secretary of Health and Human Services; the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse, on the development of new initiatives and priorities and the efficient administration of drug abuse research, including prevention and treatment research, and research training. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.
Agenda: From 9:00 a.m.–12 Noon, September 21, and from 9:00 a.m.–5:00 p.m., September 22, the meeting will open for discussion of administrative announcements, program development and policy issues. Otherwise, the Council will be performing final review of applications for assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

• National Advisory Council on Alcohol Abuse and Alcoholism
September 24–25; 9:00 a.m.
Open—September 24; 9:00 a.m.–3:30 p.m.
Closed—September 24; 4:00 p.m.–adjournment
Conference Room 8, Building 31C, National Institutes of Health, Bethesda, Maryland 20205
Open—September 25; 9:00 a.m.–adjournment
Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20205
Contact: Mr. James Vaughan, Parklawn Building, Room 16C–06, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3887
Purpose: The Council advises the Secretary of Health and Human Services regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and coherence with Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.
Agenda: On September 24, the Council session will be open from 9:00 a.m.–3:30 p.m. for general business and a discussion of current budget, legislative and program activities. Starting at 4:00 p.m., September 24, the Council will conduct a final review of grant applications for Federal assistance and the session will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).
On September 25, from 9:00 a.m.–adjournment, the session will be open for a discussion of the council role with regard to Institute planning and budget process and program policies and priorities.
Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of Committee members may be obtained as follows: NIAAA: Mrs. Diana Widner, Committee Management Officer, Room 16C–21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2860. NIDA: Ms. Claudette Wright, Committee Management Officer, Room 10–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1644. NIMH: Ms. Helen W. Garrett, Committee Management Officer, Room 17C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 82-23206 Filed 8-24-82; 8:45 am]

BILLING CODE 4160-20-M

Health Services Administration

Assistance Under the Public Health Service Act; Supplemental Grants for Community Health Centers

AGENCY: Health Services Administration, Public Health Service, HHS.

ACTION: Announcement of availability of grants.

SUMMARY: The Bureau of Community Health Services (BCHS), Health Services Administration, announces that applications for supplemental awards are now being accepted from community health centers which received fiscal year (FY) 1982 operational grant awards under section 330 of the Public Health Service Act (42 U.S.C. 254c), or which have applications currently pending for such funding. Centers that received FY 1982 grant funds to support the phaseout of their section 330 assi tance are not eligible for these supplemental grant award.

DATE: Applications must be received by the close of business on September 1, 1982, in the appropriate HHS Regional Office.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Bohrer, Acting Associate Bureau Director for Community Health Centers, BCHS, Parklawn Building Room 7A–55, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–2260.

SUPPLEMENTARY INFORMATION: On July 18, 1982, the Congress enacted the "Urgent Supplemental Appropriations Act, 1982" (Pub. L. 97–216), which appropriates an additional $33,850,000 for the Community Health Center program in FY 1982. These funds are to be used (1) to restore essential primary and supplemental health services (for which BCHS has not been able to provide grant support, due to budget cutbacks) in efficient community health centers which are located in high priority medically underserved areas, and (2) to continue to support and to increase the availability of preventive health services.

Primary and Supplemental Services

Centers which have already received FY 1982 operational grant awards, but at funding levels below the amounts necessary to carry out essential primary and supplemental health services, may apply by letter to the appropriate Regional Office for a supplemental award for such services. The letter should describe the primary and supplemental services to be provided and should contain a justification for such services (which may be done by appropriate reference to the approved application). Centers with pending applications for FY 1982 operations funds will automatically receive consideration for this special supplemental support; a letter of application is not necessary.

The agency will approve those requests which best promote the purposes of the section 330 legislation taking into account, among other things, the degree of need as determined under the need/demand assessment required under section 330(e)(2); comments from local governmental units, medical and dental societies and local health providers; and compliance with program indicators set forth in **Federal Register** Vol. 44, No. 50, pages 14640–14641, March 13, 1979.

Preventive Health Services

All centers are encouraged to apply, through a letter to the appropriate Regional Office, for a supplemental grant award for prevention and health promotion activities. All projects applying for such assistance are expected to receive approval and some level of funding. Preventive health and health promotion activities include, but are not limited to, the following areas:

1. Preventing hypertension
2. Dangers of smoking
3. Alcohol abuse
4. Drug abuse
5. Nutrition, weight control and exercise
6. Dental health
7. Accident prevention
8. Diabetes control
9. Maternal health
10. Child health
11. Family health
12. Health matters relating to disabled persons.

The letters of application described above must be received by the appropriate Regional Office by the close of business on September 1, 1982. Consultation and technical assistance regarding applying for these supplemental funds are available from the Regional Offices.

Dated: August 19, 1982.

John H. Kelso,

Acting Administrator.

[FR Doc. 82-23207 Filed 8-24-82; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES 15333, Survey Group 169]

Florida; Notice of Filing of Plat of Survey

1. On October 4, 1979, the plat representing the survey of Morrison Island in T. 15 S., R. 28 E., Tallahassee Meridian, Florida, which was omitted from the original survey, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, on November 23, 1982.

The land shown below describes the island omitted from the orginal survey.

Tallahassee Meridian, Florida

T. 15 S., R. 28 E.,
Sec. 19, Lot 13.

2. The elevation of Morrison Island ranges from a few inches above the ordinary high water mark on the easterly margin of the island to 3 feet above the ordinary high water mark on the island's southerly margin. Tree species include live oak, pine, cypress, maple, ash, cabbage palm, hickory, ironwood, sweet gum, and willow, with undergrowth of ferns, vines, palmetto, and young trees. The soil is black organic muck and is poorly drained.

3. The island described as Lot 13, Sec. 19, T. 15 S., R. 28 E., Tallahassee Meridian, Flordia, has been determined to be more than 50% swamp in character within the purview of the Swamp Lands Act of September 28, 1850. Title to this lot inured to the State of Florida as of the date; therefore, it is only open to selection by the State under that Act.

4. All inquiries relating to this island should be sent to the Chief, Division of lands and Minerals Operations, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304 on or before November 23, 1982.

Jeff O. Holdren,

Chief, Division of Lands and Minerals Operations.

[FR Doc. 82-23212 Filed 8-24-82; 8:45 am]

BILLING CODE 4310-84-M

[ES 16780, Survey Group 171]

Florida; Notice of Filing of Plat of Survey

1. On December 11, 1980, the plat representing the survey of an island in T. 14 S., R. 12 E., Tallahassee Meridian, Florida, which was omitted from the original survey, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m. on November 23, 1982.

Tallahassee Meridian, Florida

T. 14 S., R. 12 E.,
Sec. 24, Lot 9.

2. The island is separate and distinct yet similar to that of the adjacent surveyed lands. It rises approximately 5 feet above the ordinary high water mark. Timber consists of slash pine, cabbage palm and live oak. A boring of a slash pine 23 inches in diameter showed it was approximately 135 years old. Undergrowth consists mostly of cabbage palmetto, yaupon, Spanish bayonet, and prickly pear. The soil compostition is sand to sandy loam.

The island was found to be over 50 percent upland in character within purview of the Swamp Lands Act of September 28, 1850 (9 Stat. 519). It is therefore held to be public land.

3. Except for valid existing rights, the island will not be subject to application, petition, location or selection under any public law until a further order is issued.

4. All inquiries relating to the island should be sent to the Chief, Division of Lands and Minerals Operations, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, on or before November 23, 1982.

Jeff O. Holdren,

Chief, Division of Lands and Minerals Operations.

[FR Doc. 82-23211 Filed 8-24-82: 8:45 am]

BILLING CODE 4310-84-M

[ES 27252, Survey Group 115]

Minnesota; Notice of Filing of Plats of Survey

a. On February 9, 1981, the plats representing the survey of 4 islands in Bass Lake and 37 islands in Vermilion Lake in T. 62 N., R. 15 W., Fourth Principal Meridian, Minnesota, which were omitted from the original survey, were accepted. They will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., on November 23, 1982.

Fourth Principal Meridian, Minnesota

T. 62 N., R. 15 W.,
Tract Nos. 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, and 77.

b. The character of the tracts described above is similar in all respects to that of the adjacent surveyed lands.

1. Elevations of the island Tract No. 37 range up to approximately 6 feet above the ordinary high water mark of Bass Lake. Timber consists of cedar, spruce, birch, and aspen, with undergrowth of native grasses and small trees.

2. Elevations on the island Tract No. 38 range up to approximately 10 feet above the ordinary high water mark of Bass Lake. Timber consists of birch, spruce, aspen, and alder, with an undergrowth of native grasses and small trees.

3. Elevations on the island Tract No. 39 range up to approximately 7 feet above the ordinary high water mark of Bass Lake. Undergrowth consists of willow, raspberry, and native grasses.

4. Elevations on the island Tract No. 40 range up to approximately 4 feet above the ordinary high water mark of Bass Lake. Timber consists of pine, cedar, spruce and birch. Borings of the pine trees showed several to be up to 80 years old. Undergrowth consists of willow and native grasses.

5. Elevations on the island Tract No. 41 range up to approximately 12 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine and cedar. Undergrowth consists of brush and native grasses.

6. Elevations on the island Tract No. 42 range up to approximately 12 feet above the ordinary high water mark of Vermilion Lake. Timber consists of cedar, aspen, birch, and spruce. Undergrowth consists of hazel, brush and native grasses.

7. Elevations on the island Tract No. 43 range up to approximately 15 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, cedar, and spruce. Undergrowth consists of brush and native grasses.

8. Elevations on the island Tract No. 44 range up to approximately 3 feet above the ordinary high water mark of Vermilion Lake. Timber consists of maple and elm. Undergrowth consists of brush and native grasses.

9. Elevations on the island Tract No. 45 range up to approximately 5 feet above the ordinary high water mark of Vermilion Lake. Timber consists of aspen with undergrowth of brush and native grasses.

10. Elevations of the island Tract No. 46 range up to approximately 10 feet above the ordinary high water mark of Vermilion Lake. Undergrowth consists of williom, brush and native grasses.

11. Elevations on the island Tract No. 47 range up to approximately 4 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, cedar, fir, and birch. Borings of pine trees showed several to be up to 80 years old. Undergrowth consists of willow, brush, and native grasses.

12. Elevations on the island Tract No. 48 range up to approximately 15 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, cedar, birch, and spruce. Borings of pine trees showed several to be up to 105 years old. Undergrowth consists of hazel, willow, brush, and native grasses.

13. Elevations on the island Tract No. 49 range up to approximately 25 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, cedar, fir, aspen, and birch. Borings of pine trees showed several to be up to 110 years old. Undergrowth consists of willow, brush, and native grasses

14. Elevations on the island Tract No. 50 range up to approximately 3 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, cedar, fir, and birch. Borings of pine trees showed several to be up to 100 years old. Undergrowth consists of hazel, brush and native grasses.

15. Elevations on the island Tract No. 51 range up to approximately 30 feet above the high water mark of Vermilion Lake. Timber consists of pine, cedar, fir, aspen, and birch. Borings of the pine trees showed several to be up to 80 years old. Undergrowth consists of hazel, willow, brush, and native grasses.

16. Elevations on the island Tract No. 52 range up to approximately 2 feet above the ordinary high water mark of Vermilion Lake. Timber consists of ash, cedar, and birch, A large pine stump was found on the island. Undergrowth consists of hazel, willow, brush, and native grasses.

17. Elevations on the island Tract No. 53 range up to approximately 8 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, cedar, fir, aspen, and birch. Borings of the pine trees showed several to be up to 80 years old. Undergrowth consists of hazel, willow, brush, and native grasses.

18. Elevations on the island Tract No. 54 range up to approximately 12 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, cedar, and birch. Borings of the pine trees showed several to be up to 105 years old. Undergrowth consists of hazel, willow, brush and native grasses.

19. Elevations of the island Tract No. 55 range up to approximately 15 feet above the ordinary high water mark of Vermilion Lake. Timber consistst of pine, cedar, aspen, birch, and spruce. Borings of the pine trees showed several to be up to 85 years old. Undergrowth consists of hazel, willow, brush, and native grasses.

20. Elevations on the island Tract No. 56 range up to approximately 3½ feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, cedar, and aspen. Borings of the pine trees showed several to be up to 85 years old. Undergrowth consists of hazel, willow, brush, and native grasses.

21. Elevations on the island Tract No. 57 range up to approximately 14 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, cedar, aspen, birch, and spruce. Borings of the pine trees showed several to be up to 110 years old. Undergrowth consists of hazel, willow, brush, and native grasses.

22. Elevations on the island Tract No. 58 range up to approximately 20 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, aspen, birch, and spruce. Borings of the pine trees showed several to be up to 80 years old. Undergrowth consists of hazel, willow, brush, and native grasses.

23. Elevations on the island Tract No. 59 range up to approximately 7 feet above the ordinary high water mark of Vermilion Lake. Timber consists of cedar, aspen, and birch. Borings of the cedar trees showed several to be up to 80 years old. Undergrowth consists of hazel, willow, brush, and native grasses.

24. Elevations on the island Tract No. 60 range up to approximately 2 feet above the ordinary high water mark of Vermilion Lake. Timber consists of hazel, willow, brush, and native grasses.

25. Elevations on the island Tract No. 61 range up to approximately 2 feet above the ordinary high water mark of Vermilion Lake. Timber consists of cedar, aspen, and elm. Undergrowth consists of hazel, willow, brush, and native grasses.

26. Elevations on the island Tract No. 62 range up to approximately 2 feet above the ordinary high water mark of Vermilion Lake. Timber consists of cedar, aspen, and birch. Undergrowth consists of willow, brush, and native grasses.

27. Elevations on the island Tract No. 63 range up to approximately 2 feet above the ordinary high water mark of Vermilion Lake. Timber consists of cedar and aspen. Undergrowth consists of willow, brush, and native grasses.

28. Elevations on the island Tract No. 64 range up to approximately 3 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine. Borings of the pine trees showed several to be up to 105 years old. Undergrowth consists of willow, brush, and native grasses.

29. Elevations on the island Tract No. 65 range up to approximately 2 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, cedar, aspen, and birch. Borings of the pine trees showed several to be up to 89 years old. Undergrowth consists of hazel, willow, brush, and native grasses.

30. Elevations on the island Tract No. 66 range up to approximately 4 feet above the ordinary high water mark of Vermilion Lake. Timber consists of cedar and birch with undergrowth of willow, brush, and native grasses.

31. Elevations on the island Tract No. 67 range up to approximately 4 feet above the ordinary high water mark of Vermilion Lake. Timber consists of cedar, aspen, birch, and mountain ash. Undergrowth consists of willow, brush, and native grasses.

32. Elevations on the island Tract No. 68 range up to approximately 10 feet above the ordinary high water mark of Vermilion Lake. Timber consists of cedar and birch. Undergrowth consists of brush and native grasses.

33. Elevations on the island Tract No. 69 range up to approximately 9 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, cedar, aspen, and birch. Borings of pine trees showed several to be up to 80 years old. Undergrowth consists of willow, brush, and native grasses.

34. Elevations on the island Tract No. 70 range up to approximately 12 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, cedar, aspen, and birch. Borings of the pine trees showed several to be up to 80 years old. Undergrowth consists of willow, brush, and native grasses.

35. Elevations on the island Tract No. 71 range up to approximately 12 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, cedar, and birch. Borings of the pine trees showed several to be up to 100 years old. Undergrowth consists of willow, brush, and native grasses.

36. Elevations on the island Tract No. 72 range up to approximately 15 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, cedar, fir, and birch. Borings of the pine trees showed several to be up to 80 years old. Undergrowth consists of willow, brush, and native grasses.

37. Elevations on the island Tract No. 73 range up to approximately 1½ feet above the ordinary high water mark of Vermilion Lake. Undergrowth consists of willow, brush, and native grasses.

38. Elevations on the island Tract No. 74 range up to approximately 5 feet above the ordinary high water mark of Vermilion Lake. Timber consists of pine, cedar, and aspen. Borings of the pine trees showed several to be up to 108 years old. Undergrowth consists of willow, brush, and native grasses.

39. Elevations on the island Tract No. 75 range up to approximately 5 feet above the ordinary high water mark of Vermilion Lake. Timber consists of cedar and birch with undergrowth of willow, brush, and native grasses.

40. Elevations on the island Tract No. 76 range up to approximately 2 feet above the ordinary high water mark of Vermilion Lake. Timber consists of elm with undergrowth of willow, brush, and native grasses.

41. Elevations on the island Tract No. 77 range up to approximately 2 feet above the ordinary high water mark of Vermilion Lake. Undergrowth consists of willow, brush, and native grasses.

c. The soil composition of all the lands described above is of a thin layer of organic matter on a base of glacial till. Large boulders were found on each of the tracts mentioned above.

d. Tracts Nos. 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, and 77 were found to be over 50 percent upland in character within the purview of the Swamp Lands Act of September 28, 1850 (9 Stat. 519). They are, therefore, held to be public land.

e. Except for valid existing rights, the land will not be subject to application, petition, location, or selection under any public law until a further order is issued.

All inquiries relating to these lands should be sent to the Chief, Division of Lands and Minerals Operations, Bureau of Land Management, 350 S. Pickett Street, Alexandria, Virginia 22304, on or before November 23, 1982.

Jeff O. Holdren,

Chief, Division of Lands and Minerals Operations.

[FR Doc. 82-23208 Filed 8-24-82; 8:45 am]

BILLING CODE 4310-84-M

[ES 25814, Survey Group 106]

Wisconsin; Notice of Filing of Plat of Survey

1. On September 3, 1980, the plat representing a resurvey of the boundaries of Sec. 17, T. 43 N., R. 7 W., Fourth Principal Meridian, Wisconsin, to restore the corners in their true original location, reestablish the record meander lines and survey of new meander lines to include land omitted from a previous survey was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., on November 23, 1982.

Fourth Principal Meridian, Wisconsin

T. 43 N., R. 7 W.,
Sec. 17, Lot Nos. 7, 8, 9, 10, and 11.

2. The greater portion of the land in Sec. 17 is of a rolling nature approximately 35 feet above the ordinary high water mark of Perry Lake. The omitted area is vegetated with young timber 30 to 60 years in age. There are many large pine stumps which are over 130 years of age, timber species

consist of ash, aspen, balsam, linden, birch, maple, and pine. The soil in the omitted area is primarily sandy clay loam on the upland areas and muskeg in the swampy areas.

Lots numbered 7, 8, 9, 10, and 11 were found to be over 50 percent upland in character within the purview of the Act of September 28, 1850 (9 Stat. 519). They are therefore held to be public land. Except for valid existing rights, the land will not be subject to application, petition, location, or selection under any public law until a further order is issued.

All inquiries relating to these lands should be sent to the Chief, Division of Lands and Minerals Operations, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, on or before November 23, 1982.

Jeff O. Holdren,

Chief, Division of Lands and Minerals Operations.

[FR Doc. 82-23209 Filed 8-24-82; 8:45 am]

BILLING CODE 4310-84-M

[ES 30682, Survey Group 99]

Wisconsin; Notice of Filing of Plat of Survey

1. On December 5, 1979, the plat representing a dependent resurvey of a portion of the subdivisional lines, designed to restore the corners in their true original location; the reestablishment of a portion of the present shoreline of Blueberry Lake, the apportionment of the shoreline frontage to original Lots 5 and 6, the survey of the section subdivisional lines of Sec. 9, and the survey of islands omitted from the original survey in T. 39 N., R. R. 7 W., Fourth Principal Meridian, Wisconsin, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m. on November 23, 1982.

The tracts shown below describe the islands omitted from the original survey.

Fourth Principal Meridian, Wisconsin

T. 39 N., R. 7 W.,
Tract Nos. 37, 38, and 39.

2. The character of the Island Tract Nos. 37 through 39 is similar in all respects to that of the adajacent surveyed lands.

a. The island Tract No. 37 rises from the ordinary high water mark of Blueberry Lake to approximately 10 feet in elevation. Timber consists of red and white pine, aspen, and birch, with undergrowth of native grasses, small trees, scattered vines, and briars. Borings showed several pine trees to be up to 77 years old. Several stumps were found on the island.

b. The island Tract No. 38 rises from the ordinary high water mark of Blueberry Lake to approximately 20 feet in elevation and is separated from the mainland by a channel. Timber consists of red and white pine, ash, oak, basswood, aspen, and birch. Borings of the red and white pine trees showed several to be 90 to 110 years old. Undergrowth consists of native grasses, small trees, scattered vines, and briars. Several stumps were found on the island.

c. The island Tract No. 39 rises from the ordinary high water mark of Blueberry Lake to approximately 25 feet in elevation. Timber consists of red and white pine, aspen, and birch, with undergrowth of native grasses, small trees, scattered vines, and briars. Borings of the pine trees showed several to be up to 70 years old.

The soil composition of Tract Nos. 37, 38, and 39, is of a glacial till, sand mixed with clay, gravel, and larger rocks, topped with a thin layer of organic matter.

3. The islands described above were found to be over 50 percent upland in character within the purview of the Swamp Lands Act of September 28, 1850 (9 Stat. 519). They are, therefore, held to be public land.

4. Except for valid existing rights, these islands will not be subject to application, petition, location, or selection under any public law until a further order is issued.

5. All inquiries relating to these islands should be sent to the Chief, Division of Lands and Minerals Operations, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304 on or before November 23, 1982.

Jeff O. Holdren,

Chief, Division of Lands and Minerals Operations.

[FR Doc. 82-23210 Filed 8-24-82; 8:45 am]

BILLING CODE 4310-84-M

Intent To Prepare an Environmental Impact Statement; Wyoming Portion of the Newcastle Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Prepare an environmental impact statement (EIS) on grazing management in the Wyoming portion of the Newcastle Resource Area, which includes Crook, Weston and Niobrara Counties in Wyoming.

INFORMATION: The EIS will analyze a No Action Alternative, which is the continuation of current grazing management within the Newcastle Resource Area in accordance with the new BLM Rangeland Management Policy. The allotments have been categorized, as defined in rangeland policy, and only maintenance and custodial allotments were identified. Since no issues have been identified through recent scoping for the MFT and range categorization no other alternatives are anticipated. However, if during the analysis of No Action or through public participation, issues do arise then an alternative to address those issues will be developed and analyzed.

Only reasonable alternatives which could be selected and implemented by the area manager will be considered in the EIS.

FOR FURTHER INFORMATION CONTACT: For further information or to suggest issues contact Darrel Short, BLM Area Manager, P.O. Box 757, Newcastle, Wyoming 82701. Phone: (307) 746-4453.

Paul W. Arrasmith,

District Manager.

[FR Doc. 82-23213 Filed 8-24-82; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Alaska Outer Continental Shelf; Availability of Final Environmental Impact Statement Regarding Proposed St. George Basin Oil and Gas Lease Sale No. 70

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service has prepared a final environmental impact statement relating to a proposed Outer Continental Shelf (OCS) oil and gas lease sale of 479 tracts consisting of approximately 1.1 million hectares (2.7 million acres) of submerged Federal lands off the western coast of Alaska in the St. George Basin Region of the Bering Sea (OCS Sale No. 70).

Single copies of the final environmental impact statement can be obtained from the Office of Manager, Minerals Management Service, Alaska Outer Continental Shelf Office, P.O. Box 1159, Anchorage, Alaska 99510.

Copies of the final environmental impact statement will also be made available for inspection in the following public libraries: Alaska Federation of Natives, 1577 "O" Street, Suite 304, Anchorage, AK 99501; Anchor Point Public Library, Anchor Point, AK 99556; Department of the Interior Resources Library, 701 "C" Street, Box 36, Anchorage, AK 99513; Cordova Public

Library, Box 472, Cordova, AK 99574; Kenai Community Library, Box 157, Kenai, AK 99611; Elim Learning Center, Elim, AK 99739; Haines Public Library, P.O. Box 36, Haines, AK 99827; North Star Borough Library, Fairbanks, AK 99701; University of Alaska, Institute of Social and Economic Research Library, Fairbanks, AK 99801; Homer Public Library, Box 356, Homer, AK 99603; Z. J. Loussac Public Library, 427 F Street, Anchorage, AK 99801; Juneau Memorial Library, 114 W. 4th Street, Juneau, AK 99824; Alaska State Library, Documents Librarian, Pouch G, Juneau, AK 99811; Ketchikan Public Library, 629 Dock Street, Ketchikan, AK 99901; Department of Defense, Army Corps of Engineers Library, P.O. Box 7002, Anchorage, AK 99501; Kodiak Public Library, P.O. Box 985, Kodiak, AK 99615; Metlakatla Extension Center, Metlakatla, AK 99926; Department of Interior, Bureau of Mines Library, AF–F.O. Center, P.O. Box 550, Juneau, AK 99802; Petersburg Extension Center, Box 289, Petersburg, AK 99833; Seldovia Public Library, Drawer D, Seldovia, AK 99663; Seward Community Library, Box 537, Seward, AK 99664; University of Alaska Juneau Library, P.O. Box 1447, Juneau, AK 91447; Sitka Community Library, Box 1090, Sitka, AK 99835; Douglas Public Library, Box 469, Douglas, AK 99824; University of Alaska Anchorage Library, 3211 Providence Drive, Anchorage, AK 99504; University of Alaska Elmer E. Rasumsson Library, Fairbanks, AK 99701; Wrangell Extension Center, Box 651, Wrangell, AK 99929.

Harold Doley,

Director, Minerals Management Service.

Bruce Blanchard,

Director, Environmental Project Review.

July 30, 1982.

[FR Doc. 82–23203 Filed 8–24–82; 8:45 am]

BILLING CODE 4310–84–M

Chevron U.S.A. Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 2603, Block 65, Eugene Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Mineral Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: August 17, 1982.

John L. Rankin,

Acting Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82–23214 Filed 8–24–82; 8:45 am]

BILLING CODE 4310–31–M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349.* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: August 19, 1982.

By the Commission, Review Board Number 3, Members Krock, Joyce and Dowell.

MC–F–14880, filed August 5, 1982. MERIDIAN EXPRESS COMPANY, INC. [MEC], (4835 LBJ Freeway, Dallas, TX 75234)—CONTROL—ALAMO EXPRESS, INC. [ALAMO] and TRAVIS TRANSPORTATION, INC. [TRAVIS] (both of 6013 Rittiman Plaza, San Antonio, TX, 78218). Representatives: Jack R. Turney, Jr., 2001 Massachusetts Avenue, N.W., Washington, D.C. 20036; and Maxwell A. Howell, 1511 K Street, N.W., Washington, D.C. 20005. MEC, a non-carrier, except for special reports under 49 U.S.C. 11145, seeks authority to acquire control of the carrier operating rights and properties of ALAMO and TRAVIS through purchase, by Meridian Valley Express Company [MVE] (a non-carrier acquisition subsidiary formed for the transaction), of the capital stock of Redstone Corporation, non-carrier parent of ALAMO and TRAVIS. The operating rights of ALAMO to be controlled are contained in Certificates Nos. MC–107727 and Subs. These authorities authorize the transportation of general commodities, with the usual exceptions, in a portion of TX. The operating rights of TRAVIS to be controlled are contained in common carrier Certificates and contract carrier Permits in Nos. MC–150954, and contract carrier Permits in Nos. 150567, authorizing, in the aggregate, the transportation of general commodities and a wide variety of specified commodities, some between specified points and areas, and some between points in the U.S. (except HI and AK). MEC does not hold authority from this Commission. However, through non-carrier subsidiaries, MEC controls (a) Merchants Fast Motor Lines, Inc. (of East Highway 80, Abilene, TX 79604), holder of Certificates.

MC–2228, authorizing the transportation of general commodities, with the usual exceptions, in TX, NM, CO and AZ; (b) Oil Transport Company (of the same address), holder of Certificates Nos. MC–111740, authorizing the transportation of petroleum, various petroleum compound products, and sulphur, in bulk, in tank vehicles, in TX, OK, AR, CO, KS, MO, NM, AZ; (c) Gypsum Transport, Inc. (of the same address), holder of Certificates Nos. MC–126421, authorizing the transportation of gypsum, gypsum products, and materials and supplies and related building products between U.S. Gypsum plantsites in 48 States; (d) Delta Lines, Inc., a common carrier of general commodities, under Certificates Nos. MC–56640, between points in CA, AZ, OR, NV, NM, CO, WY, WA, ID, MT; (e) Thunderbird Freight Lines, Inc., a common carrier of general commodities, under Certificates Nos. MC69512, between points in CA and AZ; (f) Distribution Concepts, Inc., a contract carrier of general commodities, under Permits Nos. MC–153418, between points in the U.S., under contracts with K-Mart Corporation, and of business forms between points in the U.S. under contracts with Moore Business Forms; (g) Wycoff Company, Incorporated, a common carrier of general commodities, under Certificate Nos. MC–89684, in CA, OR, NV, ID, WY, CO and UT; and (h) Nevada-California Express, Inc. [FF–130], a freight forwarder of general commodities, between points in CA, UT, OR, WA, ID and MT. To avoid conflict with 49 U.S.C. 11323, Nevada-California Express, Inc. is to be transferred to ALAMO immediately prior to consummation.

In MC–F–14803, the Commission approved control by MEC of McLean Trucking Company (MTC) and its subsidiaries, Salem Contract Carrier, Inc. (SCC) and Pride Cargo Carriers, Inc. (PCC). MTC is a common carrier of general commodities, under Certificates Nos. MC–31389, in AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MS, MO, NE, NV, NH, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, TN, TX, VA, WA, WV, WI, and WY. SCC is a contract carrier, under Permits Nos. MC–147888, in the transportation of such commodities as are dealt in or used by chain department and food stores between points in the U.S. (except HI and AK), under continuing contracts with K-Mart Corporation. PCC is a common carrier of general commodities, under Certificate No. 151873, between points in the United States. MVE joins in the application as the directly participating non-carrier applicant. Non-carrier private investment entities WEDGE Transportation, Inc. (of 4835 LBJ Freeway, Dallas, TX 75234); Minefa Group Incorporated (of the same address); Minefa Holdings B.V. (of Uilenstede 473, 1180 AE Amstelveen, The Netherlands); Issam Investments N.V. (of Willemstad, Curacao, Dutch Antilles); together with Issam M. Fares (a non-carrier individual, c/o WEDGE International Holdings B.V., 20 Place Vendome, 750001 Paris, France), seek authority to control ALAMO and TRAVIS through the acquisition of control by MEC.

Notes.—(1) This notice does not purport to be a complete description of the operating rights of the carriers involved.

(2) None of the operating rights involved in the transaction is proposed to be cancelled or restricted.

(3) By decision dated July 7, 1982, the Commission granted applicant's petition for waiver of certain of the Commission's procedural regulations at 49 CFR 1100.240.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-23245 Filed 8-24-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302,

11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: August 18, 1982.

By the Commission, Review Board Number 3, Members Krock, Joyce and Dowell.

MC-F-14896, filed July 6, 1982. CENTRAL TRANSPORT, INC., (CTI) (34200 Mound Road, Sterling Heights, MI 48077)—CONTROL—LeRoy DAVIS TRUCK SERVICE, INC. (LDT) (14090 Kenosha Road, Zion, IL 60099). Representatives: Jack Goodman, 29 South La Salle St., Chicago, IL 60603; Lee Sparks, P. O. Box 44, Elizha Avenue, Zion, IL 60099; and LeRoy Davis, 3314 Sharon Place, Zion, IL 60099. CTI, and, in turn, it's controllers CenTra, Inc., T. J. Moroun and M. J. Moroun, seek authority to control LDT through the purchase of its capital stock. All named parties have joined in the application. The operating rights sought to be controlled are registered and authorized the transportation of *general commodities*, over irregular routes, within a fifty (50) mile radius of South Kenosha Road and 21st Street three (3) miles west of Zion, IL, and to transport such property to or from any point outside of such authorized area of operation for a shipper or (shippers) within such area.

Note.—An application has been filed for temporary authority. This proceeding is directly related to the proceeding in MC-163056, published in this **Federal Register** issue.

MC-F-14914, filed July 23, 1982. JOSEPH FAZIO (Fazio) 10584 Redwood Ave., Fontana, CA 92335)—CONTINUANCE IN CONTROL—MIDAMERICAN FREIGHT, INC. (Midamerican) (2132 Bonita Ave., LaVern, CA 91750). Representative: Daniel C. Sullivan, Suite 1700, 180 N. Michigan Ave., Chicago, IL 60601. Fazio seeks authority to continue in control of Midamerican upon institution by Midamerican of operations, in interstate or foreign commerce, as a motor common carrier. By application published in **Federal Register** issue of March 25, 1982, Midamerican was conditionally granted authority to transport *such commodities* as are dealt in or used by wholesale, retail department stores, food business houses and construction companies, between points in the United States. Fazio also control Mid-Western Transport, Inc. a motor common and contract carrier pursuant to certificates and permits issued in MC-142686 and 147712 and sub-numbers thereunder.

MC-F-14919, filed July 28, 1982. NORTHEAST DELIVERY, INC. (Northwest) (P.O. Box 127, Taylor, PA 18507)—CONTROL—GILCHRIST TRUCKING, INC. (Gilchrist) (105 North Keyser Avenue, Old Forge, PA 18518). Representatives: Brigid E. Carey, 108 North Washington Avenue, Scranton, PA 18503 and Daniel W. Krane, P.O. Box E, Shiremanstown, PA 17011. Northeast seeks authority to acquire control of Gilchrist through the purchase of Northeast of 100,000 shares of issued and outstanding stock of Gilchrist. William S. Gilchrist, Jr., sole stockholder of Northeast, also seeks authority to acquire control of Gilchrist through this transaction. The operating rights to be controlled are contained in certificates issued in MC-124821 and sub-numbers thereunder which authorize the transportation over regular and irregular routes of *general commodities* (usual exceptions), and specified commodities such as *household goods, building materials, chemicals and related products, clay, concrete, glass or stone products, and food and related products,* between points in the United States. Northeast is a carrier pursuant to certificates issued in No MC-145018 and sub-numbers thereunder. Northeast controls A & B Delivery, Inc. a motor common carrier pursuant to certificates issued in MC-153809 and sub-numbers thereunder.

Decision-Notice

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by special rule 252 of the Commission's general Rules of Practice (49 CFR 1100.252).

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements as to the finance application *or* to the following operating rights applications directly related thereto filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after

publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice by effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Dated: August 18, 1982.

By the Commission, Review Board Number 3 Members Krock, Joyce and Dowell.

MC–163056 filed July 7, 1982. Applicant: Central Transport, Inc., a Tennessee Corporation, 34200 Mound Road, Sterling Heights, MI 48077. Representatives: Jack Goodman, 29 South La Salle Street, Chicago, IL 60603. Applicant seeks to covert the Certificate of Registration held by LeRoy Davis Truck Service, Inc. (LDT) to a Certificate of Public Convenience and Necessity. Applicant seeks in the proceeding in MC–F–14896 to control LDT. Transporting (1) *general commodities* (except class A and B explosives, commodities in bulk and household goods as defined by the Commission), between points in Illinois.

Note.—This application is directly related to MC–F–14896, published concurrently in this **Federal Register** issue.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–23242 Filed 8–24–82; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. OP3–130]

Motor Carriers; Permanent Authority Decision; Decision-Notice

Decided: August 13, 1982.

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 252 of the Commission's General Rules of Practice (49 CFR 1100.252).

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems), we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements as to the finance application *or* to the following operating rights applications directly related thereto filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 2, Members Carleton, Fisher, and Williams (Member Fisher not participating).

Agatha L. Mergenovich,

Secretary.

MC 163125, filed July 23, 1982. Applicant: EAGLE EXPRESS, INC., 3514 10th Ave., Council Bluffs, IA 51501. Representative: Carl L. Steiner, 29 S. LaSalle St., Chicago, IL 60603, (312) 236–9375. Transporting *food and related products,* between points in Plymouth, Crawford, Dubuque, and Pottawattamie Counties, IA, Omaha and York County, NE, Rock Island and Ogle Counties, IL, Jewell County, KS, and Milwaukee County, WI, on the one hand, and, on the other, points in IL, IA, IN, KS, MI, MN, MO, NE, OH, SD, and WI.

Note.—This application is directly related to MC–F–14918, published in this same **Federal Register** issue.

[FR Doc. 82–23227 Filed 8–24–82; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. OP3–130]

Motor Carriers; Permanent Authority Decision; Decision-Notice

Decided: August 13, 1982.

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that oppostion to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure sesonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of an

application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demsonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 113343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 2, Members Carleton, Fisher, and Williams (Member Fisher not participating).

Agatha L. Mergenovich,

Secretary.

MC–F–14918, filed July 23, 1982. URBAN R. HAAS (3000 Elm Street, Dubuque, IA), ALLAN THOMS, GARY D. BAUMHOVER, and ROBERT H. WAHLERT (2010 Kerper Boulevard, Dubuque, IA 52001), and CHARLES E. STOLTZ (600 Sunset Ridge, Dubuque, IA 52001)—(Individuals)—(URBAN R. HAAS, ET AL)—CONTINUANCE IN CONTROL—EAGLE EXPRESS, INC. (EAGLE) (3514 10th Avenue, Council Bluffs, IA 51501). Authority is sought by Urban R. Haas, et al, to continue in control of Eagle upon the institution by Eagle of operations in interstate or foreign commerce, as a motor common carrier. Urban R. Haas, et al, currently control H&W Motor Express Company (H&W) (300 Elm Street, Dubuque, IA 52001), a motor common carrier. The operating rights of H&W are contained in Certificate No. MC–69224 and subs thereunder, transporting general commodities with exceptions over regular and irregular routes in IL, IA, MN, NE, and WI. Allan Thoms and Gary D. Baumhover are president and executive vice president, respectively, of Rowley Interstate Transportation Company, Inc. (Rowley), and are members of its board of directors. Rowley operates as a common and contract carrier of specified commodities in Certificate No. MC–114028 and subs thereunder, and in Permit No. MC–147718 and subs thereunder, between points in the U.S. Simultaneously, Eagle has filed an application for a Certificate authorizing the transportation of *food and related products*, between points in Plymouth, Crawford, Dubuque, and Pottawattamie Counties, IA, Omaha and York County, NE, Rock Island and Ogle Counties, IL, Jewell County, KS, and Milwaukee County, WI, on the one hand, and, on the other, points in IL, IA, IN, KS, MI, MN, MO, NE, OH, SD, and WI. The application, docketed as No. MC–163125, is published in this same **Federal Register** issue.

[FR Doc. 82–23228 Filed 8–24–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings:

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified settements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP2-192

Decided: August 16, 1982.

By the Commission, Review Board Number 1, Members Parker, Chandler and Fortier. Member Parker not participating.

FF-613, filed August 4, 1982. Applicant: APLINE FORWARDERS, 4940 Versper Dr., Everett, WA 98203. Representative: Revay D. Willard (same address as applicant), (206) 252-0450. As a *freight forwarder*, in connection with the transportation of *used household goods, unaccompanied baggage*, and *used automobiles*, between points in the U.S.

MC 682 (Sub-36), filed August 4, 1982. Applicant: BURNHAM VAN SERVICE, INC., 5000 Burnham Blvd., Columbus, GA 31907. Representative: David Earl Tinker, 1000 Connecticut Ave., N.W., Suite 1112, Washington DC 20036-5391, (202) 887-5868. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with General Mills, Inc., of Minneapolis, MN, and its subsidaries (1) Bowers and Ruddy Galleries Inc., of Los Angeles, CA, (2) Casa Gallardo, Inc., of St. Louis, MO, (3) Ciani Division, of New York, NY, (4) Creative Dining, of Raleigh, NC, (5) David Crystal, of New York, NY, (6) Donruss, of Memphis, TN, (7) Dunbar of Berne, IN, (8) Eddie Bauer, Inc., of Redmond, WA, (9) Foot Joy, Inc., of Brockton, MA, (10) Fundimensions, of Mt. Clemens, MI, (11) Good Earth Restaurants, of Maitland, FL, (12) The Gorton Division, of Gloucester, MA, (13) H. E. Harris and Co., of Boston, MA, (14) Kenner Products, of Cincinnati, OH, (15) Kittinger, of Buffalo, NY, (16) Lark Luggage, of New York, NY, (17) LeeWards Creative Crafts, of Elgin, IL, (18) Monet, of New York, NY, (19) O-Cel-O, of Tonawanda, NY, (20) Parker Brothers, of Beverly, MA, (21) Pennsylvania House, of Lewisburg, PA, (22) Pioneer Products, Inc., of Ocala, FL, (23) Red Lobster Inns of America, of Orlando, FL, (24) Ship 'N Shore, of Aston, PA, (25) Sigmacon, of Orlando, FL, (26) The Talbots, Inc., of Hingham, MA, (27) Tom's Foods, of Columbus, GA, (28) Trans World Seafood, Inc., of New York, NY, (29) Wallpapers To Go, of Hayward, CA, (30) Wild West Stores, Inc., of Costa Mesa, CA, (31) Yoplait USA, of Minneapolis, MN, and (32) York Steak House, of Columbus, OH.

MC 127303 (Sub-92), filed August 4, 1982. Applicant: ZELLMER TRUCK LINES, INC., P.O. Box 343, Granville, IL 61326. Representative: E. Stephen Heisley, 1919 Pennsylvania Ave., N.W., Suite 500, Washington, DC 20006, (202) 828-5015. Transporting (1) *food and related products*, between points in the U.S. (except AK and HI), and (2) *general commodities* (except classes A and B explosives and household goods), between points in IA, IL, IN, KY, KS, MI, MN, MO, NE, ND, OH, SD, TN, and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 142563 (Sub-3), filed August 4, 1982. Applicant: PICKENS TRUCKING CO., Rte. 1, Box 86, Livingston, AL 35470. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004, (202) 347-8862. Transporting (1) *clay, concrete, glass or stone products and such commodities as are dealt in by scrap metal dealers*, between points in AL and MS, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK and TX, and (2) *general commodities* (except classes A and B explosives and household goods), between points in Sumter, Pickens and Greene Counties, AL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 148203 (Sub-8), filed August 6, 1982. Applicant: COPPER CITY TRANSPORT, INC., Old Route 5 S, RD No. 2, Frankfort, NY 13340. Representative: Murray J. S. Kirshtein, 118 Bleecker St., Utica, NY 13501, 315-797-1970. Transporting *metal products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Gerald Metals, Inc., of Stamford, CT.

MC 149333 (Sub-8), filed August 9, 1982. Applicant: RICKY SHAW & SONS TRANSPORTATION COMPANY, INC., 500 Bennington, Kansas City, MO 64125. Representative: Authur J. Cerras, 2100 CharterBank Center, P.O. Box 19251, Kansas City, MO 64141, 816-842-8600. Transporting *lumber and lumber products*, between points in AL, AZ, AR, CA, GA, ID, IL, IA, KS, KY, LA, MS, MO, MT, NE, OK, OR, TN, TX, WA, and WY.

MC 153392 (Sub-3), filed July 30, 1982. Applicant: CENTRAL TRACTOR FARM & FAMILY CENTER, INC., 1515 East Euclid, Des Moines, IA 50316, Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309, (515) 282-3525. Transporting (1) *plastic containers* between points in the U.S., under continuing contract(s) with Sho-Me Company, of Des Moines, IA, and (2) *textile mill products and polyester materials*, between points in the U.S., under continuing contact(s) with Ladin Industries, Inc., of Des Moines, IA.

MC 153673 (Sub-3), filed August 4, 1982. Applicant: KENTUCKY SPECIALIZED HAULERS, INC., Route 3, Box 156-A, Hardinsburg, KY 40143. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440, (216) 652-2789. Transporting *general commodities* (except household goods, classes A and B explosives and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Powerscreen of America, of Louisville, KY.

MC 155223 (Sub-7), filed August 4, 1982. Applicant: HIGHWAY EXPRESS, INC., P.O. Box 11234, Phoenix, AZ 85061. Representative: Robert Fuller, 13215 E. Penn St., Ste. 310, Whittier, CA 90602, (213) 945-3002. Transporting *glass containers*, between points in the U.S. (except AK and HI), under continuing contract(s) with Midland Glass Co., Inc., of Cliffwood, NJ.

MC 156843 (Sub-1), filed August 6, 1982. Applicant: PETERS BROTHERS, INC., 37 Penn St., Lenhartsville, PA 19534. Representative: John Fullerton, 407 N. Front St., Harrisburg, PA 17101, 717-236-9318. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of meat and meat products, between points in Lyon County, KS, on the one hand, and, on the other, points in Berks County, PA.

MC 160483 (Sub-1), filed August 4, 1982. Applicant: JOE C. VALLELONGA d.b.a. VALLELONGA TRUCKING, 107 Hazelwood Dr., Seville, OH 44273. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440, (216) 652-2789. Transporting *such commodities* as are used by or dealt in by manufacturers and distributors of games, toys, sporting goods and juvenile furniture, between points in Oakland County, MI, and De Soto County, MS, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 160883, filed August 5, 1982. Applicant: G & M TRUCKING, INC., 36 Nokomis Ave., Oakland, NJ 07436. Representative: George A. Matejunas (same address as applicant), 201-337-2387. Transporting *plastic materials*, between points in the U.S., on and east of a line beginning at the mouth of the Mississippi River and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the U.S., and Canada, under continuing contract(s) with U.S. Industrial Chemicals Company, Division of National Distillers and Chemicals Corp., of New York, NY.

MC 161323 (Sub-1), filed August 6, 1982. Applicant: T.A.S., SR. ENTERPRISES, INC., Route 2 Box 188,

Eagle, WI 53119. Representative: Ronald E. Laitsch, 108 S. Second St., Watertown, WI 53094, 414–261–9725. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 163153 (Sub-1), filed August 2, 1982. Applicant: ALACALCO, INC., P.O. Box 3508, Oxford, AL 36203. Representative: Terry P. Wilson, 428 South Lawrence St., Montgomery, AL 36104, 205–262–2756. Transporting *such commodities* as are dealt in by chain grocery stores and food business houses, between points in the U.S. (except AK and HI).

MC 163212, filed July 30, 1982. Applicant: ROBERT KLEISNER, d.b.a. EAGLE AUTO TRANSPORT, 119 E. Huron St., Berlin, WI 54923. Representative: R. M. Gonyo, 124 N. Wisconsin, Berlin, WI 54923, (414) 361–3311. Transporting *used automobiles*, between points in the U.S.

Volume No. OP3–131

Decided: August 18, 1982.

By the Commission, Review Board Number 2, Members Carleton, Fisher and Williams.

W–1354, filed July 30, 1982. Applicant: CONTICARRIERS AND TERMINALS, DIVISION OF CONTINENTAL GRAIN COMPANY, 2700 North River Rd., Des Plaines, IL 60018. Representative: Andrew P. Goldstein, 1200 Eighteenth St., NW., Washington, D.C. 20036, (202) 331–8277. Transporting by water, by non-self propelled vessels in the transportation of *paper, paper articles and woodpulp*, from Calhoun, TN, to ports and points on the Tennessee, Mississippi, Ohio, Missouri, Illinois, Cumberland, and Arkansas Rivers, and the Gulf Intracoastal Waterway between St. Mark, FL, and Brownsville, TX.

MC 16334 (Sub-22), filed August 9, 1982. Applicant: DEBRICK TRUCK LINE COMPANY, P.O. Box 421, Paola, KS 66071. Representative: John T. Pruitt, 9832 Connell, Overland Park, KS 66212, (913) 888–3386. Transporting *food and related products*, between points in CA, MD, LA, NY, and TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 34975 (Sub-16), filed August 10, 1982. Applicant: TREDWAY'S EXPRESS, INC., 512 Myrtle Ave., Boonton, NJ 07005. Representative: Steven L. Weiman, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877, (301) 840–8565. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in RI, MA, CT, NY, NJ, PA, OH, MD, DE, VA, NC, SC, and DC.

MC 67234 (Sub-55), filed August 6, 1982. Applicant: UNITED VAN LINES, INC., One United Dr., Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105, (314) 727–0777. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with Shell Oil Company, Western E & P Operations, of Houston, TX.

MC 121145 (Sub-2), filed August 9, 1982. Applicant: BONNEY'S EXPRESS, INC., 33 Century Rd., South Rd., South Weymouth, MA 02190. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108, (617) 742–3530. Transporting (1) *general commodities*, between points in MA, and (2) *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in MA, on the one hand, and, on the other, points in CT, ME, MA, NH, RI, and VT.

Note.—Part (1) of this certificate cancels Certificate of Registration No. MC–121145 Sub 1, issued January 28, 1964, and converts applicant's Certificate of Registration to a Certificate of public Convenience and Necessity.

MC 123265 (Sub-10), filed August 6, 1982. Applicant: SANTRY TRUCKING COMPANY, a Corporation, 10505 NE Second Ave., Portland, OR 97211. Representative: John G. McLaughlin, 1600 One Main Pl., 101 SW Main St., Portland, OR 97204, (503) 224–5525. Transporting *pulp, paper and related products*, between points in CA, ID, OR, and WA, under continuing contract(s) with Potlatch Corporation, of Lewiston, ID.

MC 123685 (Sub-33), filed August 9, 1982. Applicant: PEOPLES CARTAGE, INC., 8045 Navarre Rd., S.W., P.O. Box 539, Massillon, OH 44648. Representative: M. Diane Neal, 2230 Shepler Church Ave., S.W., P.O. Box 6270, Canton, OH 44706, (216) 456–4571. As a *broker*, at Massillon, OH, in arranging for the transportation of *general commodities* (except classes A and B explosives), between points in the U.S. (except AK and HI).

MC 126514 (Sub-78), filed August 9, 1982. Applicant: SCHAEFFER TRUCKING, INC., 5200 W. Bethany Home Rd., Glendale, AZ 85301. Representative: Leonard R. Kofkin, 140 S. Dearborn St., Suite 1515, Chicago, IL 60603, (312) 580–2210. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AL, ID, IA, KS, KY, MT, NE, NM, ND, SD, WV, and WY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 128645 (Sub-11), filed August 9, 1982. Applicant: RAY L. KRALL, POB 743, Carson, WA 98610. Representative: David C. White, 2400 SW Fourth Ave, Portland, OR 97201, (503) 226–6491. Transporting *lumber and wood products*, and *building materials*, between those points in the U.S. in and west of MT, WY, CO, OK and TX (except AK and HI).

MC 140554 (Sub-3), filed July 26, 1982. Applicant: HEY, INC., d.b.a. SOUTHWEST COACHES, R.R. 4, Box 51A, Marshall, MN 56258. Representative: Patrick J. Leary, 509 W. Main St., Marshall, MN 56258, (507) 532–5766. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter and special operations, between points in MN, ND, SD, IA, and WI, on the one hand, and, on the other, points in the U.S., under continuing contract(s) with Hey, Inc., d.b.a. Southwest Tours, of Marshall, MN.

MC 142245 (Sub-11), filed August 6, 1982. Applicant: NATIONWIDE TRUCK BROKERS, INC., 5475 Clay Ave. S.W., Grand Rapids, MI 49508.. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503, (616) 459–6121. Transporting *general commodites*, (except commodities in bulk, classes A and B explosives, and household goods), between points in the U.S (except AK and HI), under continuing contract(s) with Meijer, Inc., and Holland American Wafer Co., both of Grand Rapids, MI, and Berghorst Poultry, of Grandville MI.

MC 146965 (Sub-5), filed August 6, 1982. Applicant: REDDING LUMBER TRANSPORT, INC., 4161 Eastside Rd., Redding, CA 96001. Representative: Jim Pitzer, 15 South Grady Way, Suite 321, Renton, WA 98055, (206) 235–1111. Transporting *metal and metal products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Admiral Aluminum, of Anaheim, CA.

MC 153314 (Sub-6), filed August 9, 1982. Applicant: M & D TRANSPORTATION, INC., P.O. Box 775, Glendale, AZ 85311. Representative: Michael S. Varda, P.O. Box 2509, Madison, WI 53701, (608) 255–8891. Transporting (1) *furniture and fixtures*, between points in Harrison County, IN, on the one hand, and, on the other, points in TX, and (2) *building materials*, between Forth Worth, TX, and points in Philadelphia and Delaware Counties,

PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 158465, filed August 5, 1982. Applicant: INDUSTRIAL STEEL CONSTRUCTION, INC., 6150 East Ave., Hodgkins IL 60525. Representative: Stephen H. Loeb, Suite 4, 2777 Finley Rd., Downers Grove, IL 60515, (312) 953–0330. Transporting *metal and metal products,* between Chicago, IL, on the one hand, and, on the other, points in IL, IA, IN, MI, and WI.

MC 161214 (Sub-1), filed August 5, 1982. Applicant: CHIP TRUCKING, INC., 3337 Marietta Ave., Mountville, PA 17554. Representative: James W. Patterson, 1200 Avenue of the Arts Bldg., Broad and Chestnut Sts., Philadelphia, PA 19107, (215) 735–3090. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contracts(s) with (1) Musser's Potato Chips, Inc., of Mountville, PA (2) Charles Chips, Inc., of Calhoun, KY, and (3) Lancaster Aviation, Inc., of Lancaster, PA.

MC 162135, filed August 9, 1982. Applicant: KRUEGER & STIENFEST, INC., Route 2, Box 159, Antigo, WI 54409. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Rd., Madison, WI 53719, (608) 273–1003. Transporting *nonmetallic minerals and related products,* between the upper peninsula of MI, on the one hand, and, on the other, points in WI.

MC 162175 (Sub-1), filed August 6, 1982. Applicant: CLEM HAGENHOFF, 1049 Oakley, Wentzville, MO 63385. Representative: Herman W. Huber, 101 East High St., Jefferson City, MO 65101, (314) 636–9131. Transporting (1) *iron and steel articles,* between points in Madison and St. Clair Counties, IL, on the one hand, and, on the other, points in MO, AR, and IA; and (2) *fertilizer, and fertilizer materials,* between points in Douglas County, KS, on the one hand, and, on the other, points in MO, AR, IA,.and IL.

MC 163055, filed July 21, 1982. Applicant: FOUR STAR CONSTRUCTION, INC., 7500 Tower Ave., Superior, WI 54880. Representative: James D. Robinson, Jr., 1000 Torrey Bldg., Duluth, MN 55802, (218) 727–1003. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in MN, OK, KS, NE, WY, SD, IA, MO, IL, IN, MI, and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 163315, filed August 6, 1982. Applicant: MST ENTERPRISES, INC., 27 West Produce Drive, Suite 15, Cincinnati, OH 45202. Representative: Matthew J. Keck (same address as applicant), (513) 621–1422. Transporting *such commodities* as are dealt in by manufacturers and distributors of chemical and related products, and food and related products, between Cincinnati, OH, and points in OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 163344, filed August 10, 1982. Applicant: E–C MOTOR COACHES, INC., P.O. Box 483, Grayslake, IL 60030. Representative: Mazwell A. Howell, 1100 Investment Bldg., 1511 K St., NW, Washington, DC 20005. Transporting *passengers and their baggage,* in charter operations, between points in the U.S. (including AK and HI), under continuing contract(s) with Gem Tours, Inc., of Grayslacke, IL.

MC 163374, filed August 12, 1982. Applicant: PEMBERTON TRUCK LINES, INC., 4801 Rutledge Pike, Knoxville, TN 37914. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004, (202) 347–8862. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with International Harvester Company, of Chicago, IL.

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Decided: August 18, 1982.

By the Commission, Review Board Number 2, Members Carleton, Fisher and Williams.

MC 46406 (Sub-5), filed August 6, 1982. Applicant: JOHNSON TRUCK SERVICE, INC., 537 S. Watertown St., Waupun, WI 53963. Representative: Michael J. Wyngaard, 150 E. Gilman St., Madison, WI 53703, (608) 256–7444. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Lake and Porter Counties, IN, Adams, Brown, Buffalo, Calumet, Chippewa, Clark, Columbia, Crawford, Dane, Dodge, Dunn, Eau Claire, Fond du Lac, Grant, Green, Green Lake, Iowa, Jackson, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Manitowoc, Marathon, Marquette, Milwaukee, Monroe, Outagamie, Ozaukee, Pepin, Portage, Racine, Richland, Rock, Sauk, Shawano, Sheboygan, Trempealeau, Vernon, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago, and Wood Counties, WI, and that part of IL on and north of U.S. Hwys 24 and 136.

MC 117686 (Sub-298), filed August 10, 1982. Applicant: HIRSCHBACH MOTOR LINES, INC., 920 West 21st St., P.O. Box 155, South Sioux City, NE 68776. Representative: George L. Hirschbach (Same address as applicant), (402) 494–5466. Transporting *such commodities* as are dealt in or used by hardware, department, grocery, and drug stores, and food business houses, between points in IN, OH, VA, and WV, on the one hand, and, on the other, points in the U.S. (except CT, DE, ME, MD, MA, MI, NH, NJ, NY, PA, RI, VT, and DC.

MC 143776 (Sub-58), filed August 6, 1982. Applicant: C.D.B., INCORPORATED, 155 Spaulding Ave., SE, Grand Rapids, MI 49506. Representative: C. Michael Tubbs (Same address as applicant), (800) 253–9527. Transporting *pulp, paper and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Packaging Corporation of America of Evanston, IL.

MC 143776 (Sub-59), filed August 6, 1982. Applicant: C.D.B., Incorporated, 155 Spaulding Ave., SE, Grand Rapids, MI 49506. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933, (517) 482–2400. Transporting *food and related products,* between points in the U.S. (except AK and HI).

MC 145956 (Sub-12), filed August 3, 1982. Applicant: TRANSMEDIC CARRIERS, INC., 1340 Indian Rocks Rd. Belleair, FL 33516. Representative: Paul Meilleur (Same address as applicant), (813) 585–7747. Transporting *blood, derivatives of blood, plasma, medical and dental products,* between points in the U.S. (except AK and HI).

MC 147536 (Sub-39), filed August 10, 1982. Applicant: D. L. SITTON MOTOR LINES, INC. P.O. Box 1567, Joplin, MO 64802. Representative: D. L. Sitton (Same address as applicant), (417) 782–2600. Transporting *general commodities (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).*

MC 151356 (Sub-4), filed August 9, 1982. Applicant: THE BIRGE COMPANY, INC., 421 E 16th St., Paterson, NJ 07514. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234–0301. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 152746 (Sub-1), filed August 11, 1982. Applicant: PLYWOOD COMPONENTS, INC., 6523 Old Salem

Rd., Albany, OR 97321. Representative: Lawrence V. Smart, Jr., 419 NW 23rd Ave., Portland, OR 97210, (503) 226–3755. Transporting *Food and related products,* between points in OR, WA, and CA.

MC 154826, filed August 11, 1982. Applicant: R.F. TRUCKING, INC., N24 W25162 Bluemound Rd., Pewaukee, WI 53072. Representative: Daniel R. Dineen, 710 N Plankington Ave., Milwaukee, WI 53203, (414) 273–7410. Transporting *metal products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Bradfoote Gear Works, Inc., of Cicero, IL, Crane Manufacturing & Service Corporation of Cudahy, WI, Engineered Products Division of E.R. Wagner Manufacturing Company of Milwaukee, WI, General Surface Hardening, Inc., of Chicago, IL, National Material Corporation of Elk Grove Village, IL and Viking Steel Company of Elk Grove Village, IL.

MC 155136 (Sub-1), filed August 9, 1982. Applicant: RED TRAIL TRANSPORT, INC., Box 997, Beach, ND 58621. Representative: Charles A. Johnson, Box 2056, Bismreck, ND 58502, (701) 223–5300. Transporting *Mercer commodities,* between points in ND, SD, MT, and WY.

MC 157426 (Sub-2), filed August 6, 1982. Applicant: BRIAN W. SMITH, d.b.a., BRIAN W. SMITH TRANSPORTATION COMPANY, 702 S. Felts Rd., Spokane, WA 99206. Representative: Harold O. Orlofske, P.O. Box 368, Neenah, WI 54956, (414) 722–2848. Transporting *general commodities,* (except classes A and B explosives, household goods, and commodities in bulk), between points in OR and WA, under continuing contract(s) with Western Excel Distributors, Inc., of Portland, OR.

MC 159606 (Sub-1), filed August 9, 1982. Applicant: RANDALL DIST., INC. 691 N 1800 East, St. George, UT 84770. Representative: Earl N. Miles, 3703 Candlewood Dr., Bakersfield, CA 93306, (805) 872–1106. Transporting *such commodities as are dealt in or used by manufacturers of aluminum sporting goods,* between points in the U.S. under continuing contract(s) with Easton Aluminum of Salt Lake City, UT.

MC 162456, filed August 10, 1982. Applicant: LOCKPORT TRUCKING & WAREHOUSE CO., INC., 129–02 Northern Blvd., Corona, NY 11368. Representative: Morton E. Kiel, Two World Trade Center, Suite 1832, New York, NY 10048, (212) 466–0220. Transporting *general commodities,* (except classes A and B explosives, household goods and commodities in bulk), between points in NJ, NY and PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-23240 Filed 8-24-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-195

The following applications were filed in Region I: Send protests to: Interstate Commerce Commisison, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 163369 (Sub 1–1 TA), filed August 12, 1982. Applicant: BROCKWAY TRANSPORT, INC., 178 Verge Street, P.O. Box 2301, Springfield, MA 01101. Representative: David M. Marshall, Marshall and Marshall, 101 State Street, Suite 304, Springfield, MA 01103. *General commodities (except Classes A and B explosives, household goods as defined by the Commission and commodities in bulk)* (1) between Lynn, Mansfield, and Springfield, MA, on the one hand, and, on the other, points in CT, NH, ME, RI, VT, NY and NJ; and (2) between Bloomfield, Parsippany, Cedar Grove, Moonachie and Newark, NJ, and New York, NY, on the one hand, and, on the other, points in MA, CT, NH, ME, RI and VT. Supporting shipper(s): There are eight statements in support of this application which may be examined at the Regional Office of the I.C.C. in Boston, MA.

MC 161033 (Sub 1–2 TA), filed August 12, 1982. Applicant: CARDINAL CONTAINER, INC., 500 Nordhoff Place, Englewood, NJ 07631. Representative: Jack L. Schiller, 123–60 83rd Avenue, Kew Gardens, NY 11415. *Contract carrier:* irregular routes: *(1) Fabricated steel* between New York, NY, on the one hand, and, on the other, San Francisco, CA; Atlanta, GA; Detroit, MI; Bismarck, ND; Philadelphia, PA; Kingsport, TN and Corpus Christi, TX; and *(2) Cans* between North Bergen, NJ, on the one hand, and, on the other, Scotia, NY, under continuing contract(s) with Clifford Transportation Services, Inc. of Ridgefield Park, NJ. Supporting shipper: Clifford Transportation Services, Inc., 86 Bergen Turnpike, Ridgefield Park, NJ.

MC 163353 (Sub-1–1TA), filed August 9, 1982. Applicant: EAST COAST PRODUCE CARRIERS, INC., Rt. 537, P.O. Box 102, Cream Ridge, NJ 08514. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th Street, N.W., Washington, DC 20005. *General commodities, (except Classes A & B explosives, household goods as defined by the Commission, and commodities in bulk)* between Philadelphia, PA, and points in its Commercial Zone, on the one hand, and, on the other, points in CA. Supporting shipper: West Coast Shippers Association, 2000 South 71st Street, Philadelphia, PA 19142.

MC 163364 (Sub-1–1TA), filed August 12, 1982. Applicant: INTERNATIONAL ICE CREAM CORPORATION, 492 Rutherford Avenue, Charlestown, MA 02129. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. *Contract Carrier:* irregular routes: *Ice cream products,* from Seekonk, MA to points in RI, under continuing contract(s) with Almacs, Inc. of East Providence, RI. Supporting shipper: Almacs, Inc., 1 Noyes Street, East Providence, RI 02916.

MC 163354 (Sub-1–1TA), filed August 11, 1982. Applicant: LACAILLE (ROUVILLE) TRANSPORT INCORPORATED, 3590 Rue Principale, St. Jean-Baptiste, Quebec, CD J01 2B0. Representative: Robert D. Gunderman, Can-Am Building, 101 Niagara Street, Buffalo, NY 14202. *Contract carrier:* irregular routes: *Meat, meat products, and meat by-products,* between ports of entry on the International Boundary line between the U.S. and CD in NY and VT, on the one hand, and, on the other, points in CA, CT, FL, IL, KS, ME, MA, MI, NH, NJ, NY, OH, PA, RI, and VT, under continuing contract(s) with H. St.-Jean & Sons (1976) Incorporated, Hyacinthe, CD. Supporting shipper: H. St.-Jean & Sons (1976) Incorporated, 1425 St. Jacques St., Hyacinthe, CD.

MC 146653 (Sub-1–1TA), filed August 11, 1982. Applicant: McMULLEN CUSTOM TRANSPORT LTD., 10 Elvins Gardens, Belleville, Ontario, CD K8P 2T3. Representative: Robert D. Gunderman, Can-Am Building, 101 Niagara Street, Buffalo, NY 14202. *Contract carrier:* irregular routes: *Fibreglass reinforced storage tanks, fibreglass pipe, and related parts, attachments and fittings,* between ports of entry on the International Boundary lines between the U.S. and CD in NY and MI, on the one hand, and, on the other, points in AR, CT, FL, GA, IL, IN, KY, MD, ME, MA, MI, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, and WV, under continuing contracts(s) with Enviroglas Inc., Belleville, Ontario, CD. Supporting shipper: Enviroglas Inc., Belleville, Ontario, CD.

MC 147242 (Sub-1–8TA), filed August 11, 1982. Applicant: PLAZA FREIGHT TRANSPORT, INC., 12–90 Plaza Road, Fair Lawn, NJ 07410. Representative: Arthur Liberstein, P.C., 888 Seventh Avenue, New York, NY 10106. *Contract carrier:* irregular routes: *General commodities, except household goods, Classes A and B explosives and commodities in bulk,* between all points in the U.S., under continuing contract(s) with Agway, Inc., Syracuse, NY. Supporting shipper: Agway, Inc., P.O. Box 4933, Syracuse, NY 13221.

MC 163352 (Sub-1–1TA), Filed August 10, 1982, Applicant: RHETT TRANSPORT, INC., 391 Ferry Street, Newark, NJ 07105. Representative: Ronald I. Shapss, Esq, 450 Seventh Avenue New York, NY 10123. *Contract carrier:* irregular routes: *General commodities (excluding household goods, commodities in bulk, and Classes A & B explosives),* between the New York, NY Commercial Zone on the one hand, and, or the other, points in NJ, under continuing contract(s) with Hansen & Tidemann, Inc., of New York NY. Supporting shipper: Hansen & Tideman, Inc., Suite 2451, One World Trade Center, New York, NY 10048.

MC 155018 (Sub-1–2TA), Filed August 12, 1982, Applicant: RON AND BOB'S TRUCKING INC., 1200 Como Park Boulevard, Depew, NY 14043. Representative: Robert D. Gunderman, Can-Am Building, 101 Niagara Street, Buffalo, NY 14202. *Contract carrier:* irregular routes: *Swimming pools and related items, and material, supplies and equipment used in the transportation and installation thereof,* between points in Erie County, NY, on the one hand, and, on the other, points in AL, AR, CO, DE, GA, IL, IN, IA, KS, KY, LA, MD, MI, MS, MO, NE, NJ, NY, OH, OK, PA, TN, TX, WV, and WI, under continuing contract(s) with Kayak Manufacturing Corp., Depew, NY. Supporting Shipper: Kayak Manufacturing Corp., 5460 Transit Road, Depew, NY.

MC 162218 (Sub-1–1TA), Filed August August 9, 1982, Applicant: S. J. F. TRANSFER CORP., 11 Suncrest Drive, Dix Hills, NY 11746. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24165. *New Furniture,* from Bassett and Martinsville, VA to points in CT, MA, and RI. Supporting shipper: Furniture Wholesalers Inc., P.O. Box 707, Fall River, MA 02722.

MC 163277 (Sub-1–1TA), Filed August 9, 1982, Applicant: JAMES J. SANTRY, JR., AND MARY ANNE SMITH, d.b.a. S & S REFRIGERATED TRANSPORT SERVICE CO., 536 Fayette Street, P.O. Box 952, Perth Amboy, NJ 08861. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center New York, NY 10048. *Contract carrier:* Irregular routes: *Frozen prepared foods used in airline in-flight service,* between Jamaica and Brentwood, NY, on the one hand, and, on the other, points in MA, RI, CT, NY, NJ, PA, MD, DC and VA, under continuing contract(s) with Sage Foods, Inc., of Des Plaines, IL. Supporting shippers(s): Sage Foods, Inc. 999 E. Touhy, Suite 260, Des Plaines, IL 60018.

MC 163367 (Sub-1–1TA), Filed August 12, 1982. Applicant: STONE BRIDGE FARMS, INC., R. D. 2, Hudson, NY 12534. Representative: Fred Mazzacano (same as applicant) *Contract carrier:* irregular routes: *Raw materials, equipment, goods in process and finished products* from Hudson, Columbia County, NY to Reading, PA; Metropolitan New York City; Miami, FL; Cleveland, OH; Indianapolis, IN; Dallas, TX; Pittsburgh, PA; Toledo, OH; and Chicago, IL, under continuing contract(s) with ACME National Sales, Inc., Hudson, NY. Supporting shipper: ACME National Sales, Inc., Route 9, Hudson, NY 12534.

The following applications were filed in Region 3. Send protests to: ICC, Regional Authority Center, Room 300, 1776 Peachtree Street, N.E., Atlanta, GA 30309.

MC 150072 (Sub-3–6TA), filed August 11, 1982. Applicant: DEWEY ENTERPRISES, INC., 3320 New South Province Blvd., Fort Myers, FL 33907. Representative: Leonard E. Mondschein, Suite 218, 9000 S.W. 87th Court, Miami, FL 33176. Filter material, between Ft. Myers, FL and points in the U.S., (except AK and HI). Supporting shipper: The Munters Corp., P.O. Box 6428, Ft. Myers, FL 33901.

Note.—Applicant intends to tack with existing authority in MC–150072, Sub 1F and 2F.

MC 162171 (Sub-3–1TA), filed August 13, 1982. Applicant: NOAH C. MATHIS, JR., d.b.a. MATHIS DEVELOPMENT COMPANY, P.O. Box 446 (U.S. Hwy 29), Century, FL 32535. Representative: John K. Mathis (Same address as applicant). *Oil field equipment and supplies,* between points in the states of FL, AL, MS, LA, and TX. Supporting shipper: Anderson Contracting Co., Inc., P.O. Box 900, Century, FL 32535.

The following applications were filed in Region 6. Send Protests To: Interstate Commerce Commission, Region 6 Motor Carrier Board, 211 Main St., Suite 501, San Francisco, CA 94105.

MC 52793 (Sub-6–23TA), filed August 11, 1982. Applicant: BEKINS VAN LINES CO., 333 South Center Street, Hillside, IL 60162. Representative: David A. Gallagher (Same address as applicant). *Contract* irregular: *Electronic and Computerized Business Machines* between points in the U.S., except AK and HI, for 270 days. Restricted to traffic moving under continuing contract with Illinois Wholesale Cash Register. Supporting Shipper: Illinois Wholesale Cash Register, 7A Hillside Drive, Barrington, IL 60010.

MC 52793 (Sub-6–24TA), filed August 11, 1982. Applicant: BERKINS VAN LINES CO., 333 South Center Street, Hillside, IL 60162. Representative: David A. Gallagher (Same address as applicant) *Contract* irregular: *Electronic and Computerized Business Machines,* between points in the U.S., except AK and HI, for 270 days. Restricted to traffic

moving under continuing contract with Edward Mancini Inc. Supporting Shipper: Edward Mancini Inc., 15 South Racine Avenue, Chicago, IL 60607.

MC 115716 (Sub-6–2TA), filed August 11, 1982. Applicant: DENVER-LIMON-BURLINGTON TRANSFER COMPANY, 3650 Chestnut St., Denver, CO 80216. Representative: Edward C. Hastings 666 Sharman St., Denver Co. 80203.*Contract:* irregular, *Appliances;* from Louisville, KY to CO, NE and WY under a contrinuing contract with General Electric Company, Louisville, KY., for 270 days. Supporting shipper(s): General Electric Company, APPlicance Park, Louisville, KY 40225.

MC 158312 (Sub-6–2TA), filed August 12, 1982. Applicant: ESPINOSA CARTAGE COMPANY, 801 Nikanda, N.E. Albuquerque, NM 87107. Representative: Edward J. Kiley, 1730 M Street, N.W. Washington, D.C. 20036. *General commodities* (except classes A and B explosives, household goods and commodities in bulk), between NM, on the one hand, and, on the other, La Plata and Montezume Counties, CO., for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: There are 6 shippers. Their statements may be examined at the Regional Office listed above.

MC 143331 (Sub-6–2TA), filed Aug. 13, 1982. Applicant: FREIGHT TRAIN TRUCKING, INC., 4906 E. Compton Blvd., Paramount, CA 90723. Representative: William J. Monheim, P.O. B 1756, Whittier, CA 90609. *Materials, parts, equipment, and supplies* dealt in or used by a manufacturer of trucks, from points in CA to Denton, TX, and Madison, TN, and between Denton, TX and Madison, TN, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Peterbilt Motors Co., 3200 Airport Road, Denton, TX, 76201 and Peterbilt Motors Co., 430 Myatt Drive, Madison, TN 37115.

MC 163400 (Sub-6–1TA), filed August 12, 1982. Applicant: FRONTIER STAGES, INC., 360 North Wolcott, Casper, WY 82601. Representative: Ronald D. Hall, 1250 North Center, #81, Casper, WY 82601. *Common Carrier,* Regular Route: *Passenger, baggage, and light express* between Casper, WY and Gillette, WY, via I–25 and US 87 to Edgerton, WY, then via WY 387 to Reno Junction, then via WY 59 to Gillette, WY, serving all intermediate points, and return Interlining with Trailways, Inc., at Gillettee for Newcastle, WY; rapid City, S.D.; and points east. Interlining with Trailways, Inc., at Casper, WY, for Cheyenne, WY; Denver, CO, and all points south, east, and west, for 180 days. Supporting shippers: There are 6 shippers. Their statements may be examined at the Regional Office listed above.

MC 146360 (Sub-6–15TA), filed August 10, 1982. Applicant: GREAT WEST TRANSPORTATION, INC., 110 N. Curtis Rd., Boise, ID 83704. Representative: Kevin M. Clark, 2417 Bank Dr., Ste. 8, Boise, ID 83705. *Such Commodities* as are dealt in by department, discount and catalog stores, between points in the U.S. (except AK and HI), on the one hand, and points in UT, on the other hand, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Gibson's Products Co., Inc., 5955 S. Main, Murray, UT 84107.

MC 1515 (Sub-6–22TA), filed August 10, 1982. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: R. L. Wilson (same as applicant). *Common carrier,* regular route *passengers and their baggage and express and newspapers in the same vehicle with passengers:* (1) Between junction Interstate Highway 94 and Wisconsin Highway 67 and junction Wisconsin Highway 16 and Wisconsin Highway 67: From junction Interstate Highway 94 and Wisconsin Highway 67 over Wisconsin Highway 67 to junction Wisconsin Highway 16 and return over the same route, serving all intermediate points. (2) Between junction Wisconsin Highway 26 and Wisconsin Highway 16 and junction Wisconsin Highway 26 and Wisconsin Highway 33: From junction Wisconsin Highway 26 and Wisconsin Highway 16 over Wisconsin Highway 26 to junction Wisconsin Highway 26 and Wisconsin Highway 33 and return over the same route, serving all intermediate points. (3) Between junction Wisconsin Highway 73 and U.S. Highway 51 and junction Wisconsin Highway 73 and Wisconsin Highway 13: From junction Wisconsin Highway 73 and U.S. Highway 51 over Wisconsin Highway 73 to junction Wisconsin Highway 73 and Wisconsin Highway 13 and return over the same route, serving all intermediate points. (4) Between Milwaukee, Wisconsin, and Neenah, Wisconsin: From Milwaukee, Wisconsin, over U.S. Highway 41 to Neenah, Wisconsin, and return over the same route, serving all intermediate points. (5) Between junction Interstate Highway 90 and Interstate Highway 94, east of Billings, Montana, and Seattle, Washington: From junction Interstate Highway 90 and Interstate Highway 94, east of Billings, Montana, over Interstate Highway 90 to Seattle, Washington and return over the same route, serving all intermediate points. (6) Between Milwaukee, Wisconsin, and junction Interstate Highway 94 and Interstate Highway 90 east of Billings, Montana: From Milwaukee, Wisconsin, over Interstate Highway 94 to junction Interstate Highway 94 and Interstate Highway 90 east of Billings, Montana and return over the same route, serving all intermediate points. (7) Between junction Interstate Highway 90 and Interstate Highway 94, east of Tomah, Wisconsin, and junction Interstate Highway 90 and U.S. Highway 14, north of La Crescent, Minnesota: From junction Interstate Highway 90 and Interstate Highway 94, east of Tomah, Wisconsin, over Interstate Highway 90 to junction U.S. Highway 14, north of La Crescent, Minnesota, and return over the same route, serving all intermediate points. (8) Between Milwaukee, Wisconsin, and Green Bay, Wisconsin: From Milwaukee, Wisconsin, over Interstate Highway 43 to Green Bay, Wisconsin, and return over the same route, serving all intermediate points, for 180 days. Applicant intends to tack this authority with authority it presently holds in MC–1515. Supporting Shippers: There are thirteen (13) shippers. Their statements may be examined at the Regional Office listed above.

MC 163227 (Sub-6–1TA), filed August 11, 1982. Applicant: GARY JOHNSON TRUCKING CO., 16824 S. Higley Rd., Higley, AZ 85236. Representative: Gary D. Johnson (same address as applicant). *General commodities,* (except commodities in tank vehicles and household goods) and hazardous materials from Phoenix, AZ, to points in Dolores, La Plata and Montezuma Counties, CO and San Juan and McKinley Counties, NM, for 270 days. Supporting shipper(s): Central Mercantile Co., 421 Central Ave., Dolores, CO; Manning Trading Co., Inc., Box 1297, Shiprock, NM 87420; Mike's 7 til 11, P.O.B. 215, Bloomfield, NM 87413.

MC 163399 (Sub-6–1TA), filed August 13, 1982. Applicant: PETRO-CHEM, INC., P.O. Box 2542, Billings, MT 59103. Representative: Ted Langendorf, P.O.B. 2199, Mills, WY 82644. *Contract Carrer,* irregular routes: *Drilling fluids, additives, chemicals* and *sand,* used in the oil and gas industry, except commodities in bulk in tank vehicles, from OK, TX; to points in WY, CO, NM, UT, MT, CA, for 270 days. Supporting shipper: Western Co. of North America, 6100 Western Place, P.O. 186, Fort Worth, TX 76101. Smith Energy Services,

Jct. Highways 58 & 93, Golden, CO 80403. B–J Hughes, Inc., 1776 Lincoln St., Ste. #410, Denver, CO 80203. Pettibone-Chicago, Inc., 435 N. Michigan Ave., Chicago, IL 60611.

MC 145813 (Sub-6–5TA), filed August 11, 1982. Applicant: POINTS WEST TRUCKING, INC., 20727 Santa Clara St., Canyon Country, CA 91351. Representative: Bradford E. Kistler, P.O.B. 82028, Lincoln, NE 68501. *General commodities* (except Classes A and B explosives, household goods, and commodities in bulk), from points in CT, MA, NY, NJ, and RI to the commercial zone of Reno, NV and points in CA, for 270 days. Supporting shipper: Total Distribution Services, Inc., 10 N. Maine St., W. Hartford, CT 06107.

MC 002389 (Sub-6–1TA), filed August 16, 1982. Applicant: SIERRA NEVADA STAGE LINES, INC., 655 S. Stanford Way, Sparks, NV 89431. Representative: J. B. Laramore, 340 Maria Court, Sparks, NV 89431. *Passengers and their baggage* in special and charter operations beginning at points in NV, CA, OR and UT and extending to points in the U.S. including AK but excluding HI, for 180 days. Supporting shippers: Pioneer Travel, Inc., 927 Haskell St. Reno, NV 89509. Travel System Ltd., Zephyr Cove, NV 89448.

MC 113271 (Sub-6–16TA), filed August 12, 1982. Applicant: TRANSYSTEMS INC., P.O.B. 399, Black Eagle, MT 59414. Representative: Richard S. Mandelson, 1660 Lincoln St., #1600, Denver, CO 80264. *Ore,* between points in Eureka County, NV, for 270 days. Supporting shipper: Carlin Gold Mining Company, P.O.B. 979, Carlin, NV 89822.

MC 129814 (Sub-6–1TA), filed August 13, 1982. Applicant: WHITFIELD BUS LINES, INC., P.O.B. 1330, Las Cruces, NM 88004. Representative: Glenda Newcomer (Same address as applicant), *Contract;* Irregular. *Passengers and their baggage in the same vehicle* from points in IA, MO, and IL to points in TX under a continuing contract(s) with the United States Department of Justice, Immigration and Naturalization Service, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: U.S. Department of Justice, Immigration and Naturalization Service, Omaha, NE, 68102.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–23241 Filed 8–24–82; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 387 (Sub-228)]

Rail Carriers; Atchison, Topeka and Santa Fe Railway Company Exemption for Contract Tariff ICC–ATSF–C–0099 (Potash)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: A provisional exemption is granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the above-noted contract tariffs may become effective on one day's notice. This exemption may be revoked if protests are filed.

DATES: Protests are due, within 15 days of publication in the **Federal Register.**

ADDRESSES: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7278.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101(a) or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption request meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following condition:

This grant neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

By the Commission, Division 2, Commissioners Andre, Gilliam, and Taylor. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

(49 U.S.C. 10505)

Decided: August 18, 1982.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–23226 Filed 8–24–82; 8:45 am

BILLING CODE 7035–01–M

[Ex Parte No. 387 (Sub-No. 231)]

Rail Carriers; Burlington Northern Railroad Company Exemption for Supplement 2 to Contract Tariff ICC–BN–C–0120 (Canned Foodstuffs)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: A provisional exemption is granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the above-noted contract tariff may become effective on one day's notice. This exemption may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Tom Smerdon, (202) 275–7277.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption request meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following conditions:

This grant neither shall be construed to mean that the Commission has approved the contract for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to determine its lawfulness.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

By the Commission, Division 1, Commissioners Sterrett, Simmons, and Gradison. Commissioner Sterrett was absent and did not participate.

(49 U.S.C. 10505)

Decided: August 19, 1982.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–23220 Filed 8–24–82; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 387 (Sub-233)]

Rail Carriers; Burlington Northern Railroad Company Exemption for Supplement 2 To Contract Tariff ICC–BN–C–0034 (Plywood)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: A provisional exemption is granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the above-noted contract tariff may become effective on one day's notice. This exemption may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Tom Smerdon, (202) 275–7277.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption request meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following conditions:

This grant neither shall be construed to mean that the Commission has approved the contract for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to determine its lawfulness.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

By the Commission, Division 1, Commissioners Sterrrett, Simmons, and Gradison. Commissioner Sterrett was absent and did not participate.
(49 U.S.C. 10505)

Decided: August 19, 1982.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–23223 Filed 8–24–82; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 387 (Sub.-227]

Burlington Northern Railroad Company Exemption for Supplement 2 to Contract Tariff ICC–BN–C–0042 (Lumber)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: A provisional exemption is granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the above-noted contract tariff may become effective on one day's notice. This exemption may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Tom Smerdon, (202) 275–7277.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101(a) or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption request meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following conditions.

This grant neither shall be construed to mean that the Commission has approved the contract for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to determine its lawfulness.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

By the Commission, Division 1, Commissioners Sterrett, Simmons, and Gradison. Commissioner Sterrett was absent and did not participate.
(49 U.S.C. 10505).

Decided: August 19, 1982.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–23225 Filed 8–24–82; 8:45 am]

BILLING CODE 7031–01–M

[Finance Docket No. 30004]

Rail Carriers; Norfolk and Western Railway Co.—Acquisition and Operation of—New Jersey, Indiana and Illinois Railroad Company in St. Joseph County, IN

Norfolk and Western Railway Company (NW), 8 North Jefferson Street, Roanoke, VA 24042, represented by Richard A. Keeny, Richard W. Kienle and William C. Wooldridge, 8 North Jefferson Street, Roanoke, VA 24042, hereby gives notice that on the 30th day of July, 1982, it filed with the Interstate Commerce Commission at Washington, DC, an application pursuant to 49 U.S.C. 11343 et seq. to acquire all the assets of its wholly owned subsidiary, New Jersey, Indiana and Illinois Railroad Company (NJI&I), an Indiana corporation operating 11.38 miles of main line and 19.70 miles of side track in St. Joseph County, IN, and integrate its operations into the operations of NW.

The application was filed under our current consolidation regulations, 49 CFR Part 1111, as modified in Ex Parte No. 282 (Sub-No. 3), Railroad Consolidation Procedures, (45 FR 9844, March 8, 1982), 363 I.C.C. 75 (1982). The transaction is governed by 49 U.S.C. 11343 and the time limits of 49 U.S.C. 11345, as those sections are modified by section 228 of the Staggers Rail Act of 1980, Pub. L. 96–448, October 14, 1980.

We find that the proposal is a minor transaction within the meaning of that term as used in our consolidation regulations, 49 CFR Part 1111, the Staggers Rail Act of 1980, which requires us to conclude the evidentiary proceeding by December 8, 1982 (the 105th day after the publication of the notice).

The application and exhibits are available for inspection in the Public Docket Room at the offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained from applicant's representatives upon request.

The proposed transaction is not one of regional or national transportation significance within the meaning of the Staggers Rail Act of 1980.

Any interested person may participate in this proceeding by submitting written comments regarding the application. An original and 10 copies must be filed with the Section of Finance, Room 5414, Interstate Commerce Commission, Washington, DC 20423, no later than September 24, 1982. Written comments shall be concurrently served by first-class mail on the United States Secretary of Transportation, the Attorney General of the United States, and the applicant's representatives: Richard A. Keeney, Richard W. Kienle and William C. Wooldridge, 8 North Jefferson Street, Roanoke, VA 24042. Written comments must also be served upon all parties of record within 10 days of our issuance of the service list in this proceeding. (We plan to issue that service list by October 8, 1982.) All persons who file timely written comments may be considered as parties of record, but only if they so indicate in their comments. In this event no petition for leave to intervene need be filed.

Written comments must contain:

(1) The docket number and title of the proceeding;

(2) The name, address and telephone number of the commenting party and its representative upon whom service shall be made;

(3) The commenting party's position, in support of or opposition to the proposed transaction;

(4) A statement of whether the commenting party intends to participate formally in hearings or merely comment upon the proposal;

(5) A list of all information sought to be discovered from applicant carrier;

(6) An initial list of specific protective conditions sought; and

(7) Any request for oral hearing that the commenting party will make with reasons supporting the request.

Preliminary comments from the Secretary of Transportation and the Attorney General must be filed with the Commission by October 8, 1982.

By statute, the evidentiary phase of the proceeding must be concluded by December 8, 1982. Service of an initial decision will be waived, and determination on the merits of the application will be made in the first instance by the entire Commission, under 49 U.S.C. 11345 by January 22, 1983.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-23219 Filed 8-24-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-235)]

Rail Carriers; Richmond, Fredericksburg and Potomac Railroad Company Exemption for Supplement 2 To Contract Tariff ICC-RFP-C-0012 (Storage of Paper)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: A provisional exemption is granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the above-noted contract tarriff may become effective on one day's notice. This exemption may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the Federal Register.

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC. 20423.

FOR FURTHER INFORMATION CONTACT: Tom Smerdon, (202) 275-7277.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limted scope. Therefore, we find that the exemption request meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following conditions:

This grant neither shall be construed to mean that the Commission has approved the contract for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initative or on complaint, to review this contract and to determine its lawfulness.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

By the Commission, Division 1, Commissioners Sterrett, Simmons, and Gradison. Commissioner Sterrett was absent and did not participate.

(49 U.S.C. 10505)

Decided: August 19, 1982.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-23221 Filed 8-24-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-No. 229)]

Soo Line Railroad Company Exemption for Contract Tariff ICC-SOO-C-0087 (Wheat)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: A provisional exemption is granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the above-noted contract tariff may become effective on one day's notice. This exemption may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the Federal Register.

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Tom Smerdon, (202) 275-7277.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption request meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following conditions:

This grant neither shall be construed to mean that the Commission has approved the contract for purposes of 49 U.S..C 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to determine its lawfulness.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

By the Commission, Division 1, Commissioners Sterrett, Simmons and Gradison. Commissioner Sterrett was absent and did not participate.

(49 U.S.C. 10505)

Decided: August 19, 1982.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-23224 Filed 8-24-82; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-127]

Certain Amino Acid Formulations; Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: August 17, 1982.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 82-23255 Filed 8-24-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-188 (Preliminary)]

Certain Commuter Airplanes From Brazil

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary countervailing duty investigation and scheduling of a conference to be held in connection with the investigation.

EFFECTIVE DATE: August 13, 1982.

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of investigation No. 701-TA-188 (Preliminary) to determine, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), 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 Brazil of certain commuter airplanes, provided for in item 694.41 of the Tariff Schedules of the United States, upon which subsidies are alleged to be paid. For purposes of this investigation, "commuter airplanes" are turboprop powered airplanes having a

seating capacity ranging from 15 to 19 seats.

FOR FURTHER INFORMATION CONTACT: Mr. Woodley Timberlake, Office of Investigations, U.S. International Trade Commission; telephone 202–523–4618.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1982, a petition was filed with the U.S. International Trade Commission and the Department of Commerce by counsel for Fairchild Swearingen Corporation alleging that producers, manufacturers, or exporters in Brazil of certain commuter airplanes receive, directly or indirectly, bounties or grants within the meaning of section 701 of the Tariff Act of 1930 (the Act).

The Commission must make its determination in the investigation within 45 days after the date on which the Commission and the Department of Commerce receive a petition filed under section 702(b) of the Act, or by September 27, 1982 (19 CFR 207.17 (1981)). The investigation will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR 207.17 (1981)), as amended by 47 FR 6190 (February 10, 1982)), and particularly subpart B thereof.

Service of Documents

Any interested person may appear in these investigations as a party, either in person or by representative, by filing an entry of appearance with the Secretary in accordance with § 201.11 of the Commission's rules (19 CFR 201.11). Each entry of appearance must be filed with the Secretary no later than September 1, 1982.

In addition to the foregoing, each document filed with the Commission in the course of these investigations must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written submissions

Any person may submit to the Commission on or before September 13, 1982, a written statement of information pertinent to the subject matter of this investigation. A signed original and fourteen (14) copies of such statement must be submitted. In the event that confidential treatment of the document is requested under § 201.6, at least one additional copy shall be filed in which the confidential business information shall have been deleted and which shall have been marked "nonconfidential" or "public inspection."

Any business information which a submitter desires the Commission to treat as confidential shall be submitted in conformance with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6 (1981)). Each sheet of information for which confidential treatment is desired must be clearly marked at the top "Confidential Business Data."

All written submissions, except for confidential business data, will be available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10:00 a.m., e.d.t., on September 8, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigation, Mr. William Fry, telephone 202–523–0267, not later than September 3, 1982, to arrange for their appearance. Parties in support of the imposition of countervailing 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.

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 207, 47 FR 6182, February 10, 1982), and Part 201, Subparts A through E (19 CFR Part 201, 47 FR 6182, February 10, 1982). Further information concerning the conduct of the conference will be provided by Mr. Fry.

This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: August 19, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-23251 Filed 8-24-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-112]

Certain Cube Puzzles; Commission Requests for Comments Regarding Proposed Termination of Respondents Based on Settlement Agreements

AGENCY: International Trade Commission.

ACTION: Request for public comment on proposed termination of investigation as to certain respondents based on settlement agreements.

SUMMARY: The settlement agreements would result in the termination of this investigation as to respondents Robert S. Koons & Associates, Rand International, Korvettes, Inc., F. W. Woolworth Co., Sears Roebuck & Co., and John N. Hansen Co., Inc. This notice requests comments from the public on the proposed termination of the above-named respondents on the basis of settlement agreements.

DATES: Comments will be considered if received by September 24, 1982. They should conform with § 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), and should be addressed to Kenneth R. Mason, Secretary, U.S. International Trade Commission, 701 F Street NW., Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and concerns alleged unfair trade practices in the importation into and sale in the United States of certain cube puzzles. Notice of the institution of the investigation was published in the **Federal Register** of December 29, 1981 (46 FR 62964). Complainant Ideal Toy Corp. (Ideal) and each of the above-named respondents have moved jointly in separate motions for termination of this investigation as to the above-named respondents. The Commission investigative attorney has filed responses to the motions supporting the terminations. On July 14, 1982, the presiding officer recommended that the joint motions be granted.

Settlement Agreements: The settlement agreements are summarized as follows:

A. Robert S. Koons & Associates

1. Koons agrees to pay a certain sum of money to Ideal.

2. The parties agree to move to terminate the Commission investigation and a related Federal court action in the Southern District of New York.

3. If, in any other litigation involving Ideal and a third party, a final unappealed decision on the merits is rendered against Ideal with respect to its claims described as "trade dress infringement" of its "Rubik's Cube" puzzle, and the third party is thus entitled to manufacture or sell cube puzzles, then Koons will be in the same position as the third party.

4. Ideal will terminate litigation and not institute further litigation against

customers of Koons who have previously purchased puzzles from Koons.

5. Koons is free to sell its present inventory of cubes, but not in the United States or 18 other named countries. Koons may also donate its inventory to charity.

B. Rand International

1. Rand agrees to pay Ideal a certain sum of money in consideration of what the parties describe as Rand's past infringements of Ideal's rights in its "Missing Link" and "Rubik's Cube" puzzles, and for the right to sell its remaining inventory of both puzzles within the next 90 days.

2. Rand will provide Ideal with copies of sales records with regard to puzzles sold from the remaining inventory.

3. Rand agrees to refrain from a number of acts relating to infringement or simulation of Ideal's trademarks, trade dress, or copyrights in either of the puzzles.

4. Rand agrees to provide Ideal with copies of purchase documents reflecting the purchase of cube and link puzzles.

5. If, in any other litigation involving Ideal and a third party, a final unappealed decision on the merits is rendered against Ideal with respect to its claims described as "trade dress infringement" of its "Rubik's Cube" puzzle, and the third party is thus entitled to manufacture or sell cube puzzles, then Rand will be in the same position as the third party.

6. Rand agrees to produce an official for deposition in the Commission proceeding.

7. Ideal agrees to permit Rand's customers to dispose of their inventories of cube puzzles purchased from Rand without further compensation.

C. Korvettes, Inc.

The parties agree that Korvettes was erroneously included in the Commission investigation because a cube puzzle was purchased from a store which, although it bore a Korvettes sign, was not owned and operated by Korvettes at the time of the purchase. Korvettes had previously filed a petition in bankruptcy.

D. F. W. Woolworth Co.

1. Woolworth has until August 12, 1982, to dispose of its present inventory of cube puzzles.

2. Woolworth will advise its stores not to buy or sell cube puzzles which are similar to Ideal's "Rubik's Cube" puzzle.

E. Sears Roebuck & Co.

1. Sears will discontinue all future advertising and sale of the cube puzzle it presently markets under its "Sugar Cube" trademark.

2. Sears will refrain from selling any cube puzzle identical or "confusingly similar" to Ideal's "Rubik's Cube."

3. Sears may advertise and sell cube puzzles not "confusingly similar" to Ideal's "Rubik's Cube", including, for example, puzzles which utilize designs or symbols on each face or on each cube face, puzzles utilizing cubes of a color other than black and color panels of a shape other than square or rectangular, puzzles molded in gray plastic and utilizing specified colors on the cube faces, and puzzles which Ideal has admitted or admits in the future in any action to be available for use by competitors and/or not to be "confusingly similar" to Ideal's "Rubik's Cube."

4. Sears may sell any cube puzzle, under the same terms, which Ideal permits any other manufacturer or retailer to sell, or which is finally determined by a court to be not "confusingly similar" to Ideal's "Rubik's Cube." Sears may sell cube puzzles identical to Ideal's "Rubik's Cube" if a final unappealed court judgment determines that Ideal has no proprietary rights to the trade dress of its "Rubik's Cube" puzzle.

5. The parties will move to dismiss a related Federal court action in the Southern District of New York as well as this investigation.

6. Sears does not admit the correctness of Ideal's charges.

7. Ideal will purchase Sears' entire inventory of "Sugar Cube" puzzles for a specified sum of money.

F. John N. Hansen Co., Inc.

1. Hansen agrees to pay a certain sum of money to Ideal.

2. The parties agree to move to terminate the Commission investigation as to Hansen and a related Federal court action in the Southern District of New York.

3. If, in any other litigation involving Ideal and a third party, a final unappealed decision on the merits is rendered against Ideal with respect to its claims described as "trade dress infringement" of its "Rubik's Cube" puzzle, and the third party is thus entitled to manufacture or sell cube puzzles, then Hansen will be in the same position as the third party.

4. Ideal will terminate litigation and not institute further litigation against customers of Hansen who have previously purchased puzzles from Hansen.

5. Hansen is free to sell its present inventory of cubes, but not in the Untied States or 18 other named countries. Hansen may also donate its inventory to charity.

Written comments requested: In order to discharge its statutory obligation to consider the public interest, the Commission seeks written comments from interested persons regarding the effect that the proposed termination of this investigation as to the above-named respondents based on the settlement agreements may have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States, and (4) U.S. consumers. All written comments must be filed with the Secretary to the Commission no later than September 24, 1982. In addition, pursuant to 19 CFR 210.14(a)(2), the Commission has requested comments from the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs Service.

Additional Information: The original and 14 copies of all written submissions must be filed with the Secretary to the Commission, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request *in camera* treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons the Commission should grant such treatment. The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0350.

By order of the Commission.

Issued: August 17, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–23256 Filed 8–24–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–128]

Certain Cupric Hydroxide Formulated Fungicides and Cupric Hydroxide Preparations Used in the Formulation Thereof; Order No. 1

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate

Administative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: August 19, 1982.

Donald K. Duvall,

Chief Administrative Law Judge,

[FR Doc. 82-23249 Filed 8-24-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-129]

Certain Limited-Charge Cell Culture Microcarriers; investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 19, 1982, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Flow General, Inc. and Flow Laboratories, Inc., both at 7655 Old Springhouse Road, McLean, Virginia 22102, and Massachusetts Institute of Technology, 77 Massachusetts Ave., Cambridge, Massachusetts 02139. A supplement to the complain was filed on August 3, 1982. The complaint alleges unfair methods of competition and unfair acts in the importation of certain limited-charge cell culture microcarriers into the United States, or in their sale, by reason of alleged (1) misappropriation of trade secrets, (2) refusal to sell sieved beads, (3) misrepresentation to prevent issuance of patents, (4) false and deceptive advertisting, (5) false and disparaging comments about complainants, (6) direct infringement of the claims of U.S. Letters Patent 4,189,534 and U.S. Letters Patent 4,293,654, (7) contributory infringement and induced infringement of the claims of said patents, and (8) unauthorized manufacture abroad in accordance with the process claims of U.S. Letters Patent 4,293,654. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States.

The complainants request the Commission to institute an investigation and, after a full investigation, to issue both a permanent exclusion order and a permanent cease and desist order.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 17, 1982 ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain limited-charge cell culture microcarriers into the United States, or in their sale, by reason of alleged (1) misappropriation of trade secrets, (2) refusal to sell sieved beads, (3) false and deceptive advertising, (4) false and disparaging comments about complainants, (5) direct infringment of the claims of U.S. Letters Patent 4,189,534 and U.S. Letters Patent 4,293,654, (6) contributory infringement and induced infringement of the claims of said patents, or (7) unauthorized manufacture abroad in accordance with the process claims of U.S. Letters Patten 4,293,654, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States. The Commission does not find it appropriate to include misrepresentation to prevent issuance of patents as a separate count of unfair competition at this time, and accordingly, the investigation will not include this count.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Flow General, Inc. and Flow Laboratories, Inc., 7655 Old Springhouse Road, McLean, Va. 22102

Massachusetts Institute of Technology, 77 Massachusetts Ave., Cambridge, Mass. 02139

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

AB Fortia, Box 604, S-751 25 Uppsala, Sweden

Pharmacia AB, Box 181, S-751 04 Uppsala, Sweden

Pharmacia Fine Chemicals AB, Box 175, S-751 04 Uppsala, Sweden

Pharmacia, Inc., 800 Centennial Ave., Piscataway, N.J. 08854

(c) Juan S. Cockburn, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436; telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: Juan S. Cockburn, Esq., Unfair Import Investigations Division, U.S. International Trade Commission; telephone 202-523-1272.

By order of the Commission.

Issued: August 19, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-23253 Filed 8-24-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-102 (Preliminary)]

Certain Radio Paging and Alerting Receiving Devices From Japan

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping investigation and

scheduling of a conference to be held in connection with the investigation.

EFFECTIVE DATE: August 20, 1982.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigation No. 731–TA–102 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 167b(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 Japan of certain radio paging and altering receiving devices, provided for in items 685.24 and 685.70 of the Tariff Schedules of the United States, which are allegedly being sold in the United States at less than fair value (LTFV).

FOR FURTHER INFORMATION CONTACT: Mr. Bill Schechter, Office of Investigations, U.S. International Trade Commission; telephone 202/523–0300.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted following receipt of a petition filed by counsel for Motorola Inc., Schaumburg, Ill. A nonconfidential copy of the petition is available for public inspection during offical working hours (8:45 a.m. to 5:15 p.m) in the Office of the Secretary U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone (202–523–0448). The Commission must make its determination in this investigation within 45 days after the date of the filing of the petition, or by October 4, 1982 (19 CFR 207.17). This investigation will be subject to the provisions of part 207 of the Commission's Rules of Practices and Procedure (19 CFR 207, 44 FR 76457 and 47 FR 6190), and particularly Subpart B thereof.

Person wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission not later than September 1, 1982. (19 CFR 201.11). Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the notice.

Service of Documents

The Secretary will compile a service list from the entries of appearance filed in this investigation. Any party submitting a document in connection with the investigation shall, in addition to complying with § 201.8 of the Commission's rules (19 CFR 201.8), serve a copy of each such document on all other parties to the investigation. Such service shall conform with the requirements set forth in § 201.16(b) of the rules (19 CFR 201.16(b)).

In addition to the foregoing, each document filed with the Commission in the course of this investigation must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written Submissions

Any person may submit to the Commission on or before September 13,1982, a written statement of information pertinent to the subject matter of this investigation (19 CFR 207.15). A signed original and fourteen (14) copies of such statements must be submitted (19 CFR 201.8).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions 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 data, will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m., on September 9, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigation, Mr. Jim McClure, telephone 202/523–0439, not later than September 3, 1982, to arrange for their appearance. Parties in support of the imposition of antidumping duties 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.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedures, Part 207, Subparts A and B (19 CFR 207), and Part 201, subpart A through E (19 CFR 201), 47 FR 6182, February 10, 1982. Further information concerning the conduct of the conference will be provided by Mr. McClure.

This notice is published pursuant to § 207.12 of the Commission's Rules of Practice and Procedure (19 CFR 207.12).

By order of the Commission.

Issued: August 20, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–23250 Filed 8–24–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–108]

Certain Vacuum Bottles and Components Thereof; Commission Request for Comments Regarding Proposed Termination of Respondent Based on a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Request for public comment on proposed termination of respondent based on a settlement agreement.

SUMMARY: The settlement agreement would result in the termination of this investigation as to respondent Wholesale Merchandisers, Inc., a subsidiary of Meijer, Inc. This notice requests comments from the public on the proposed termination.

DATES: Comments will be considered if received on or before September 24, 1982. They should conform with § 201.8 of the Commission's Rules of Practice and Procedures (19 CFR 201.8), and should be addressed to Kenneth R. Mason, Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and concerns alleged unfair trade practices in the importation into and sale in the United States of certain vacuum bottles and components thereof. Notice of the institution of the investigation was published in the **Federal Register** of October 29, 1981 (43 FR 53543).

Complainant Union Manufacturing Co. (Union), and respondent Wholesale Merchandisers, Inc. (Wholesale Merchandisers) have moved jointly for termination of this investigation as to Wholesale Merchandisers. The Commission investigative attorneys have filed a response to the motion which supports the termination. On July 30, 1982, the presiding officer recommended that the joint motion be granted (Order No. 22).

Settlement Agreement: The settlement agreement states that Meijer, Inc. (Meijer) has imported 3,784 vacuum bottles alleged to infringe complainant's

trademark. Meijer is not currently importing such vacuum bottles. Further, Meijer will not import into the United States any vacuum bottles alleged in the complaint to infringe complainant Union's alleged trademark until such time as there is a final decision by the Commission that the subject vacuum bottles do not infringe any trademark owned by complainant.

Written Comments Requested: In order to discharge its statutory obligation to consider the public interest, the Commission seeks written comment from interested persons regarding the effect that the proposed termination of respondent Wholesale Merchandisers based on the settlement agreement may have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States, and (4) U.S. consumers. All written comments must be filed with the Secretary to the Commission no later than September 24, 1982. In addition, pursuant to 19 CFR 210.14(a)(2), the Commission has requested comments from the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs Service.

Additional Information: The original and 14 copies of all written submissions must be filed with the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0499.

By order of the Commission.

Issued: August 19, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–23252 Filed 8–24–82: 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–111]

Certain Vacuum Cleaner Brush Rollers; Termination of Respondent Based on a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Termination of the investigation with respect to respondent Vacuum Parts Unlimited, Inc., based on a settlement agreement.

SUPPLEMENTARY INFORMATION: Complainant Scott & Fetzer Co. moved on April 21, 1982, to terminate the above-captioned investigation as to respondent Vacuum Parts Unlimited, Inc. (Vacuum Parts), on the basis of a settlement agreement. The Commission investigative attorney supported the motion.

On August 16, 1982, the Commission terminated this investigation as to respondent Vacuum Parts on the basis of the settlement agreement. The Commission concluded that such termination would not adversely affect the public interest.

Notice of institution of this investigation was published in the **Federal Register** on December 23, 1981 (46 FR 62343).

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Lairold M. Street, Esq., U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202–523–0124.

By order of the Commission.

Issued: August 19, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–23254 Filed 8–24–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–96 (Preliminary)]

Nitrocellulose From France

Determination

Based on the record [1] developed in investigation No. 731–TA–96 (Preliminary), the Commission determines pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury [2] by reason of imports of nitrocellulose from France, provided for under item 445.25 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On July 2, 1982, counsel for Hercules, Inc., Wilmington, Delaware, filed a petition with the U.S. International Trade Commission and the U.S. Department of Commerce alleging that an industry in the United States is being materially injured and threatened with material injury by reason of LTFV imports of nitrocellulose from France. Accordingly, on July 6, 1982, the Commission instituted a preliminary antidumping investigation (No. 731–TA–96) under section 733(a) of the Tariff Act of 1930. Notice of the institution of the investigation and conference therefor was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission and by publishing the notice in the **Federal Register** on July 14, 1982 (47 FR 30669). A public conference was held in Washington, D.C. on July 27, 1982, at which all interested parties were afforded the opportunity to present information for consideration by the Commission.

Views of the Commission

The record of this investigation provides a reasonable indication that an industry in the United States is materially injured or threatened with material injury [3] by reason of imports of nitrocellulose from France allegedly sold at less than fair value (LTFV). Our affirmative finding is based on the existence of underselling, lost sales, and the generally weak condition of the domestic industry.[4]

[1] The "record" is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Haggart finds a reasonable indication of present material injury only.

[3] Commissioner Haggart determines only that there is a reasonable indication of material injury, and therefore does not reach the issue of reasonable indication of threat of material injury.

[4] Commissioner Frank notes that only a low-threshold test applies to preliminary determinations. An overview on this is found in his views in Frozen French Fried Potatoes From Canada, Inv. No. 731–TA–93 (Preliminary), USITC Pub. No. 1259 (1982) at 12–15.

Domestic industry

The domestic industry against which the impact of allegedly LTFV imports is to be assessed is defined in section 771(4)(A) of the Tariff Act of 1930 as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." [5] "Like product" is defined in section 771(10) as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation * * *" [6]

The imported product under investigation in this case is soluble industrial nitrocellulose from France. Nitrocellulose is a dry, white amorphous plastics material prepared by reacting cellulose from cotton linters or wood pulp with an aqueous mixture of nitric acids and sulfuric acid.[7] Nitrocellulose is used primarily in the manufacture of fast-drying, durable, lacquer coatings. It is also used in furniture finishes, cellophane coatings, fingernail polish, and printing inks.[8]

Both imported and domestic soluble industrial nitrocellulose are classified according to nitrogen content in three grades: SS-type, AS-type, and RS-type. RS-type contains 11.8–12.2 percent nitrogen and accounts for the bulk of production [9] as it is the most compatible of the three grades with synthetic resins. AS-type contains 11.3–11.7 percent nitrogen and is similar, but differs in its tolerance level of alcohols in the solvent. SS-type contains 10.9–11.2 percent nitrogen, is soluble in solvent systems with high alcohol content, and, therefore, is preferred in retrograves and flexographic inks.[10]

Domestic soluble industial nitrocellulose is identical to the imported product. The domestic product is produced in the same grades in similar proportions by grade, it is used for the same purposes, and it is sold in the same markets. It can be used interchangeably with the imported product.[11]

Soluble industrial nitrocellulose can be distinguished from another type of nitrocellulose known as smokeless or explosive grade cellulose or guncotton. Smokeless nitrocellulose is required to contain a minimum of 12.6 percent nitrogen and generally contains at least 13 percent nitrogen.[12] It is used in shells or propellants and has no plastics application.[13] Smokeless nitrocellulose differs from soluble industrial nitrocellulose in chemical content and in end use.

Soluble industrial nitrocellulose is also distinguishable from substitutes because of its characteristics of fast-air drying and rapid-hardness development.[14] It also has a unique ability to develop a deep wood patina [15] and to coat products which come in contact with food.[16] Other products can be substituted for some, but not all, of the uses of industrial nitrocellulose. For example, a product called alkyd-amine has been used to replace nitrocellulose in some furniture refinishing, but cannot be used on cloth, cellophane or any other flexible item, or in ink, or fingernail polish. Fabrikoid (R) is another example. It is a water-borne coating which is sometimes used as a substitute for nitrocellulose on leather-like material, but cannot be used on metal or wood surfaces because of the water content.[17]

We conclude that the like product for this investigation is soluble industrial nitrocellulose of all three grades and does not include explosive grade cellulose or any substitutes. Therefore, we find that the domestic industry consists of the sole U.S. producer of soluble industrial nitrocellulose, Hercules Incorporated.

Reasonable indication of material injury by reason of LTFV imports

Section 771(7) of the Act directs the Commission to consider, among other factors, (1) the volume of imports of the merchandise under investigation, (2) their impact on domestic prices, and (3) the consequent impact on the domestic industry.[18]

Volume of imports—Although the domestic market for nitrocellulose has declined from 1979 to 1981, imports from France have captured and ever-increasing share of that market since their entry in 1978. Consequently, although the absolute volume of imports from France remained at approximately the same level during the corresponding periods of January through June in 1981 and 1982, the market penetration of imports from France increased to its highest level in the first six months of 1982.[19]

Effect of imports on prices—Prices were compared on an f.o.b. basis for RS-grade nitrocellulose.[20] This comparison showed that both domestic and imported prices increased during the period 1980 to 1981. However, underselling by French imports occurred throughout this period. In January through June of 1982, domestic prices declined from their 1981 levels.[21] Pricing data show that even with this decline in U.S. prices, underselling by French imports occurred in the most recent quarter.[22] The trends in domestic and imported prices provide a reasonable indication of price depression and price suppression.

Impact of imports on the domestic industry—Production, capacity utilization, profit and loss, and lost sales data provide a reasonable indication that the domestic industry has been adversely affected by imports from France.

Production data show a moderate increase for Hercules' production in the years 1979 through 1981. Production has, however, dropped sharply in the first six months of 1982.[23] This decline in production occurred shortly after there was a 50 percent increase in plant capacity.[24] This large increase in capacity has never been fully utilized. During the most recent period of January through June of 1982, capacity utilization declined significantly from the corresponding period of 1981. This decline in capacity utilization occurred during the same time that imports reached their highest market penetration level.[25]

An analysis of selected financial data reveals consistent declines for all indicators of profit or loss for the period from 1979 through June 1982. These indicators include, among others, operating profit or loss, and operating profit or loss as a percentage of net sales.[26] The period of greatest decline in

[5] 19 U.S.C. 1677(4)(A).
[6] 19 U.S.C. 1677(10).
[7] Report at A–3.
[8] *Id.*
[9] RS-type constitutes more than three-fourths of total imports of nitrocellulose and of total domestic production.
[10] *Id.* at A–2.
[11] *Id.*
[12] *Id.*
[13] *Id.* and transcript at 43.
[14] Transcript at 44 and 107.
[15] *Id.* at 44.
[16] *Id.* at 108.
[17] Memorandum GC–F–263 at 3 (August, 1982).
[18] 19 U.S.C. 1677(7)(B). The industry data have been designated confidential because there is only one importer of French nitrocellulose and only one domestic producer. Consequently, the discussion necessarily focuses on generalized trends.
[19] Report at A–16.
[20] The domestic product is sold in returnable steel drums, and the French product is sold in disposable fiber drums. *Id.* at A–20. The effect of packaging on prices is not clear in this preliminary investigation, but will be explored further in any final investigation.
[21] Report at A–20.
[22] *Id.* at A–21.
[23] Id. at A–8.
[24] In 1980, Hercules increased its capacity after DuPont announced its intention to leave the market in December 1977. Appendix C. However, Hercules' expanded capacity is less than the combined capacity of Hercules and DuPont in 1977. *Id.* at A–8.
[25] Report at A–8.
[26] *Id.* at A–12 and 15 and Table 7.

these indicators occurred in the first half of 1982 when imports captured their greatest share of the U.S. market.[27]

During the period that imports increased, domestic shipments declined irregularly from 1979 to 1981 and then dropped sharply in the first half of 1982.[28] Employment likewise decreased in the first six months of 1982 to a level below that of 1979. The most dramatic change, however, was in inventories which increased significantly from 1979 to 1980 and then further increased in 1981.[29]

Lost sales due to lower prices were confirmed by the Commission for all of the eight purchasing firms contacted.[30] Although many companies mentioned that they also wanted to maintain an alternative source of supply, the majority of purchasers explained that they purchased the lower-priced imports from France to keep their own product prices competitive.[31]

Reasonable indication of threat of material injury [32]

We note that during the most recent period from January through June of 1982 there have been accelerating declines in domestic production, capacity utilization, profits, shipments, and employment as well as a sharp increase in domestic inventories. In addition to the foregoing, production capacity of the foreign producer is not currently being fully utilized, and capacity utilization is increasing.[33] Most of this production capacity is used for export shipments with the United States as one of the foreign producer's largest customers.[34] Midyear inventories for the foreign producer in 1982 are significantly greater than in the corresponding period of 1981.[35] Further, the importer is open a new warehouse facility in North Carolina [36] and therefore may be better able to attract new business and lower freight costs.

Conclusion

We therefore determine, on the basis of the record in this preliminary investigation, that there is a reasonable indication of material injury or threat of material injury to the domestic industry by reason of imports of nitrocellulose from France.

By order of the Commission.

Issued: August 16, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-23257 Filed 8-24-82; 8:45 am]

BILLING CODE 7020-02-M

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[27] *Id.*
[28] *Id.* at A-9.
[29] *Id.* at A-12.
[30] *Id.* at A16-17.
[31] *Id.* at A-17.
[32] See footnote 1, page 3, *supra.*
[33] Report at A-18.
[34] *Id.* at A-19.
[35] *Id.*
[36] *Id.* at A-7.

[Investigation No. 337-TA-117]

Certain Automotive Visors; Request for Public Comments on Recommended Termination of Two Respondents Based on a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Request for public comments on proposed termination of two respondents in this investigation on the basis of a settlement agreement.

SUMMARY: On July 2, 1982, complainant Prince Corporation (Prince), respondent Mercedes-Benz of North American, Inc. (Mercedes-Benz), and the Commission investigative attorney filed a joint motion to terminate the above-captioned investigation with respect to respondents Mercedes-Benz and Daimler-Benz A.G. (Daimler-Benz), on the basis of a settlement agreement entered into between Prince, Mercedes-Benz, and Daimler-Benz. On July 20, 1982, the presiding officer recommended that the joint motion be granted. Before taking final action on this motion, the Commission seeks written comments on the proposed terminations from interested members of the public. A nonconfidential synopsis of the settlement agreement is set forth below.

SYNOPSIS: Prince agrees to accept a lump-sum payment for a paid-up, nonexclusive, and irrevocable license for the life of the two U.S. patents in issue (U.S. Letters Patent Nos. 3,926,470 and 4,227,241). The license allows the importation into the United States of Mercedes-Benz brand vehicles equipped with the subject visor assemblies and replacemet visor assemblies therefor. Similar rights are granted with respect to counterpart patents or patent applications in Great Britain and the Federal Republic of Germany. The license applies to visors wherever and by whomever they are manufactured or supplied except for manufacture in the United States and Canada. The lump-sum payment is in full settlement of all claims between Prince, Mercedes-Benz and Daimler-Benz arising out of this investigation and a related Federal court action in Michigan. Prince grants Mercedes-Benz and Daimler-Benz an option to take a similar license with respect to all U.S. improvement patents and their foreign counterparts issued or pending as of the date of the agreement.

DATES: Comments will be considered if received on or before September 24, 1982. Comments should conform with Commission Rule 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8) and should be addressed to Kenneth R. Mason, Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION: The Commission is conducting investigation No. 337-TA-117 to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation and sale of certain automotive visors, which are alleged to infringe certain claims of U.S. Letters Patent Nos. 3,926,470, and 4,227,241, owned by complainant Prince. The alleged effect or tendency of these unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Notice of the institution of this investigation was published in the **Federal Register** On March 4, 1982 (47 FR 9296).

COMMENTS REQUESTED: In light of the Commission's duty to consider the public interest in this investigation, the Commission requests written comments from interested persons concerning the effect of the termination of this investigation with respect to Mercedes-Benz and Daimler-Benz based upon the settlement agreement may have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States, and (4) U.S. consumers. Written comments must be filed with the Secretary to the Commission no later than September 24, 1982. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request *in camera* treatment. Such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. The Commission will either accept such submission in confidence or return it. All nonconfidential written submissions will be open for public inspection at the Secretary's office, as is a copy of the settlement agreement with confidential information deleted.

FOR FUTHER INFORMATION CONTACT: Jane Albrecht, Esq. Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

Issued: August 17, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-23260 Filed 8-24-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-126]

Certain Handbags, Luggage and Brief Cases

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: August 13, 1982.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 82-23259 Filed 8-24-82; 8:45 am]

BILLING CODE 7020-02-M

[332-131]

Hearing on and Release for Public Comment of Chapters of the Tariff Schedules of the United States Converted Into the Nomenclature Structure of the Harmonized System

AGENCY: International Trade Commission.

ACTION: Setting of public hearing and release for comment from interested parties, pursuant to Commission investigation No. 332-131, under the authority of section 332(g) of the Tariff Act of 1930, as amended, and initiated upon the request of the President of the United States, of the following chapters of the Tariff Schedules of the United States (TSUS) converted into the nomenclature structure of the Harmonized Commodity Description and Coding System (Harmonized System):

Volume 8
- Chapter 1: Live animals
- Chapter 2: Meat and edible meat offal
- Chapter 3: Fish and crustaceans, molluscs and other aquatic invertebrates
- Chapter 4: Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included
- Chapter 5: Products of animal origin, not elsewhere specified or included
- Chapter 6: Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage
- Chapter 7: Edible vegetables and certain roots and tubers
- Chapter 8: Edible fruit and nuts; peel of melons or citrus fruits

Volume 9
- Chapter 16: Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates

Volume 10
- Chapter 20: Preparations of vegetables, fruit, nuts or other parts of plants

Volume 11
- Chapter 22: Beverages, spirits and vinegar
- Chapter 23: Prepared animal feed; residues and waste from the food industries
- Chapter 24: Tobacco and manufactured tobacco substitutes

Volume 12
- Chapter 26: Ores, slag and ash

Volume 13
- Chapter 28: Inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements, or of isotopes
- Chapter 29: Organic chemicals

Volume 14
- Chapter 36: Explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations
- Chapter 37: Photographic films and materials

Volume 15
- Chapter 61: Articles of apparel and clothing accessories, knitted or crocheted
- Chapter 62: Articles of apparel and clothing accessories, not knitted or crocheted
- Chapter 63: Other made up textile articles; sets; worn clothing and worn textile articles; rags

Volume 16
- Chapter 74: Copper and articles thereof
- Chapter 75: Nickel and articles thereof
- Chapter 76: Aluminum and articles thereof
- Chapter 78: Lead and articles thereof
- Chapter 79: Zinc and articles thereof
- Chapter 80: Tin and articles thereof
- Chapter 81: Other base metals; cermets; articles thereof

Volume 17
- Chapter 90: Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus; parts thereof
- Chapter 91: Clocks and watches and parts thereof
- Chapter 92: Musical instruments; parts and accessories of such articles

Volume 4-S
- Chapter 52: Cotton

SUMMARY: The United States International Trade Commission (hereinafter "the Commission") has completed a draft of the above chapters of the TSUS converted into the nomenclature structure of the Harmonized System, with proposed rates of duty. This notice announces the scheduling of a public hearing on these converted chapters and requests public comment on the draft conversion, including the proposed rates of duty.

Written Submissions: Persons wishing to submit written comments with respect to one or more of the chapters should do so at the earliest possible date, but no later than the close of business (5:15 p.m.) November 26, 1982. The signed original and 14 copies of all written comments must be filed with the Secretary of the Commission at his office in Washington, D.C. and should conform with section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Any person desiring confidential treatment as to commercial or financial information must submit that information 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 (19 CFR 201.6). All nonconfidential written submissions will be made available to interested persons.

Hearing: Public hearings on the draft converted chapters will begin on November 1, 1982, in the Hearing Room of the U.S. International Trade Commission Building, 701 E Street, N.W., Washington, D.C. at 10 a.m. Requests for appearances at the hearing, including the name and address of any witness who will testify and the industry or organization, if any, which the witness represents, should be filed in writing with the Secretary of the Commission no later than the close of business on October 25, 1982. Request should indicate the chapter or heading upon which the witness will express views and a brief indication of any position to be taken. Parties with a common interest in a chapter are encouraged to consolidate their oral presentations. For further information on hearing procedures and rules of general application consult the Commission's Rules, part 201 (19 CFR Part 201).

Copies of Documents: Copies of the chapters which are the subject of this notice are available for public inspection at the office of the Secretary, 701 E Street, NW., Washington, DC 20436. The Secretary will also send copies of chapters to interested parties upon request; telephone (202) 523-5178.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene A. Rosengarden, Director, or Mr. Holm Kappler, Deputy Director, Office of Tariff Affairs, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436; telephone (202) 523-0370 or 0362.

SUPPLEMENTARY INFORMATION: In its public notices of February 8, 1980 (45 FR 9828 of February 13, 1980), March 21, 1980 (45 FR 19696 of March 26, 1980), August 15, 1980 (45 FR 55549 of August 20, 1980), June 24, 1981 (46 FR 34439 of July 1, 1981) and July 17, 1981 (46 FR 37824 of July 22, 1981) the Commission identified the 96 chapters of the Harmonized System for which texts had

been provisionally adopted by the Harmonized System and the Nomenclature committees of the Customs Cooperation Council. Views and comments of interested parties with respect to the 96 chapters were sought, and the structure and technical development of the Harmonized System were described.

In response to a request dated August 24, 1981, by the President of the United States, the Commission instituted an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) in order to prepare a basic draft converting the Tariff Schedules of the United States into the nomenclature structure of the Harmonized System. The President directed that the Commission's report, including the converted U.S. tariff schedule, be submitted no later than June 30, 1983. Guidelines for the conversion set by the President were set forth in the Commission's notice of the institution of investigation of September 16, 1981 (46 FR 47897 of September 30, 1981). The Commission published the first set of converted chapters for hearing and public comment on January 29, 1982 (47 FR 5369 of February 4, 1982). Hearings were held on those chapters on March 29 and 30, 1982. The final set of converted chapters will be published for hearing and public comment in January of 1983.

Currently the Customs Cooperation Council is preparing draft explanatory notes to the chapters of the Harmonized System. On February 16, 1982 (47 FR 8108), April 14, 1982 (47 FR 17135) and June 30, 1982 (47 FR 29734) the Commission released draft explanatory notes for 64 of the chapters of the Harmonized System for public comment. As soon as more explanatory notes become available the Commission will release them for public comment. Explanatory notes for all chapters of the Harmonized System are scheduled to be released for comment before the Commission submits the converted tariff schedule to the President in June of 1983.

In preparing the converted U.S. tariff schedules, the Commission is seeking and taking into consideration the views of any interested person, of any trade or industry organization and of interested government agencies. Submissions should be directed at evaluating the draft conversion in light of the President's guidelines, in particular whether the conversion—

(a) Avoids, to the extent practicable and consonant with sound nomenclature principles, changes in rates of duty on individual products;

(b) Simplifies the U.S. tariff structure to the extent possible without rate changes significant for U.S. industry, workers, or trade; and

(c) Alleviates administrative burdens on the Customs Service.

The Commission will utilize the post-MTN rates of duty on individual products when analyzing impacts of any proposed changes.

Submissions should also address the probable effect of U.S. adoption of the converted tariff schedules on U.S. industries, workers, and trade. Submissions aimed primarily at seeking increases or reductions in existing tariff rates are not relevant and will not be entertained by the Commission.

Issued: August 16, 1982.
By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-23258 Filed 8-24-82; 8:45 am]
BILLING CODE 7020-02-M

[332-73]

Release for Public Comment of Explanatory Notes to Provisionally Adopted Chapters of the Harmonized Commodity Description and Coding System

AGENCY: International Trade Commission.

ACTION: Release for public comment, pursuant to Commission investigation No. 332-73, under the authority of section 332(g) of the Tariff Act of 1930, as amended, of drafts of Explanatory Notes to the following chapters of the Harmonized Commodity Description and Coding System (Harmonized System) being prepared by the Harmonized System Committee and the Nomenclature Committee of the Customs Cooperation Council.

Volume 9
- Chapter 39: Plastics and articles thereof
- Chapter 40: Rubber and articles thereof
- Chapter 70: Glass and glassware

Volume 10
- Chapter 72: Iron and steel
- Chapter 73: Articles of iron and steel
- Chapter 74: Copper and articles thereof
- Chapter 75: Nickel and articles thereof
- Chapter 76: Aluminum and articles thereof
- Chapter 78: Lead and articles thereof
- Chapter 79: Zinc and articles thereof
- Chapter 80: Tin and articles thereof
- Chapter 81: Other base metals; cermets; articles thereof
- Chapter 82: Tools, implements, cutlery, spoons and forks, of base metal; parts thereof
- Chapter 83: Miscellaneous articles of base metal

Volume 11
- Chapter 84: Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof
- Chapter 85: Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles

Volume 12
- Chapter 86: Railway or tramway locomotives, rolling-stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro-mechanical) traffic signalling equipment of all kinds
- Chapter 87: Vehicles other than railway or tramway rolling-stock, and parts and accessories thereof
- Chapter 88: Aircraft and parts thereof
- Chapter 89: Ships, boats, and floating structures

Volume 13
- Chapter 90: Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus; parts thereof
- Chapter 91: Clocks and watches and parts thereof
- Chapter 92: Musical instruments; parts and accessories of such articles
- Chapter 93: Arms and ammunition; parts thereof
- Chapter 94: Furnitures; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like; prefabricated buildings
- Chapter 95: Toys, games and sports requisites; parts thereof
- Chapter 96: Miscellaneous manufactured articles
- Chapter 97: Works of art, collector pieces, and antiques

Written Submissions: Parties wishing to submit written comments should do so by filing them with the Secretary of the Commission, 701 E Street NW., Washington, D.C. 20436, no later than the close of business on October 1, 1982.

Copies of Documents: Copies of Explanatory Notes which are the subject of this notice are available for public inspection at the Office of the Secretary. The Secretary will also send copies to interested parties upon request; telephone (202) 523-5178.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, or Holm Kappler, Deputy Director, Office of Tariff Affairs, U.S. International Trade Commission, 7021 E Street, NW., Washington, D.C. 20436, Telephone: (202) 523-0370 or 0362.

This notice is being issued pursuant to Commission investigation No. 332-73, instituted on January 31, 1975 (40 FR 6329), under section 332(g) of the Tariff Act of 1930. The public notice of July 17, 1981 (46 FR 37824) set forth the basis for the Commission's investigation and participation in technical work on, and

described the structure and development of, the Harmonized System.

Texts of Explanatory Notes for the above chapters have been provisionally adopted by the Nomenclature Committee of the Customs Cooperation Council. The Explanatory Notes, which do not form a part of the Harmonized System nomenclature, contain the official interpretation of the Harmonized System, nomenclature ultimately to be adopted by the Customs Cooperation Council. The notes are arranged in the systematic order of the Harmonized System nomenclature and set forth information concerning the scope of each heading, including the products included and excluded, technical product descriptions, a guide for product identification, and the appearance, properties, uses, and methods of production of the products concerned. The public notices of February 16, 1982 (47 FR 8108), and April 21, 1982 (47 FR 17135) identified chapters for which Explanatory Notes were available and requested public comments. The notices sought views on Explanatory Notes for chapters 1 through 38, 41 through 69, and 71. Views and comments of interested parties are now being sought as to Explanatory Notes for twenty-eight additional chapters of the Harmonized System.

Drafts of the above Explanatory Notes are being finally reveiwed by both the Harmonized System Committee and the Nomenclature Committee. With this release for public comment the Commission has published all of the draft Explanatory Notes to the Harmonized System.

Issued: August 11, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-23261 Filed 8-24-82; 8:45 am]

BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Proposed Meetings

In order to provide advance information regarding proposed meetings of the ACRS Subcommittees and of the full Committee, the following preliminary schedule reflects the current situation, taking into account additional meetings which have been schedulked and meetings which have been postponed or cancelled since the last list of proposed meetings published July 20, 1982 (47 FR 31481). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. Those Subcommittee meetings for which it is anticipated that there will be a portion or all of the meeting open to the public are indicated by an asterisk (*). It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the September 1982 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634-3267, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Meetings

**Reactor Operations,* August 25, 1982, Washington, DC. The Subcommittee plans to discuss NRC's enforcement policy, the Inspection and Enforcement performance appraisal team and the Systematic Assessment of Licensee Performance programs, as well as NRC's regionalization program. It also plans to have diccussions with representatives of the Institute of Nuclear Power Operations and the Professional Reactor Operator Society. Notice of this meeting was published August 9.

**Washington Public Power Supply System Unit 2 (WPPSS),* September 2 and 3, 1982, Richland, WA. The Subcommittee will review the application of Washington Public Power Supply System for an operating license for the WPPSS Nuclear Project Unit 2.

**Human Factors,* September 7, 1982, Washington, DC. The Subcommittee will review the final draft of the NRC Staff's Integrated Human Factors Program Plan.

**AC/DC Power Systems Reliability,* September 8, 1982, Washington, DC. the Subcommittee will review the status of the NRC's implementation of the recommendations of NUREG-0666, "A Probabilistic Safety Analysis of DC Power Supply Requirements for Nuclear Power Plants," the status of the ongOing work on station blackout, and matters related to the reliability of AC/DC power systems.

**Regulatory Activities,* September 8, 1982, Washington, DC. The Subcommittee will discuss Regulatory Guide 1.145, Revision 1, "Atmospheric Dispersion Models for Potential Accident Consequence Assessments at Nuclear Power Plants."

**Safety Philosophy, Technology & Criteria/Class-9 Accidents,* September 8, 1982, Washington, DC. The Subcommittee will review issues regarding severe accident rulemaking and implementation of safety goals.

**Emergency Core Cooling Systems (ECCS),* September 16, 1982, Washington, DC. The Subcommittee will discuss: (1) Natural circulation modeling in Babcock and Wilcox Small Break LOCA Model; (2) Reactor Coolant Pump trip requirement status; (3) results of recent Semiscale tests and status of Mod-5 proposal; (4) status of Appendix K review proposal; (5) need for pressure relief capability for Combustion Engineering reactors; and (6) status of LOFT consortium effort.

**Reactor Operations,* September 29, 1982, Washington, DC. The Subcommittee will discuss: (a) The pressure transients during shutdown at Turkey Point Unit 4, and other related incidents with the Staffs of the Offices of Analysis and Evaluation of Operational Data, Nuclear Reactor Regulation, and Inspection and Enforcement; (b) the proposed rule on Licensing Requirements for pending Operating License Applications; and (c) proposed rulemaking on 10 CFR 50.34, "Contents of Applications; Technical Information."

**Metal Components Working Group,* September 30, 1982 (Tentative), Washington, DC. The Subcommittee will continue the discussion with NRC and industry regarding the matter of pressurized thermal shock.

**Clinch River Breeder Reactor (CRBR) Working Group on Systems Integration and Instrumentation Control,* September 30, 1982, Washington, DC. The Subcommittee will be briefed on the design of the CRBR plant protection and instrument and control systems.

**Reliability and Probabilistic Assessment,* Date to be determined (Late September), Washington, DC. The Subcommittee will discuss the ACRS review of the Limerick Probabilistic Risk Assessment.

**Anticipated Transients Without Scram (ATWS),* October 1, 1982, Washington, DC. The Subcommittee will begin the review of a final ATWS Rule proposed by an NRC Task Force.

**Meeting with Reactor Safety Commission (RSK),* October 5 and 6, 1982, Washington, DC. The Subcommittee will discuss the use of

PRA and quantitative safety goals in the design and regulation of nuclear power plants, recent or proposed changes in safety-related policy, including items such as consideration of Class 9 accidents in the design of nuclear plants, reemphasis on standardization in the design and licensing of nuclear plants, and changes in safety-related technology, including items such as the use of the Double Ended Pipe Break as the basis for plant design and consideration of pressurized thermal shock of reactor pressure vessels.

Extreme External Phenomena, October 20 and 21, 1982, Los Angeles, CA. The Subcommittee will review the issues associated with the flooding hazard at Systematic Evaluation Program (SEP) plants, the NRC Staff's proposed solutions for plants which do not meet the requirements of the Standard Review Plan (SRP), the seismic hazard methodology being used in the evaluation of the SEP, and discuss the status of the Seismic Safety Margins Research Program work and the revised plans for Phase II of this work.

Clinch River Breeder Reactor (CRBR) Structures and Materials, October 22, 1982 (Tentative), Washington, DC. The Working Group will continue its review of the CRBR structures and materials to include; leak before break, inservice inspection, weldments, and structural seismic margins.

Clinch River Breeder Reactor (CRBR) Thermal Hydraulic Design, October 26, 1982, Washington, DC. The Subcommittee will review the thermal hydraulic aspects of the CRBR plant design.

Systematic Evaluation Program (SEP), October 26 and 27, 1982, Washington, DC. The Subcommittee will review the completion of Integrated Plant Safety Assessment/Systematic Evaluation for Oyster Creek and, to the extent possible, for Dresden 2 and Millstone 1. A two-day meeting to review all three plants is a possibility.

Clinch River Breeder Reactor (CRBR), October 26 and 27, 1982, Washington, DC. The Subcommittee will continue the review of the Hypothetical Core Disruptive Accident energetics for CRBR.

Metal Components and Three Mile Island Unit 1 (TMI–1), Date to be determined (Mid-October, Tentative), Washington, DC. The Subcommittee will review the NRC Steam Generator Generic Recommendation Report and TMI–1 steam generator problems and fixes.

Combination of Dynamic Loads, Date to be determined (October, Tentative), Washington, DC. The Subcommittee will discuss the status of work being done on the Combination of Dynamic Loads.

Metal Components, Date to be determined (October, Tentative), Washington, DC. The Subcommittee will review the elimination of the double-ended pipe break criteria for pipe whip restraints.

Reactor Radiological Effects and Site Evaluation, Date to be determined (October), Washington, DC. The Subcommittee will review and comment on Federal Emergency Management Agency's draft National plan on use of potassium iodide as a thyroid blocking agent during a radiation accident.

Reactor Radiological effects and Site Evaluation, Date to be determined (October), Washington, DC. The Subcommittee will review NRC Staff's "Working Paper" on revision to 10 CFR Part 20 (Standards for Protection Against Radiation).

Regulatory Activities, November 3, 1982 (Tentative), Washington, DC. The Subcommittee will review proposed Regulatory Guides and Regulations.

Procedures, November 3, 1982, Washington, DC. The Subcommittee will review activities of ACRS Members regarding (1)(a) working group activities sponsored by ACRS, (b) attendance at ACRS meetings, and (c) comments by ACRS members as individuals prior to ACRS consideration of a matter; (2) review and distribution of Category B documents; and (3) working relations with NRC Regional Offices.

Emergency Core Cooling Systems (ECCS), November 16 and 17, 1982, San Jose, CA. The Subcommittee will discuss revision of the General Electric SAFER code and General Electric's proposal for revision of Appendix K of 10 CFR 50.

Reactor Radiological Effects and Site Evaluation, Date to be determined (2-day November), Washington, DC. The Subcommittee will review (1) Radiation Safety Research Program (NRC and DOE); (2) FY 1983 through 1987 Long Range Research Plan; and (3) Research regarding control room liability, High Level Waste and Low Level Waste (Parts 60 and 61), and reduction of occupational exposures.

Safety Research Program, December 8, 1982, Washington DC. The Subcommittee will discuss the NRC Safety Research Program and Budget for FY 1984 and 1985 and also Draft 1 of the ACRS Report to the Congress on this matter.

Metal Components, Date to be determined (December, Tentative), Washington, DC. The Subcommittee will review the NRC action plan on integrity of steel bolts.

ACRS Full Committee Meeting

September 9–11, 1982: Items are *tentatively* scheduled.

*A. *Safety Goals for Nuclear Power Plants*—Discuss proposed NRC safety goals for nuclear power plants, the proposed implementation plan, and related research program.

*B. *Consideration of Severe Accidents in Nuclear Power Plant Design and Operation*—Discuss proposed NRC policy statement on severe accidents and related views on nuclear reactor regulation.

*C. *Human Factors Integrated Program Plan*—Discuss proposed NRC program plan for integrated consideration of human factors in the design and operation of nuclear power plants.

*D. *Transportation of Radioactive Materials*—Disuss proposed rule (10 CFR part 71) regarding packaging of radioactive materials for transport and NRC procedures for certification of packages for transport of radioactive materials.

*E. *Meeting with NRC Commissioners (Tentative)*—Discuss status of ACRS activities regarding proposed NRC safety goals for nuclear power plants, consideration of severe accidents in the siting, design, and operation of nuclear power plants, consideration of seismic events beyond the Design Basis Earthquake in the siting and design of nuclear power plants, and long range safety research activities including those related to consideration of severe accidents.

F. *Naval Reactor Policies/Practices*—Meeting with Admiral Kinnaird R. McKee to discuss future naval reactors policies and practices.

*G. *Nuclear Reactor Liquid Level Instrumentation*—Discuss the manner in which liquid level instrumentation is installed in nuclear power plants, particularly in boiling water reactors.

*H. *Regulatory Activities*—Discuss proposed changes in NRC Regulations and Regulatory Guides including proposed changes in Regulatory Guide 1.145, "Atmospheric Dispersion Models for Potential Accident Consequence Assessments at Nuclear Power Plants".

*I. *Future ACRS Activities*—Discuss proposed ACRS Activities including ACRS review of the CRBR.

October 7–9, 1982: Agenda to be announced.

November 4–6, 1982: Agenda to be announced.

Dated: August 20, 1982.

Samuel J. Chilk,

Acting Advisory Committee Management Officer.

[FR Doc. 82-23310 Filed 8-24-82; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Safety Philosophy, Technology and Criteria/ Class-9 Accidents; Time Change

The ACRS Subcommittee on Safety Philosophy, Technology and Criteria/ Class-9 Accidents scheduled for September 8, 1982, in Room 1046, at 1717 H Street, NW., Washington, DC starting at 8:30 a.m. has been changed "to 10:30 a.m. until the conclusion of business."

All other items regarding this meeting remain the same as announced in the **Federal Register** published Wednesday, August 18, 1982 (47 FR 36060).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Gary Quittschreiber (telephone 202/634-3267) or the Staff Engineer, Mr. Michael Griesmeyer between 8:15 a.m. and 5:00 p.m., e.d.t.

Date: August 19, 1982.

Samuel J. Chilk

Acting Advisory Committee Management Officer.

[FR Doc. 82-23311 Filed 8-24-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-324]

Carolina Power & Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory commission (the Commission) has issued Amendment No. 73 to Facility Operating License No. DPR-62 issued to Carolina Power & Light Company (the licensee) which revised the Technical Specifications for operation of the Brunswick Steam Electric Plant, Unit 2 (the facility), located in Brunswick County, North Carolina. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications to reflect (1) the addition of diverse instrumentation to the scram discharge instrument volumes, and (2) the deletion of certain snubbers resulting from removal of the control rod drive return line.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated June 16, 1982, (2) Amendment No. 73 to License No. DPR-62, and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Southport Brunswick County Library, 109 West Moore Street, Southport, North Carolina 28461. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, the 17th day of August 1982.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 82-23308 Filed 8-24-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-416]

Mississippi Power and Light Co., et al.; Issuance of Amendment of Facility Operating License

In the matter of Mississippi Power and Light Co., Middle South Energy, Inc., and South Mississippi Electric Power Association.

The U.S. Nuclear Regulatory Commission (the Commission) has issued amendment No. 2 to Facility Operating License No. NPF-13, issued to Mississippi Power and Light Company, Middle South Energy, Inc., and South Mississippi Electric Power Association (the Licensees), for Grand Gulf Nuclear Station, Unit No. 1 (the facility) located in Claiborne County, Mississippi. This amendment grants additional one time Technical Specification exceptions for Phase I operation, changes the stated pressure level for the control room leak testing program and approves the delay in the completion of the control room envelope leak tightness test. The amendment is effective as of the date of issuance.

The applications for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR Section 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for the amendments dated July 2, August 5 and August 10, 1982; (2) Amendment No. 2 to license NPF-13 dated August 17, 1982; and (3) the Commission's evaluation dated August 16, 1982. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and at the Hinds Jr. College, George M. McLendon Library, Raymond, Mississippi 39154. A copy of items (1), (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 17th day of August 1982.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 82-23309 Filed 8-24-82; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Issuance of Circular A-125, "Prompt Payment"

AGENCY: Office of Management and Budget.

ACTION: Final issuance of OMB Circular A–125, "Prompt Payment."

SUMMARY: This OMB Circular provides policy guidance to Federal agencies on the implementation of the Prompt Payment Act (Pub. L. 97–177). It is anticipated that implementation will result in timely payment, better business relationships with suppliers, improved competition for Federal acquisitions, and reduced costs to the Government.

EFFECTIVE DATE: This Circular is effective on publication.

FOR FURTHER INFORMATION CONTACT: David J. Gribble, Financial Management Division, Office of Management and Budget, Washington, D.C. 20503 (202) 395–4773.

SUPPLEMENTARY INFORMATION: On July 7, 1982, the Office of Management and Budget published a proposed Circular, "Timely Payments," for comment. Comments were received from more than 80 individuals or organizations, including Members of Congress, Federal agencies, universities, professional and business associations, and members of the general public.

There follows a summary of the major comments grouped by subject and a response to each, including a description of changes made as a result of the comments. Other changes have been made to increase clarity, precision, and readability, and to reduce the burden of compliance as much as possible.

Policy

Comment: Several commenters objected to OMB providing guidance to the agencies on proper timing of payments. They argued that the Act was intended to solve the problem of late payment, and that the guidance should not discourage agencies from paying earlier than required by law or contract.

Response: We disagree. Federal agencies have a responsibility to manage resources efficiently, including the use of sound, businesslike cash management practices. Moreover, the legislative history of the Prompt Payment Act shows that the Congress intended that the Act would strengthen agency cash management practices. The report on the bill by the Senate Committee on Governmental Affairs says, beginning on page 4, "the Committee expects that this legislation will not only reduce late payments, but also will reduce the number of early payments, with resultant savings to the government."

Interest Penalty Requirements

Comments: Several commenters objected to the provisions of Section 8.d., which provided that interest penalties need not be paid in certain circumstances. The major concerns expressed dealt with the provisions concerning payments made outside the United States and payments of less than $10.

Response: Section 8.d. has been deleted. The provision concerning payments outside the United States has been eliminated, as has the provision concerning interest penalties of less than $10. There has, however, been a new provision added to Section 9, "Calculation of Interest Penalties," concerning payment of penalties amounting to less than one dollar. Other provisions of Section 8.d. have been modified, and used in clarification of the provisions of Section 8.c.

Effective Date

Comment: Several commenters suggested that the interest penalty provisions of the Act be made applicable to existing contracts as well as those entered into on or after October 1, 1982. Some cited the legislative history of S. 1131, the "Delinquent Payments Act of 1981," in support of the view that the Circular should cover "payments made" on or after October 1, 1981.

Response: The Prompt Payment Act covers "acquisitions" made on or after October 1, 1982. Our understanding of the term acquisition is that it includes the entire process of contracting, delivery, receipt, and payment. We believe this is consistent with the use of the term in Pub. L. 96–83, the "Office of Federal Procurement Policy Act." Moreover, the legislative history of S. 1131 is associated with language in that bill that called for interest penalties to be applicable to "payments" rather than to "acquisitions." The bill that was enacted, however, refers to acquisitions, rather than to payments.

In addition, applying the interest penalty provisions only to contracts entered into after a certain date assures a more orderly administrative transition for the provisions of the Act. It also assures that payment terms will be considered at the same time that other contractual provisions are entered into.

Nothing in the Circular prohibits business concerns from proposing amendments to contracts entered into before October 1, 1982.

Candice C. Bryant,

Acting Deputy Assistant Director for Administration.

August 19, 1982.

[Circular No. A–125]

To The Heads of Executive Departments and Establishments

Subject: Prompt payment.

1. *Purpose.* This Circular prescribes policies and procedures to be followed by executive departments and agencies in paying for property and services acquired under Federal contract.

2. *Background.* The Prompt Payment Act (Pub. L. 97–177) requires Federal agencies to pay their bills on time, to pay interest penalties when payments are made late, and to take discounts only when payments are made within the discount period. Section 2(a)(1) of the Act requires the Director of the Office of Management and Budget to issue implementing regulations. Implementation will result in timely payment, better business relationships with suppliers, improved competition for Government business, and reduced costs to the Government for goods and services. Implementation must be consistent with sound cash management practices and related Treasury regulations.

3. *Policy.* Agencies will make payments as close as possible to, but not later than, the due date, or if appropriate, the discount date. Payment will be based on receipt of proper invoices and satisfactory performance of contract terms. Agencies will take discounts only when payments are made within the discount period. When agencies take discounts after expiration of the discount period or fail to make timely payment, interest penalties will be paid. Agencies will pay interest penalties without the need for business concerns requesting them, and will absorb interest penalty payments within funds available for the administration or operation of the program for which the penalty was incurred.

4. *Definitions.* For the purposes of this Circular, the following definitions apply:

a. *Agency*—has the same meaning as the term "agency" in Section 551(1) of Title 5, United States Code, and also includes any entity (1) that is operated exclusively as an instrumentality of such an agency for the purpose of administering one or more programs of that agency, and (2) that is so identified for this purpose by the head of such agency. The term agency includes military post and base exchanges and commissaries, but does not include the Tennessee Valley Authority, which is exempted from coverage by this Circular under the provisions of the Prompt Payment Act.

b. *Applicable interest rate*—the interest rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) and published in the **Federal Register.** This rate is referred to as the "Renegotiation Board Interest Rate," and is published semiannually on or about January 1 and July 1.

c. *Business concern*—any person or organization engaged in a profession, trade, or business; and not-for-profit entities (including State and local governments, but excluding Federal entities) operating as contractors.

d. *Contract*—any enforceable agreement, including rental and lease agreements and purchase orders, between an agency and a business concern for the acquisition of property or services.

e. *Designated payment office*—the place named in the contract for forwarding of invoices for payment, or in certain instances, for approval

f. *Due date*—the date on which Federal payment should be made. Determination of such dates is discussed in Section 7 of this Circular.

g. *Discount date*—the date by which, if payment is made, a specified discount can be taken.

h. *Payment date*—the date on which a check for payment is dated or a wire transfer is made.

i. *Proper invoice*—a bill or written request for payment provided by a business concern for property or services rendered. A proper invoice must meet the requirements of Section 6.b. of this Circular.

j. *Receipt of invoice*—the later of:

—The date a proper invoice is actually received in the designated payment office, or

—The date on which the agency accepts the property or service.

k. *Receiving report*—written evidence of acceptance of property or services by a Government official. Receiving reports must meet the requirements of Section 6.c. of this Circular.

5. *Responsibilities.* Each agency head is responsible for assuring timely payments and the payment of interest penalties where required. Each agency head will issue internal instructions, as necessary, to implement this Circular by October 1, 1982. Such instructions will include provisions for determining the causes of any interest penalties incurred, and for taking necessary corrective or disciplinary action. Inspectors General and internal auditors will make reviews of implementation, as they and the agency head deem appropriate.

6. *Payment Standards.* Payments will be made as close as possible to, but not later than, the due date, consistent with Treasury regulations (I *Treasury Fiscal Requirements Manual* 6–8040.20). To establish adequate documentation to support payment of interest penalties, the following information must be included in contracts, invoices, and receiving reports.

a. A contract must include the following payment provisions:

—Payment due date(s).

—Separate payment dates if partial payment is provided for partial executions or deliveries.

—If applicable, a statement that the special payment provisions of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)) or the Perishable Agriculture Commodities Act of 1930 (7 U.S.C. 499a(4)) applies.

—A stated inspection period following delivery, where necessary, for Federal acceptance of property or services.

—Name where practicable, title, phone number, and complete mailing address of officials of the business concern, and of the designated payment office.

b. A proper invoice must include:

—Name of the business concern and invoice date.

—Contract number, or other authorization for delivery of property or services.

—Description, price, and quantity of property and services actually delivered or rendered.

—Shipping and payment terms.

—Other substantiating documentation or information as required by the contract.

—Name where practicable, title, phone number, and complete mailing address of responsible official to whom payment is to be sent.

Notice of an apparent error, defect, or impropriety in an invoice will be given to a business concern within 15 days of receipt of an invoice (3 days for meat or meat food products and 5 days for perishable agricultural commodities) and suitably documented.

c. A receiving report must include:

—Contract or other authorization number.

—Product or service description.

—Quantities received, if applicable.

—Date(s) property or services accepted.

—Signature, printed name, title, phone number, and mailing address of the receiving official.

Agencies will ensure that receipt and acceptance are executed as promptly as possible. Receiving reports will be forwarded in time to be received by the designated payment office by the fifth business day after acceptance, unless other arrangements are made. Designated payment offices will stamp receiving reports and invoices with the date received in that office.

d. Checks will be mailed or transmitted on or about the same day for which the check is dated.

7. *Determining Due Dates.* Payment will be made as close as possible to, but not later than, the thirtieth day after receipt of a proper invoice as defined in Section 4.i. of this Circular, except as follows:

—When a specific payment date is provided for in the contract, payment will be made as close as possible to, but not later than, that date.

—When a time discount is taken, payment will be made as close as possible to, but not later than, the discount date. Discounts will be taken whenever economically justified. (See I *Treasury Fiscal Requirements Manual* 6–8040.30.)

—Payment for meat or meat food products, as defined in Section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), will be made as close as possible to, but not later than, the seventh day after the date of delivery.

—Payment for perishable agriculture commodities, as defined in Section 1(4) of the Perishable Agriculture Commodities Act of 1930 (7 U.S.C. 499a(4)), will be made as close as possible to, but not later than, the tenth day after the date of delivery, unless another date is specified in the contract.

8. *Interest Penalty Requirement.*

a. An interest penalty will be paid automatically when all of the following conditions are met:

—There is a contract or purchase order with a business concern.

—Federal acceptance of property or services has occurred and there is no disagreement over quantity, quality, or other contract provisions.

—A proper invoice has been received (except where no invoice is required, e.g., some periodic lease payments) or the agency fails to give notice that the invoice is not proper within 15 days of receipt of an invoice (3 days for meat or meat food products, and 5 days for perishable agricultural commodities).

—Payment is made to the business concern more than 15 days after the due date (3 days for meat or meat food products, and 5 days for perishable agricultural commodities).

b. An interest penalty will also be paid when an agency takes a discount after the discount period has expired, and fails to correct the underpayment within 15 days of the expiration of the discount period (3 days for meat and meat food products, and 5 days for perishable agricultural commodities).

c. Interest penalties are not required when payment is delayed because of a disagreement between a Federal agency and a business concern over the amount of the payment or other issues concerning compliance with the terms of a contract; nor are they required when payments are made solely for financing purposes, payments are made in advance, or for a period when amounts are withheld temporarily in accordance with the contract. Claims concerning disputes, and any interest that may be payable with respect to the period while the dispute is being settled, will be resolved in accordance with the provisions in the Contract Disputes Act of 1978 (41 U.S.C. 601 *et. seq.*).

9. *Calculation of Interest Penalties.* Whenever a proper invoice (or periodic payment where no invoice is required) is paid after the due date plus 15 days (except 3 days for meat and meat food products, and 5 days for perishable agricultural commodities), interest will be included with the payment at the interest rate applicable on the payment date. Interest will be computed from the day after the due date through the payment date and the amount will be separately stated on the check or accompanying remittance advice. Adjustments will be made for errors in calculating interest, if requested. When an interest penalty that is owed is not paid, interest will accrue on the unpaid amount until paid. Interest penalties remaining unpaid for any 30-day period will be added to the principal, and interest penalties, thereafter, will accrue monthly on the total of principal and previously accrued interest.

When an agency takes a discount after the discount period has expired, the interest payment will be calculated on the amount of the discount taken, for the period beginning the day after the end of the specified discount period through the payment date.

When an agency fails to make notification of an improper invoice within 15 days (3 days for meat or meat food products, and 5 days for perishable agricultural commodities), the number of days allowed for payment of the corrected, proper invoice will be reduced by the number of days between the fifteenth day and the day notification was transmitted to the business concern. Calculation of interest penalties, if any,

will be based on an adjusted due date reflecting the reduced number of days allowable for payment.

Interest penalties under the Prompt Payment Act will not continue to accrue (1) after the filing of a claim for such penalties under the Contract Disputes Act of 1978, or (2) for more than one year. Interest penalties of less than one dollar need not be paid.

10. *Grant Recipients.* Recipients of Federal assistance may pay interest penalties if so specified in their contracts with business concerns. However, obligations to pay such interest penalties will not be obligations of the United States. Federal funds may not be used for this purpose, nor may interest penalties be used to meet matching requirements of federally-assisted programs.

11. *Reporting.* Each Federal agency will report to the Director of OMB within 60 days after the end of each fiscal year, beginning with Fiscal Year 1983, the following information:

Number of interest penalties paid.
Amount of interest penalties paid.
Relative frequency, on a percentage basis, of interest penalty payments to the total number of payments.
Number, total amount, and relative frequency, on a percentage basis, of payments made 5 days or more before the due date, except where cash discounts were taken.
Reasons that interest penalties were incurred.
An analysis of the progress made from previous years in improving the timeliness of payments.

In order to minimize the cost of reporting, statistical sampling may be used to derive the information above.

12. *Additional Provisions.* Additional procurement guidelines and requirements are set forth in applicable acquisition regulations.

13. *Effective Date.* This Circular is effective on publication. Interest penalties will apply to payments made under contracts issued on or after October 1, 1982.

14. *Inquiries.* Questions or inquiries may be directed to the Financial Management Division, Office of Management and Budget, Washington, D.C. 20503, telephone number 202/395–4773. Inquiries concerning the applicable interest rate may be directed to the Appropriation and Investment Branch, Department of the Treasury, telephone number 202/566–5651.

15. *Sunset Review Date.* This Circular will have an independent policy review to ascertain its effectiveness three years from the date of issue.

David A. Stockman,

Director.

[FR Doc. 82-23233 Filed 8-24-82; 8:45 am]

BILLING CODE 3110-01-M

PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORAL RESEARCH

Public Meeting

Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committees Act, that the twenty-fourth meeting of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research will be held in the Auditorium of The Medical Society of the District of Columbia, 2007 Eye Street, N.W., Washington, D.C. from 8:30 a.m. to 5:00 p.m. on Friday, September 10, 1982 and from 8:30 a.m. to 1:30 p.m. on Saturday, September 11, 1982.

The meeting will be open to the public, subject to limitations of available space. The agenda for Friday, September 10 will include, among other things, discussion of a draft report on the ethical implications of differences in the availability of health services. The agenda for Saturday, September 11 will include, among other things, discussion of the Federal rules for the protection of human subjects of research and the implementation of the rules.

During Friday afternoon at approximately 1:45 p.m., and Saturday afternoon, at approximately 12:45 p.m., fifteen minutes will be devoted to comments from the floor on the subject of any of the agenda items, limited to three minutes per comment. Written suggestions and comments will be accepted for the record from those who are unable to speak because of the constraints of time and from those unable to attend the meeting.

Records shall be kept on all Commission proceedings and will be available for public inspection at the Commission office, located in Suite 555, 2000 K Street, N.W., Washington, D.C. 20006.

For further information, contact Andrew Burness, Public Information Officer, at (202) 653–8051.

Alexander M. Capron,

Executive Director.

[FR Doc. 82-23204 Filed 8-24-82; 8:45 am]

BILLING CODE 6820-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth Fogash, 202–275–2700.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, D.C. 20549.

Amendment

Rule 17a–2, No. 270–189

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 has submitted for clearance a proposed amendment to Rule 17a–2 under the Securities Exchange Act of 1934 which concerns recordkeeping and reporting requirements by broker-dealer participants in a distribution of securities.

The potential respondents are broker-dealers who manage, or participate in, a syndicate or group that distributes securities which are stabilized pursuant to Rule 10b–7 of the Securities Exchange Act of 1934. The proposed amendment would eliminate the present requirement that a form concerning transactions in the stabilized security be filed with the Commission and would instead require the manager of a syndicate or group to retain in a separate file certain information relating to stablizing purchases of the security being distributed.

Submit comments to OMB Desk Officer: Robert Veeder 202–395–4814.

August 19, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-23248 Filed 8-24-82; 8:45 am]

BILLING CODE 8010-01-M

SYNTHETIC FUELS CORPORATION

Statement of Programmatic Objectives and Groundrules for Second Solicitation for Synthetic Fuels Projects

AGENCY: Synthetic Fuels Corporation.

ACTION: Issuance of statement of programmatic objectives and groundrules for the second solicitation for synthetic fuels projects.

SUMMARY: Notice is hereby given that on August 19, 1982, the United States Synthetic Fuels Corporation in accordance with the Energy Security Act of 1980 (Pub. L. 96–294) issued a Statement of Programmatic Objectives and Groundrules for its Second Solicitation for Synthetic Fuels Projects which was dated December 11, 1981. The said Statement and Groundrules is only applicable to those concerns that submitted proposals to the Corporation pursuant to the Second Solicitation on or before June 1, 1982, the closing date under said solicitation.

EFFECTIVE DATE: August 19, 1982.

FOR FURTHER INFORMATION CONTACT: Ralph L. Bayrer, Vice President for Projects, United States Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586; (202) 822–6436.

For copies of the statement contact: Catherine McMillan, Director for Public

Disclosure United States Synthetic fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586; (202) 822–6460.

United States Synthetic Fuels Corporation.

Edward E. Noble,

Chairman of the Board of Directors.

[FR Doc. 82-23288 Filed 8-24-82; 8:45 am]

BILLING CODE 0000-00-M

Statement of Programmatic Objectives and Third Solicitation for Synthetic Fuels Projects

AGENCY: Synthetic Fuels Corporation.

ACTION: Issuance of statement of programmatic objectives and third solicitation for synthetic fuels projects.

SUMMARY: Notice is hereby given that on August 19, 1982 the United States Synthetic Fuels Corporation in accordance with the Energy Security Act of 1980 (Pub. L. 96–294) issued a Statement of Programmatic Objectives and a Third Solicitation for Synthetic Fuels Projects addressed to concerns interested in applying for financial assistance for the construction and/or operation of such projects.

EFFECTIVE DATE: August 19, 1982.

FOR FURTHER INFORMATION CONTACT: Ralph L. Bayrer, Vice President for Projects, United States Synthetic Fuels Corporation, 2121 K Street, N.W., Washington, D.C. 20586 (202) 822–6436.

For copies of the statement and solicitation contact: Catherine McMillan, Director of Public Disclosure, United States Synthetic Fuels Corporation, 2121 K Street, N.W., Washington, D.C. 20586 (202) 822–6460.

Synthetic Fuels Coroporation.

Edward E. Noble,

Chairman of the Board of Directors.

[FR Doc. 82-23287 Filed 8-24-82; 8:45 am]

BILLING CODE 0000-00-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Application Packages for the 1983 Tax Counseling for the Elderly Program

AGENCY: Internal Revenue Service, Treasury.

ACTION: Availability of applicaton packages.

SUMMARY: This document provides notice of the availability of Application Packages for the 1983 Tax Counseling for the Elderly program.

DATES: Application packages are available from IRS at this time. The deadline for submitting an application package to the IRS for the 1983 Tax Counseling for the Elderly program is September 24, 1982.

ADDRESS: Application Packages may be requested by contacting: Internal Revenue Service, Tax Counseling for the Elderly Program, Taxpayer Service Division D:R:T:I, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Carlos Rosario of the Taxpayer Service Division, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224; (202) 566–4904, not a toll-free call.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly program is contained in Section 163 of the Revenue Act of 1978 (92 Stat. 2810). Regulations were published in the **Federal Register** at (44 FR 72113) on December 13, 1979. Section 163 gives the Internal Revenue Service authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Applications are being solicited before Congress has passed a budget for FY 1983, and, therefore, cooperative agreements will be entered into subject to funds being appropriated. Subject to funding, volunteers may receive reimbursement for expenses incurred in training and in providing tax return assistance, and sponsoring agencies and organizations may receive reimbursement for administrative expenses. The Tax Counseling for the Elderly program is referenced in the Catalog of Federal Domestic Assistance in Section 21.006.

Walter M. Alt,

Director, Taxpayer Service Divison.

[FR Doc. 82-23291 Filed 8-24-82; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Cooperative Studies Evaluation Committee; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Cooperative Studies Evaluation Committee, authorized by 38 U.S.C. 4101, will be held in Meeting Room A, Holiday Inn, Massachusetts Avenue at Thomas Circle, NW., Washington, D.C. 20005, October 20 through 22, 1982. The meeting will be for the purpose of reviewing proposed cooperative studies and advising the Veterans' Administration on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects. The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program, on its findings.

The meeting will be open to the public up to the seating capacity of the room from 8 to 8:30 a.m., on October 20 through 22, to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. James A Hagans, Coordinator, Cooperative Studies Evaluation Committee, Veterans Administration Central Office, Washington, DC (202–389–3702), prior to September 24.

The meeting will be closed from 8:30 a.m. to 5:45 p.m. on October 20, from 8:30 a.m. to 4:30 p.m. on October 21, and from 8:30 a.m. to 1:15 p.m. on October 22, for consideration of specific proposals in accordance with provisions set forth in subsection 10(d) of Pub. L. 92–463, as amended by section 5(c) of Pub. L. 94–409, and subsections (c)(6) and (c)(9)(B) of section 552b, title 5, United States Code. During this portion of the meeting, discussions and decisions will deal with qualifications of personnel conducting the studies and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of the Committee's recommendations would likely frustrate implementation of final proposed actions.

Dated: August 16, 1982.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 82-23205 Filed 8-24-82; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 165
Wednesday, August 25, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, August 30, 1982, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Colorado, Martinez, Odell, Calabria & Sierra, Hato Rey, Puerto Rico, in connection with the liquidation of Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications or requests approved by the Director or Associate Director of the Division and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final amendments to Part 309 of the Corporation's rules and regulations, entitled "Disclosure of Information," which would (1) delegate to the Corporation's General Counsel the authority to act on appeals from initial denials or partial denials of requests for records pursuant to the Freedom of Information Act; (2) delegate to the Corporation's Executive Secretary the authority to act on requests for a reduction or waiver of fees chargeable for making records available under the Freedom of Information Act; and (3) revise the schedule of fees charged for making records available.

Memorandum and resolution re: Final amendment to § 329.10(b)(3)(ii) of Part 329 of the Corporation's rules and regulations, entitled "Interest on Deposits," which would exempt mandatory convertible debt issues and obligations of state nonmember banks from the weighted average and minimum maturity requirements of Part 329.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: August 23, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary,

[S-1220-82 Filed 8-23-82; 3:43 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, August 30, 1982, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: August 23, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1221-82 Filed 8-23-82; 3:43 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Friday, August 20, 1982 the Board of Directors of the Federal Deposit Insurance Corporation met in

closed session, by telephone conference call, to consider the following matter:

Application of United American Bank in Hamilton County, Chattanooga, Tennessee, for consent to merge, under its charter and title, with City Bank and Trust, East Ridge, Tennessee, and to establish the three offices of City Bank and Trust as branches of the resultant bank.

In calling the meeting, the Board determined, on motion of Chairman William M. Issac, seconded by Director Irvin H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice on the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 55sb(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: August 23, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1222-82 Filed 8-23-3:43 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. Friday, August 20, 1982 the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the following matters:

Recommendation with respect to the initiation and conduct of a cease-and-desist proceeding against an insured bank (name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Application of United American Bank in Hamilton County, Chattanooga, Tennessee, for consent to merge, under its charter and title, with City Bank and Trust, East Ridge, Tennessee, and to establish the three offices of City Bank and trust as branches of the resultant bank.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S. C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: August 23, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson

Executive Secretary.

[S-1223-82 Filed 8-23-82; 3:43 pm]

BILLING CODE 6714-01-M

5

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 10 a.m., Monday, August 30, 1982.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistance to the Board (202) 452-3204.

Dated: August 20, 1982.

William W. Wiles,

Secretary of the Board.

[S-1218-82 Filed 8-20-82; 4:20 pm]

BILLING CODE 6210-01-M

6

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., September 9, 1982.

PLACE: Room 1101, 1825 K Street, N.W., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION:

Mrs. Patricia Bausell (202) 634-4015.

Dated: August 23, 1982.

[S-1216-82 Filed 8-23-82; 11:18 am]

BILLING CODE 7600-01-M

7

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., September 24, 1982.

PLACE: Room 1101, 1825 K Street, N.W., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION:

Mrs. Patricia Bausell (202) 634-4015.

Dated: August 23, 1982.

[S-1219-82 Filed 8-23-82; 11:18 am]

BILLING CODE 7600-01-M

8

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of August 30, 1982, in Room 6059, 450 5th Street, N.W., Washington, D.C.

A closed meeting will be held on Tuesday, August 31, 1982, at 10:00 a.m. An open meeting will be held on Wednesday, September 1, 1982, at 1:30 p.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(4)(8)(9)(i) and (10).

Commissioner Evans, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 31, 1982, at 10:00 a.m., will be:

Formal orders of investigation.

Access to investigative files by Federal, State, or Self-Regulatory authorities.

Litigation matters.

Regulatory matter regarding financial institution.

Subpoena enforcement action.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive action.
Regulatory matter bearing enforcement implications.
Institution of injunctive action.

The subject matter of the open meeting scheduled for Wednesday, September 1, 1982, at 1:30 p.m., will be:

1. Consideration of further matters relating to the registration of securities to be offered and sold on a delayed or continuous basis in the future (shelf registration), consequent to hearings held on this subject which took place during the week of June 28, 1982. For further information, please contact William Larsen at (202) 272-2589.

2. Consideration of whether to recommend to the Congress that it enact the Insider Trading Sanctions Act of 1982 which would permit the Commission to bring an action for civil penalties when certain persons violate the Securities Exchange Act of 1934 by purchasing or selling securities while in possession of material non-public information. In addition, consideration of whether the proposed statute should permit the Commission to petition the district court to direct payment of penalties in insider trading cases otherwise than to the United States Treasury. For further information, please contact James J. Junewicz at (202) 272-2420.

3. Consideration of certain matters concerning the decision of the Commission on July 7, 1982, regarding the acceleration of the effective date of registration statements of investment companies that have arrangements with banking institutions raising substantial issues under the banking laws. For further information, please contact Susan P. Hart at (202) 272-2098.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:
Catherine McGuire at (202) 272-2468.

August 23, 1982.

[S-1227-82 Filed 8-24-82; 10:48 am]
BILLING CODE 8010-01-M

federal register

Wednesday
August 25, 1982

Part II

Environmental Protection Agency

Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Equipment

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-(62015C); TSH-FRL 2184-6]

Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule amends portions of the existing PCB rule; this action is being taken in response to an order from the U.S. Court of Appeals for the District of Columbia Circuit. This rule authorizes the use of PCBs in capacitors and the use and servicing of PCBs in electromagnets, circuit breakers, voltage regulators, reclosers, cable, switches (including sectionalizers and motor starters), and transformers other than railroad transformers. It also provides for the distribution in commerce and disposal of this electrical equipment.

DATES: These amendments shall be considered promulgated for purpose of judicial review under section 19 of TSCA at 1:00 p.m. Eastern Daylight Time on September 8, 1982. These amendments shall be effective on September 24, 1982. As of August 19, 1982, the provisions of the PCB rule (44 FR 31514, May 31, 1979, recodified at 47 FR 19527, May 6, 1982) amended by this action and the Interim Measures Program (46 FR 16090, March 10, 1981) are no longer in effect unless the U.S. Court of Appeals for the District of Columbia Circuit has acted to stay further its mandate. EPA has asked the court for a stay of the mandate that would leave the 1979 rule as it applies to electrical equipment and the Interim Measures Program in effect until these amendments become effective. The court has not acted as of the date of signature of these amendments. If the court does grant EPA's request, the court's action will likely be retroactive to August 19, 1982. As a matter of Agency policy, EPA will not enforce the provisions of section 6(e) of TSCA against any person who complies with the provisions of the 1979 rule and the Interim Measures Program between the expiration of the current stay, August 19, 1982, and the date when the court grants EPA's request of this rule becomes effective, whichever comes first.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-509, 401 M St., S.W., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C. (554-1404), Outside the USA: (Operator-202-554-1404).

Copies of this rule and its support documents can be obtained from the Industry Assistance Office listed above.

SUPPLEMENTARY INFORMATION: OMB Control Number: 2070-0003.

I. Recodification of 40 CFR Part 761

Title 40 of the Code of Federal Regulations, Part 761, which regulates polychlorinated biphenyls (PCBs), has been reorganized. Notice of the recodification appears in the **Federal Register** of May 6, 1982 (47 FR 19527). This final rule uses the following new designations:

Old designation	New designation
Subpart A, § 761.2	Subpart A, § 761.3.
Subpart B, § 761.10	Subpart D, § 761.60.
Subpart C, § 761.20	Subpart C, § 761.40.
Subpart D, § 761.30	Subpart B, § 761.20.
Subpart D, § 761.31	Subpart B, § 761.30.
Subpart E, § 761.42	Subpart D, § 761.65.

II. Background

Section 6(e) of the Toxic Substances Control Act (TSCA) generally prohibits the use of PCBs after January 1, 1978. The statute sets forth two exceptions under which EPA may, by rule, allow a particular use of PCBs to continue. Under section 6(e)(2) of TSCA, EPA may allow PCBs to be used in a "totally enclosed manner." A "totally enclosed manner" is defined by TSCA to be "any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant, as determined by the Administrator by rule." TSCA also allows EPA to authorize the use of PCBs in a manner other than a "totally enclosed manner" if the Agency finds that the use "will not present an unreasonable risk of injury to health or the environment."

EPA promulgated a rule, which was published in the **Federal Register** of May 31, 1979 (44 FR 31514), to implement sections 6(e) (2) and (3) of TSCA. This rule is listed in the Code of Federal Regulations under 40 CFR Part 761. The rule designated all intact, nonleaking capacitors, electromagnets, and transformers other than railroad transformers as "totally enclosed", thus permitting their use without specific authorization or conditions. The Environmental Defense Fund (EDF) petitioned the U.S. Court of Appeals for the District of Columbia Circuit to review that portion of the PCB rule that designated the use of intact, nonleaking capacitors, electromagnets and transformers (other than railroad transformers) as "totally enclosed." (*Environmental Defense Fund, Inc.* v. *Environmental Protection Agency*, 636 F.2d 1267). On October 30, 1980, the court decided that there was insufficient evidence in the record to support the Agency's classification of transformers, capacitors, and electromagnets as totally enclosed. The court invalidated this portion of the rule and remanded it to EPA for further action. The effect of this decision would have been to make the use of capacitors, electromagnets, and transformers other than railroad transformers, containing any concentration of PCBs a violation of section 6(e) of TSCA. An immediate ban of these uses would not only have disrupted electric service but would also have caused severe economic hardship for the public and United States industry. Therefore, EPA concluded that it was completely impractical to take no action and allow a total ban on the use of this equipment to go into effect immediately.

On January 21, 1981, EPA, EDF, and certain industry intervenors in *EDF* v. *EPA* filed a joint motion with the court. The motion asked for a stay of the court's mandate setting aside the classification of transformers, capacitors, and electromagnets as totally enclosed. During the period of the stay, EPA agreed to conduct a rulemaking on the use of PCBs in electrical equipment beginning with an Advance Notice of Proposed Rulemaking (ANPR). In addition, the Edison Electric Institute (EEI) through the Utility Solid Waste Activities Group (USWAG) agreed to develop some of the factual material necessary for the rulemaking. The parties also agreed on interim risk-reduction measures (the Interim Measures Program) for transformers containing PCBs at 50 ppm or greater. They suggested that the court make these measures a condition of the eighteen-month stay.

On February 12, 1981, the court granted the requests of the joint motion and entered an order. The text of the court's order was published in the **Federal Register** of March 10, 1981, along with EPA's ANPR on the use of PCBs in electrical equipment (46 FR 16090 and 46 FR 16096, respectively). The court's order allows the totally enclosed classification (40 CFR 761.20), to remain in effect for the duration of the stay. Therefore, persons who use PCB-containing transformers, capacitors, and

electromagnets may use this electrical equipment during the stay of the court's mandate, providing that they comply with the PCB rule and the Interim Measures Program which is detailed in the court's order.

The February 12, 1981, court order required EPA to promulgate a final rule within six months of receipt of the study from EEI/USWAG. Since the final report of the EEI/USWAG study was received on February 19, 1982, EPA was required to promulgate this final rule on the use of PCBs in electrical equipment by August 19, 1982. EPA's proposed rule regarding the use of PCBs in electrical equipment was published in the **Federal Register** of April 22, 1982 (47 FR 17426).

This final rule will become effective on September 24, 1982. The court-ordered stay of mandate is currently scheduled to expire on August 19, 1982. If that mandate were to issue before this rule becomes effective, the use of PCB's in electrical equipment covered by the use authorizations contained in this rule would be a violation of section 6(e)(2) of TSCA until the rule becomes effective. Therefore, on August 5, 1982, EPA requested that the court further stay its mandate until November 1, 1982. As of the date of signature of these amendments, the court has not acted on EPA's request. EPA expects that the court will grant the further stay and that the stay will be retroactive to August 19, 1982. However, until the court grants EPA's request or these amendments become effective, persons affected by the amendments will be uncertain about what rules to follow. As a matter of Agency policy, EPA will not enforce the provisions of section 6(e) of TSCA against any person who complies with the provisions of the 1979 rule and the Interim Measure Program between the expiration of the current stay, August 19, 1982, and the date when the court grants EPA's request or this rule becomes effective, whichever comes first.

In order to avoid a "race to the courthouse" by persons seeking judicial review of this rule, EPA has decided to designate the time and date of "promulgation" of this rule as 1:00 p.m. Eastern Daylight Time on September 8, 1982. The Agency has previously taken this approach for rules promulgated under the Clean Water Act (see 40 CFR 100.01, 45 FR 26048). The Agency will be considering a general rule for TSCA similar to 40 CFR 100.01.

III. Electrical Equipment Containing PCBs

This rulemaking was initiated to deal with those uses of PCBs which EPA had formerly classified as totally enclosed (transformers other than railroad transformers, capacitors, and electromagnets). (Any reference to transformers in this rule does not include transformers used on locomotives and self-propelled railroad cars unless otherwise specified.) In general, this equipment falls into two categories: (1) Equipment designed to contain PCBs at a high concentration and (2) equipment designed to contain mineral oil. Because of past manufacturing and servicing practices, the mineral oil-filled equipment often contains PCBs at low concentrations. The 1979 rule defined a PCB Transformer as one containing more than 500 ppm and a PCB-Contaminated Transformer as one containing between 50 and 500 parts per million (ppm). Very little mineral oil equipment contains PCBs at a concentration of 500 ppm or greater. This final rule makes frequent reference to the three ranges of PCB contamination: 0–50 ppm, 50–500 ppm, and greater than 500 ppm.

While administering the May 1979 PCB rule and gathering information for this rulemaking, EPA has identified five additional categories of oil-filled electrical equipment that contain PCB's. Those are: voltage regulators, switches (including sectionalizers and motor starters), circuit breakers, reclosers, and cable. These uses were not addressed in the May 1979 PCB rule because EPA was not aware that these devices contained PCBs.

IV. Summary of the Final Rule

This final rule modifies and clarifies some of the requirements presented in the proposed rule because of information obtained during the comment period and the public hearing (June 7–10, 1982) on the proposed rule. EPA's responses to various issues raised during this rulemaking are discussed in this "preamble" and are presented in more detail in a document titled "Support Document for the Electrical Equipment Use Rule/Response to Comments." The major elements of the final rule are summarized in the following list, with changes from the proposed rule highlighted. This final rule:

1. Uses the recodified version of the PCB rule (40 CFR Part 761).

2. Prohibits the use of PCB Transformers and PCB-filled electromagnets (with a PCB concentration of 500 ppm or greater) posing an exposure risk to food or feed, after October 1, 1985, and requires a weekly inspection of this equipment for leaks of dielectric fluid until that date. (The proposed rule would have authorized the use of this equipment indefinitely with a requirement for weekly inspections).

3. Authorizes the use of all other PCB Transformers for the remainder of their useful lives, and requires a quarterly inspection of this equipment for leaks of dielectric fluid.

4. Authorizes the use of large PCB Capacitors that are located in restricted-access electrical substations for the remainder of their useful lives. (The proposed rule would have only authorized the use of this equipment for ten years.)

5. Authorizes the use of large PCB Capacitors that are located in contained and restricted-access indoor installations for the remainder of their useful lives. (The proposed rule would have authorized the use of this equipment for only ten years.)

6. Prohibits the use of all other large PCB Capacitors after October 1, 1988. (The proposed rule would have authorized the use of this equipment for ten years.)

7. Eliminates the proposed inspection requirements for all large PCB Capacitors.

8. Authorizes the use of all PCB-containing, mineral oil-filled electrical equipment for its remaining useful life.

9. Clarifies what constitutes electrical equipment posing an exposure risk to food or feed.

10. Allows oil-filled cable to be assumed to contain less than 50 ppm PCBs if the actual PCB concentration is unknown. (The proposed rule would have required that the concentration be assumed to be between 50 and 500 ppm if it were unknown.)

11. Allows storage for disposal of nonleaking PCB Large High Voltage Capicators and PCB-Contaminated Electrical Equipment outside of qualified storage facilities after January 1, 1983. The proposed rule prohibited this storage after January 1, 1983.

12. Requires records of inspection and maintenance histories to be maintained for at least 3 years after disposing of PCB Transformers. (The proposed rule would have required record retention for five years.)

13. Clarifies that "disposal" includes leaks of PCBs.

14. Does not include the language contained in the proposed rule regarding the required extent of cleanup of PCB spills. Comments urged EPA to postpone consideration of this language, and the extent of cleanup of PCB spills will not be dealt with at this time.

V. Use Authorizations

As previously described, section 6(e)(2) of TSCA allows uses of PCBs in a

totally enclosed manner to continue without restriction. Section 6(e)(2)(C) defines the term "totally enclosed" to mean "any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant as determined by the Administrator by rule." In the May 31, 1979 rule, EPA defined insignificant exposure as "not measurable or detectable by any scientifically acceptable analytical method." After examining the information submitted in response to this rulemaking, EPA has decided that no electrical equipment uses should be categorized as use in a totally enclosed manner. The leakage data contained in this information show that all types of electrical equipment leak during normal operation. Since this leakage could result in some detectable exposure of humans and the environment to PCBs, EPA believes that it is not appropriate to classify the use of this equipment as use in a totally enclosed manner.

This final rule allows the use of certain electrical equipment containing PCBs to continue under specified conditions because EPA has concluded that the uses will not present an unreasonable risk of injury to human health or the environment. This finding is in accordance with the provisions of section 6(e)(2)(B) of TSCA. The specific unreasonable risk findings are made for each authorized use in later sections of this preamble.

To determine whether a risk is unreasonable, EPA balanced the probability that harm will occur from the use against the benefits to society of the proposed regulatory action. In doing this, EPA has considered the following factors:

1. The effects of PCBs on human health and the environment.
2. The magnitude of PCB exposure to humans and the environment.
3. The benefits of using PCBs and the availability of substitutes for PCB uses.
4. The economic impact resulting from the rule's effect upon national economy, small business, technological innovation, the environment, and public health.

These are the same types of considerations listed in section 6(c) of TSCA, which describe factors EPA must consider in deciding whether a chemical presents an unreasonable risk under section 6(a) of TSCA.

A. Effects on Human Health and the Environment

In any regulatory context, agencies have imperfect data, but they still must regulate on the basis of the best data available. There are differing interpretations of data regarding the potential risks of PCBs to human health and the environment. Although additional study may be suggested, EPA is concerned about the health and environmental effects of PCBs on the basis of the data available now. These data are sufficient to support EPA's approach in this rule.

In *EDF* v. *EPA*, EPA's regulatory cutoff of 50 ppm was set aside by the court. As a result, other rulemaking activities are currently underway which deal with PCBs in low concentrations. EPA has been ordered by the D.C. Court of Appeals to submit, by November 1, 1982, a plan for dealing with certain PCBs in concentrations under 50 ppm. EPA expects that the implementation of this plan will lead to additional rulemaking.

The health effects data base for PCBs is continuously increasing. The Agency will consider any additional pertinent information on health and environmental effects and information on risks associated with PCBs during the development of that future rulemaking.

Should new information on health effects or other areas of concern with PCBs become known, Section 21 of TSCA provides a mechanism for interested persons to petition the Agency to initiate new rulemaking or modify existing rules.

In determining whether authorizations are warranted, EPA considered information regarding the effects of PCBs on human health and the environment. The effects of PCBs were described in various documents which are part of the rulemaking record for the May 31, 1979, rule. EPA evaluated this information, new information submitted to the Agency, as well as other recent literature on the effects of PCBs. The results are presented in the document "Response to Comments on Health Effects of PCBs". This document is included in the rulemaking record. Copies of this document are available through the Industry Assistance Office (see the "FOR FURTHER INFORMATION CONTACT" paragraph).

1. *Health effects.* Documents on health effects were submitted to EPA by (1) the Edison Electric Institute (EEI) together with the Utility Solid Waste Activities Group (USWAG) and the National Rural Electric Cooperative Association (NRECA), (2) the National Electrical Manufacturers Association (NEMA), and (3) the Chemical Manufacturers Association (CMA). These documents are included in the rulemaking record. These documents concluded that the use of PCBs in electrical equipment does not present a significant risk to human health.

EPA has reached conclusions different from those presented in the documents submitted. While PCBs have not been found to be uniquely toxic, EPA concludes that they are toxic and persistent.

EPA agrees with the comments submitted that chloracne occurs in humans exposed to PCBs. Although the effects of chloracne are reversible, EPA does not consider it insignificant. Chloracne is painful, disfiguring and may require a long period of time before symptomatology disappears. Other areas of major concern have been identified by EPA. EPA finds that reproductive effects, developmental toxicity, and oncogenicity are areas of concern and may produce effects in humans exposed to PCBs.

Available data show that some PCBs have the ability to alter reproductive processes in mammalian species, sometimes even at doses that do not cause other signs of toxicity. Animal data and limited available human data indicate that prenatal exposure to PCBs can result in various degrees of developmentally toxic effects. Postnatal effects have also been demonstrated on immature animals following exposure prenatally and via breast milk.

Available animal studies indicate an oncogenic potential (the degree of which would be dependent on exposure). Available epidemiology data are not adequate to confirm or negate oncogenic potential in humans at this time. Further epidemiological research is needed in order to correlate human and animal data, but EPA does not find any evidence to suggest that the animal data would not be predictive of human potential.

EPA agrees that little or no mutagenic activity from PCBs is indicated from available data. It is EPAs opinion that more information is needed to draw a final conclusion on the possibility of mutagenic effects from PCBs.

EPA does not attribute all the effects observed with PCBs to be due to toxic impurities. Relatively pure PCB congeners have been shown to produce toxicity equivalent to that found when testing commercial PCB mixtures containing higher levels of impurities.

EPA also does not assume that all PCBs are equivalent toxicologically. It cannot be assumed that if one PCB congener is positive or negative for a specific health effect, then all PCB congeners are also positive or negative for that specific health effect. Research is just beginning in this area; many more studies need to be conducted on specific congeners before conclusions can be

reached on an isomer or congener specific basis.

2. *Environmental effects.* Very little information was submitted during the comment period with regards to the environmental effects of PCBs. EPA has conducted a literature search to provide additional information on the environmental effects of PCBs.

PCBs have been shown to affect the productivity of phytoplankton and the composition of phytoplankton communities. Deleterious effects on environmentally important freshwater invertebrates from PCBs have been demonstrated. PCBs have also been shown to impair reproductive success in birds and mammals.

It has been demonstrated that PCBs are toxic to fish at very low exposure levels. The survival rate and the reproductive success of fish can be adversely affected in the presence of PCBs. Various sublethal physiological effects attributed to PCBs have been recorded in the literature. Abnormalities in bone development and reproductive organs have also been demonstrated.

EPA concludes that PCBs can be concentrated and transferred in freshwater and marine organisms. Transfer up the food chain from phytoplankton to invertebrates, fish, and mammals can result ultimately in human exposure through consumption of PCB-containing food sources.

3. *Risks.* Toxicity and exposure are the two basic components of risk. As indicated above, EPA concludes that in addition to chloracne there is the potential for reproductive effects and developmental toxicity as well as oncogenic effects in humans based on animal data. EPA also concludes that PCBs do present a hazard to the environment. Potential for exposure of the environment to PCBs was included in EPA's consideration of each category of use of PCBs in electrical equipment.

Minimizing exposure to PCBs should minimize any potential risk. The requirements of this rule will result in the reduction of exposure, and in some uses eliminate exposure to PCBs, relative to present exposure levels from electrical equipment use. EPA's analysis of alternative conditions for use authorizations includes examining the effectiveness of each condition in reducing exposure, thereby reducing the associated risk.

B. General Benefits of Using Electrical Equipment

The electrical equipment being considered in this rulemaking is used extensively by electric utilities and other industries to provide efficient and reliable electrical energy. There are currently millions of pieces of electrical equipment in use which contain PCBs. Although allowing the statutory ban to become effective is theoretically one available alternative, EPA believes an immediate ban on these uses would be unacceptable since it would disrupt electric service throughout the United States. An adequate supply of non-PCB replacement equipment and storage/disposal capacity is not immediately available. The resulting economic impact associated with an immediate ban has been conservatively estimated at about $175 billion in the Regulatory Impact Analysis prepared for this rulemaking.

The other factors that EPA considered to determine whether uses of PCBs in electrical equipment warrant authorization, the balancing of these factors, and EPA's conclusions regarding unreasonable risks are discussed separately in this notice for each category of electrical equipment.

C. Use and Servicing of Transformers

This unit on the use and servicing of transformers analyzes only those transformers that do not pose an exposure risk to food or feed. The analysis of equipment posing an exposure risk to food or feed is found in Unit E of this portion of the preamble.

Transformers are used extensively by electric utilities and other industries to transmit and distribute electric power efficiently. The use of PCBs in transformers has resulted in the dielectric fluid of some transformers containing between 60 and 70 percent PCBs by design. Transformers designed to contain mineral oil dielectric fluid have been contaminated with PCBs during past servicing and manufacturing activities.

EPA estimates that there are 39,600 PCB Transformers designed to contain PCBs in use in the electric utility industry and approximately 91,600 in all other applications. EPA also estimates that there are over 20 million mineral oil transformers in use in the electric utility industry and about 5 million in all other applications. These estimates are for the end of 1981 and are summarized in the proposed rule for this rulemaking (47 FR 17426, April 22, 1982).

Transformers are located throughout the nation's electrical generation, transmission, and distribution systems, many of which are located near consumers of electric power. However, transformers designed to contain PCBs are more restricted in their distribution than other transformers. These PCB Transformers are located in secure indoor locations and in electrical substations and are not mounted on utility poles throughout electric service areas.

1. *Magnitude of exposure.* EPA is concerned about releases of PCBs from all transformers because of the potential to expose humans and the environment to PCBs. In general, PCB Transformers pose greater exposure risks due to the use of higher concentration and larger quantities of PCBs than mineral oil-filled transformers. A release of PCBs into the environment has the potential to reach acquatic systems, build up in the food chain and ultimately expose humans through ingestion of PCBs.

Although it is impossible to measure exactly the effectiveness of an inspection and maintenance program in avoiding releases of PCBs to the environment, such a program will reduce the actual amount of PCBs released from PCB Transformers by correcting otherwise undetected leaks of dielectric fluid and reducing the number of transformer failures due to improper maintenance. Additional benefits of this program include containment of active leaks which are discovered and cleanup and disposal of leaked material. All of these benefits will result in reduced exposure to PCBs. EPA estimates that without an inspection and maintenance program as many as 1.3 million pounds of PCBs could be released from PCB Transformers over their entire lifetimes.

2. *Benefits of PCBs and availability of substitutes.* Although the electrical properties of PCBs are not as good as mineral oil, PCBs have a higher fire point than mineral oil. It is the fire resistance of PCBs that makes them an excellent dielectric fluid in transformers located where concerns for fire safety are paramount.

PCB Transformers can be replaced by comparably rated mineral oil transformers even where fire safety is an issue as long as fire codes and insurance requirements allow it. In most cases these restrictions require additional fire prevention measures, such as vaults, sprinklers, or alarms.

A number of other substitute dielectric fluids have been developed to replace PCBs. These fluids can be used in replacement transformers or used to refill transformers which contain PCB dielectric fluid. Many of these fluids appear to possess acceptable characteristics. The National Electrical Manufacturers Association estimates that new transformers to replace all PCB Transformers could be manufactured in five years or less using these substitute fluids. Substitute fluids for PCBs offer satisfactory electrical properties and flammability characteristics which are much better than mineral oil. The

persistence and bioaccumulative properties of PCB substitute fluids are less those of PCBs.

Persons owning mineral oil transformers containing PCBs may substitute for the PCBs by purchasing new equipment that does not contain PCBs, replacing the contaminated fluid with new fluid that does not contain PCBs, or otherwise servicing the existing dielectric fluid in order to reduce the PCB concentration.

3. *Economic and environmental impacts of regulatory requirements.* As discussed under "Magnitude of Exposure," the actual environmental impact of a quarterly inspection program for PCB Transformers that do not pose an exposure risk to food or feed is impossible to measure. However, a quarterly inspection and maintenance program has been demonstrated for more than one year under the Interim Measures Program to be an effective measure in reducing total releases of PCBs from these transformers. This fact was confirmed by comments in response to the ANPR and the proposed rule. Comments indicated that this inspection and maintenance program reduced releases of PCBs from transformers and supported it as an effective risk reduction measure.

EPA estimates that the cost of a quarterly inspection and maintenance program is $28.8 million for the electric utility industry and $47.9 million for nonutility industries. These estimates represent total costs of the required program over the entire useful lives of the transformers. Additional costs and benefits associated with the use authorization and conditions are discussed in the Regulatory Impact Analysis developed for this final rule. This document also contains an analysis of costs and benefits of other regulatory options considered but not adopted, including some options which were considered in the development of the proposed rule.

4. *Findings on the use and servicing of transformers.* In the proposed rule, EPA discussed whether the use of PCBs in transformers should continue and analyzed options that would effectively reduce the risks of exposure from the use of PCB-containing transformers. The proposed rule authorized the use of PCBs in transformers for the remainder of their useful lives, subject to certain conditions.

Several comments disagreed with EPA's proposed rule. These comments suggested a wide range of alternatives, from phasing out the use of PCBs in all transformers in a very short period of time to authorizing them with no conditions. However, no comments provided information that leads EPA to conclude that its findings in the proposed ruled were inappropriate.

The cost of imposing the more restrictive conditions suggested by some comments are not reasonable in comparison to the benefits of such conditions. For example, one comment suggested that the use of PCBs in all mineral oil transformers should be phased out in a very short period of time, perhaps as short as three years. Such an approach would cost millions of dollars per pound of PCB release avoided. EPA concludes that the imposition of such a condition is not reasonable.

On the other hand, some comments suggested the raising of the upper limit of the range of contamination of PCB-Contaminated Transformers from 500 ppm to 5000 ppm. Such an approach would result in unnecessary and avoidable exposure to PCBs since there is information in the rulemaking record that indicates that technology is available at reasonable cost to reduce the PCB concentration in transformers to below 500 ppm. Comments at the hearing by people who have performed such operations or have studied the subject indicate that concentrations below 500 ppm have been achieved by draining, flushing, and refilling followed by additional servicing.

After reviewing all of the information submitted in response to the proposed rule and other information in the rulemaking record, EPA concludes that the requirements presented in the proposed rule for transformers not posing an exposure risk to food or feed were reasonable. Details of the calculations of costs and benefits which led EPA to this conclusion are found in the Regulatory Impact Analysis. EPA's responses to specific comments are contained in the Support Document for the Electrical Use Rule—Response to Comments.

This final rule does not make any major changes to the proposed conditions of the use authorization for PCB-containing transformers that do not pose an exposure risk to food or feed. The few minor changes that were made are explained in subsequent paragraphs.

To reduce the risks associated with the release of PCBs from PCB Transformers, this rule requires inspection and maintenance procedures as a condition to the use authorization for all PCB Transformers. These conditions vary with the potential for exposure to PCBs. A quarterly inspection and maintenance program is required for all PCB Transformers that do not pose an exposure risk to food or feed. However, the inspection frequency is reduced to annually for any PCB Transformer which contains less than 60,000 ppm PCBs or has secondary containment capable of holding at least 100 percent of the transformer's fluid volume. No inspection or follow-up maintenance procedures are required for transformers containing less than 500 ppm PCBs because of the low concentration of PCBs involved.

A program of inspection and maintenance for PCB Transformers reduces the amount of PCBs released and resultant PCB exposure by finding, stopping, and cleaning up small leaks of dielectric fluid. Properly maintained transformers are less likely to experience leaks, spills, or equipment failure. An inspection program also keeps company personnel informed and alert to the potential impact of PCBs discharged from electrical equipment.

Although some data submitted in response to the proposed rule indicated that certain government-owned PCB Transformers leak more than transformers owned by others, EPA believes that the required follow-up maintenance to correct leaks addresses this problem. In addition, owners of transformers that have high service costs to repair recurring leaks have an incentive to replace it as PCB-Contaminated Electrical Equipment or reclassify the transformer.

Servicing restrictions also apply as a condition to the use authorization for transformers that contain PCBs. Any servicing of a PCB Transformer (including rebuilding) that requires the removal of the transformer coil from the transformer casing is prohibited. This condition not only reduces the exposure risks to service personnel, but, also prevents the use of PCB Transformers beyond their normal operating lives. Other servicing conditions primarily prevent the further contamination of PCB-containing transformers.

EPA believes that authorizing the use of PCB-filled transformers and mineral oil-filled transformers containing PCBs according to the proposed conditions does not present an unreasonable risk for the following reasons:

a. If EPA did not authorize the use of PCBs in tranformers, it would cost the public and United States industry billions of dollars, primarily as a result of the disruption of electrical service. The resulting reduction in risk would not outweigh these substantial costs.

b. The required inspection and maintenance program reasonably reduces the exposure risks associated with the use of PCBs in PCB Transformers, and the servicing conditions prevent further PCB

contamination of transformers. These measures are much less costly than a ban on the use of PCBs in transformers would be.

c. Releases of PCBs to the environment and exposure to humans and biological organisms from mineral oil transformers are minimal. EPA estimates that these transformers contain less than 0.15 percent of all the PCBs used in transformers and release less than one half of a percent of these PCBs on an annual basis.

d. The costs associated with other risk reduction measures such as accelerated phase-out, reducing the PCB concentration in the dielectric fluid, or providing containment for transformers are not reasonable when compared to the potential reduction in release of PCBs achieved if any of these measures were required for all PCB Transformers.

Several comments said that even though phase-out, containment, and reduction of PCB concentration are not warranted as regulatory requirements, each of these measures might be cost-effective in individual situations on a voluntary basis. In fact, some companies have already initiated such efforts because of benefits in their specific cases. EPA agrees with these comments, and, to recognize the positive effect those actions have in reducing risks from PCB Transformers, this rule provides for less frequent inspections for those PCB Transformers. For a PCB Transformer with secondary containment capacity of at least 100 percent of the transformer's total dielectric fluid volume, or a PCB Transformer which contains less than 60,000 ppm (6 percent) PCBs, a visual inspection is required only once every 12 months. Secondary containment of at least 100 percent of the transformer's total dielectric fluid volume will contain virtually all releases of PCBs from the transformer. Draining, flushing, and refilling a PCB Transformer reduces the amount of PCBs in a transformer by a factor of between 10 and 15, leaving a residual PCB concentration of between 30,000 and 80,000 ppm. EPA believes that, for transformers with these kinds of reduced risks, it is reasonable to inspect no more often then once per year. EPA chose a 60,000 ppm PCB concentration cutoff because, on the basis of numerous demonstrations, it has been shown to be a consistently achievable concentration after one carefully conducted fluid replacement for a PCB Transformer. Additional incentives (such as reduced or eliminated use, servicing and disposal requirements) exist in the PCB rules which encourage further reduction in PCB concentration to 50 and 500 ppm.

Several persons commented that the visual inspection required by this final rule could pose an electrical shock hazard to unqualified personnel. It has always been EPA's intent that the extent of a visual inspection should be only as complete as safely possible. This will vary, depending on the physical constraints of each transformer installation. No visual inspection should require an electrical shutdown of the transformer being inspected. Transformers that require electrical isolation (shutdown) to be inspected thoroughly (due to safety precautions, enclosures, etc.) may be inspected as completely as possible without disconnecting the transformer. Future inspections should then be coordinated when possible with equipment outages from the power system so that more thorough inspections can be completed.

The proposed rule did not specify the time period in which quarterly and annual inspections must take place. Several comments suggested that inspection frequencies should be flexible in order to take advantage of equipment outages which can occur at irregular intervals. EPA agrees with this comment and, for quarterly inspections, has added regulatory language that allows inspections for leaks of dielectric fluid to take place any time during the quarter (i.e. January–March, April–June, July–September, and October–December) as long as there is a minimum of 30 days between inspections. Inspections may also take place any time during the calendar year for annual inspections as long as there is a minimum of 180 days between inspections.

Follow-up maintenance activities to repair a leak are required only if corrective action is necessary to stop the leak. EPA recognizes that some small leaks of dielectric fluid are unavoidable in the operation of a transformer and repairs are not always required to stop a leak. A leak of dielectric fluid which has run off or is about to run off the external surface of the transformer clearly needs repair to prevent further leaking. A leak of dielectric fluid which does not form a run or drip, i.e. a sweat or a weep, and does not require repair to prevent further leaking, only requires proper cleanup. All leaks must be cleaned up within 48 hours and the PCB-contaminated materials properly disposed of in a timely fashion. If dielectric fluid is actively leaking, the leak must be contained to prevent the PCBs from entering the environment and inspected daily to verify that the leak is being contained until the leak is corrected.

This final rule requires recordkeeping of each PCB Transformer's inspection and maintenance history. This requirement will assist companies in the operation of their inspection and maintenance program and help management determine that the company is meeting the conditions of the use authorization. These records may be maintained in any form or format as long as all of the required information is available (in hard copy) upon request by EPA. These records must be maintained for at least three years after disposing of the transformer and should be coordinated with other records required for the transformer under the PCB rule (formerly 40 CFR 761.45 and correctly recodified in this document to 40 CFR 761.180). This time period was reduced from the five-year requirement in the proposed rule. Several comments indicated that five years was excessive and resulted in unnecessary costs. EPA has reduced the period in response to these comments and because it believes that the three-year time period provides a sufficient history for EPA to monitor compliance with a reasonable interval between compliance inspections.

Because reporting of PCB spills are mandated under § 311 of the Clean Water Act for discharges to navigable waters, and under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) for discharges to other media, this rule does not require any additional reporting.

D. Use of Capacitors

This section on the use of capacitors analyzes only those capacitors that do not pose an exposure risk to food or feed. Analysis of the exposure risks associated with equipment that poses an exposure risk to food or feed is found in section E.

Large PCB Capacitors (PCB Large High Voltage and PCB Large Low Voltage) are also used extensively by electric utilities and other industries. Large PCB Capacitors contain more than 3 pounds of dielectric fluid and are commonly used to improve the voltage and power factor of the electric power system. Virtually all capacitors (large and small) manufactured prior to 1978 were filled with PCB fluid at a concentration near 100 percent. Capacitors manufactured after 1978 did not use PCB dielectric fluid.

EPA estimates that there were 2,800,000 utility-owned large PCB

Capacitors in service at the end of 1981. EPA also estimates that the total population of in-service nonutility-owned large PCB Capacitors was 490,000 at the end of 1981.

Large PCB Capacitors are located within fenced electrical substations, within buildings, and on utility poles throughout the service areas of electric utilities. Many comments pointed out that there are significant differences between the risk posed by Large Capacitors depending upon their location. Therefore, this final rule recognizes the widespread distribution of large PCB Capacitors and distinguishes two different exposure risk categories by capacitor location. The two categories are: (1) capacitors used within restricted-access electrical substations or used in contained and restricted-access indoor installations, and (2) capacitors used in all other locations (primarily in electric utility distribution systems).

1. *Magnitude of exposure.* Large PCB Capacitors used within restricted-access electrical substations and in contained and restricted-access indoor locations pose comparatively low exposure risk. A restricted-access electrical substation is a fenced or walled-in facility that is restricted to public access and used in the transmission or distribution of electric power. Releases of PCBs from capacitors in these substations beyond the confines of the substation are extremely limited. In most cases, PCBs become intimately bound to the gravel and soil and very little PCBs evaporate or dissolve or are driven off by rain. In a report by Dr. Donald Mackay titled Environmental Pathways of Polychlorinated Biphenyls (Volume IV of the EEI/USWAG study), Dr. Mackay calculates that the likely extent of evaporation from a "typical" pure PCB spill into soil is 0.16 percent per day and the dissolution rate of a spill into water is typically a factor of 100 slower than evaporation. Many comments indicated that substations are inspected at regular intervals, often at intervals of one week or less. Because of these frequent inspections and because there is evidence that PCBs usually migrate slowly from a spill within a substation, EPA concludes that a very high percentage of all PCB releases from capacitors in these locations can be identified and cleaned up quickly with very little risk of exposure to humans or the environment. EPA estimates that 41,073 pounds of PCBs could be released from large PCB Capacitors in Restricted-access electrical substations.

Similarly, certain other facilities, described in this rule as contained and restricted-access indoor installations, also present limited exposure risk potential. An installation meeting this description has a roof, walls, and floors that will contain any release of PCBs within the indoor installation. This type of installation also prevents rain from reaching the large PCB capacitors and has controlled access to these PCB capacitors. A building which prevents PCB releases from escaping, including escape through drains or expansion joints, would be acceptable. This type of contained and restricted-access installation allows proper cleanup of PCBs with very little exposure to humans or the environment. EPA estimates that 25,728 pounds of PCBs could be released from large PCB capacitors in contained and restricted-access indoor installations.

The second category of large PCB Capacitor locations represents all other locations. The capacitors in this category are primarily located on utility poles throughout electric service areas. The exposure risks associated with those capacitors vary due to their widespread use. These capacitor installations are used in residential neighborhoods, industrial areas, rural areas, public areas (such as shopping centers, schools, etc.), and even near waterways. The capacitors, because of their locations, have a greater potential for exposing humans, animals, and the environment during their use than other large PCB Capacitors. EPA estimates that without any risk reduction measures these capacitors could release as many as 730,110 pounds of PCBs during their remaining useful life.

2. *Benefits of PCBs and availability of substitutes.* The electrical properties of PCBs are so well suited as a dielectric fluid for capacitors that no other fluids were commonly used in capacitors prior to 1978. Since 1978, electric utilities and other industries have been installing non-PCB Capacitors with no apparent replacement or operational problems.

Under this final rule EPA estimates that 1.087 million large PCB Capacitors (or 108.7 million KVAR, assuming an average size of 100 KVAR) will require removal due to the accelerated phase-out requirements. (KVAR is the abbreviation for reactive kilovolt-ampers, which is a standard power rating for capacitors.) EPA assumes that companies will take one year to plan for the phase-out and five years to implement it. Considering the additional capacitors that will require replacement due to failure or obsolescence, EPA estimates that a peak annual power capacitor manufacturing capacity of 29 million KVAR (about 145,000 200–KVAR units) will be required to meet the total demand for replacements. EPA's estimates for the demand for new power capacitor applications (unrelated to any demand for replacements) range from 9.7 million KVAR to 20.3 million KVAR per year. Therefore, the maximum total annual demand for power capacitors should be between 38.7 and 49.3 million KVAR under this final rule.

In a survey of domestic capacitor manufacturers by the National Electrical Manufacturers Association in response to this rulemaking, four respondents indicated that production could be increased 65 percent by 1983 or earlier. With this increase in production, the total annual power capacitor manufacturing capacity would be 47.85 million KVAR.

According to these estimates, manufacturing capacity is adequate for companies to comply with the requirement to phase out these capacitors over the next six years. The derivation of the estimates and a further discussion of the methodology used to arrive at this conclusion is found in the Regulatory Impact Analysis prepared for this final rule.

3. *Economic and environmental impacts of regulatory requirements.* The economic impact of this final rule was calculated in terms of the lost economic value associated with removing PCB Capacitors before the end of their useful lives. EPA estimates this cost to be $135.8 million. EPA estimates that the net present value of the phase-out cost for the electric utility industry is only 0.05 percent of the 1979 net value of assets in electric plant nationally.

It should be noted that the direct costs of the regulatory requirements for large PCB Capacitors do not include the energy savings associated with the use of more efficient replacement capacitors. This savings is very significant for capacitors that were manufactured using paper insulation (approximately pre-1966). The Regulatory Impact Analysis prepared for this final rule estimates that the payback period for capacitors with paper insulation is approximately 11 years, assuming that the capacitors are in use 50 percent of the time.

By removing large PCB Capacitors before the end of their useful service lives it prevents the release of PCBs during the remaining years of use. EPA estimates that this final rule avoids an estimated 572,000 pounds of PCBs from release from large PCB Capacitors that doe not pose an exposure risk to food and feed. A more complete discussion of the costs and benefits associated with the regulatory requirements is presented

in the Regulatory Impact Analysis prepared for this final rule.

4. *Findings on the use of capacitors.* The proposed rule discussed whether the use of PCBs in capacitors should continue and the options EPA considered to reduce the risks from the use of PCBs in capacitors. The proposed rule authorized the use of capacitors for ten years. Several comments suggested that capacitors should be categorized on the basis of difference in potential for exposure. These differences arise because of differences in the accessability of the capacitor location and differences in the degree of containment of any PCB spills or leaks which may occur. EPA agrees with these comments and has created categories based on the comments. Other comments urged EPA to eliminate the phase-out requirement altogether. With respect to those capacitors in the category with comparatively low exposure potential, EPA agrees with these comments and has eliminated the phase-out, but with respect to other capacitors, EPA has concluded that the cost of a six-year phase-out is reasonable because of the large quantity of PCBs release which will be avoided and because of the comparatively high potential for exposure in these locations.

This final rule prohibits the use of large PCB Capacitors after October 1, 1988, unless the capacitors are used in restricted-access outdoor electrical substations, or in contained and, restricted-access indoor installations. EPA finds that the more limited potential for exposure in these restricted-access locations warrants authorizing their use for the remainder of their useful lives.

A very large number of comments stated that the benefits of an inspection program for capacitors do not outweigh the costs. In most cases, large releases of PCBs from capacitors (ruptures) happen very suddenly as a result of a large amount of energy entering the capacitor in a very short time period. Inspections of in-service capacitors cannot detect characteristics which indicate a capacitor's potential to release PCBs. EPA agrees that the effectiveness of an inspection program for large PCB Capacitors is very limited in preventing future releases of PCBs. Therefore, this final rule eliminates the proposed requirement that large PCB Capacitors must be inspected for leaks of dielectric fluid on a quarterly basis.

An inspection program can speed the detection and cleanup of PCBs in cases where a release has already occurred and the release has not been detected or cleaned up. However, EPA has learned from comments on the proposed rule that for large capacitors located on distribution systems that a utility company or other owner is almost always notified of PCB releases by the public or company personnel within a much shorter time period than the proposed quarterly inspection frequency. Furthermore, large PCB Capacitors located in electrical substations and indoors are typically inspected by company crews more frequently than the proposed quarterly inspection due to existing concerns for system efficiency and stability.

EPA finds that authorizing the use of PCBs in capacitors not posing an exposure risk to food or feed, under the required conditions, does not present an unreasonable risk for the following reasons:

a. The use of PCBs in large PCB Capacitors that are located in restricted-access indoor installations for their remaining useful lives is such that PCBs released from these capacitors are readily identified and cleaned up with limited exposure potential to humans and the environment.

b. The required six-year phase-out period for large PCB Capacitors should prevent more than 500,000 pounds of PCBs from entering the environment and some unknown percentage of that quantity from entering the food chain. This time period also avoids any disruption of electrical service.

c. The cost of the phase-out requirement is reasonable when compared to the large amount of PCBs it prevents from entering the environment and the costs and benefits of alternative risk reduction measures. This cost is only $237 per pound of PCB release avoided.

5. *Small capacitors.* PCB Small Capacitors contain less than 3 pounds of dielectric fluid. These capacitors commonly contain between 0.1 and 0.6 pounds of PCBs and are used in fluourescent light ballasts, household appliances, and industrial equipment. In most applications, the equipment containing the small capacitor in its circuitry cannot function without it. In 1976, an EPA study estimated that 870 million small capacitors, containing 275 million pounds of PCBs, were in use in a wide variety of applications. Today, EPA estimates that approximately 500 million of these small capacitors are still in use. EPA calculated this figure assuming that 10 percent of these capacitors are removed from service annually due to equipment or appliance obsolescence and capacitor failure.

No data has been submitted to EPA which indicate that small capacitors have a different propensity to leak than other capacitors. Additionally, no comments have identified any practical and cost-effective use restrictions regarding the use of PCB Small Capacitors. Because of the widespread and diverse nature of their use and the small amount of PCBs contained within each individual small capacitor, all regulatory approaches targeted at controlling releases from these capacitors are very expensive when compared to the potential quantity of PCBs kept from the environment. Consequently, EPA has not identified a reasonable cost-effective regulatory alternative that would result in significantly reducing the risks associated with the remaining PCB Small Capacitors in service. Therefore, this final rule does not require any restrictions regarding the use of PCBs in small capacitors. However, EPA encourages commercial and industrial firms that use and dispose of large quantities of PCB Small Capacitors to establish voluntarily a collection and disposal program that results in waste capacitors being disposed of in an EPA-approved incinerator or chemical waste landfill. Such programs could be expanded to encourage voluntary collection and disposal of PCB Small Capacitors from the public and other firms. Any firm which desires more information about identifying and disposing of PCB Small Capacitors should contact the nearest EPA regional office or the Industry Assistance Office at 800-424-9065 for assistance.

Since these capacitors contain small quantities of dielectric fluid and significant amounts of absorbant material such as paper, and because many of these capacitors are encapsulated, PCBs are rarely released from these capacitors during their use or from the equipment using the capacitors. Therefore, exposure risks to humans, food, feed, water, or the environment from the use of these capacitors are low. In conclusion, EPA finds that the use of small capacitors containing PCBs is not unreasonable because their use provides society with the benefits from the use of millions of pieces of electronic equipment and consumer products, it avoids billions of dollars in replacement costs, and there appear to be no practical, cost-effective risk reduction measures.

E. Use of PCB Transformers, Capacitors, and Electromagnets That Pose an Exposure Risk to Human Food and Animal Feed

EPA estimates that at the end of 1979 there were approximately 47,500 large PCB Capacitors and 9,580 PCB Transformers in use on the premises of

food and feed facilities. Because of comments that much of this equipment never posed an exposure risk to food or feed and that, for much of the rest of it, steps have been taken to eliminate the risk, EPA estimates that ten percent of the equipment used on the premises of food and feed facilities poses an exposure risk to food or feed products.

Since publication of the proposed rule, EPA has received a comment that indicated that electromagnets designed to contain PCBs are still in use over grain elevators. EPA was unaware that this use still existed at the time of the proposed rule. In 1979, EPA estimated that a total of 200 PCB-filled electromagnets were in use with an unknown percentage of these in use in coal operations.

1. *Magnitude of exposure.* Human food and animal feed represent EPA's greatest concern for exposure because of the increased health risks associated with the ingestion of PCBs. Electrical equipment filled with askarel dielectric fluid presents the greatest exposure risks to food and feed due to the high concentrations and large quantities of PCBs. Any leakage from such equipment has the potential to cause severe harm. One incident, involving a single PCB Transformer, occurred at a plant manufacturing animal feed ingredients. The contaminated feed was fed to poultry and livestock, resulting in millions of dollars of damages. Implicated food and feed products were distributed to nineteen states and two foreign countries.

2. *Benefits of PCBs and availability of substitutes.* The benefits of using PCBs and the availability of substitutes for PCBs in transformers and capacitors that pose an exposure risk to food and feed are identical to those discussed for PCB Transformers and PCB Capacitors. The benefit of using PCBs in electromagnets is the safety provided by the fire resistant properties of the PCBs. The substitutes for PCBs in transformers are also available and suitable for use in electromagnets.

3. *Economic and environmental impacts of regulatory requirements.* The food contamination incident previously described which involved a single PCB Transformer demonstrates that the cost to society of a PCB spill affecting food or feed can be more than one million dollars per pound of PCBs spilled. Therefore, only a very small reduction in PCB leakage is needed for a risk reduction measure to be cost effective in food and feed facilities. The Regulatory Impact Analysis contains an examination of the cost effectiveness of different accelerated phase-out time periods and inspection program frequencies.

The impact of replacing the affected PCB Transformers and large PCB Capacitors in food and feed facilities is estimated to be $16.04 million, and the impact of replacing the affected electromagnets is $0.38 million. These estimates assume that ten percent of the PCB Transformers and Capacitors used by the food and feed industry pose an exposure risk to food and feed and that ten percent of the estimated 200 PCB-filled electromagnets in service in 1979 pose an exposure risk to food and feed.

4. *Findings on the use of PCBs posing an exposure risk to food and feed.* In the proposed rule, EPA found that it was reasonable to require weekly inspection of all PCB Transformers and Large PCB Capacitors that pose an exposure risk to food or feed and to prohibit the use of these capacitors after October 1, 1992. Several comments suggested that EPA categorize equipment according to differences in the risk of exposure. Other comments expressed concern that EPA was proposing to allow indefinite use of PCBs in transformers in the areas of greatest risk. After further analysis of the cost-effectiveness of various accelerated phase-out periods and consideration of these comments, EPA has decided to establish a prohibition on the use of PCB Transformers, PCB Large Capacitors, and PCB-filled electromagnets that pose an exposure risk to food and feed. This prohibition becomes effective in three years for PCB Transformers and PCB-filled electromagnets and in six years for PCB Large Capacitors. The cost-effectiveness calculations are contained in the Regulatory Impact Analysis.

Other comments urged EPA not to prohibit the use of any electrical equipment in food or feed establishments, but to rely on the effectiveness of an inspection and maintenance program. EPA did not choose this option because, although an inspection and maintenance program does have benefits, the need to avoid contamination of human food with PCBs justifies the imposition of additional protective measures.

The three-year time period for transformers and electromagnets is based on an estimated one year to analyze the specifics of the individual situation, to choose the method to be used to eliminate the exposure risk to food or feed, and to develop a plan for compliance with the regulation and two years to implement the plan. Given the comparatively small amount of equipment involved, EPA believes that this period of time is sufficient for affected persons to avoid logistical difficulties.

The six-year time period for PCB Large Capacitors is based on an estimated one year for planning for compliance and five years for implementation of the plan. EPA decided not to shorten this period any further for these capacitors because the quantity of PCBs involved is much less than the quantity of PCBs in transformers posing this exposure risk and because the cost per pound of preventing PCB release was higher than for the transformers.

Prohibiting the use of PCB-containing equipment in a location that poses an exposure risk to food or feed represents the most effective risk reduction measure of the alternatives EPA has considered. Persons subject to this requirement actually have several choices as to how to comply. They may replace the equipment. They may provide secondary containment so that the exposure risk to food or feed is eliminated. They may relocate the equipment to a location which does not present an exposure risk. For transformers and electromagnets, they may service the equipment to reduce the PCB concentration to less than 500 ppm.

Many comments agreed with EPA's finding in the proposed rule that a weekly inspection frequency is not unreasonable primarily because it is an effective risk reduction measure for equipment such as transformers and electromagnets and because of the large exposure risks associated with the use of PCB Transformers and PCB-filled electromagnets near food or feed. As discussed in an earlier section of this preamble, the effectiveness of an inspection program for capacitors is very limited and in most cases ruptures of this equipment are identified in shorter time frames than the inspection frequency. Therefore, this final rule eliminates the proposed weekly inspection requirement for Large PCB Capacitors and retains this program for PCB Transformers and PCB-filled electromagnets.

Most comments in response to the proposed rule did not support any use restrictions for mineral oil-filled electrical equipment posing an exposure risk to food or feed since very little of this equipment is used in food and feed facilities. In most cases, mineral oil equipment contains very little PCBs, and it is expensive to test all the equipment to determine which items actually contains PCBs. Therefore, EPA made no changes in the proposed authorization for this equipment which allows its use without restriction.

Other comments in response to the proposed rule recommended that EPA include in the final rule clarifications that were issued under the Interim Measures Program. These clarifications have been incorporated into the final rule where appropriate and are discussed in this preamble.

The proposed rule required special inspection procedures for transformers which are in a location that pose a risk of exposure to human food or animal feed. This exposure risk is presumed to exist in any facility manufacturing, processing, packaging, or holding human food or animal feed, or in any federally inspected meat, poultry product or egg product establishment. Because several comments pointed out a need for more specificity as to which equipment is subject to inspection requirements, EPA has further clarified the definition of posing an exposure risk to food or feed in this rule under 40 CFR 761.3(11).

This new definition clarifies that PCB Items pose an exposure risk to food or feed only when there exists a potential pathway for PCBs discharged from the item to contaminate food or feed products. Food and feed covered by this definition includes items regulated by USDA and FDA as food or feed including additives. Food and feed is excluded from this definition if it is used or stored in private residences by the public because a very small amount of food would be potentially exposed in a single incident in a private residence and because the enforcement of this requirement in private residences would place a very large demand on EPA enforcement resources. This definition, does cover food and feed that are held in all other facilities including grocery stores, restaurants, warehouses, barns, bins, sheds, silos, and other structures, and in feedlots, open fields, and animal grazing areas.

Comments also encouraged the clarification of the responsibilities between users and owners of PCB-containing electrical equipment that pose an exposure risk to food and feed. As in the Interim Measures Program it is the responsibility of the user of a PCB Transformer to fulfill all appropriate inspection, recordkeeping and maintenance requirements until the owner is notified that the transformer may pose an exposure risk to food or feed, or until the owner has other knowledge indicating that the transformer may pose an exposure risk to food or feed. It is the ultimate responsibility of the owner of the PCB-containing electrical equipment to determine if it poses an exposure risk to food or feed. Although users of PCB-Transformers, PCB capacitors, and PCB-filled electromagnets are not responsible for phasing-out any of this equipment, users should contact the owner if they feel that this equipment poses an exposure risk to food or feed. In any event, the user still has responsibility under other Federal laws to insure that food and feed distributed in commerce are not contaminated.

In the **Federal Register** of May 9, 1980, EPA proposed a rule amendment which would have prohibited the use of PCB Items in facilities manufacturing, processing, or storing fertilizers or agricultural pesticides. EPA received comment upon this proposed rule and, on May 6, 1981, in light of the court-ordered rulemaking on the use of PCBs in electrical equipment, EPA put that proposed rule in abeyance. Because the promulgation of this final rule deals with PCBs that pose an exposure risk to food or feed, EPA has decided not to issue a final rule from the May 9, 1980 proposed rule. The final rule on the use of PCBs in electrical equipment does not recognize agricultural pesticides and fertilizers as food or feed additive or require additional provisions for PCB Items which pose an exposure risk to agricultural pesticides and fertilizers. The rulemaking record from the May 9, 1980, proposed amendment has been incorporated into the record for this final rule.

F. Use and Servicing of Voltage Regulators, Switches (Including Sectionalizers and Motor Starters), and Electromagnets

Voltage regulators and switches (including sectionalizers and motor starters) are used by electric utilities and industry to control, transmit, and distribute electric power efficiently. Almost all of this electrical equipment is mineral oil-filled and not designed to contain PCB dielectric fluid. Very few items are contaminated with greater than 500 ppm PCBs. Electromagnets are primarily used over conveyor belts to remove iron from non-magnetic commodities and are not commonly used by the electric utility industry. Electromagnets designed to contain PCBs are used in areas such as coal mines, coal preparation plants, and coal-fired generating stations. PCB-filled electromagnets that pose an exposure risk to food or feed are discussed in section E.

1. *Magnitude of exposure.* The total pounds of PCBs in oil-filled voltage regulators, switches, and electromagnets represent less than 0.01 percent of the total PCBs in-service in electrical equipment. EPA estimates from data in the rulemaking record that the annual leakage of oil-filled voltage regulators and switches would amount to a release of approximately 85 pounds of PCBs per year.

Leaks of dielectric fluid from oil-filled electrical equipment have the potential for exposing humans or the environment to low concentrations (parts per million) of PCBs because some of this equipment is used in the Nation's electrical distribution system which is located near consumers of electric power. In addition, releases of PCBs anywhere in the environment have the potential to reach aquatic systems, build up in the food chain, and ultimately result in human exposure. Leaks of PCBs from electromagnets used in coal-handling systems, however, present negligible risks since the coal in these systems is handled automatically and eventually is burned in combustion devices (such as high efficiency boilers) capable of destroying PCBs.

2. *Benefits of PCBs and availability of substitutes.* The PCBs in almost all of this electrical equipment serve no specific purpose since the PCBs are in such small concentrations and are the result of contamination from servicing and manufacturing activities. For this equipment, the PCBs provide no significant benefits. For any equipment designed to contain PCBs, the use of PCBs in the equipment provides the same safeguards against fire hazards as that described for transformers.

The availability of substitutes was discussed in the proposed rule.

3. *Economic and environmental impacts of regulatory requirements.* This final rule reduces the amount of worker and environmental exposure associated with servicing (including rebuilding) this equipment. This rule also prevents further PCB contamination of this equipment.

The economic impacts are discussed in further detail in the proposed rule and the Regulatory Impact Analysis prepared for this final rule. There are no significant changes from the analysis done for the proposed rule.

4. *Findings on the use and servicing of this electrical equipment.* The proposed rule contained an authorization for the use of PCBs in voltage regulators, switches (including sectionalizers and motor starters), and electromagnets for their remaining useful lives with no use restrictions. It also restricted servicing activities in order to prevent this equipment from being further contaminated with PCBs and to reduce PCB exposure of servicing personnel and the environment during these activities. Comments in response to the proposed rule did not raise any new

issues that warranted changes in the proposal. Therefore, EPA reaffirms its proposed findings in this final rule.

EPA finds that authorizing the use of PCBs in voltage regulators, switches (including sectionalizers and motor starters), and electromagnets with the servicing conditions does not present an unreasonable risk for the following reasons:

a. Allowing this use of PCBs to continue avoids disruption of electric service and the costs associated with a prohibition. (This reason does not apply to electromagnets.)

b. There is little PCB contamination of this oil-filled equipment and very small amounts of PCBs are expected to be released annually.

c. EPA does not believe that the cost associated with restrictions regarding the use of this equipment is justified by the small PCB exposure that would be prevented by such measures.

d. The servicing restrictions will prevent easily avoidable human exposure to PCBs.

This rule authorizes the servicing of electrical equipment not previously mentioned in the PCB rule, such as voltage regulators and switches. Persons who service this equipment should note that any processing and distribution in commerce of PCBs for servicing this equipment requires an exemption from the July 1, 1979 ban of these activities. Procedures for submitting a petition for exemption from the PCB processing and distribution in commerce prohibitions under section 6(e)(3)(B) of TSCA are described in 40 CFR Part 750, (44 FR 31558, May 31, 1979).

G. Use and Servicing of Circuit Breakers, Reclosers, and Cable

Circuit breakers, reclosures, and cable are used primarily by electric utilities to protect other equipment in the electric power system from damage caused by electrical faults and to transmit electric power. Circuit breakers, reclosers, and cable are types of oil-filled electrical equipment generally not designed to contain PCBs. However, available data indicate that a small percentage of this electrical equipment contains PCBs resulting from past servicing and manufacturing practices.

1. *Magnitude of exposure.* Although approximately 26.3 percent of all oil-filled circuit breakers can be expected to leak during an average year, this could amount to a release of only 50.88 pounds of PCBs, according to the EEI/USWAG study. This same study indicates that releases of dielectric fluid from reclosers could amount to 6.64 pounds of PCBs per year. As with other oil-filled electrical equipment, leaks of dielectric fluid have the potential for exposing humans and the environment to low concentrations of PCBs because of the equipment's location throughout electric power system service areas.

2. *Benefits of PCBs and availability of substitutes.* Both the benefits and availability of substitutes for PCBs in circuit breakers, reclosers, and cable are the same as that discussed for other mineral oil-filled equipment (transformers, voltage regulators, switches, etc.).

3. *Economic and environmental impacts of regulatory requirements.* Since this electrical equipment may be assumed to contain less than 50 ppm PCBs, the economic and environmental impact of the servicing and disposal requirements is minimal and difficult to measure. These requirements would only apply to equipment that is known to contain PCBs in excess of 50 ppm (e.g. from test results). Additional discussion of the costs and benefits associated with the regulatory requirements is found in the proposed rule and the Regulatory Impact Analysis prepared for this final rule. There are no significant changes from the analysis done for the proposed rule.

4. *Findings on the use and servicing of this electrical equipment.* The proposed rule contained an authorization, with servicing conditions, which would have allowed the use of PCBs in circuit breakers and reclosers for the remaining useful life of this equipment. No comments contained data which would warrant changing this part of the proposal.

The proposed rule also authorized the use of oil-filled cable and contained a requirement that oil-filled cable must be assumed to contain between 50 and 500 ppm PCBs if the concentration were unknown. This requirement was included in the proposal because there was virtually no data in the rulemaking record on PCB concentrations in cable. Comments in response to the proposed rule contained additional data on the PCBs concentrations of oil-filled cable, indicating that virtually none of the cable is contaminated in excess of 50 ppm. Therefore, this final rule allows the assumption that oil-filled cable contains less than 50 ppm PCBs if the actual concentration is unknown.

EPA authorizes the use and servicing of PCBs in circuit breakers, reclosers, and cable for the remainder of their useful lives, according to the servicing restrictions of § 761.30(m)(1). These servicing conditions prevent further PCB contamination of equipment containing less than 50 ppm PCBs. The disposal requirements of 40 CFR 761.60 and the servicing requirements of 40 CFR 761.30(h) apply to any oil-filled circuit breaker, recloser, or cable found to contain 50 ppm or greater PCBs. EPA believes that this use authorization with servicing conditions does not present an unreasonable risk for the following reasons:

a. Allowing this use of PCBs to continue avoids disruption of electric service and the costs associated with a prohibition.

b. There is little PCB contamination of this oil-filled equipment and very small amounts of PCBs are expected to be released annually.

c. EPA does not believe that the cost associated with restrictions regarding the use of this equipment is justified by the small PCB exposure that would be prevented by such measures.

d. The servicing restrictions will prevent easily avoidable human exposure to PCBs and further contamination of this equipment.

VI. Other Amendments to the PCB Rule

A. PCB-Contaminated Electrical Equipment

Because this rulemaking has identified electrical equipment containing PCBs that was not previously recognized in the PCB rule, changes have been made to definitions presented in the rule. This final rule deletes the definition of a "PCB-Contaminated Transformer" (40 CFR 761.3(z)) and substitutes a definition titled "PCB-Contaminated Electrical Equipment.

"PCB-Contaminated Electrical Equipment" means any electrical equipment that contains at least 50 ppm, but less than 500 ppm PCB. Electrical equipment includes transformers (including those used on railway locomotives and self-propelled cars), capacitors, voltage regulators, electromagnets, cable, circuit breakers, reclosers, and switches (including sectionalizers and motor starters).

Although the use of PCBs in certain electrical equipment is authorized regardless of PCB concentration, the disposal requirements of the May 1979 PCB rule make certain distinctions on the basis of PCB concentration. That is, different disposal requirements apply to PCBs at concentrations of 500 ppm or greater and at concentrations between 50 and 500 ppm. The definition of PCB-Contaminated Electrical Equipment was developed in order to refer to the electrical equipment that contains between 50 and 500 ppm PCBs.

Prior to publication of the proposed rule, EPA had received data regarding the actual PCB concentrations in different types of electrical equipment.

These data indicate that approximately 12 to 14 percent of oil-filled transformers, voltage regulators, and switches contain PCB concentrations of 50 ppm or greater, but PCB concentrations greater than 500 ppm in this equipment are rare, estimated to occur in less than 2 percent of the equipment. Because the contamination was caused by unintentional manufacturing and servicing practices, it is impossible to determine for certain which pieces of equipment are contaminated without testing them all. EPA estimates the cost of such testing to be over two billion dollars, based on a total of cost of $100 per test. Based on these data, EPA requires that all oil-filled transformers, voltage regulators, switches, and electromagnets must be assumed to be PCB-Contaminated Electrical Equipment unless the oil has been tested, or otherwise verified, and found not to contain between 50 and 500 ppm PCBs. In other words, if the actual PCB concentration of any oil-filled transformer, voltage regulator, switch, or electromagnet is unknown, the equipment must be assumed to contain more than 50 ppm PCBs and may be assumed to contain less than 500 ppm PCBs for purposes of servicing and disposing of this equipment. This will allow owners of this equipment to avoid the cost of testing if they choose.

Little monitoring data were available to EPA prior to publication of the proposed rule regarding the PCB concentration in oil-filled electromagnets. Comments on the proposed rule added little additional information. Because electromagnets use the same kind of oil and are serviced in the same manner as other types of oil-filled equipment, there is no reason to believe its PCB concentration would frequently exceed 500 ppm. Therefore, EPA requires that oil-filled electromagnets be included in the category of PCB-Contaminated Electrical Equipment so that they must be assumed to have a PCB concentration between 50 and 500 ppm if the concentration is unknown.

Data in the rulemaking record indicate that less than two percent of oil-filled circuit breakers, reclosers, and cable are contaminated with PCB concentrations of 50 ppm or greater. EPA estimates that it would cost approximately forty million dollars to indentify all of the circuit breakers, reclosers, and cable whose PCB contamination exceeds 50 ppm. Because the cost of either testing all the equipment or treating it as contaminated in excess of 50 ppm is high relative to the number of pieces of equipment that are likely to contain greater than 50 ppm, EPA allows that oil-filled circuit breakers, reclosers and cable need not be classified as PCB-Contaminated Electrical Equipment if the PCB concentration is unknown.

B. Clarification of Existing Definitions

This final rule retains, as proposed, changes to the definitions of "Large High Voltage Capacitor", "Large Low Voltage Capacitor", "Small Capacitor", and PCB Article (40 CFR 761.3(d) (1), (2), and (3) and 761.3(t), respectively). No comments on the proposed rule raised any new issues regarding these changes.

C. Distribution in Commerce

EPA in its April 22, 1982 Federal Register notice proposed changes to the list of PCB activities it found to be in a totally enclosed manner, due to new information submitted prior to the proposal. This final rule is identical to the proposal. To assure that PCBs are not released from electrical equipment being distributed in commerce under the provisions of section 6(e)(3)(C), EPA finds the distribution in commerce of only intact and nonleaking transformers (including transformers used on railway locomotives and self-propelled cars), capacitors, electromagnets, voltage regulators, circuit breakers, reclosers, switches (including sectionalizers and switches), and cable to be totally enclosed activities. Coupled with 40 CFR 761.30(c)(1), this will restrict the applicability of section 6(e)(3)(C) to intact, nonleaking equipment. Persons wishing to distribute in commerce electrical equipment which is not intact and nonleaking must apply for an exemption from the ban on distribution in commerce, using the exemption procedures found in 40 CFR Part 750.

D. Disposal Requirements

Since this rulemaking has identified uses of PCB-containing electrical equipment not recognized in the earlier PCB regulations, changes have been made to the disposal requirements for PCBs and PCB Items. The major difference between this final rule and the proposal is that language specifying the extent of cleanup required for a PCB spill has been deleted.

1. *Mineral oil dielectric fluid.* This final rule allows mineral oil dielectric fluid from any type of PCB-Contaminated Electrical Equipment to be disposed following the requirements of 40 CFR 761.60(a)(2). All mineral oil from transformers, electromagnets, voltage regulators, and switches is subject to the disposal requirements of this section, unless the oil has been tested (or otherwise verified) and found to contain less than 50 ppm PCBs. No comments on this proposed change affected EPA's conclusions regarding the degree of contamination of this equipment.

2. *PCB items.* The proposed rule established disposal requirements for PCB-Contaminated Electrical Equipment. This equipment must be drained of all free flowing liquid, and the liquid must be disposed of under 40 CFR 761.60(a)(2). The proposed rule also regulated the disposal of PCB Articles with a PCB concentration of 500 ppm or more under 40 CFR 761.60(b)(5), but did not regulate the disposition of a PCB Article containing less than 500 ppm, once all free flowing liquid has been drained from the PCB Article. Comments received generally agreed with these requirements, and this final rule retains them as proposed. However, one comment stated that some capacitors have been found to contain between 50 and 500 ppm PCBs. These comments pointed out that capacitors are not designed to be drained of dielectric fluid and would have to be punctured or cut open. Puncturing or cutting open a Large PCB Capacitor poses a potential PCB exposure risk to workers and the environment due to the sudden release of internal pressure that may have built up in a failed capacitor. In order to discourage this potentially hazardous activity, this final rule requires disposal of capacitors containing between 50 and 500 ppm PCBs in an incinerator that complies with § 761.70 or in a chemical waste landfill that complies with § 761.75.

Although this rule does not require testing of mineral oil dielectric fluid for PCB concentration, some people may choose to do so. In order to reduce the costs associated with testing for PCB concentrations in mineral oil dielectric fluid, this rule allows, as proposed, common container collection ("batch testing") of mineral oil dielectric fluid from all electrical equipment containing mineral oil dielectric fluid (see 40 CFR 761.60(g)(1)). Common container collection is permitted so that mineral oil from multiple sources can be collected and tested without requiring a separate test of each individual piece of electrical equipment to determine disposal options. However, in order to prevent persons from using dilution to circumvent the disposal rules, dielectric fluid from oil-filled circuit breakers, reclosers, or cable, collected in a common container with untested dielectric fluid from other oil-filled equipment must be assumed to contain at least 50 ppm PCBs.

3. *Spills and leaks.* The proposed rule clarified the definition of disposal by

including leaks in the definition. The final rule refines this clarification. A number of comments stated that it was unfair to charge a party with unauthorized disposal when PCBs are spilled or leaked during authorized use of electrical equipment but prompt cleanup is initiated. It is not the Agency's intention that § 761.3(h) and § 761.60(d) should be applied in this way. Where the responsible party shows that: (1) The spill, leak, or uncontrolled discharge occurred during authorized use of electrical equipment and (2) adequate cleanup measures were initiated within 48 hours, the Agency will not charge the party with a disposal violation.

The proposal also contained requirements for cleanup of PCB contamination resulting from spills, leaks, and other uncontrolled discharges of PCBs. Comments in response to these provisions varied. Some comments stated that a requirement for level of cleanup should be set, but that cleanup to a concentration of 50 ppm was always appropriate. Other comments expressed concern about setting any specific requirements for level of cleanup at this time and about how these levels would be determined in the field. Still others approved of the standards set in the proposed rule.

The Agency has decided not to include language regarding the required level of cleanup in this final rule. A part of § 761.60(d)(2) (formerly § 761.10(d)(2)), which was sometimes construed as setting a required level of cleanup has been deleted.

4. *Storage for disposal.* The storage for disposal of nonleaking and structurally undamaged PCB Large High Voltage Capacitors and PCB-Contaminated Transformers on pallets next to qualified storage facilities was permitted until January 1, 1983, under the May 31, 1979, PCB rule (formerly 40 CFR 761.42(c)(2)). This provision was designed to relieve the burden on PCB storage facilities until EPA-approved incineration facilities were commercially available.

A number of comments pointed out that if EPA were going to require accelerated phase-out of capacitors, there would be additional storage needed for phased-out equipment awaiting disposal. After considering these comments, EPA has decided to allow this type of storage for disposal for nonleaking and structurally undamaged PCB Large High Voltage Capacitors and PCB-Contaminated Electrical Equipment after January 1, 1983.

The May 31, 1979, PCB rule did not envision an accelerated phase-out for certain PCB Transformers and large PCB Capacitors or the use of PCB-containing oil-filled electrical equipment other than transformers. In order to lessen the burden on existing storage facilities and reduce the need to build additional facilities, this final rule allows this type of storage for disposal to continue indefinitely, according to the provisions of 40 CFR 761.65(c)(2).

The May 1979 rule exempted PCB Small Capacitors from the storage requirements. In the April 22, 1982, proposed rule, this exemption (§ 761.10(b)(6)) was printed erroneously. This error made it appear that EPA was proposing to exempt PCB-Contaminated Electrical Equipment from storage requirements instead of PCB Small Capacitors. EPA did not intend to propose any change in the language of this paragraph. The introductory text to § 761.60(b)(6) in this final rule corrects this error.

E. Reclassification of Electrical Equipment Containing PCBs

The May 1979 rule prohibits rebuilding of PCB Transformers and allows the PCB concentration in electrical equipment to be reduced for purposes of reclassifying the equipment. The proposed rule retained these provisions. Under the provisions for reclassification, the equipment must be put back into service for three months before testing the PCB concentration. Comments on the proposed rule pointed out that the proposed servicing restrictions prohibit reclassification of PCB Transformers which have failed electrically because failed transformers can not be put back into service unless rebuilt. In response to this comment, EPA has added a provision to the final rule which allows the Assistant Administrator for Pesticides and Toxic Substances to approve a method of simulating the loading conditions associated with in-service use. To apply for approval of any method which uses conditions other than in-service use, a letter should be sent to the Assistant Administrator for Pesticides and Toxic Substances (TS–794), Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Responses to any applications for approval will be in writing. All applications should show that alternative conditions result in equivalent or greater release of PCBs from the internal components of the equipment into the dielectric fluid as three months of in-service use.

This final rule also clarifies the definition of in-serrvice use for transformers by specifying a minimum dielectric fluid temperature of 50° C. This temperature has been shown experimentally to be associated with a condition of light electrical loading and to cause release of PCBs from the internal components of the transformer into the dielectric fluid. This clarification also provides guidance as to what constitutes adequate in-service use.

VII. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this amendment to the PCB rule is not a major rule as the term is defined in section 1(b) of the Executive Order.

EPA has concluded that the amendment is not "major" under the criteria of section 1(b) because the annual effect of the rule on the economy will be less than $100 million; it will not cause a major increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets. In fact, this rule allows uses of PCBs in electrical equipment to continue that would otherwise be prohibited by section 6(e) of TSCA. This rule avoids the severe disruption of electric service to the public and industry that would occur if the use were prohibited. It also greatly reduces the economic impact that would result from a requirement to replace the equipment as soon as possible. However, although this proposal is not a major rule, EPA has prepared a Regulatory Impact Analysis using the guidance in the Executive Order to the extent possible within the time constraints of the court's order.

This final rule amendment was submitted to the Office of Management and Budget (OMB) prior to publication as required by the Executive Order.

VIII. Regulatory Flexibility Act

Section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, requires EPA to prepare and make available for comment a "regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published. The "regulatory flexibility analysis" describes the effect of a final rule on small business entities.

Section 605(b) of the Regulatory Flexibility Act, however, provides that

section 604 of the Act "shall not apply to any proposed or final rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

The effect of this final rule is to avoid severe disruption of electric service to industry and the public and to reduce the costs of complying with TSCA. In general, this rule will reduce the burden on small businesses that would otherwise be encountered if an immediate ban on PCB-containing electrical equipment were to take effect. If an immediate ban were imposed, large costs would be incurred by all producers and users of electricity, including small businesses.

Since the actual distribution of electrical equipment ownership is unknown, EPA estimated the effect of the capacitor phase-out on different groups of utilities, including the rural electric cooperatives, using number of customers as a predictor of number of capacitors owned by the utility group. Four groups were analyzed: private investor-owned utilities, local public utilities, rural electric cooperatives, and federally owned utilities. The rural electric cooperative group would be expected to include the most small utilities. Using a number of measures of impact, none of the groups analyzed, including the rural electric cooperatives, would be significantly affected by this final rule. EPA estimated that the total costs of the capacitor phase-out for rural electric cooperatives would be $13.97 million, or 0.072 percent of the net value of assets in electric plant in 1979. The maximum annual increase in capitalized costs as a percent of net investment would be 0.31 percent for the rural electric cooperatives. The maximum revenue requirement increase over the phase-out period for the rural electric cooperatives would be 0.084 percent of 1979 revenues.

The impact of the regulation on the food and feed industries should also be very small since most of the industry has voluntarily moved or replaced their PCB Transformers and Large Capacitors. Further, the impact on small food and feed companies will be negligible since most small firms do not own their own transformers and capacitors.

Since the effect of this rule avoids the economic impact associated with a disruption of electric service and based on the regulatory analysis which indicates that there is a net benefit from the rule, I certify that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, a "regulatory flexibility analysis" is not required and will not be prepared for this rulemaking.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, authorizes the Director of the OMB to review certain information collection requests by Federal agencies. EPA has determined that the recordkeeping requirements set out in 40 CFR 761.30 constitute a "collection of information," as defined in 44 U.S.C 3502(4), making these requirements subject to the terms of the PRA.

In 40 CFR 761.30(a) EPA grants authorizations for the use of PCB-containing transformers provided that records are kept which indicate when the equipment was inspected for leaks, whether any leaks were found, and what action it took if any leaks were found. The person is required to keep the records until three years after disposing of the equipment, and upon request, to make them available to EPA for inspection. This requirement has been reduced from the five-year period that was in the proposal.

These recordkeeping requirements minimize paperwork burden and are designed to obtain only information necessary to assure that companies are complying with the rule. By eliminating the inspection requirements for capacitors, the paperwork burden of this final rule has been reduced to less than six percent of the burden for the requirements in the proposed rule.

This final rule amendment has been forwarded to the Director of OMB for review under the terms of the PRA. OMB has assigned the following control number to this final rule: 2070–0003.

IX. Official Record of Rulemaking

In accordance with the requirements of section 19(a)(3)(E) of TSCA, EPA is publishing the following list of documents, which constitute the record of this rulemaking. However, public comments, the transcript of the rulemaking hearing, or submissions made at the rulemaking hearing or in connection with it will not be listed because these documents are exempt from **Federal Register** listing under section 19(a)(3). A full list of these materials is available on request by contacting the Industry Assistance Office (see listing under **"For Further Information Contact"**).

A. Previous Rulemaking Records

1. Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions Rule" published in the **Federal Register** of May 31, 1979, (44 FR 31514).

2. Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Proposed Restrictions on Use at Agricultural Pesticide and Fertilizer Facilities," published in the **Federal Register** of May 9, 1980, (45 FR 30989).

B. Federal Register Notices

3. 44 FR 31514, May 31, 1979. USEPA. "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions."

4. 45 FR 14232, March 5, 1980. USEPA. "Polychlorinated Biphenyls (PCBs); Request for Information on PCB Transformers."

5. 46 FR 16096, March 10, 1981. USEPA. "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Equipment; Court Order on Inspection and Maintenance."

6. 46 FR 16096, March 10, 1981. USEPA. "Polychlorinated Biphenyls (PCBs); Use in Electrical Equipment."

7. 46 FR 25411, May 6, 1981. USEPA. "Polychlorinated Biphenyls (PCBs); Proposed Restrictions on Use at Agricultural Pesticide and Fertilizer Facilities; Abeyance of Proposed Rule Amendment."

8. 46 FR 27614, May 20, 1981. USEPA. "Polychlorinated Biphenyls (PCBs); Use in Electrical Equipment; Interim Measures Program."

9. 47 FR 17426, April 22, 1982. USEPA. "Polychlorinated Biphenyls (PCBs); Use in Electrical Equipment."

C. Support Documents

10. USEPA, OTS, "Regulatory Impact Analysis—for the Proposed PCB-Containing Electrical Equipment Rulemaking."

11. USEPA, OTS "Regulatory Impact Analysis of the Use Rule for PCB-Containing Electrical Equipment."

12. USEPA, OTS "Response to Comments on Health Effects of PCBs submitted by the Chemical Manufacturers Association and the Edison Electric Institute."

13. USEPA, OTS "Support Document for the Electrical Equipment Use Rule—Response to Comments."

D. Reports

14. Chemical Manufacturers Association, "Summary of the Health Effects of PCBs." Prepared by Ecology and the Environment, Inc.

15. Edison Electric Institute and Utilities Solid Waste Activities Group, "Comments and Studies on the Use of Polychlorinated Biphenyls (PCBs) in Response to an Order of the U.S. Court of Appeals for the District of Columbia Circuit."

Vol I.—Executive Summary and Integrated Comments (02/12/82)

Vol. II.—Potential Health Effects in the Human from Exposure to Polychlorinated Biphenyls and Related Impurities (2/12/82) Prepared under contract to Drill, Friess, Hays, Loomis & Shaffer, Inc.

Vol. III.—Report of the Study on PCBs in Equipment Owned by the Electric Utility Industry (02/12/82). Prepared under contract to Resource Planning Corp.

Vol. IV.—Environmental Pathways of Polychlorinated Biphenyls (02/12/82). Prepared by Donald MacKay, Dept. of Chemical Eng. and Applied Chemistry, Inst. of Environmental Studies, Univ. of Toronto, CA.

16. Edison Electric Institute, "Initial Cost Impact to Utility Companies of the Regulation of PCBs in Food-Related Industries." (December 1980) Prepared by Resource Planning Corp.

17. Edison Electric Institute and Utilities Solid Waste Activities Group, "Preliminary Findings of the Study of PCBs in Equipment Owned by the Electric Utilities Industry, Task I and II" (10/29/81). Prepared by Resource Planning Corp.

18. Electric Power Research Institute, "Equilibrium Study of PCBs Between Transformer Oil and Transformer Solid Materials" (December 3, 1981). Prepared by RTE Corp.

19. ENSCO, "Emission Testing During Incineration of PCBs at Energy Systems Co." (December 1981). Prepared by TRW, Inc., Env. Div.

20. National Electric Manufacturers Association, "Potential Health Effects in the Human from Exposure to Polychlorinated Biphenyls (PCBs) and Related Impurities" (01/25/82). Prepared by Drill, Friess, Hays, Loomis & Shaffer, Inc.

21. Northeast Utilities Service Co., "Capacitor Protective Schemes Investigated by Northeast Utilities." Presented to EPRI PCB Seminar, Dallas, TX (December 1–3, 1981).

22. Rollins Env. Services, "The PCB Incineration Test Made by Rollins Environmental Services (TX), Inc. at Deer Park, TX." (November 10–12, 1981).

23. USEPA, OTS, "Summary Data on Substitutes for Polycholorinated Biphenyls (PCBs)" (February, 1981). Prepared by SRI International.

24. USEPA, OTS, "Assessment of the Use of Selected Replacement Fluids for PCBs in Electrical Equipment" (March 1979). Prepared by Versar, Inc.

25. USEPA, Reg. 6, AHMD, Solid Waste Division, "Incineration of PCBs Summary of Approval Actions—Energy Systems Co. (ENSCO), El Dorado Park, TX" (02/06/81).

26. USEPA, WH, Marine Protection, "Marine Protection, Research, and Sanctuaries Act (Incineration at Sea) Permit."

X. Statutory Authority

Under section 6(e) of TSCA (15 U.S.C. 2605), the Administrator may by rule authorize the manufacture, processing, distribution in commerce or use (or any combination of such activities) of any PCBs in other than a totally enclosed manner if the Administrator finds that it will not present an unreasonable risk of injury to health or the environment. The Administrator also has authority to amend or modify the PCB Manufacturing, Processing, Distribution in Commerce, and Use Prohibition Rule (40 CFR Part 761), published in the **Federal Register** of May 31, 1979, (44 FR 31514).

List of Subjects in 40 CFR Part 761

Hazardous materials, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements, Environmental protection.

Dated: August 18, 1982.

John W. Hernandez,

Acting Administrator.

Therefore, 40 CFR Part 761 is amended as follows:

PART 761—POLYCHLORINATED BIPHENYLS (PCBs) MANUFACTURING, PROCESSING, DISTRIBUTION IN COMMERCE, AND USE PROHIBITIONS

1. In § 761.3, paragraphs (d)(1), (2), and (3), (h), (t), and (z) are revised and paragraph (ll) is added to read as follows:

§ 761.3 Definitions.

* * * * *

(d) * * *

(1) "Small Capacitor" means a capacitor which contains less than 1.36 kg (3 lbs.) of dielectric fluid. The following assumptions may be used if the actual weight of the dielectric fluid is unknown. A capacitor whose total volume is less than 1,639 cubic centimeters (100 cubic inches) may be considered to contain less than 1.36 kg (3 lbs.) of dielectric fluid and a capacitor whose total volume is more than 3,278 cubic centimeters (200 cubic inches) must be considered to contain more than 1.36 kg (3 lbs.) of dielectric fluid. A capacitor whose volume is between 1,639 and 3,278 cubic centimeters may be considered to contain less than 1.36 kg (3 lbs.) of dielectric fluid if the total weight of the capacitor is less than 4.08 kg (9 lbs.).

(2) "Large High Voltage Capacitor" means a capacitor which contains 1.36 kg (3 lbs.) or more of dielectric fluid and which operates at 2000 volts (a.c. or d.c.) or above.

(3) "Large Low Voltage Capacitor" means a capacitor which contains 1.36 kg (3 lbs.) or more of dielectric fluid and which operates below 2000 volts (a.c. or d.c.).

* * * * *

(h) "Disposal" means intentionally or accidentally to discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB Items. Disposal includes spills, leaks, and other uncontrolled discharges of PCBs as well as actions related to containing, transporting, destroying, degrading, decontaminating, or confining PCBs and PCB Items.

* * * * *

(t) "PCB Article" means any manufactured article, other than a PCB Container, that contains PCBs and whose surface(s) has been in direct contact with PCBs. "PCB Article" includes capacitors, transformers, electric motors, pumps, pipes and any other manufactured item (1) which is formed to a specific shape or design during manufacture, (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commerical purpose separate from that of the PCB Article.

* * * * *

(z) "PCB-Contaminated Electrical Equipment" means any electrical equipment, including but not limited to transformers (including those used in railway locomotives and self-propelled cars), capacitors, circuit breakers, reclosers, voltage regulators, switches (including sectionalizers and motor starters), electromagnets, and cable, that contain 50 ppm or greater PCB, but less than 500 ppm PCB. Oil-filled electrical equipment other than circuit breakers, reclosers, and cable whose PCB concentration is unknown must be assumed to be PCB-Contaminated Electrical Equipment. (See § 761.30(a) and (h) for provisions permitting reclassification of electrical equipment containing 500 ppm or greater PCBs to PCB-Contaminated Electrical Equipment).

* * * * *

(ll) "Posing an Exposure Risk to Food or Feed" means being in any location where human food or animal feed products could be exposed to PCBs released from a PCB Item. A PCB Item poses an exposure risk to food or feed if PCBs released in any way from the PCB Item have a potential pathway to human food or animal feed. EPA considers human food and animal feed to include items regulated by the U.S. Department of Agriculture or the Food and Drug Administration as human food or animal feed; this includes additives. Food or feed is excluded from this definition if it is used or stored in private homes.

* * * * *

2. The introductory text of § 761.20 is revised to read as follows:

§ 761.20 Prohibitions.

Except as authorized in § 761.30 the activities listed in paragraphs (a) and (d) of this section are prohibited pursuant to section 6(e)(2) of TSCA. The requirements set forth in paragraphs (b) and (c) of this section concerning export and import of PCBs for purposes of

disposal and PCB Items for purposes of disposal are established pursuant to section 6(e)(1) of TSCA. Subject to any exemptions granted pursuant to section 6(e)(3)(B) of TSCA, the activities listed in paragraphs (b) and (c) of this section are prohibited pursuant to section 6(e)(3)(A) of TSCA. In addition, the Administrator hereby finds, under the authority of section 12(a)(2) of TSCA, that the manufacture, processing, and distribution in commerce of PCBs and PCB Items for export from the United States presents an unreasonable risk of injury to health within the United States. This finding is based upon the well-documented human health and environmental hazard of PCB exposure; the high probability of human and environmental exposure to PCBs and PCB Items from manufacturing, processing, or distribution activities; the potential hazard of PCB exposure posed by the transportation of PCBs or PCB Items within the United States; and the evidence that contamination of the environment by PCBs is spread far beyond the areas where they are used. In addition, the Administrator hereby finds that any exposure of human beings or the environment to PCBs as measured or detected by any scientifically acceptable analytical method is a significant exposure, as defined in § 761.3(dd). Section 761.3(hh) and TSCA section 6(e)(2)(C) define the term totally enclosed manner as "any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant * * *." Since any exposure to PCBs is found to be a significant exposure, a totally enclosed manner is a manner that results in no exposure of humans or the environment to PCBs. The following activities are considered totally enclosed: distribution in commerce of intact, nonleaking electrical equipment such as transformers (including transformers used in railway locomotives and self-propelled cars), capacitors, electromagnets, voltage regulators, switches (including sectionalizers and motor starters), circuit breakers, reclosers, and cable that contain PCBs at any concentration and processing and distribution in commerce of PCB Equipment containing an intact, nonleaking PCB Capacitor. See paragraph (c) (1) of this section for provisions allowing the distribution in commerce of PCBs and PCB Items.

* * * * *

3. Section 761.30 is amended by revising paragraphs (a) and (h) and adding paragraphs (l) and (m) to read as follows:

§ 761.30 Authorizations.

* * * * *

(a) *Use in and servicing of transformers (other than railroad transformers).* PCBs at any concentration may be used in transformers (other than transformers for railroad locomotives and self-propelled railroad cars) and may be used for purposes of servicing including rebuilding these transformers for the remainder of their useful lives, subject to the following conditions:

(1) *Use conditions.* (i) After October 1, 1985, the use and storage for reuse of PCB Transformers that pose an exposure risk to food or feed is prohibited.

(ii) A visual inspection of each PCB Transformer (as defined in § 761.3(y)) in use or stored for reuse shall be performed at least once every three months. These inspections may take place any time during the three month periods; January–March, April–June, July–September, and October–December as long as there is a minimum of 30 days between inspections. The visual inspection must include investigation for any leak of dielectric fluid on or around the transformer. The extent of the visual inspections will depend on the physical constraints of each transformer installation and should not require an electrical shutdown of the transformer being inspected.

(iii) If a PCB Transformer is found to have a leak which results in any quantity of PCBs running off or about to run off the external surface of the transformer, then the transformer must be repaired or replaced to eliminate the source of the leak. In all cases any leaking material must be cleaned up and properly disposed of according to disposal requirements of § 761.60. Cleanup of the released PCBs must be initiated as soon as possible, but in no case later than 48 hours of its discovery. Until appropriate action is completed, any active leak of PCBs must be contained to prevent exposure of humans or the environment and inspected daily to verify containment of the leak. Trenches, dikes, buckets, and pans are examples of proper containment measures.

(iv) Records of inspection and maintenance history shall be maintained at least 3 years after disposing of the transformer and shall be made available for inspection, upon request, by EPA (OMB Control Number: 2070–0003). Such records shall contain the following information for each PCB Transformer:

(A) Its location.

(B) The date of each visual inspection and the date that a leak was discovered, if different from the inspection date.

(C) The person performing the inspection.

(D) The location of any leak(s).

(E) An estimate of the amount of dielectric fluid released from any leak.

(F) The date of any cleanup, containment, repair, or replacement.

(G) A description of any cleanup, containment, or repair performed.

(H) The results of any containment and daily inspection required for uncorrected active leaks.

(v) A reduced visual inspection frequency of at least once every 12 months applies to PCB Transformers that utilize either of the following risk reduction measures. These inspections may take place any time during the calendar year as long as there is a minimum of 180 days between inspections.

(A) a PCB Transformer which has impervious, undrained, secondary containment capacity of at least 100 percent of the total dielectric fluid volume of all transformers so contained, or

(B) A PCB Transformer which has been tested and found to contain less than 60,000 ppm PCBs (after three months of inservice use if the transformer has been serviced for purposes of reducing the PCB concentration).

(vi) An increased visual inspection frequency of at least once every week applies to any PCB Transformer in use or stored for reuse which poses an exposure risk to food or feed. The user of a PCB Transformer posing an exposure risk to food or feed is responsible for the inspection, recordkeeping, and maintenance requirements under this section until the user notifies the owner that the transformer may pose an exposure risk to food or feed. Following such notification, it is the owner's ultimate responsibility to determine whether the PCB Transformer poses an exposure risk to food or feed.

(2) *Servicing conditions.* (i) Transformers classified as PCB-Contaminated Electrical Equipment (as defined in § 761.3(z)) may be serviced (including rebuilding) only with dielectric fluid containing less than 500 ppm PCB.

(ii) Any servicing (including rebuilding) of PCB Transformers (as defined in § 761.3(y)) that requires the removal of the transformer coil from the transformer casing is prohibited. PCB Transformers may be serviced

(including topping off) with dielectric fluid at any PCB concentration.

(iii) PCBs removed during any servicing activity must be captured and either reused as dielectric fluid or disposed of in accordance with the requirements of § 761.60. PCBs from PCB Transformers must not be mixed with or added to dielectric fluid from PCB-Contaminated Electrical Equipment.

(iv) Regardless of its PCB concentration, dielectric fluids containing less than 500 ppm PCB that are mixed with fluids that contain 500 ppm or greater PCB must not be used as dielectric fluid in any electrical equipment. The entire mixture of dielectric fluid must be considered to be greater than 500 ppm PCB and must be disposed of in an incinerator that meets the requirements in § 761.70.

(v) A PCB Transformer may be converted to PCB-Contaminated Electrical Equipment or to a non-PCB Transformer and a transformer that is classified as PCB-Contaminated Electrical Equipment may be reclassified to a non-PCB Transformer by draining, refilling and/or otherwise servicing the transformer. In order to reclassify, the transformer's dielectric fluid must contain less than 500 ppm PCB (for conversion to PCB-Contaminated Electrical Equipment) or less than 50 ppm PCB (for conversion to a non-PCB Transfomer) after a minimum of three months of in-service use subsequent to the last servicing conducted for the purpose of reducing the PCB concentration in the transformer. In-service means that the transformer is used electrically under loaded conditions that raise the temperature of the dielectric fluid to at least 50° Centigrade. The Assistant Administrator may grant, without further rulemaking, approval for the use of alternative methods that simulate the loaded conditions of in-service use. All PCBs removed from transformers for purposes of reducing PCB concentrations are subject to the disposal requirements of § 761.60.

(vi) Any dielectric fluid containing 50 ppm or greater PCB used for servicing transformers must be stored in accordance with the storage for disposal requirements of § 761.65.

(vii) Processing and distribution in commerce of PCBs for purposes of servicing transformers is permitted only for persons who are granted an exemption under TSCA 6(e)(3)(B).

* * * * *

(h) *Use in and servicing of electromagnets, switches and voltage regulators.* PCBs at any concentration may be used in electromagnets, switches (including sectionalizers and motor starters), and voltage regulators and may be used for purposes of servicing this equipment (including rebuilding) for the remainder of their useful lives, subject to the following conditions:

(1) *Use conditions.* (i) After October 1, 1985, the use and storage for reuse of any electromagnet which poses an exposure risk to food or feed is prohibited if the electromagnet contains greater tha 500 ppm PCBs.

(ii) A visual inspection of each electromagnet subject to paragraph (h)(1)(i) shall be performed at least once every week according to the conditions contained in § 761.30(a)(1)(iii) and (iv).

(2) *Servicing conditions.* (i) Servicing (including rebuilding) any electromagnet, switch, or voltage regulator with a PCB concentration of 500 ppm or greater which requires the removal and rework of the internal components is prohibited.

(ii) Electromagnets, switches, and voltage regulators classified as PCB-Contaminated Electrical Equipment (as defined in § 761.3(z)) may be serviced (including rebuilding) only with dielectric fluid containing less than 500 ppm PCB.

(iii) PCBs removed during any servicing activity must be captured and either reused as dielectric fluid or disposed of in accordance with the requirements of § 761.60. PCBs from electromagnets switches, and voltage regulators with a PCB concentration of at least 500 ppm must not be mixed with or added to dielectric fluid from PCB-Contaminated Electrical Equipment.

(iv) Regardless of its PCB (concentration, dielectric fluids containing less than 500 ppm PCB) that are mixed with fluids that contain 500 ppm or greater PCB must not be used as dielectric fluid in any electrical equipment. The entire mixture of dielectric fluid must be considered to be greater than 500 ppm PCB and must be disposed of in an incinerator that meets the requirements of § 761.70.

(v) An electromagnet, switch or voltage regulator with a PCB concentration of at least 500 ppm may be converted to PCB-Contaminated Electrical Equipment or to a non-PCB classification and PCB-Contaminated Electrical Equipment may be reclassified to a non-PCB classification by draining, refilling and/or otherwise servicing the equipment. In order to be reclassified, the equipment's dielectric fluid must contain less than 500 ppm PCB (for conversion to PCB-Contaminated Electrical Equipment) or less than 50 ppm PCB (for conversion to a non-PCB classification) after a minimum of three months of in-service use subsequent to the last servicing conducted for the purpose of reducing the PCB concentration in the equipment. In-service use means the equipment is used electrically under loaded conditions. The Assistant Administrator may grant, without further rulemaking, approval for the use of alternative methods that simulate the loaded conditions of in-service use. All PCBs removed from this equipment for purposes of reducing PCB concentrations are subject to the disposal requirements of § 761.60.

(vi) Any dielectric fluid containing 50 ppm or greater PCB used for servicing electromagnets, switches, or voltage regulators must be stored in accordance with the storage for disposal requirements of § 761.65.

(vii) Processing and distribution in commerce of PCBs for purposes of servicing electromagnets, switches or voltage regulators is permitted only for persons who are granted an exemption under TSCA 6(e)(3)(B).

* * * * *

(l) *Use in capacitors.* PCBs at any concentration may be used in capacitors, subject to the following conditions:

(1) *Use conditions.* (i) After October 1, 1988, the use and storage for reuse of PCB Large High Voltage Capacitors and PCB Large Low Voltage Capacitors which pose an exposure risk to food or feed is prohibited.

(ii) After October 1, 1988, the use of PCB Large High Voltage Capacitors and PCB Large Low Voltage Capacitors is prohibited unless the capacitor is used within a restricted-access electrical substation or in a contained and restricted-access indoor installation. A restricted-access electrical substation is an outdoor, fenced or walled-in facility that restricts public access and is used in the transmission or distribution of electric power. A contained and restricted-access indoor installation does not have public access and has an adequate roof, walls, and floor to contain any release of PCBs within the indoor location.

(2) [Reserved]

(m) *Use in and servicing of circuit breakers, reclosers and cable.* PCBs at any concentration may be used in circuit breakers, reclosers, and cable and may be used for purposes of servicing this electrical equipment (including rebuilding) for the remainder of their useful lives, subject to the following conditions:

(1) *Servicing conditions.* (i) Circuit breakers, reclosers, and cable may be serviced (including rebuilding) only with dielectric fluid containing less than 50 ppm PCB.

(ii) Any circuit breaker, recloser or cable found to contain at least 50 ppm PCBs may be serviced only in accordance with the conditions contained in 40 CFR 761.30(h)(2).

(2) [Reserved]

4. In § 761.40, paragraphs (a)(2) and (c)(1) are revised to read as follows:

§ 761.40 Marking requirements.

(a) * * *

(2) PCB Transformers at the time of manufacture, at the time of distribution in commerce if not already marked, and at the time of removal from use if not already marked. [Marking of PCB-Contaminated Electrical Equipment is not required];

* * * * *

(c) * * *

(1) All PCB Transformers not marked under paragraph (a) of this section [marking of PCB-Contaminated Electrical Equipment is not required];

* * * * *

5. The heading for Subpart D is revised to read as follows:

Subpart D—Storage and Disposal

6. In § 761.60 paragraph (b)(1)(ii) is removed and reserved and the introductory text of paragraph (a)(2), paragraph (b)(2)(i), the introductory text of paragraph (b)(2)(iii), paragraph (b)(4) and (5), paragraph (d), and paragraph (g)(1) are revised and paragraph (b)(6) is added to read as follows:

§ 761.60 Disposal requirements.

(a) * * *

(2) Mineral oil dielectric fluid from PCB-Contaminated Electrical Equipment containing a PCB concentration of 50 ppm or greater, but less than 500 ppm, must be disposed of in one of the following:

* * * * *

(b) * * *

(2) *PCB Capacitors.* (i) The disposal of any capacitor shall comply with all requirements of this subpart unless it is known from label or nameplate information, manufacturer's literature (including documented communications with the manufacturer), or chemical analysis that the capacitor does not contain PCBs.

* * * * *

(iii) Any PCB Large High or Low Voltage Capacitor which contains 500 ppm or greater PCBs, owned by any person, shall be disposed of in accordance with either of the following:

* * * * *

(4) *PCB-Contaminated Electrical Equipment.* All PCB-Contaminated Electrical Equipment except capacitors shall be disposed of by draining all free flowing liquid from the electrical equipment and disposing of the liquid in accordance with paragraph (a)(2) or (3) of this section. The disposal of the drained electrical equipment is not regulated by this rule. Capacitors that contain between 50 and 500 ppm PCBs shall be disposed of in an incinerator that complies with § 761.70 or in a chemical waste landfill that complies with § 761.75.

(5) *Other PCB Articles.* (i) PCB Articles with a PCB concentration of 500 ppm or greater must be disposed of:

(A) In an incinerator that complies with § 761.70; or

(B) In a chemical waste landfill that complies with § 761.75, provided that all free-flowing liquid PCBs have been thoroughly drained from any articles before the articles are placed in the chemical waste landfill and that the drained liquids are disposed of in an incinerator that complies with § 761.70.

(ii) PCB Articles with a PCB concentration between 50 and 500 ppm must be disposed of by draining all free flowing liquid from the article and disposing of the liquid in accordance with paragraph (a)(2) or (3) of this section. The disposal of the drained article is not regulated by this rule.

(6) *Storage of PCB Articles.* Except for a PCB Article described in paragraph (b)(2)(ii) of this section and hydraulic machines that comply with the municipal solid waste disposal provisions described in paragraph (b)(3) of this section, any PCB Article shall be stored in accordance with § 761.65 prior to disposal.

* * * * *

(d) *Spills.* (1) Spills, leaks, and other uncontrolled discharges of PCBs constitute the disposal of PCBs.

(2) PCBs resulting from the clean-up and removal of spills, leaks, or other uncontrolled discharges, must be stored and disposed of in accordance with paragraph (a) of this section.

(3) These regulations do not exempt any person from any actions or liability under other statutory authorities, including but not limited to the Clean Water Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

* * * * *

(g) *Testing procedures.* (1) Owners or users of mineral oil dielectric fluid electrical equipment may use the following procedures to determine the concentration of PCBs in the dielectric fluid:

(i) Dielectric fluid removed from mineral oil dielectric fluid electrical equipment may be collected in a common container, provided that no other chemical substances or mixtures are added to the container. This common container option does not permit dilution of the collected oil. Mineral oil that is assumed or known to contain at least 50 ppm PCBs must not be mixed with mineral oil that is known or assumed to contain less than 50 ppm PCBs to reduce the concentration of PCBs in the common container. If dielectric fluid from untested, oil-filled circuit breakers, reclosers, or cable is collected in a common container with dielectric fluid from other oil-filled electrical equipment, the entire contents of the container must be treated as PCBs at a concentration of at least 50 ppm, unless all of the fluid from the other oil-filled electrical equipment has been tested and shown to contain less than 50 ppm PCBs.

(ii) For purposes of complying with the marking and disposal requirements, representative samples may be taken from either the common containers or the individual electrical equipment to determine the PCB concentration, except that if any PCBs at a concentration of 500 ppm or greater have been added to the container or equipment then the total container contents must be considered as having a PCB concentration of 500 ppm or greater for purposes of complying with the disposal requirements of this subpart. For purposes of this subparagraph, representative samples of mineral oil dielectric fluid are either samples taken in accordance with American Society of Testing and Materials method D-923 or samples taken from a container that has been thoroughly mixed in a manner such that any PCBs in the container are uniformly distributed throughout the liquid in the container.

* * * * *

7. In § 761.65, paragraph (c)(2) is revised to read as follows:

§ 761.65 Storage for disposal.

* * * * *

(c) * * *

(2) Non-leaking and structurally undamaged PCB Large High Voltage Capacitors and PCB-Contaminated Electrical Equipment that have not been drained of free flowing dielectric fluid may be stored on pallets next to a storage facility that meets the requirements of paragraph (b) of this section. PCB-Contaminated Electrical Equipment that has been drained of free flowing dielectric fluid is not subject to the storage provisions of § 761.65. Storage under this subparagraph will be permitted only when the storage facility

has immediately available unfilled storage space equal to 10 percent of the volume of capacitors and equipment stored outside the facility. The capacitors and equipment temporarily stored outside the facility shall be checked for leaks weekly.

* * * * *

§ 761.45 Correctly designated as § 761.180.

8. Section 761.45 which was incorrectly redesignated as § 761.80 in the **Federal Register** of May 6, 1982 (47 FR 19527) is correctly redesignated as § 761.180 in Subpart J.

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

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DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
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List of Public Laws

Last Listing August 20, 1982

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

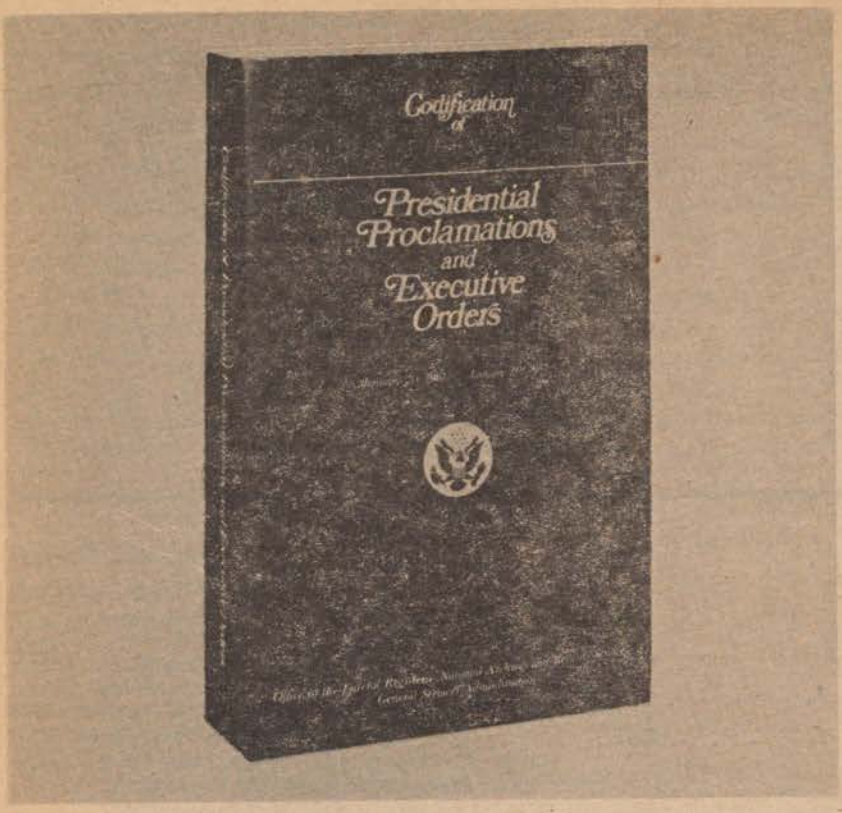
H.J. Res. 541 / Pub. L. 97–237 Concerning the successful completion of the test flight phase of the Space Shuttle program. (August 20, 1982; 96 Stat. 267) Price $1.75.

S. 2154 / Pub. L. 97–238 To direct the Secretary of Agriculture to release a reversionary interest held by the United States in certain lands located in Christian County, Kentucky, so that such lands may be used for cemetery purposes. (August 20, 1982; 96 Stat. 269) Price $1.75.

H.J. Res. 516 / Pub. L. 97–239 To provide for the designation of April 17 to April 23, 1983, as "National Coin Week". (August 20, 1982; 96 Stat. 271) Price $1.75.

S.J. Res. 123 / Pub. L. 97–240 Authorizing and requesting the President to proclaim "National Disabled Veterans Week". (August 20, 1982; 96 Stat. 272) Price $1.75.

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