AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

3-11-85
Vol. 50 No. 47
Pages 9609-9784

federal register

Monday
March 11, 1985

Selected Subjects

Administrative Practice and Procedure
Internal Revenue Service

Air Pollution Control
Environmental Protection Agency

Communications Common Carriers
Federal Communications Commission

Customs Duties and Inspection
Customs Service

Disaster Assistance
Federal Emergency Management Agency

Grazing Lands
Land Management Bureau

Handicapped
Architectural and Transportation Barriers Compliance Board

Income Taxes
Internal Revenue Service

Marine Safety
Coast Guard

Marketing Agreements
Agricultural Marketing Service

Milk Marketing Orders
Agricultural Marketing Service

Oil Pollution
Environmental Protection Agency

CONTINUED INSIDE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

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.

Selected Subjects

Postal Service
Postal Service

Reporting and Recordkeeping Requirements
Federal Communications Commission

Surface Mining
Surface Mining Reclamation and Enforcement Office

Contents

Federal Register
Vol. 50, No. 47
Monday, March 11, 1985

Agricultural Marketing Service
RULES
9610 Lemons grown in Arizona and California
PROPOSED RULES
Milk marketing orders:
9637 Middle Atlantic and New York-New Jersey
9654 New Orleans-Mississippi
9661 Texas

Agriculture Department
See Agricultural Marketing Service; Federal Crop Insurance Corporation; Soil Conservation Service.

Architectural and Transportation Barriers Compliance Board
PROPOSED RULES
9686 Nondiscrimination on basis of handicap, in programs and activities; enforcement

Arts and Humanities, National Foundation
NOTICES
Meetings:
9732 Design Arts Advisory Panel
9732 Literature Advisory Panel
9732 Theater Advisory Panel

Centers for Disease Control
NOTICES
Meetings:
9718 Diabetic sentinel health events, surveillance systems
9717 Immunization Conference
9718 Tuberculosis, future research; prospects and priorities for eradication of disease

Coast Guard
PROPOSED RULES
Ports and waterways safety:
9682 Gulf of Mexico; port access routes study results
Regattas and marine parades:
9681 Seattle Opening Day Yacht Parade and Crew Race

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service.

Customs Service
RULES
Forms:
9610 Special Customs Invoice, elimination

Defense Department
See also Engineers Corps; Navy Department.
NOTICES
9706 Agency information collection activities under OMB review
9706 Travel per diem rates, civilian personnel; changes

Energy Department
See Federal Energy Regulatory Commission.

Engineers Corps
NOTICE
Environmental statements; availability, etc.:
9707 Fort A.P. Hill, VA

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
9627 Maryland
PROPOSED RULES
Air quality implementation plans; preparation, adoption and submittal, etc.:
9694 Air quality models guideline; amendment; draft availability
Air quality planning purposes; designation of areas:
9694 Pennsylvania
Water pollution control:
9776 Oil discharge
NOTICES
9708 Agency information collection activities under OMB review
Toxic and hazardous substances control:
9709 Premanufacture notices receipts; correction
Water pollution; effluent guidelines for point source categories:
9708 Simpson Paper Co. et al.; denial of variance; extension of time

Equal Employment Opportunity Commission
NOTICES
9756 Meetings; Sunshine Act (2 documents)

Federal Communications Commission
RULES
Common carrier services:
9633 MTS and WATS market structure, etc.; waiver extension
Organizations, functions, and authority delegations:
9632 Reporting and recordkeeping requirements
NOTICES
Hearings, etc.:
9709 Bryan Industrial Electronics, Inc., et al.
9712 Great American Broadcasting Corp. et al.
9711 Jackson Co. Broadcasting, Inc., et al.
9711 Moore, Josie, et al.
9709 Shinn, Charles Ray, et al.

Federal Crop Insurance Corporation
RULES
Crop insurance; various commodities:
9609 Citrus; correction
9609 Citrus; sales closing date extension

Federal Deposit Insurance Corporation
NOTICES
9713 Agency information collection activities under OMB review

Federal Emergency Management Agency
RULES
Disaster assistance:
9628 Crisis counseling assistance and training

NOTICES
9713 Privacy Act; systems of records

Federal Energy Regulatory Commission
NOTICES
9756 Meetings; Sunshine Act

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
9753 Norfolk Southern Corp. et al.

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
9715 American Discount Bankholding Corp. et al.
9715 Marshall & Ilsley Corp.
9716 Texas Commerce Bancshares, Inc., et al.

Food and Drug Administration
PROPOSED RULES
Human drugs:
9678 Aphrodisiac drug products (OTC); correction
9678 Laxative drug products (OTC); tentative final monograph; correction
NOTICES
Grants and cooperative agreements:
9718 Fish and other aquatic animals used for food, comparative drug metabolism studies

General Services Administration
NOTICES
Property management:
9716 Transportation and motor vehicles; Government-wide motor vehicle rental program

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; National Institutes of Health; Social Security Administration.

Interior Department
See Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office.

Internal Revenue Service
RULES
Income and excise taxes:
9614 Fringe benefits; use of company cars, vacations, etc.; temporary; correction
Income taxes:
9613 Aggregation of activities for purposes of the at-risk rules; temporary
9614 Withholding upon disposition of U.S. real property interests by foreign persons; temporary; correction
Procedure and administration:
9614 Church tax inquiries and examinations; temporary
PROPOSED RULES
Procedure and administration:
9678 Church tax inquiries and examinations; cross reference
NOTICES
Authority delegations:
9754 Regional Commissioners et al.
Meetings:
9754 Art Advisory Panel

International Trade Administration
NOTICES
Antidumping:
9700 Drycleaning machinery from West Germany
9701 Large diameter carbon steel welded pipes from Brazil; termination
Countervailing duties:
9701 Yarns of polypropylene fibers from Mexico
Export privileges, actions affecting:
9699 Carlson, Paul C., et al.
9702 Export trade certificates of review

International Trade Commission
NOTICES
Import investigations:
9723 Oil country tubular goods from Austria, Romania, and Venezuela

Interstate Commerce Commission
NOTICES
Rail carriers:
9724 State intrastate rail rate authority; California et al.
Railroad operation, acquisition, construction, etc.:
9724 Burlington Northern Railway Co.
9724 Missouri Pacific Railroad Co.
Railroad services abandonment:
9725 Western Pacific Railroad Co. et al.

Justice Department
See also Juvenile Justice and Delinquency Prevention Office.
NOTICES
9725 Agency information collection activities under OMB review
9725 Intergovernmental review of agency programs and activities

Juvenile Justice and Delinquency Prevention Office
PROPOSED RULES
Grants:
9679 Formula grants to States; correction

Labor Department
See Pension and Welfare Benefit Programs Office.

Land Management Bureau
PROPOSED RULES
Grazing administration:
9696 Livestock grazing on public lands
NOTICES
Alaska native claims selection:
9720 Eklutna, Inc.
9720 Olsonville, Inc.
9721 Coal production forecast technical report; availability and inquiry
9721 Coal unsuitability criteria, application; report availability and inquiry
Meetings:
9722 Elko District Advisory Council
Sale of public lands:
9721 Nevada
Withdrawal and reservation of lands:
9720 Idaho; correction

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
9722 ARCO Oil & Gas Co.
9722 Exxon Co. U.S.A.

National Aeronautics and Space Administration
NOTICES
9731 Agency information collection activities under OMB review

National Institutes of Health
NOTICES
Recombinant DNA molecules research:
9760 Actions under guidelines

National Oceanic and Atmospheric Administration
NOTICES
Marine mammal permit applications, etc.:
9703 Northwest and Alaska Fisheries Center
9703 Payne, Dr. Roger

National Technical Information Service
NOTICES
9703 Patents, Government-owned; licensing agent assistance

Navy Department
NOTICES
Meetings:
9707 Naval Academy, Board of Visitors

Nuclear Regulatory Commission
NOTICES
9733 Agency information collection activities under OMB review
Applications, etc.:
9733 Baltimore Gas & Electric Co.
9734 Florida Power & Light Co. (3 documents)
9736 Southern California Edison Co. et al.
Environmental statements; availability, etc.:
9734 Manhattan College
9735 Philadelphia Electric Co. et al.
9732 Regulatory guides; issuance, availability, and withdrawal

Pension and Welfare Benefit Programs Office
NOTICES
Employee benefit plans; prohibited transaction exemptions:
9730 Cumberland Farms Employees' Retirement Trust et al.
9726 People's Bank of Bridgeport et al.

Postal Service
RULES
Domestic Mail Manual:
9622 Merchandise Return Service

Securities and Exchange Commission
NOTICES
Applications, etc.:
9736 Rochester Tax Managed Fund, Inc., et al.
Self-regulatory organizations; proposed rule changes:
9738, 9739 Midwest Stock Exchange, Inc. (2 documents)
9739 Pacific Stock Exchange, Inc.

Social Security Administration
NOTICES
Social security benefits:
9770 Mental impairment cases; disability claims determination; inquiry

Soil Conservation Service
NOTICES
Watershed projects; deauthorization of funds:
9699 Middle River, GA

State Department
NOTICES
9740 Gifts to Federal employees from foreign governments; listing

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program submission:
9620 Illinois
PROPOSED RULES
Permanent program submission:
9679 Maryland
9680 Wyoming
NOTICES
9723 Agency information collection activities under OMB review

Textile Agreements Implementation Committee
NOTICES
Cotton, wool, and man-made textiles:
9704 Brazil
9705 Hungary
9704 Indonesia

Transportation Department
See also Coast Guard; Federal Railroad Administration.
NOTICES
Meetings:
9753 Commercial Space Transportation Advisory Committee

Treasury Department
See Customs Service; Internal Revenue Service.

Veterans Administration
RULES
Vocational rehabilitation and education:
9621 Vocational rehabilitation program; amendments; correction

Separate Parts in This Issue

Part II
9760 Department of Health and Human Services, National Institutes of Health

Part III
9770 Department of Health and Human Services, Social Security Administration
Part IV
9776 Environmental Protection Agency

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
409 9609
440 9609
910 9610
Proposed Rules:
1002 9637
1004 9637
1094 9654
1126 9661

19 CFR
141 9610
143 9610
145 9610
147 9610
172 9610
177 9610

21 CFR
Proposed Rules:
310 9678
334 9678

26 CFR
1 (3 documents) 9613, 9614
31 9614
54 9614
301 9614
Proposed Rules:
301 9678

28 CFR
Proposed Rules:
31 9679

30 CFR
913 9620
Proposed Rules:
920 9679
950 9680

33 CFR
Proposed Rules:
100 9681
166 9682

36 CFR
Proposed Rules:
1154 9686

38 CFR
21 9621

39 CFR
111 9622

40 CFR
62 9627
Proposed Rules:
51 9694
52 9694
81 9694
110 9776

43 CFR
Proposed Rules:
4100 9698

44 CFR
205 9628

47 CFR
0 9632
69 9633

Rules and Regulations

Federal Register
Vol. 50, No. 47
Monday, March 11, 1985

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 409

[Docket No. 2075S]

Arizona-California Citrus Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date.

SUMMARY: Under the authority contained in the Federal Crop Insurance Act, as amended, the Federal Crop Insurance Corporation (FCIC) herewith gives notice of the extension of the sales closing date for accepting applications for crop insurance in Arizona and California on citrus by reopening the sales period through the month of April, effective for the 1986 crop year only. This action is being taken on an experimental basis to determine the increase in participation and any administrative problems that might arise. The intended effect of this notice is to advise all interested parties of the extension of sales closing dates and to comply with the Arizona-California Citrus Crop Insurance Regulations with respect to the authority of the Manager to extend sales closing dates.

EFFECTIVE DATE: March 11, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: Under the provisions contained in the Arizona-California Citrus Crop Insurance Regulations (7 CFR Part 409), the Manager, FCIC, is authorized to extend the sales closing date for accepting applications for crop insurance in any county. In counties in Arizona and California the closing date for accepting applications for the citrus crop insurance is November 30.

FCIC is extending the period for accepting applications for citrus crop insurance by reopening the sales period for the month of April. This action is for the 1986 crop year only, and on an experimental basis to determine increase in participation and any administrative problems. It has been determined that no potential for adverse selection will result from such reopening since all applications would require a pre-acceptance field inspection to determine eligibility. The extended period for accepting applications for citrus crop insurance in Arizona and California will be from April 1 through the close of business on April 30, 1985, effective for the 1986 crop year only.

Notice

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation herewith gives notice of the reopening of the sales period for accepting applications for citrus crop insurance in Arizona and California under the provisions of 7 CFR 409.7(b), effective for the 1986 crop year only, from April 1, 1985, through the close of business on April 30, 1985.

Done in Washington, D.C., on February 28, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 4, 1985.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 85-5655 Filed 3-8-85; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 440

[Docket No. 2081S]

Texas Citrus Tree Crop Insurance Regulations; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Correction.

SUMMARY: Federal Crop Insurance Corporation (FCIC) published a final rule in the **Federal Register** on Friday, April 6, 1984, at 49 FR 13671, issuing a new Part 440 in Title 7 of the Code of Federal Regulations to be known as 7 CFR Part 440—Texas Citrus Crop Insurance Regulations (7 CFR Part 440). These regulations, as published, provide that an application for insurance may be made by any person to cover such person's insurable share in the trees as landlord, owner-operator, or tenant. This reference to tenant was inadvertently included. The policy for crop insurance states that the insured share shall be the policyholder's share as landlord or owner-operator with no reference to "tenant." Further, Section 17 of the policy, titled "Meaning of Terms", defines an insured as being the person (owner or owners) who submitted the application accepted by us.

The word "tenant" is clearly in error and should be removed from the regulation. This notice is published to correct that reference.

ADDRESS: Written comments on this correction may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: FR Doc. 84-9204, appearing at page 13671, is corrected on page 13672 by removing the phrase "or tenant" in the first sentence of 7 CFR 400.7(a), and by adding the word "or" between the words "landlord," and "owner-operator".

The Authority citation for 7 CFR Part 440 is:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516)

Done in Washington, D.C. on February 28, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 4, 1985.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 85-5656 Filed 3-8-85; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 506]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 280,000 cartons during the period March 10–16, 1985. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

DATES: Effective for the period March 10–16, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on March 5, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand is good on mid sizes and improving on the larger sizes of fruit.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing Agreements and Orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.806 is added as follows:

§ 910.806 Lemon Regulation 506.

The quantity of lemons grown in California and Arizona which may be handled during the period March 10, 1985, through March 16, 1985, is established at 280,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 6, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–5803 Filed 3–8–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141, 143, 145, 147, 172 and 177

[T.D. 85–39]

Customs Regulations Amendments Relating to Elimination of the Special Customs Invoice, Customs Form 5515

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs regulations relating to invoices by eliminating the Special Customs Invoice and requiring that the commercial invoice identify by name a responsible employee of the exporter, who has knowledge, or who can readily obtain knowledge, of the facts of the transaction.

Because of (1) statutory amendments which simplified the methods used to determine the value of imported merchandise, (2) the fact that the information required on the Special Customs Invoice also appears on the commercial invoice presented at the time of entry, and (3) increased sophistication on the part of the importing community, there is no longer any need to require the Special Customs Invoice.

EFFECTIVE DATE: May 10, 1985.

FOR FURTHER INFORMATION CONTACT: Herbert Geller, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202–535–4161).

SUPPLEMENTARY INFORMATION:

Background

This document amends Part 141, Customs Regulations (19 CFR Part 141), relating to invoices, to eliminate the Special Customs Invoice, Customs Form 5515 (SCI),and require that the commercial invoice identify by name a responsible individual who has knowledge, or can readily obtain knowledge, of the facts of the transaction. Conforming amendments are made to other parts of the Customs Regulations referencing the SCI and the commercial invoice.

Section 141.83, Customs Regulations (19 CFR 141.83), provides that a SCI shall be filed for each shipment of merchandise imported into the U.S. if the purchase price exceeds $500 and the rate of duty is dependent in any manner upon the value of the merchandise. The SCI also is required for merchandise not imported pursuant to a purchase, or agreement to purchase, if the value is over $500.

The general information required by section 481(a), Tariff Act of 1930 (19 U.S.C. 1481(a)), to be shown on the SCI and all other invoices for merchandise imported into the U.S., is set forth in § 141.86(a), Customs Regulations (19 CFR 141.86(a)).

Pursuant to section 481(d), Tariff Act of 1930 (19 U.S.C. 1481(d)), such exemptions from the requirements of 19 U.S.C. 1481(a), may be made by the Secretary of the Treasury as he deems advisable.

Furthermore, section 484(b), Tariff Act of 1930, as amended (19 U.S.C. 1484(b)), provides that the Secretary shall provide by regulation for the production of a certified invoice (i.e. SCI) for imported merchandise when he deems it advisable and the terms and conditions under which such merchandise may be permitted entry without the production of a certified invoice.

Because of (1) Pub. L. 96–39, the "Trade Agreements Act of 1979," which simplified the methods used to

determine the value of imported merchandise, (2) the fact that the information required on the SCI also appears on the commercial invoice presented at the time of entry, and (3) increased sophistication on the part of the importing community, Customs believed the SCI no longer served a useful purpose. Accordingly, on February 1, 1982, instructions were sent to Customs personnel advising that effective March 1, 1982, a SCI would not be required when a signed commercial invoice is provided which contains the information required by § 141.86, Customs Regulations. The instructions further indicated that when a signed commercial invoice was not provided the SCI could still be waived in accordance with § 141.92, Customs Regulations (19 CFR 141.92).

However, on August 20, 1979, the U.S. accepted the "Recommendation of the Customs Co-operation Council Concerning Customs Requirements Regarding Commercial Invoices", which states that Council members should refrain from requiring a signature, for customs purposes, on commercial invoices. Accordingly, it was decided that the present practice of accepting a signed commercial invoice should be changed to require that the name of a responsible individual who has knowledge of the transaction be placed on the commercial invoice.

Therefore, on April 20, 1984, a notice proposing to amend the Customs Regulations was published in the Federal Register (49 FR 16803), soliciting public comments. It also was proposed to incorporate the present requirements of § 141.86(j) (2), (4), and (8), relating to country of origin of the merchandise, exchange rate and goods and services furnished, respectively, which are not included in the invoice, into § 141.86(a), Customs Regulations, relating to general information required on the invoice. Eleven comments were received in response to the notice. A discussion of these comments and our responses follow.

Discussion of Comments

Comment: Requiring a name on a commercial invoice is contrary to the agreement reached by the Customs Cooperation Council (of which the U.S. is a member) that Council members should refrain from requiring a signature, for Customs purposes, on commercial invoices.

Response: We disagree. The proposed amendment asks that the name of a person who has knowledge of the transaction be shown on the invoice. A signature of an official is not required.

Comment: It would be difficult to provide Customs with the name of any single individual who has knowledge of the transaction. Many transactions are multi-invoiced, i.e., they involve numerous individuals with knowledge of only certain aspects of the transaction. Moreover, the cost and effort sustained by foreign exporters in identifying and placing names of persons with knowledge of transactions on millions of commercial invoices far exceeds any benefit to Customs.

Response: We disagree. The rule does not require the named individual to be knowledgeable of the transaction in every minute detail, but simply requires that the name of a responsible individual who has knowledge of the transaction appear on the invoice. It is reasonable to assume that there is at least one employee of an exporting firm that has general knowledge of the transaction.

Also, we do not believe that it would be costly for exporters merely to identify and type or print in the name of one individual on the commercial invoice. Customs, as well as the importer, would benefit by having a person identified to whom questions could be referred concerning the transaction.

Comment: The naming of an individual on the commercial invoice implies individual liability rather than corporate liability.

Response: We disagree that the mere placing of a name on an invoice implies liability. Placing the name on the invoice is done only for obtaining information about the transaction. The individual named may ultimately be held responsible if, after investigation, the evidence supports this finding. The assessment of liability, however, is not the purpose of the amendment.

Comment: The proposal to name an individual knowledgeable of the transaction on the commercial invoice is vague. One could conclude that the name listed on the invoice could be a broker, an employee of the importer, or an employee of the exporter, as long as that person had knowledge of the transaction.

Response: We agree. The person named on the commercial invoice should be an employee of the exporter so that, for investigative purposes, the person can be contacted quickly. The proposed amendment has been further amended to clarify this point.

Comment: Several commenters proposed that the rule regarding the naming of an individual on the invoice be amended to require the name of a responsible individual who has knowledge of *or who can readily obtain knowledge of* the facts of the transaction.

Response: We concur. The final rule includes this provision.

Comment: One commenter suggested that there should be a 6-month transition period before the SCI is eliminated because exporters have computerized documentation systems based on the use of this invoice.

Response: We disagree. Customs notified brokers and the importing/exporting community in February, 1982, that the SCI would not be required after March 1, 1982. All parties have had ample time, therefore, to adjust to the elimination of the SCI. Customs will continue, however, to accept a SCI prepared in conjunction with a commercial or pro forma invoice.

Comment: The country of origin statement on the commercial invoice is not practical inasmuch as many exporters do not know the country of origin and few problems have arisen on this matter.

Response: We disagree. The country of origin statement is extremely important considering the fact that much imported merchandise is subject to quota limitations and visa requirements. The statement would assist importers in determining the country of origin of goods, thereby alleviating possible liability on domestic importers' parts if a false country of origin were shown on the invoice prepared by the exporter. Therefore, we are retaining this provision in § 141.86(a).

Comment: It is unnecessary to include the exchange rate on the commercial invoice, as proposed in the notice.

Response: We agree. This provision has been eliminated from § 141.86(a)(7).

Comment: Proposed § 141.86(a)(11) should be revised to exclude goods or services undertaken in the U.S. and to include a provision for acceptance of annual reports for goods and services.

Response: We agree. Section 141.86(a)(11) excludes goods or services undertaken in the U.S., and it includes a provision for acceptance of annual reports for goods and services, when approved upon application to the district director.

After consideration of all the comments and further review of the matter, we have decided to adopt the proposed amendments with the modifications noted.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly,

no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to these amendments because the rule will not have a significant economic impact on a substantial number of small entities. The amendments remove a regulatory burden and will result in reduced cost to the importing community.

Accordingly, it is certified under the provisions of § 3, Regulatory Flexibility Act (5 U.S.C. 605(b)), that the rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information requirements contained in § 141.86(a)(10) and (11) and § 141.86(j) are subject to the provisions of the Paperwork Reduction Act (44 U.S.C. 3504) and have been cleared by the Office of Management and Budget. They have been assigned OMB No. 1515-0120.

Drafting Information

The principal author of this document was Susan Terranova, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Parts 141, 143, 145, 172 and 177

Customs duties and inspection, Imports.

Amendments to the Regulations

Parts 141, 143, 145, 147, 172, and 177, Customs Regulations (19 CFR Parts 141, 143, 145, 147, 172, 177), are amended as set forth below.

William von Raab,

Commissioner of Customs.

Approved: February 21, 1985.

Edward T. Stevenson,

Acting Assistant Secretary of the Treasury.

PART 141—ENTRY OF MERCHANDISE

§ 141.81 [Amended]

1. The first sentence of § 141.81 is amended by removing the words "A special Customs invoice, a" and inserting, in their place, the word "A".

2. Section 141.83 is amended by removing paragraph (a) and reserving it; removing the second sentence of paragraph (b); and revising the first sentence of paragraph (c)(1) to read as follows:

§ 141.83 Type of invoice required.

* * * * *

(c) *Commercial invoice.* (1) A commercial invoice shall be filed for each shipment of merchandise not exempted by paragraph (d) of this section. * * *

3. Section 141.83(d) is amended by removing the words "Special Customs or commercial" in the paragraph heading and inserting, in their place, the word "Commercial", and removing the words "A Special Customs Invoice or a" in the first sentence and inserting, in their place, the word "A".

§ 141.84 [Amended]

4. Section 141.84 is amended by removing the words "original special Customs invoice or" in the first sentence of paragraph (a); the words "a special Customs invoice or" in the first sentence of paragraph (c); and the words "a special Customs invoice or" both times they are used in paragraph (e) and, in the second instance inserting, in their place, the word "the".

§ 141.85 [Amended]

5. The first sentence of the Pro Forma Invoice form set forth in § 141.85 is amended by removing the words "special or".

6. Section 141.86 is amended by removing the words, "except the Special Customs Invoice (Customs Form 5515) (see paragraph (j) of the section)" in the first sentence of paragraph (a); removing the word "and" at the end of paragraph (a)(8); removing the period at the end of paragraph (a)(9), and inserting, in its place, a semicolon; and adding new paragraphs (a)(10) and (a)(11) to read as follows:

§ 141.86 Contents of invoices and general requirements.

(a) * * *

(10) The country of origin of the merchandise; and,

(11) All goods or services furnished for the production of the merchandise (e.g., assists such as dies, molds, tools, engineering work) not included in the invoice price. However, goods or services furnished in the United States are excluded. Annual reports for goods and services, when approved by the district director, will be accepted as proof that the goods or services were provided

* * * * *

7. Section 141-86 is further amended by revising paragraph (j) to read as follows:

§ 141.86 Contents of invoices and general requirements.

* * * * *

(j) *Name of responsible individual.* Each invoice of imported merchandise shall identify by name a responsible employee of the exporter, who has knowledge, or who can readily obtain knowledge, of the transaction.

(The collection of information requirements contained in § 141.86 have been approved by the Office of Management and Budget under Control Number 1515-0120)

(R.S. 251, as amended, secs. 448, 481, 484, 624, 46 Stat. 714, as amended, 719, 722, as amended, 759; 19 U.S.C. 66, 1448, 1481, 1484, 1624)

PART 143—CONSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

Section 143.27 is revised to read as follows:

§ 143.27 Invoices.

In the case of merchandise imported pursuant to a purchase or agreement to purchase, or intended for sale and entered informally, the importer shall produce the commercial invoice covering the transaction or, in the absence thereof, an itemized statement of value.

(R.S. 251, as amended, secs. 481, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

PART 145—MAIL IMPORTATIONS

§ 145.11 [Amended]

Section 145.11 is amended by removing pararaph (c) and reserving it.

(R.S. 251, as amended, secs. 481, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

PART 147—TRADE FAIRS

Section 147.12 is revised to read as follows:

§ 147.12 Invoices.

Articles intended for a fair under the provisions of the Act are subject to the invoice requirements of Subpart F, Part 141 of this Chapter.

(R.S. 251, as amended, secs. 481, 484, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

PART 172—LIQUIDATED DAMAGES

§ 172.22 [Amended

Section 172.22(b) is amended by removing the words "Special Customs Invoices or" in the paragraph heading; the words "Special Customs Invoice, Customs Form 5515, or a " in the first sentence of paragraph (b); and the words "special Customs or" in paragraph (b)(3)(i).

(R.S. 251, as amended, secs. 481, 484, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

PART 177—ADMINISTRATIVE RULINGS

§ 177.2 [Amended]

Sections 177.2 is amended by removing the words "a Special Customs Invoice" in the first sentence of paragraph (b)(2)(iii) and inserting, in their place, the words "an invoice".

(R.S. 251, as amended, secs. 481, 484, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

[FR Doc. 85-5709 Filed 3-8-85; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[T.D. 8012]

Income Tax; Taxable Years Beginning After December 31, 1953; Aggregation of Certain Activities for Purposes of the At-Risk Rules

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the aggregation of certain activities for purposes of the at-risk rules. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations provide the public with the guidance needed to comply with the law and affect certain taxpayers engaged in those activities.

EFFECTIVE DATE: The regulations are effective for taxable years beginning after December 31, 1983 and before January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Alice M. Bennett of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3238, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) to provide rules relating to the aggregation of certain activities under section 465 of the Internal Revenue Code of 1954. Section 465 was added to the Code by section 204 of the Tax Reform Act of 1976 (90 Stat. 1531). Section 465 subsequently was amended by sections 201-204 of the Revenue Act of 1978 (92 Stat. 2763), section 402(e) of the Energy Tax Act of 1978 (92 Stat. 3174), section 102(a)(1) of the Technical Corrections Act of 1979 (94 Stat. 194), section 5(a)(31) of the Subchapter S Revision Act of 1982 (96 Stat. 1669), and section 432 of the Tax Reform Act of 1984 (98 Stat. 811). In general, section 465 provides a limit on the amount of losses a taxpayer may deduct in a taxable year with respect to certain activities.

Prior to the enactment of the Tax Reform Act of 1984, section 465 provided special aggregation rules for partnership and S corporation activities listed in section 465(c)(1). Under those aggregation rules, a partner or S corporation shareholder treated all the films and videotapes of the partnership or S corporation as a single activity for purposes of section 465, and similarly treated all farms, all section 1245 properties leased or held for leasing, all oil and gas properties, and all geothermal properties of the partnership or S corporation as single activities for purposes of section 465. Taxpayers engaged in the activities listed in section 465(c)(1) other than through a partnership or S corporation, however, were required to treat each film, video tape, farm, section 1245 property that is leased or held for leasing, oil and gas property, and geothermal property as a separate activity for purposes of section 465.

The Tax Reform Act of 1984 changed the aggregation rules with respect to the activities listed in section 465(c)(1) for taxable years beginning after December 31, 1983. Section 465(c)(2) (as amended by the Tax Reform Act of 1984) generally requires partners and S corporation shareholders to separate activities listed in section 465(c)(1) that are engaged in by a partnership or S corporation on a property-by-property basis. Thus, partners and S corporation shareholders generally must treat each of the partnership's or S corporation's films, video tapes, farms, oil and gas properties, and geothermal properties as a separate activity. A special aggregation rule applies to section 1245 property that is leased or held for leasing: section 465(c)(2)(B) provides that partners and S corporation shareholders shall aggregate the partnership's or S corporation's section 1245 properties by reference to the taxable year in which the property is placed in service.

Section 465(c)(2) (as amended by the Tax Reform Act of 1984) also provides that taxpayers (including partners and S corporation shareholders) shall aggregate activities listed in section 465(c)(1) under rules similar to the rules provided in section 465(c)(3)(B), relating to active trades or businesses. In addition, the Secretary's authority to aggregate or separate activities by regulations is extended to the activities listed in section 465(c)(1). Prior to the enactment of the Tax Reform Act of 1984, the aggregation rules of section 465(c)(3)(B) and the Secretary's authority to aggregate or separate activities by regulations applied only to activities not listed in section 465(c)(1).

The Service recognizes that the new rules for separating film and video tape, farming, oil and gas, and geothermal activities engaged in by a partnership or S corporation on a property-by-property basis may create difficult allocation problems. In addition, if the aggregation rule under section 465(c)(3)(B) for active trades or businesses does not apply, the paperwork burden associated with the filing of partners' and shareholders' income tax returns may be substantial.

Therefore, the temporary regulations provide that, for taxable years beginning during 1984, partners and S corporation shareholders may aggregate the activities of a partnership or S corporation with respect to films and video tapes, farms, oil and gas properties, and geothermal properties in the same manner as provided under section 465 for taxable years beginning before January 1, 1984. The temporary regulations do not extend this aggregation rule to partnership or S corporation leasing activities since the special aggregation rule provided in section 465(c)(2)(B) reduces substantially the allocation and paperwork burdens.

The temporary regulation applies only to taxable years beginning during 1984. The Service intends to study the problems raised by the aggregation rules (as amended by the Tax Reform Act of 1984) and anticipates issuing guidance for future taxable years in additional temporary or final regulations. One alternative being considered is to allow taxpayers to aggregate these activities in a manner similar to the special aggregation rule provided under section 465(c)(2)(B) for leasing activities.

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Alice M. Bennett of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.441–1—1.483–2

Income taxes, Accounting, Deferred compensation plans.

Amendments to the Regulations

PART 1—[AMENDED]

The amendments to 26 CFR Part 1 are as follows:

The following new § 1.465–1T shall be added at the appropriate place:

§ 1.465–1T Aggregation of certain activities (Temporary).

(a) *General rule.* A partner in a partnership or an S corporation shareholder may aggregate and treat as a single activity—

(1) The holding, production, or distribution of more than one motion picture film or video tape by the partnership or S corporation,

(2) The farming (as defined in section 464 (e)) of more than one farm by the partnership or S corporation,

(3) The exploration for, or exploitation of, oil and gas resources with respect to more than one oil and gas property by the partnership or S corporation, or

(4) The exploration for, or exploitation of, geothermal deposits (within the meaning of section 613(e)(3)) with respect to more than one geothermal property by the partnership or S corporation.

Thus, for example, if a partnership or S corporation is engaged in the activity of exploring for, or exploiting, oil and gas resources with respect to 10 oil and gas properties, a partner or S corporation shareholder may aggregate those properties and treat the aggregated oil and gas activities as a single activity. If that partnership or S corporation also is engaged in the activity of farming with respect to two farms, the partner or shareholder may aggregate the farms and treat the aggregated farming activities as a single separate activity. Except as provided in section 465(c)(2)(B)(ii), the partner or shareholder cannot aggregate the farming activity with the oil and gas activity.

(b) *Effective date.* This section shall apply to taxable years beginning after December 31, 1983 and before January 1, 1985.

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 465(c)(2)(B) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 814, 68A Stat. 917; 26 U.S.C. 465(c)(2)(B) and 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: February 26, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85–5752 Filed 3–7–85; 10:13 am]

BILLING CODE 4830–01–M

---

26 CFR Part 1

[T.D. 8000]

Income Tax: Taxable Years Beginning After December 31, 1953; Withholding Upon Dispositions of U.S. Real Property Interests by Foreign Persons

Correction

In FR Doc. 84–33786, beginning on page 50667, in the issue of Monday, December 31, 1984, make the following corrections:

1. On page 50672, first column, eleventh and twelfth lines of § 1.1445–1T(c)(1), "will be stamped as their timely filing", should read, "by U.S. mail will be treated as their timely filing".

2. On page 50676, third column, in § 1.1445–2T(d)(3) (ii) and (iii), in both the thirteenth line down and the tenth line from the bottom of the column, "of" should be corrected to read, "or".

3. On page 50682, first column, seventh line in § 1.1445–5T(b)(3)(ii)(A), "of" should read, "not".

BILLING CODE 1505–01–M

---

26 CFR Parts 1, 31, and 54

[T.D. 8004]

Taxation of Fringe Benefits

Correction

In FR Doc. 85–292 beginning on page 747 in the issue of Monday, January 7, 1985, make the following corrections:

1. On page 748, in the second column, in the third line, "not" should read "nor".

2. On page 749, in the second column, in the first line, the section number now reading "§ 1.61–2" should read "§ 1.61–2T".

3. On page 755, in the third column, in the first line, the section number now reading "§ 31.312(a)–1T" should read "§ 31.3121(a)–1T".

BILLING CODE 1505–01–M

---

26 CFR Part 301

[T.D. 8013]

Procedure and Administration; Restrictions on Church Tax Inquiries and Examinations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the procedures for conducting church tax inquiries and examinations. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations provide guidance concerning the procedures described in the Act and affect church tax inquiries and examinations within the scope of section 7611 of the Internal Revenue Code of 1954 as well as certain other requests for information relating directly or indirectly to churches.

DATES: The regulations apply to all church tax inquiries and examinations beginning after December 31, 1984 and are effective after December 31, 1984. Church examinations commenced prior to January 1, 1985, will be conducted pursuant to section 7605(c) of the Internal Revenue Code of 1954.

FOR FURTHER INFORMATION CONTACT: Monice Rosenbaum of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:EE) (202–566–3938) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations on Procedure and Administration (26 CFR Part 301) under section 7611 of the Internal Revenue Code of 1954, enacted by section 1033 of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 1034–1039). The legislative background of section 7611 is found in the conference report published in H.R.

Rep. No. 861, 98th Cong., 2d Sess., pp. 1101–1114 (1984).

Format

These regulations are presented in the form of questions and answers. No inference should be drawn regarding issues not expressly raised that may be suggested by a particular question or answer or by the inclusion or exclusion of certain questions.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 533(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that these temporary regulations are not subject to review under Executive Order 12291 or the Treasury and OMB implementation of that Order dated April 29, 1983.

Drafting Information

The principal author of these regulations is Monice Rosenbaum of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 533 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

List of Subjects in 26 CFR Part 301

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

Amendments to the Regulations

The amendments to 26 CFR Part 301 are as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. There is added in the appropriate place the following new § 301.7611–1T:

§ 301.7611–1T Questions and answers relating to church tax inquiries and examinations (Temporary).

Table of Contents

Question(s)/Answer(s)

Church Tax Inquiry....1, 2, 3
Routine Requests....4
Third Party Records....5
Scope of Section 7611....6, 7, 8
Notice Requirements....9, 10
Action After Issuance of Notices....11
Procedural Time Limitations....12, 13, 13a
Examination of Records or Religious Activities....14
Limitations on Period of Assessment or proceedings for Collection Without Assessment....15
Multiple Examinations....16
Remedy for violations of Section 7611....17
Effective Date....18

Church Tax Inquiry

Q–1: When may the Internal Revenue Service begin an inquiry of a church's tax liability?

A–1: Under section 7611 of the Internal Revenue Code, the Internal Revenue Service may begin a church tax inquiry only when the appropriate Regional Commissioner (or higher Treasury official) reasonably believes, on the basis of facts and circumstances recorded in writing, that the organization (1) may not qualify for tax exemption as a church; (2) may be carrying on an unrelated trade or business (within the meaning of section 513); or (3) may be otherwise engaged in activities subject to tax. Information received by the Internal Revenue Service at its request may not be used to form the basis of a reasonable belief to begin a church tax inquiry, unless the Service's request is made within the procedures of section 7611, is a request permitted by these questions and answers to be made without application of the procedures of section 7611, or is a request to which the procedures of section 7611 do not apply.

Q–2: What is a church tax inquiry within the meaning of section 7611?

A–2: A church tax inquiry is any inquiry to a church (other than a routine request described in Q and A–4, an inquiry described in Q and A–5, an investigation described in Q and A–6 or an examination described in Qs and As 10 and 14), to serve as a basis for determining whether the organization qualifies for tax exemption as a church or whether it is carrying on an unrelated trade or business or is otherwise engaged in activities subject to tax. An inquiry is considered to commence when the Internal Revenue Service requests information or materials from a church of a type contained in church records. The term "church tax inquiry" does not include routine requests for information or inquiries regarding matters which do not primarily concern the tax status or liability of the church itself. See Q and A–4 with respect to routine requests regarding, among other things, withholding responsibilities for income tax or FICA (social security) tax liabilities. See Q and A–6 with respect to the types of investigations, other than routine requests, that are outside the scope of the procedures of section 7611. See Q and A–5 with respect to requests for third party records that are outside the scope of the procedures of section 7611.

Q–3: What is a "church" for purposes of the church tax inquiry and examination procedures of section 7611?

A–3: Solely for purposes of applying the procedures of section 7611, and as used in these questions and answers, the term "church" includes any organization claiming to be a church and any convention or association of churches. For purposes of the procedures of section 7611 and these questions and answers a church does not include separately incorporated church-supported schools or other organizations incorporated separately from the church.

Routine Requests

Q–4: What is a routine request to a church that is outside the scope of and does not necessitate application of the procedures set forth in section 7611?

A–4: Routine requests to a church will not be considered to commence a church tax inquiry and will not necessitate application of the procedures set forth in section 7611. Routine requests for this purpose include (but are not limited to) questions regarding (1) the filing or failure to file any tax return or information return by the church; (2) compliance with income tax or FICA (social security) tax withholding responsibilities by the church; (3) any supplemental information needed to complete the mechanical processing of any incomplete or incorrect return filed by the church; (4) information necessary to process applications for exempt status and letter ruling requests; (5) information necessary to process and update periodically a church's (i) registrations for tax-free transactions (excise tax), (ii) elections for exemption from windfall profit tax, or (iii) employment tax exemption requests; (6) information identifying a church that is used to update the Cumulative List of Tax Exempt Organizations (Publication No. 78) and other computer files; and (7) confirmation that a specific business is or is not owned or operated by a church.

Third Party Records

Q–5: To what extent may the Internal Revenue Service gain access to third party records?

A–5: The Internal Revenue Service may request a church to provide information necessary to locate third-party records (for instance, bank records), including information regarding the church's chartered name, state and year of incorporation, and location of checking and savings accounts, without application of the procedures of section 7611.

Records (for instance, cancelled checks or other records in the possession of a bank) held by third party recordkeepers, as defined in section 7609, are not considered church records. Thus, subject to the provisions set forth in section 7609 regarding third party summonses, access is permitted to such records without regard to the requirements of the procedures set forth in section 7611. The Internal Revenue Service is generally required, under other rules, to inform a church of any Internal Revenue Service requests for materials.

Third party materials may be acquired without application of the procedures of section 7611; however, a determination that a church is not entitled to an exemption, or an assessment of tax for unrelated business income against a church, may not be made solely on the basis of third party records, without first complying with the requirements of two notices and offering of a conference (see Qs and As 9 and 10) pursuant to the procedures set forth in section 7611. This limitation does not apply to assessments of tax other than income tax resulting from loss of exemption or for unrelated business income (for instance, assessments of social security or other employment taxes). Third party bank records will not be used in a manner inconsistent with the procedures set forth in section 7611 or in these questions and answers.

Scope of Section 7611

Q–6: What types of investigations, other than routine requests and requests for information necessary to locate and examine third party records, and examination of those records, are outside the scope of the procedures of section 7611?

A–6: The church inquiry and examination procedures described in section 7611 do not apply to (1) any inquiry or examination relating to the tax liability of any person other than a church; (2) any termination assessment under section 6851 or jeopardy assessment under section 6861; or (3) any case involving a knowing failure to file a return or a willful attempt to defeat or evade tax (including but not limited to any case involving a failure by the church to withhold or pay social security or other employment taxes or income tax required to be withheld from wages). Additionally, the church inquiry and examination procedures do not apply to any criminal investigations.

The church tax inquiry and examination procedures also do not apply to inquiries or examinations which relate primarily to the tax status (including, but not limited to, social security or self-employment tax or income tax required to be withheld from wages) or liability of persons other than the church (including, but not limited to, the tax status or liability of a contributor or contributors to the church), rather than the tax status or liability of the church itself. These may include, but are not limited to: (1) inquiries or examinations regarding the inurement of church funds to a particular individual or individuals or to another organization, which may result in the denial of all or part of such individual's or organization's deduction for charitable contributions to a church; (2) inquiries or examinations regarding the assignment of income or services or contributions to a church; and (3) inquiries or examinations regarding a vow of poverty by an individual or individuals followed by a transfer of property or an assignment of income or services to a church. Inquiries may be made to a church regarding these matters without being considered to have commenced a church tax inquiry under section 7611, and an examination of church records may be made relating to these issues (including enforcement of a summons for access to such records) without application of the requirements contained in section 7611 applicable to church tax inquiries and examinations. Such examinations are subject to the general rules regarding examinations of taxpayer books and records.

Q–7: What action may be taken if the church or its agents fail to respond to routine requests, or questions regarding other individuals' or organizations' tax liabilities?

A–7: Repeated (two or more) failures by a church or its agents to reply to routine requests (see Q and A–4) will be considered by the appropriate Internal Revenue Service Regional Commissioner to be a reasonable basis for commencement of a church tax inquiry under the church tax inquiry and examination procedures of section 7611. The failure of a church to respond to repeated requests for information regarding individuals' or other organizations' tax liabilities (see Q and A–6) will be considered a reasonable basis for commencement of a church tax inquiry. Failure by a church to provide information necessary to locate third-party records (see Q and A–5) will be a factor, but not a conclusive factor, in determining if there is reasonable cause for commencing a church tax inquiry. For this purpose, a failure to respond to a request means either that no response has been made or that the response does not make a reasonable attempt to submit the information called for by the specific language of the request.

Q–8: Where an inquiry or examination is outside the scope of and does not necessitate application of the procedures of section 7611, what are the limitations on the Internal Revenue Service's actions?

A–8: Inquiries or examinations which are outside the scope of the procedures of section 7611 and therefore are conducted without application of the procedures of section 7611 (for instance, those addressed in Q and A–6) will be limited to the determination of facts and circumstances specifically relating to the tax liabilities of the individuals or other organizations in question. For example, in a case against an individual or other organization, information may be requested or church records examined, if pertinent, regarding amounts of money, property, or services transferred to the individual or individuals in question (including, but not limited to wages, loans, or noncontractual transfers), the use of church funds for personal expenses, or other similar matters, without having to follow the church tax inquiry and examination procedures. As one example, in an assignment of income case against an individual or other organization, information could be requested or church records examined if relevant to an individual's assignment of particular income, donation of property, or transfer of a business to a church. However, without following the church tax inquiry and examination procedures, no examination of a contributor or membership list in the possession of the church will be made, other than under the applicable procedures of section 7611, for the purpose of determining the overall financial structure of the church, merely because such structure was relevant to the church's qualification as a tax-exempt entity and therefore indirectly relevant to the validity of contributors' deductions in general. Inquiries or examinations regarding individuals' or other organizations' tax liabilities will not be used in a manner inconsistent with the procedures set

forth in section 7611 or in these questions and answers.

Notice Requirements

Q–9: What satisfies the inquiry notice requirement (first notice) upon commencement of a church tax inquiry?

A–9: Upon commencing a church tax inquiry, the appropriate Regional Commissioner is required to provide written notice to the church of the beginning of the inquiry. This notice will include (1) an explanation of the concerns which gave rise to the inquiry and the general subject matter of the inquiry, which is sufficiently specific to allow the church to understand the particular area of church activities or behavior which is at issue; (2) a general explanation of the provisions of the Internal Revenue Code which authorize the inquiry or which may otherwise be involved in the inquiry; and (3) a general explanation of applicable administrative and constitutional provisions with respect to the inquiry, including the right to a conference with the Internal Revenue Service before an examination of church records is commenced. The inquiry notice (first notice) may also request information in an effort to alleviate the concerns which gave rise to the inquiry.

However, the Internal Revenue Service is not precluded from expanding its inquiry beyond the concerns expressed in the inquiry notice (first notice) as a result of facts and circumstances which subsequently comes to its attention (including, where appropriate, an expansion of an unrelated business income inquiry to include questions of tax-exempt status, and vice-versa).

The inquiry notice requirement (first notice) does not require the Internal Revenue Service to share particular items of evidence with the church, or to identify its sources of information regarding church activities, if providing such information would be damaging to the inquiry or to the sources of information. For example, in an inquiry regarding unrelated business income, the Internal Revenue Service might state that its inquiry was prompted by a local newspaper advertisement regarding a church-owned business. However, the Internal Revenue Service would not be required to reveal the existence or identity of any so-called "informers" within a church (including present or former employees).

Q–10: What must be done to satisfy the examination notice requirement (second notice) before commencing an examination of church records or religious activities with respect to an examination conducted under section 7611?

A–10: Where an examination is conducted under section 7611, church records or religious activities of a church may be examined only if, at least 15 days prior to the examination, written notice of the proposed examination is provided to the church and to the appropriate Regional Counsel. This notice is in addition to the notice of commencement of inquiry (first notice) previously provided to the church.

The notice of examination (second notice) is required to include (1) a copy of the church tax inquiry notice (first notice) previously provided to the church; (2) a description of the church records and activities sought to be examined; and (3) a copy of all documents which were collected or prepared by the Internal Revenue Service for use in the examination, and which are required to be disclosed under the Freedom of Information Act (5 U.S.C. 552) as supplemented by section 6103 of the Code (relating to disclosure and confidentiality of tax return information). The documents to be supplied under this provision will be limited to documents specifically concerning the church whose records are to be examined and will not include documents relating to other inquiries or examinations or to Internal Revenue Service practices and procedures in general. Disclosure to the church will be subject to restrictions regarding the disclosure of the existence or identity of informants. Although a description of materials to be examined will be provided in the notice of examination (second notice), the description does not restrict the ability of the Internal Revenue Service to examine church records or religious activities which are not specifically mentioned in the notice of examination (second notice) but which are properly within the scope of the examination (see Q and A–9).

At the time the notice of examination (second notice) is provided to the church, a copy of the same notice will be provided to the appropriate Regional Counsel. The Regional Counsel is then allowed 15 days from issuance of the second notice in which to file an advisory objection to the examination. (This is concurrent with the 15-day period during which an examination of church records is prohibited pending a request for a conference.)

As part of the notice of examination (second notice), the church will be offered an opportunity to meet with an Internal Revenue Service official to discuss the concerns which gave rise to the inquiry and the general subject matter of the inquiry. An examination will not begin until 15 days after the mailing of the notice of examination (second notice). The organization may request a conference at any time prior to beginning of the examination and a conference so requested will be scheduled within a reasonable time after the request is made.

The purpose of the conference is to remind the church, in general terms, of the stages of the church tax inquiry and examination procedures and to discuss the relevant issues that may arise as part of the inquiry, in an effort to resolve the issues of tax exemption or liability without the necessity of an examination of church records or activities. Information properly excludable from a written notice of examination (second notice) (including information regarding the identity of third-party witnesses or evidence provided by such witnesses) is not a subject for discussion at, and will not be revealed during, a conference.

Once a conference request is timely made, an examination will begin only following the conference. The conference requirement may not be utilized to delay an examination beyond the time reasonably necessary to prepare for and hold the conference. The holding of one conference with the church will be sufficient to satisfy the requirements of section 7611 and these questions and answers.

Action After Issuance of Notice

Q–11: What action may be taken after issuance of the examination notice (second notice)?

A–11: After the examination notice (second notice) is issued, the organization may request a conference as described in Q and A–10 (see Q and A–12 with respect to time for issuance of examination notice). If the matters of concern which gave rise to the issuance of the examination notice (second notice) are resolved at the conference, it may be determined that an examination is not necessary. If the matters of concern are not resolved at the conference, or if the organization does not request a conference, the examination will ordinarily begin.

The examination will be conducted under the Internal Revenue Service's general examination procedures and the procedures of section 7611. The outcome of such an examination will ordinarily be: (1) No change in tax-exempt status or tax liability; (2) no change in such status or liability, conditioned on compliance with a request to modify in future tax periods matters such as internal accounting practices and procedures or coupled with a caution to refrain from increasing certain activities

limited by the Internal Revenue Code, such as lobbying programs aimed at influencing legislation; (3) a proposal to revoke tax-exempt status; (4) a proposal asserting unrelated business income tax liability; or (5) a proposal asserting liability for other taxes.

In certain exceptional circumstances the Internal Revenue Service may, in lieu of an examination, propose to revoke the organization's exemption based upon the facts and circumstances which form the basis for a reasonable belief to commence an inquiry under section 7611 and any other appropriate information that becomes apparent as a result of the inquiry, the conference, or both.

Pursuant to section 7611(d), the Regional Counsel is required to approve, in writing, certain final determinations that are within the scope of section 7611 and adversely affect tax-exempt status or increase any tax liability. The Regional Counsel will review and approve (1) a determination that an organization is not entitled to tax-exempt status; (2) a determination that an organization is not entitled to receive tax-deductible contributions; or (3) the issuance of a notice of tax deficiency to a church arising out of an inquiry or examination or, in cases where deficiency procedures are inapplicable, the assessment of any underpayment of tax by the church arising out of an inquiry or examination. The Regional Counsel will also state in writing that there has been substantial compliance with section 7611, when applicable.

Procedural Time Limitations

Q–12: When may the notice of examination (second notice) be sent?

A–12. The notice of examination (second notice) may be mailed to a church not less than 15 days after the notice of commencement of a church tax inquiry (first notice). Thus, at least 30 days must pass between the first notice and the actual examination of church records since an examination may not begin until 15 days after the notice of examination (second notice). For example, if notice of commencement of an inquiry is mailed to a church on March 1st, the notice of proposed examination may be mailed to the church no earlier than the 15th day after the date of the inquiry notice, or March 16th. If the notice of examination (second notice) was mailed March 16th, no examination of church records may be made prior to day 30; thus, the earliest date the examination may commence is March 31st. If an organization does not request a conference prior to day 30, the Internal Revenue Service may proceed to examine church records and complete its investigation or make a determination based on the information already in its possession.

Q–13: What is the limitation on the amount of time the Internal Revenue Service has to complete inquiries and examinations?

A–13: The Internal Revenue Service is required to complete any church inquiry or examination, and to make a final determination with respect thereto, not later than two years after the date on which the notice of examination (second notice) is mailed to the church. The running of this two-year period is suspended for any period during which (1) a judicial proceeding brought by the church or its officials or agents against the Internal Revenue Service with respect to the church tax inquiry or examination is pending or being appealed (even though section 7611(e)(2) describes the exclusive remedy for a violation of the church tax inquiry and examination procedures; see Q and A–17); (2) a judicial proceeding brought by the Internal Revenue Service against the church (or any official or agent thereof) to compel compliance with any reasonable request for examination of church records or religious activities is pending or being appealed; or (3) the Internal Revenue Service is unable to take actions with respect to the church tax inquiry or examination by reason of an order issued in a suit under section 7609 involving access to records held by third-party recordkeepers. The two-year period is also suspended for any period in excess of 20 days (but not in excess of 6 months) in which the church or its agents fail to comply with any reasonable request for church records or other information. The two-year period may be extended by mutual agreement of the church and the Internal Revenue Service.

In cases where the inquiry is not followed by an examination notice (second notice), the inquiry must be concluded and a final determination made within 90 days of the date of the notice of inquiry (first notice). This 90-day period is suspended during any period for which the two year period for duration of a church examination would be suspended; except that the 90-day period will not be suspended because of the church's failure to comply with requests for information made prior to the notice of examination (second notice).

Q–13a: When do the church tax inquiry and church tax examination periods commence and conclude?

A–13a: A church tax inquiry commences when the church tax inquiry notice (first notice) is mailed. A church tax inquiry must be concluded not later than 90 days after the church tax inquiry notice (first notice) date. The period is counted from the day after the inquiry notice (first notice) is mailed. A church tax inquiry is concluded when the results of the inquiry or the notice of examination, as appropriate, is mailed. For example, if the inquiry notice (first notice) is mailed on November 1, 1985, the church tax inquiry must be concluded, in the absence of a permissible suspension of the period (see Q and A–13), on or before January 30, 1986.

A church tax examination commences when the church tax examination notice (second notice) is mailed. A church tax examination must be concluded not later than the date which is 2 years after the examination notice (second notice) date. The period is counted from the day after the examination notice (second notice) is mailed. A church tax examination is concluded when the final determination is mailed. For example, if the examination notice is mailed November 16, 1985, the final determination must be made, in the absence of a permissible suspension of the period (see Q and A–13), on or before November 16, 1987.

Examination of Records or Religious Activities

Q–14: To what extent may church records or religious activities of a church be examined?

A–14: In cases conducted under section 7611, an examination of church records may be made only after complying with the notice provisions of section 7611 (see Qs and As 9, 10 and 12) unless the church files a written waiver of the provisions of section 7611 or a part thereof. In cases conducted under section 7611 where no written waiver has been filed, church records may be examined only to the extent necessary to determine the liability for, and the amount of, any Federal tax. This includes examinations (1) to determine the initial or continuing qualification of the organization whose records are being examined as a tax-exempt church under section 501(c)(3); (2) to determine whether the organization qualifies to receive tax-deductible contributions under section 170(c); or (3) to determine the amount of tax (including unrelated business income tax), if any, which is to be imposed on the organization.

Church records include all regularly kept church corporate and financial records including (but not limited to) corporate minute books, contributor or membership lists, and any materials which qualified as church books of

account under section 7605(c), as in effect on December 31, 1984. Church records include private correspondence between a church and its members that is in the possession of the church. However, church records do not include records previously filed with a public official or newspapers or newsletters distributed generally to church members.

The religious activities of an organization claiming to be a church (see Q and A–3 for a definition of the term "church" as used in section 7611 and in these questions and answers) may be examined only to the extent necessary to determine if the organization actually is a church exempt from tax. This includes a determination of the organization's qualification as a church for any period.

Limitations on Period of Assessment or Proceedings for Collection Without Assessment

Q–15: What are the special limitations on the period of assessment or proceedings for collection without assessment?

A–15: The special limitation periods for church tax liabilities are described below and are not be to construed to increase an otherwise applicable limitation period. Thus, a three-year limitation period would apply where a church filed a tax return before an examination was held and did not substantially understate income. No limitation period is to apply in any case of fraud, willful tax evasion, or knowing failure to file a return which should have been filed.

In the case of any church tax examination with respect to the revocation of tax-exempt status under section 501(a), any tax imposed by chapter 1 (other than section 511) may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, only for the three most recently completed taxable years preceding the examination notice date (*i.e.*, the date the notice of examination is mailed to the church). If an organization is not a church exempt from tax under section 501(a) for any of the three years described in the preceding sentence, then the period of assessment will apply to the six most recently completed taxable years ending before the examination notice date.

For examinations concerning qualification for tax-exempt status, the examination is limited initially to an examination of church records which are relevant to a determination of tax status or liability for the three most recently completed taxable years ending before the examination notice date. If it is determined that an organization is not a church exempt from tax for one or more of the three most recently completed taxable years and no return has been filed for the three years ending before the three most recently completed taxable years, an examination of relevant records may be made, as part of the same examination, for the six most recently completed taxable years ending before the examination notice date. (This assumes that no returns were filed for any of the three years to which the examination is to be extended. If a return was timely filed for any such year, the filing of that return determines the applicable statute of limitations for that year in the absence of other factors, for example, fraud, willful tax evasion or substantial understatement, which ordinarily would extend the statute of limitations.)

For purposes of section 7611(d)(2)(A) and this question and answer, an organization is determined not to be a church exempt from tax for one or more of the three most recently completed taxable years ending before the examination notice date, when the appropriate Regional Commissioner approves, in writing, the completed findings of the examining agent that the organization is not a church exempt from tax for one or more of such years. Such approval may not be delegated by the Regional Commissioner to a subordinate official. The completed findings of the examining agent, as approved by the appropriate Regional Commissioner for this purpose, do not constitute a final revenue agent's report under section 7611(g).

Church records of a year earlier than the third or sixth completed taxable year, as applicable, may be examined if material to a determination of tax-exempt status during the applicable three or six year period.

For examinations concerning unrelated business taxable income, where no return has been filed by the church, tax may be assessed or collected for the six most recently completed taxable years ending before the examination notice date. Church records of a year earlier than the sixth year may be examined if material to a determination of unrelated business income tax liability during the six year period.

For examinations involving issues other than revocation of exempt status or unrelated business income (*e.g.*, examinations relating to social security or other employment taxes), no limitation period is to apply if no return has been filed.

The applicable limitation period may be extended by mutual agreement of the church and the Internal Revenue Service.

Multiple Examinations

Q–16: What are the special multiple examination rules applicable to churches?

A–16: The Assistant Commissioner (Employee Plans and Exempt Organizations) is required to approve, in writing, any second inquiry or examination of a church, if the second inquiry or examination is to be undertaken within five years of an earlier inquiry or examination and if the earlier inquiry or examination did not result in either (1) revocation of tax exemption, notice of deficiency or an assessment of tax, or (2) a request for any significant changes in church operational practices (including the adequacy or sufficiency of records maintained to reflect income). The Assistant Commissioner's approval is required only if the second inquiry or examination involves the same or similar issues as the earlier inquiry or examination. The 5-year period is counted from the examination notice date of the earlier examination or, if no notice of examination was mailed, the inquiry notice date of the earlier examination. This 5-year period is to be suspended for periods during which the two-year period for completion of an examination is suspended (as described in Q and A–13) unless the prior examination was actually concluded within 2 years of the notice of examination.

In determining whether the second church tax inquiry or examination involves the same or similar issues as the preceding inquiry or examination, the substantive factual issues involved in the two examinations, rather than legal classifications, will govern. For example, where a prior examination and a current examination of unrelated business income involve income from different sources, the current examination involves different issues than the prior examination and the approval of the Assistant Commissioner (Employee Plans and Exempt Organizations) is not necessary.

Remedy for Violations of Section 7611

Q–17: What remedy is available for a violation of the church inquiry and examination procedures?

A–17: The exclusive remedy for any Internal Revenue Service violation of the church tax inquiry and examination procedures is as follows: Failure to comply substantially with the requirements that (1) two notices be sent to the church; (2) the Regional

Commissioner approve the commencement of a church tax inquiry; or (3) an offer of a conference with the church be made (and a conference held if timely requested), will result in a stay of proceedings in a summons proceeding to gain access to church records (but not in dismissal of such proceeding), until these requirements are satisfied. The two-year limitation on duration of a church tax examination will not be suspended during stays of summons proceedings resulting from violations described above; however, violations may be corrected without regard to the otherwise applicable time limits prescribed under the procedures of section 7611. In determining whether a stay is necessary, a court must consider the good faith effort of the Internal Revenue Service and the effect of any violation of the proper examination procedures.

Section 7611(e)(2) provides that no suit may be maintained and no defense may be raised, other than a stay in a summons enforcement proceeding, by reason of any noncompliance with the requirements of section 7611. Thus, failure to comply with any of these requirements may not be raised as a defense or affirmative ground for relief in any judicial proceeding including, but not limited to, a summons proceeding to gain access to church records; a declaratory judgment proceeding involving a determination of tax-exempt status under section 7428; a proceeding to collect unpaid tax; or a deficiency or refund proceeding. Additionally, failure to substantially comply with the requirements that two notices be sent, that the Regional Commissioner approve an inquiry, and that a conference be offered (and the conference held if requested) may not be raised as a defense or as an affirmative ground for relief in a summons proceeding or any other judicial proceeding other than as specifically set forth above. Therefore, a church or its representatives will not be able to litigate the issue of the reasonableness of the appropriate Regional Commissioner's belief in approving the commencement of a church tax inquiry (*i.e.*, that the church may not be tax-exempt or may be engaged in taxable activities) in a summons proceeding or any other judicial proceeding. The church retains the right to raise any substantive or procedural argument which would be available to taxpayers generally in an appropriate proceeding.

Effective Date

Q–18: What is the effective date of the church examination procedures?

A–18: The procedures set forth in section 7611 apply to all tax inquiries and examinations beginning after December 31, 1984. The procedures of section 7605 will apply to any examination commenced before January 1, 1985. Any activities commenced after December 31, 1984, that would constitute a new inquiry or new examination must comply with the procedures of section 7611.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: February 19, 1985.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85–5750 Filed 3–7–85; 10:13 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Permanent State Regulatory Program of Illinois; Consideration of Modification of Deadline for Conditions of Approval

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining (OSM) is announcing the Secretary of the Interior's decision to extend the deadline for Illinois to meet two conditions of approval of its State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Condition (b) concerns covering the pit floor and highest coal seam with water and condition (c) concerns sedimentation ponds.

EFFECTIVE DATE: March 11, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. James Fulton, Field Office Director, Springfield Field Office, 600 East Monroe Street, Room 20, Springfield, Illinois 62701; Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

Background

The Illinois program was conditionally approved by the Secretary of the Interior on June 1, 1982 (47 FR 23858). Information pertinent to the general background, revisions, modifications and amendments to the proposed program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982 **Federal Register.**

Under 30 CFR 732.13(j), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiences where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set forth in the notice of conditional approval. The schedule is established in consultation with the State based on the time required for changes to be adopted under State procedures or legislative schedules.

In accepting the Secretary's conditional approval, Illinois agreed to satisfy conditions (a), (d), and (e) by December 1, 1982 and conditions (b) and (c) by June 1, 1983. Conditions (a), (d), and (e) have been removed (48 FR 23412, May 25, 1983, and 48 FR 51619, November 10, 1983).

On May 23, 1983, Illinois requested a six-month extension of the June 1, 1983 deadline to satisfy conditions (b) and (c). August 19, 1983, OSM announced the decision to extend the deadline to December 1, 1983 (48 FR 37625).

On December 1, 1983, Illinois requested a further extension of the deadline for satisfying conditions (b) and (c), until June 1, 1984. In its request, the State pointed to certain developments in the litigation on the approval of the Illinois program. The State noted that the United States District Court for the Central District of Illinois had granted, on November 30, 1983, the Secretary's motion to remand the *Illinois South Project* v. *Watt* (Civ. No. 82–2229) case to the Secretary for review in light of legal developments that have occurred since the approval date. Conditions (b) and (c) concern subjects that are directly at issue in the litigation and which may be affected by the Secretary's review on remand. In order to avoid rulemaking proceedings which may prove to be unnecessary, the State requested a six-month extension of the December 1, 1983 deadline. On February 22, 1984, OSM announced the decision to extend the deadline to June 1, 1984 (49 FR 6487).

On May 31, 1984, Illinois requested a further extension of the deadline, until November 30, 1984. The State noted that the conditions are directly affected by two cases which are still unresolved—*Illinois South Project* v. *Watt* and

Illinois Department of Mines and Minerals v. *Watt*. The State indicated that it had hoped that the cases would have been resolved by June 1, 1984, but as they have not been, Illinois requested that possibly unnecessary rulemaking proceedings be delayed for six months. In the interim, Illinois stated that it would continue to enforce its regulations in accordance with the Federal regulations. On August 24, 1984, OSM announced the decision to extend the deadline to November 30, 1984 (49 FR 33645).

Condition (b) stipulates that Illinois must amend its program to require a cover of the pit floor and highest coal seam with a minimum of ten meters (33 feet) of water, and that pending completion of the above, Illinois may not use its authority to approve covering with less than 10 meters of water or the approval will terminate. Condition (c) stipulates that Illinois must amend its program to demonstrate that Illinois understands that at the present time the best technology currently available for sediment control is sedimentation ponds and should Illinois wish to approve any other technology, the State will first send the proposal to OSM for review and approval as either an experimental practice or a program amendment. Furthermore, pending completion of the above Illinois may not use its authority to approve siltation structures other than sedimentation ponds or the approval will terminate.

Extension of the Deadline

On November 28, 1984, Illinois requested a further extension of the deadline until May 30, 1985. The State noted that the remaining conditions were and remain directly affected by two cases which are still unresolved: *Illinois South Project et al.* v. *Watt* and the Federal District Court Case of the *Illinois Department of Mines and Minerals* v. *Watt*. The State indicated that it had hoped the cases would have been resolved by the November deadline, but unfortunately must again request an extension until May 30, 1985, to pursue rulemaking. Illinois stated hopefully this six-month period will be sufficient time for the litigation to be resolved and the exact nature of the rulemaking to be delineated.

On January 4, 1985, OSM published a notice in the **Federal Register** (50 FR 485) to propose an extension of the deadline to meet conditions (b) and (c) to May 30, 1985. Comment on the proposal was solicited for 30 days ending February 5, 1985.

Public Comment

In response to the January 4, 1985 **Federal Register** notice announcing the comment period on the extension of the deadline for meeting Illinois program conditions (b) and (c), OSM received one written comment from the Illinois South Project, Inc. (ISP).

The commenter noted that the State has requested a deadline extension on three previous occasions because the two conditions remain directly affected by unresolved litigation. The commenter states that these extensions were allowed in contravention of OSM's rules regarding program conditions under 30 CFR 732.13(j)(4).

OSM disagrees for several reasons. Illinois has agreed to continue to enforce its regulations in accordance with the Federal regulations until the issues involved in the litigation are resolved. Also, Illinois has provided a valid explanation of the circumstances related to the current inability to modify its program as outlined in conditions (b) and (c).

The ability of the Secretary to impose conditions on the approval of State programs under 30 CFR 732.13(j) must by necessity include the ability to modify or extend conditions as circumstances change. OSM concludes that as long as Illinois continues to apply the Federal standards to the areas subject to conditions (b) and (c), no deficiencies actually exist with regard to the State's administration of the approved program.

Secretary's Determination

The Secretary has determined that an extension of the deadline for Illinois to satisfy conditions (b) and (c) is warranted. As noted above, since Illinois has agreed to operate its program in accordance with the terms of the conditions until such time as its rules are amended there will be no substantial effect in the regulation of surface coal mining operations in Illinois.

Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (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. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 913

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

Accordingly, Part 913 of Title 30 is amended as set forth herein.

Dated: March 6, 1985.

John D. Ward,

Director, Office of Surface Mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

PART 913—ILLINOIS

§ 913.11 [Amended]

1. Section 913.11 is amended in paragraphs (b) and (c) by substituting "May 30, 1985" for "November 30, 1984" each time it appears.

[FR Doc. 85–5717 Filed 3–8–85; 8:45 am]

BILLING CODE 4310–05–M

VETERANS ADMINISTRATION

38 CFR Part 21

Vocational Rehabilitation Amendments; Corrections

AGENCY: Veterans Administration.

ACTION: Final regulations; corrections.

SUMMARY: This document corrects a final rule document implementing title 1 of Pub. L. 96–466, Education and Rehabilitation Amendments of 1980, which was published on October 18, 1984 (49 FR 40810).

FOR FURTHER INFORMATION CONTACT: Celia Fasone, Paperwork Management and Regulations Service (731), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, 202–389–2340.

Dated: March 5, 1985.

Nancy C. McCoy,

Chief, Directives Management Division.

SUPPLEMENTARY INFORMATION: Accordingly the Veterans Administration is correcting the regulation published on October 18, 1984 (49 FR 40810) as follows:

1. The amendatory instruction on page 40814 should have read "The table of contents for Subpart A of Part 21 is revised to read as follows:".

2. An amendment is added after the table of contents on page 40815 to read as follows: "The authority citation for 38 CFR Part 21, Subpart A, is revised to read as follows:

"**Authority:** 38 U.S.C. 210(c) and as otherwise noted."

3. In § 21.1, paragraph (a) is corrected by inserting the word "to" preceding the words "provide to eligible veterans".

4. In § 21.35(i)(1)(ii), the word following "employment;" should be changed from "or" to "and".

5. In § 21.40, paragraph (a)(1) is corrected by removing the word "a" preceding "retired pay".

6. Section 21.41 is corrected by inserting the word "during" following "rehabilitation services".

7. In the introductory paragraph of § 21.42, insert the words "begin to" following "eligibility does not".

8. In § 21.51(g) remove the word "delete".

9. In § 21.70(b)(1)(ii) remove the word "or" following "suitable employment;".

10. In § 21.84(b)(6) delete the words "is included".

11. In § 21.120(c)(1)(iii) insert word "or" following "distance;"

12. In § 21.123(b) the authority cite . should read "38 U.S.C. 1504(a)(7)".

13. In § 21.124 (a)(4) and (b)(4) the authority cites should read "38 U.S.C. 1504(a)(7)".

14. In § 21.126(e)(2) the authority cite should read "38 U.S.C. 1504(a)(7)".

15. In § 21.196(c), insert the words "under § 21.284" following "'rehabilitated' status".

16. In § 21.214(e) remove the word "subject which may be furnished,".

17. In § 21.250(c)(1), the cite "§ 21.52" should read "§ 21.51".

18. In § 21.256(b)(2), the cite "§ 21.290" should read "§ 21.292".

19. In § 21.258(b) the cite § 21.254(e) should read "§ 21.214(e)".

20. In § 21.260 the cite "38 U.S.C. 1508(b)" should follow the footnotes on the chart in paragraph (b).

21. In § 21.272(d)(2) delete the word "services".

22. Instruction line 55 should read: "The center heading "Termination of Training" and §§ 21.280, 21.281, 21.283, 21.286, 21.287 and 21.288 are removed.

23. In § 21.294(c) insert the title: "Use of facilities."

24. Section 21.296(a)(8) should read: (8) Agree to pay the veteran during training (except as provided in paragraph (b) of this section) a salary or wage rate;

25. In § 21.298(b) the last word of the introductory text should be "farm" not "firm".

26. In § 21.332(c)(2) the word "unstitution" should read "institution".

27. In § 21.342(b) change the word "of" to "or" preceding "family problems".

28. In § 21.370(b)(2)(xi) the cite should read "(38 U.S.C. 111)".

29. In § 21.374(c)(1)(ii) the cite should read "(5 U.S.C. chapter 57)".

[FR Doc. 85-5583 Filed 3-8-85; 8:45 am]

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 111

Merchandise Return Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document establishes final regulations for various changes to the Merchandise Return Service, effective June 30, 1985. The rule prescribes changes intended to make the service more attractive to merchandise return permit holders, to simplify mailing by the recipient, to streamline postage payment procedures, and to extend the control of the permit application to the Management Sectional Center (MSC) level. These changes will:

1. Replace the current dual label system with a one-part label to eliminate confusion by permit holders, the designated customers, and postal employees.

2. Replace dual mailing procedures and allow designated customers to deposit merchandise return mail according to the current method used for the one-part label.

3. Replace the permit application, Form 3625, *Merchandise Return Permit Application,* with one that requires approval by the MSC manager. The postmaster would continue to issue the permit.

EFFECTIVE DATE: June 30, 1985.

FOR FURTHER INFORMATION CONTACT: F.E. Gardner, (202) 245-4565.

SUPPLEMENTARY INFORMATION: A detailed explanation of the nature and background of the proposed rule, including the reasons for its proposed adoption and a discussion of the major changes, accompanied its publication in the **Federal Register** on December 24, 1984 (49 FR 49859).

Two letters were received with comments on the proposed regulations. The comments and the Postal Service response are as follows:

1. One commenter suggested that 919.61 should be amended so that merchandise return parcels may also be mailed in "any mail deposit receptacle," since this would be in keeping with the previous deposit procedures under the previous one part label. We agree, and have revised 919.61 as suggested. We also made a similar conforming change to 919.16. The commenter also requested that the Postal Service postmark all merchandise return parcels so that, if the return address should not be on the parcel, the postmark could be used as the point of origin to determine the correct postage rate. We are not adopting this suggestion. The Postal Service postmarks merchandise return parcels only when they require ancillary services such as insurance or a certificate of mailing. In such cases the parcel must be mailed at a post office so that it can be processed, including postmarking, by an acceptance clerk. Merchandise return parcels requiring no ancillary services may be mailed at a post office or in any mail deposit receptacle; they need no special processing at the mailing point by an acceptance clerk. If we were to adopt the commenter's suggestion all merchandise return parcels would have to be specially processed at their point of mailing, thereby increasing costs for all who use the service. We believe it would not be in the interest of merchandise return mailers generally or the Postal Service to impose this requirement.

2. The other commenter requested that a core set of acceptance instructions be printed on the side of merchandise return labels to eliminate any difficulties some acceptance employees may have with the labels. The merchandise return label lacks space for additional core instructions. We have, however, added a reference on the label to 919.6 of the Domestic Mail Manual, where the complete instructions may be found. The commenter also noticed an erroneous cross reference in 919.443. We are pleased to change the reference from 724.1 to 764.11.

In order to obtain a new permit after revocation of the old one for failure to follow format requirements, 919.243b establishes certain requirements. In the final rule we added in this section the

suggestion that funds to cover at least two weeks normal returns should be maintained in the permit holder's advance deposit account; this is a non-mandatory interpretation of the requirement that "sufficient funds" be maintained in such accounts. See 919.332.

Consistent with the new rates and fees that went into effect on February 17, 1985 (50 FR 2787, 2816), we changed the annual fee in 919.31 for each permit issued to $50, and the transaction fee in 919.32 for each item returned to 30¢ per parcel.

For the reasons given and after careful consideration, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations.

See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

Part 919, Domestic Mail Manual (DMM) is revised to read as follows:

DMM 919 MERCHANDISE RETURN

919.1 Description.

.11 General. Merchandise Return Service allows authorized permit holders to pay the postage and fees on First-Class (Priority), third-class, and fourth-class mail to be returned by their designated customers.

.12 Activation. The service is activated by the use of labels which are provided by permit holders to those designated customers they authorize to use the service.

.13 Merchandise Return Label. The label used for this service must contain: The delivery address of the postage due unit at the post office where the permit is held, the address of the permit holder, and a space for the return address of the designated customer. It must also identify the class of mail (see 919.4).

.14 Label Instructions. The permit holder must provide written instructions with the label to advise the designated customer how to use the label and how to mail the parcel.

.15 Distribution. Merchandise return labels may be distributed by permit holders for return to the postage due unit at a post office where a merchandise return permit is held. Merchandise Return Service may be established at the post offices in the United States, its territories and possessions, and at military post offices overseas. Service is not available for any foreign country.

.16 Acceptance. Designated customers may mail parcels using merchandise return labels at any post office, at any place locally designated by the postmaster for the receipt of mail, or in any mail deposit receptacle.

919.2 Permits

.21 General. A merchandise return permit is required at every post office where parcels mailed under the service will be returned.

.22 Application. A form 3625, *Merchandise Return Permit Application* (see Exhibit 919.2), must be submitted at each post office where the mail will be returned. Permit holders must furnish copies of their labels and instructions for approval with the application, and before changes are made.

.23 Processing Application. Upon receipt of the application and the annual permit fee, the postmaster will complete the indicated section and forward it to the MSC manager for approval. Upon approval by the MSC manager, the application must be returned to the postmaster for issuance of the permit. The postmaster will complete and give the customer its part of Form 3625. The permit is valid for one calendar year ending December 31.

.231 Filing Forms. Post offices file Form 3625 by permit holder in alphabetical order.

.232 Annual Permit Renewals. The permit holder must renew the permit by sending the annual fee to the post office issuing the permit by December 31.

.233 Nonrenewed Permits. When records indicate a permit was not renewed, the permit holder will be informed in writing by certified mail with a return receipt that if the permit is not renewed all merchandise return mail will be held for ten days and then returned to the sender. The following methods will be followed if the permit is not renewed after the mailer has been notified in writing and ten days have elapsed.

a. Merchandise return mail will be returned to the sender.

b. Merchandise return mail that does not contain the sender's return address will be forwarded to the nearest dead parcel branch for proper handling with the endorsement "Permit Cancelled."

.24 Cancellation of Permit. A permit may be cancelled by the postmaster, with the approval of the MSC manager, for any violation of postal regulations, including:

.241 Refusal to Pay. Refusal to accept and pay the required charges for merchandise return offered for delivery.

.242 Insufficient Funds. Failure to maintain sufficient funds in the advance deposit account to cover postage and fees chargeable on return parcels.

.243 Nonconforming Labels. Distributing merchandise return labels which do not conform to Postal Service specification.

a. The permit holder will be notified in writing by certified mail of specific errors when merchandise return formats do not meet current postal requirements. He will be allowed ten days to respond. The permit holder is responsible for correcting merchandise return formats and ensuring that future formats meet specifications.

b. To obtain a new permit after a merchandise return permit has been revoked for failure to follow merchandise return format requirements, a new application (Form 3625) must be completed, a new merchandise return permit fee must be paid, and two samples of all merchandise return formats must be submitted annually to the appropriate post office for approval. In addition, funds to cover at least two weeks' normal returns should be maintained in the advance deposit account (see .332) at all times.

.244 Receipt of Parcels After Cancellation. When a permit is cancelled, parcels received after the cancellation will be treated the same as in 919.233 a and b.

919.3 Postage and Fees.

.31 Annual Fee. An annual fee of $50 will be charged for each calendar year or part thereof for each permit issued.

.32 Transaction Fee. The fee for each item returned is 30¢ per parcel in addition to the postage and insurance fees.

.33 Postage Payment.

.311 Applicable Rate. The applicable postage for the single-piece First-Class (Priority), third-class, or fourth-class rate will be charged on each piece returned under the Merchandise Return Service.

.332 Advance Deposit Account. Postage and fees must be paid through a postage due advance deposit account. Parcels will be delivered under this service only when sufficient funds are in an advance deposit account to pay applicable postage and fees. Permit holders may use the same advance deposit for this service as they use for other postage due mail (see 146.34).

919.4 Format.

* * * * *

.42 Required Format Elements.

.421 Preprinted Endorsements.

* * * * *

d. The following information must be shown in capital letters above the merchandise return legend (see Exhibit 919.4):

DELIVERY POST OFFICE

COMPUTE POSTAGE DUE

(SEE 919 DOMESTIC MAIL MANUAL)

ACCEPTANCE POST OFFICE

FOR ANCILLARY SERVICES ONLY

ADD: POSTAGE _____

MERCHANDISE RETURN FEE _____

INSURANCE FEE, IF ANY _____

TOTAL POSTAGE DUE _____

(SEE 919.6 DOMESTIC MAIL MANUAL)

.422 Required Markings. Horizontal bars as prescibed in 917.526 must be placed on labels. A Facing Identification Mark (FIM) as prescribed in 917.527 is not required on this label.

.43 Addressing of Merchandise Return Labels. Space in the upper left corner of the label must contain the return address of the person who sends the matter to the permit holder. The merchandise return label must bear the address of the postage due unit of the post office where the permit is held. The address must be arranged in the manner prescribed in 122.2. A margin of at least one inch is required between the left edge of the piece and the address. The address must contain the following information:

First line in capital letters at least 3/16 of an inch high	Postage Due Unit
Second line	U.S. Postal Service
Third line	(Post Office, State and ZIP Code of the post office)

.44 Class of Mail Endorsement

.441 If endorsement of class of mail appears the parcel will be accepted at the applicable single piece third-class or fourth-class parcel post rate according to weight.

.442 Parcels will be returned as First-Class Mail if the permit holder endorses the label "First-Class". The endorsements must be in letters at least ¼ of an inch high and must be printed or rubber stamped to the left of the merchandise return legend and above the address.

Note.—First-Class Mail cannot be insured unless the contents contain third- or fourth-class matter and are so labeled.

.443 Parcels qualifying for special rate fourth-class or library rate will be returned at those rates provided the appropriate identifying endorsement prescribed in 725.1, 764.11 or 767.1 is preprinted or rubber stamped in letters at least ¼ of an inch high to the left of the "Merchandise Return Label" legend and above the address on the label.

.45 Illustration of Merchandise Return Label. Permit holder's requirements and resources for making labels may vary. Exhibit 919.4 is a suggested example which would meet all address and endorsement requirements.

919.5 Ancillary Services.

.51 Insured Mail Service.

.511 Only the permit holder may obtain insured mail service in conjunction with merchandise return service. The recipient may not obtain insured mail service. To request insured mail service, the permit holder must place the following endorsement and information on the merchandise return label to be attached or affixed to the parcel:

Insurance Desired by Shipper for $ (value)

The endorsement must be printed or rubber stamped to the left and above the *Merchandise Return Label* legend and below the return address. The permit holder must indicate the specific dollar amount of insurance applicable to the parcel.

Note.—First-Class (Priority) Mail cannot be insured unless the parcel contains third- or fourth-class matter and is so labeled.

.512 When a Merchandise Return Service parcel contains the insurance indorsement the article must be presented at a post office for rating.

.513 When a merchandise return article is presented at a post office for return to the permit holder, the accepting Postal Service employee will take the following actions if the return label is endorsed with the *insurance requested* endorsement.

a. Look at the endorsement to see how much insurance is desired by the permit holder and enter the appropriate insurance fee for the coverage desired on the mailing lable on the *Add Insurance Fee If Any* line.

b. If the article is to be insured for $25.00 or less, stamp the article *Insured*, complete a Form 3813, *Receipt for Domestic Insured Parcel*, and give the receipt to the recipient, and instruct the recipient to keep the receipt as evidence of mailing the insured article.

c. If the article is to be insured for more than $25.00 complete a Form 3813–P, *Receipt for Insured Mail, Domestic-International*, affix the insured label with the insurance number on it to the article, give the receipt portion of the Form 3813–P to the recipient, and instruct the recipient to keep the receipt as evidence of mailing the insured article.

.52 Certificate of Mailing.

.521 The designated customer mailing a Merchandise Return Service article may obtain a certificate of mailing at his own expense at the time of mailing.

.522 When the designated customer desires a certificate of mailing, he must present it at a post office to obtain the receipt.

919.6 Acceptance.

.61 General. Merchandise Return Service parcels requiring no ancillary services must be mailed at the designated customer's return address post office, at a place designated by the postmaster for receipt of mail, or in any mail deposit receptacle.

.62 Ancillary Services. Merchandise Return Service parcels requiring insurance or a certificate of mailing must be mailed at a post office so that they can be processed by an acceptance clerk. The accepting employee will:

a. Accept the parcel and verify that the label has been filled out completely.

b. Check to see if an insurance endorsement is preprinted on the label. (See DMM 919.51)

c. Check for the class of mail endorsement by the permit holder. (See DMM 919.44)

d. Compute the postage and fees for the parcel, following all normal procedures required for insured mail service if requested, and apply any required endorsements or labels to the parcel.

e. Record the postage and verify the insurance fee, if applicable, in the spaces provided on the portion of the label to be affixed or attached to the parcel.

f. Total the postage and fees, including the merchandise return fee, and fill in the appropriate spaces on the portion of the label to be affixed to the parcel.

g. Postmark the label in the space directly above the merchandise return legend.

h. Provide a receipt for the insurance or the certificate of mailing to the recipient mailer when that service is requested.

919.7 Delivery. When the parcel is received at the postage due unit, the postage due unit will:

a. Compute the postage and fees.

b. Withdraw the amount due from the permit holder's advance deposit account.

c. Dispatch the parcel for delivery to the permit holder.

d. When numbered insured merchandise return articles are delivered, the delivery Postal Service employee will obtain a delivery receipt for the articles on Form 3849–A, *Delivery Notice or Receipt*, Form 3849-

B, *Delivery Reminder or Receipt*, or Form 3883, *Firm Delivery Book—Registered, Certified and Numbered and Insured Mail.*

Note.—Parcels received without a return address or postmark will be charged the appropriate single piece First-Class (Priority), third-class or fourth-class rate for zone 4 in addition to other required fees. Special fourth-class and Library Rate parcels will be charged the appropriate postage.

A transmittal letter making these changes in the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. These changes will be published in the **Federal Register** as provided in 39 CFR 111.3.

(39 U.S.C. 401, 404(a)(1))

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

BILLING CODE 7710-12-M

U.S. POSTAL SERVICE

MERCHANDISE RETURN PERMIT APPLICATION

Application is made to use merchandise return service for return of parcels without prepayment of postage and fees under DMM 919. All postage and fees will be paid by the permit holder on all pieces returned under this privilege. Applicant agrees to prepare merchandise return labels in accordance with DMM 919.4 or 919.5, and understands that failure to conform with those requirements may be considered basis for cancellation of this permit. The annual merchandise return permit fee must accompany this request.

NAME AND ADDRESS OF APPLICANT (Print or type)	NAME		TELEPHONE NO.
	STREET	CITY AND STATE	ZIP CODE

PERMIT FOR PRIORITY _____, THIRD-CLASS _____, FOURTH-CLASS _____, (SUB-CLASS _____)

POST OFFICE TO WHICH SUBMITTED (*City, State and ZIP Code*)	SIGNATURE AND TITLE OF APPLICANT	DATE

TO BE COMPLETED BY POSTMASTER

☐ RECOMMEND APPROVAL ☐ RECOMMEND NON-APPROVAL DATE

REASON FOR RECOMMENDING NON-APPROVAL

TO BE COMPLETED BY MSC MANAGER

☐ APPLICATION APPROVED ☐ APPLICATION DENIED DATE

REASON FOR DENIAL

DATE OF ISSUANCE	DATE OF EXPIRATION	SIGNATURE OF POSTMASTER

PS Form 3625

POSTMASTER: Retain application in your file. After application has been approved, deliver authorization to permit holder.

U.S. POSTAL SERVICE

MERCHANDISE RETURN PERMIT AUTHORIZATION

PERMIT NUMBER	DATE OF ISSUANCE	DATE OF EXPIRATION	SIGNATURE OF POSTMASTER

You are authorized to use merchandise return service under the provisions of DMM 919. Your permit number must be shown on each label. Please notify this office of any change of name, address or abandonment of permit. Only mail properly prepared in the format described in DMM 919.4 or 919.5 will be accepted. Annual permit renewal fee must be received by the post office issuing the permit by December 31.

Enter name of permit holder, street address, city, state and ZIP Code	POST OFFICE: State and ZIP Code

Exhibit 919.2

BILLING CODE 7710-12-C

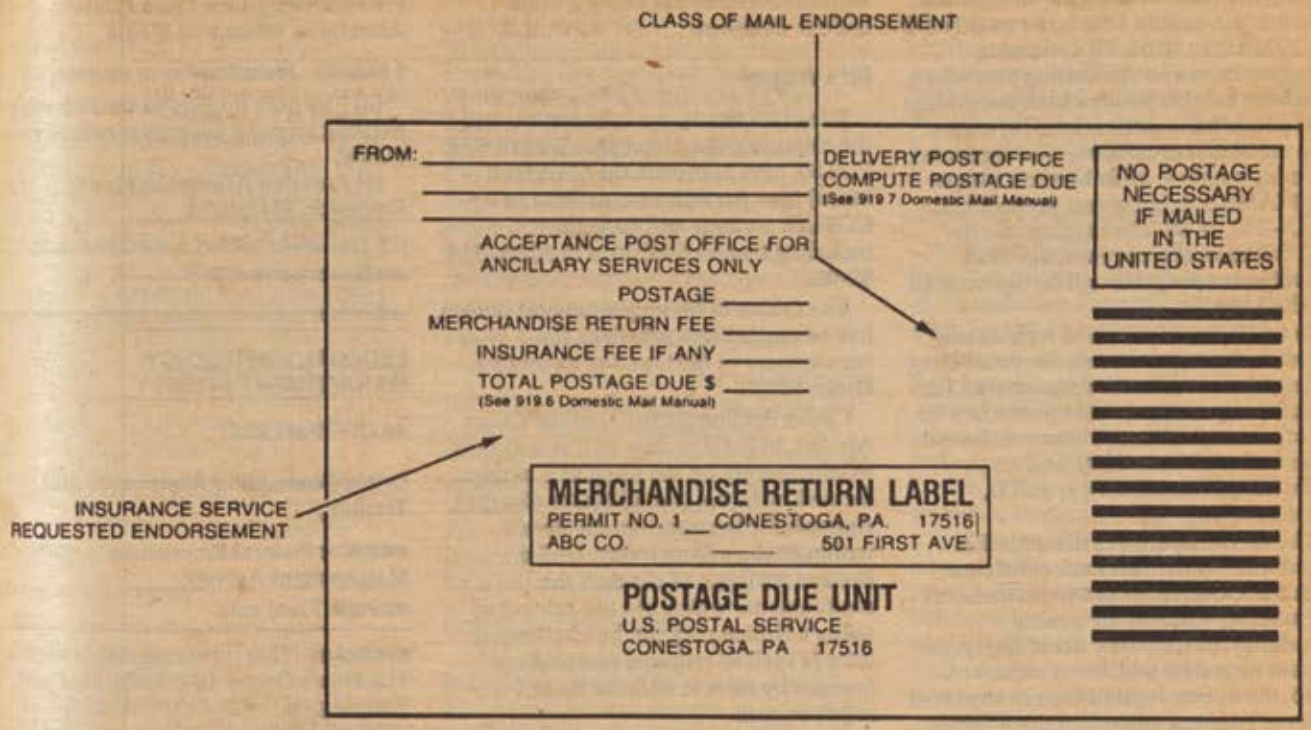

EXHIBIT 919.4

[FR Doc. 85-4270 Filed 3-8-85; 8:45 am]
BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA Docket No. AM204MD; A-3-FRI-279-25]

Approval of State Plans for Designated Facilities and Pollutants; Maryland

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice approves the State of Maryland Air Management Administration's plan for the control of total fluoride emissions from primary aluminum reduction plants as required under Section 111(d) of the Clean Air Act. The plan is applicable statewide, but affects only the Eastalco Aluminum plant located in Frederick County. This plan is approvable as it meets all of the applicable requirements of Section 111(d) of the Clean Air Act and 40 CFR Part 60.

EFFECTIVE DATE: April 10, 1985.

ADDRESSES: Copies of the 111(d) plan, as well as accompanying support documentation submitted by the Maryland Air Management Administration (MAMA) and interested citizens, are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division (3AM10), Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, Attn: James B. Topsale, P.E.

Maryland Department of Health and Mental Hygiene, Air Management Administration, 201 W. Preston Street, Baltimore, MD 21201, Attn: George P. Ferreri

FOR FURTHER INFORMATION CONTACT: Mr. James B. Topsale, (3AM13), 215/597-4553 or at the EPA Region III address indicated above.

SUPPLEMENTARY INFORMATION:

Background

In accordance with Section 111 of the Clean Air Act, "Standards of Performance for New Stationary Sources," EPA has promulgated standards of performance for new sources of criteria pollutants (pollutants for which National Ambient Air Quality Standards have been published) and non-criteria (or designated) pollutants. Paragraph (d) of Section 111 requires states to develop control plans for designated pollutant emissions from existing stationary sources of the type regulated by standards of performance for new sources of designated pollutants. The requirements for such plans are set forth in Subpart B of 40 CFR Part 60.

On January 24, 1984, the State of Maryland submitted a plan for controlling fluoride emissions from primary aluminum plants. EPA proposed approval of this plan in the Federal Register on August 27, 1984 (49 FR 33905). Today, EPA is giving final approval to the Maryland 111(d) Plan.

Primary Aluminum Fluoride Plan

The plan for controlling emissions of fluorides from existing primary aluminum plants specifies the following emission limits:

(1) Total fluoride emissions discharged from all potlines shall not exceed a quarterly average of 2.5 lbs/ton of aluminum produced.

(2) Total fluoride emissions discharged from an anode bake plant shall not exceed a quarterly average of 0.1 lbs/ton of aluminum produced.

The Eastalco Aluminum reduction plant may not cause or permit the discharge of fluoride emissions which will cause a violation of either the above emission standards as defined in the Code of Maryland Regulations

(COMAR) 10.18.06.07B(2) or the fluoride ambient air quality standards as defined in COMAR 10.18.04. To determine compliance, a specific testing procedure has been established for both the potline and anode bake oven control systems. The stack test procedure, also approved in today's notice, adds Method 1014 to the MAMA's existing test procedures, AMA–TM 83–05. The manner, scope, and duration of a required ambient surveillance program will be determined by the MAMA.

In addition, two revised regulations relocate the requirements for conducting a fluoride surveillance program and for developing an approvable procedure for records maintenance. These are moved from COMAR 10.18.01.04 and .05 to COMAR 10.18.06.07B(1)(b) and D, respectively.

The MAMA believes the emission standards for fluorides are consistent with the COMAR 10.18.04 requirements for meeting ambient air quality standards for fluorides; accordingly, no impact on public welfare is expected. Also, the above regulations are expected to have minimal impact on the affected industry.

Response to Comments

No comments were received during the official 30-day comment period ending September 26, 1984. However, comments were received later from two private citizens and from a Congresswoman on behalf of one of her constituents.

Both citizens were concerned about any impacts that the plan could have on them in the local area, and expressed their desire not to see the plan approved.

The Congresswoman's constituent felt that the fluoride plan would allow primary aluminum reduction plants to emit more fluorides than in the past.

EPA responded to both commenters, reassuring them that the fluoride emission standards proposed by the MAMA are well within EPA's guidelines, and are also consistent with the COMAR 10.18.04 requirements for meeting ambient air quality standards. Accordingly, no impact on public welfare is expected.

In regards to the Congresswoman's letter, EPA explained how the Maryland 111(d) plan now contains a Federally enforceable regulation which sets emission standards for fluorides. Previously, there had been no regulations of this kind at all. EPA believes that the Maryland 111(d) fluoride plan, together with the Maryland Ambient Air Regulations, form a complete strategy on fluoride control and does not allow a more lenient standard.

EPA Action

Based on the above information and the requirements of Subpart B of 40 CFR Part 60, EPA approves the Maryland 111(d) Plan for fluorides defined in COMAR 10.18.04 and 10.18.06.07, including test Method 1014 in AMA–TM 83–05.

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

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from today. Under Section 307(b)(2) of the Act, the requirements which are the subject of today's Notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur, Administrative practice and procedure, Intergovernmental relations, Reporting requirements, Phosphate.

(42 U.S.C. 7411)

Dated: March 1, 1985.

Lee M. Thomas,

Administrator.

PART 62—[AMENDED]

Part 62 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart V—Maryland

1. Section 62.5100 is amended by adding paragraphs (b)(3) and (c)(3) to read as follows:

§ 62.5100 Identification of plan.

* * * * *

(b) * * *

(3) Control of fluoride emissions from primary aluminum reduction plants, submitted by the Secretary of Health and Mental Hygiene, State of Maryland on January 26, 1984.

(c) * * *

(3) Primary aluminum reduction plants.

2. An undesignated center heading and § 62.5103 are added as follows:

Fluoride Emissions From Primary Aluminum Reduction Plants

§ 62.5103 Identification of sources.

(a) The plan applies to the following existing primary aluminum reduction plants:

(1) Eastalco Aluminum Plant, Frederick, Maryland.

[FR Doc. 85–5579 Filed 3–8–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

Crisis Counseling Assistance and Training

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule implements section 413, Crisis Counseling Assistance and Training, of the Disaster Relief Act of 1974, which provides for a program of assistance for States in meeting the emotional needs of victims of major disasters. This rule replaces that currently published by the Department of Health and Human Services (HHS) (42 CFR Part 38), which is canceled by separate publication by HHS.

EFFECTIVE DATE: April 10, 1985.

ADDRESS: Federal Emergency Management Agency, 500 C Street, S.W., Room 710, Washington, D.C. 20472, 202–646–3662.

FOR FURTHER INFORMATION CONTACT: Donna M. Dannels, Individual Assistance Division, Office of Disaster Assistance Programs, 202–646–3662.

SUPPLEMENTARY INFORMATION: On Tuesday, September 4, 1984, FEMA published a proposed rule, and accepted comments until November 5, 1984. Comments were received from seven parties, and replies are being sent directly to the commenters. The Department of Human Resources in North Carolina sent supportive comments, and no changes to the rule were requested or necessary. The Chief Administrative Officer of the County of Los Angeles also sent supportive comments, one of which requested a clarification of the advisory role of the National Institute of Mental Health (NIMH). It was felt that paragraph (e)(2) stated the advisory and other NIMH roles very clearly, and no changes were made. The rest of the comments were from FEMA regional office staff. Two of these supported the rule with no

comment. The other three had the following substantive comments, grouped according to their subject matter.

Length of the Program

This comment dealt with the "short-term" nature of the program, and the stated nine-month time period, which did not appear short to the commenter. The proposed rule changes the time period from six months to nine months, because it was felt that programs could not gear up fast enough to take care of the short-term problems and phase into longer-term ongoing programs within the six-month time. Also, experience showed that FEMA often granted a three-month extension, since the program could not be completed in six months. In comparison with ongoing therapy modes, nine months is still relatively short.

Immediate Services

One comment indicated that immediate services should not include payment for assessment work. It does not; the assessment is performed by the Governor and not funded by the grant. Another comment requested information on how the FEMA Regional Director is to know whether the States' resources are insufficient and crisis counseling should be provided. The answer is, by reviewing the Governor's assessment and the recommendation of NIMH. No particular FEMA expertise in mental health resource identification or planning is expected or assumed. The same commenter wanted to know what justification would be required for the obligation and advance of FEMA funds. The answer is stated in paragraph (d)(2), wherein it is determined that State resources are insufficient in a disaster of severe proportions. This commenter also asked whether there is a limit to the amount which can be spent for immediate services. FEMA has set no limit on these funds; the amount will be determined based on the requirements for immediate staffing. Another comment questioned the consequences of a regular program denial after initial approval of immediate services. FEMA intends no adverse consequences of such action. If regular program services were found not to be necessary, the State will have had the benefit of the immediate services award. Another comment about immediate services funds was a question as to whether the immediate services funds were to be included in the overall grant. The answer is that funding for both the immediate services portion and the regular services portion will be from the same fund account, and the obligations and advances will be totaled, but the regular program grant is a separate transaction from the immediate services grant. The last comment requested confirmation of whether the FEMA Regional Director had the authority to approve immediate services funding. The answer is yes. In relation to the Regional Director's authority, the definition of "Regional Director" has been revised to include his/her delegate, the Disaster Recovery Manager, in response to several comments.

FEMA Regional Office Resources

One commenter asked what resources the FEMA national office expected the regional office to use on crisis counseling program functions during the application/funding cycle. The answer is that FEMA assumes no special expertise in needs assessment or other program functions; this role is assumed by NIMH as FEMA's technical advisor.

Reporting Requirements

One commenter requested that the State Coordinating Officer also be provided the same reports as received by the Federal Coordinating Officer and the Secretary of Health and Human Services. We agree, and have revised paragraph (i) accordingly.

Administrative Expenses

A question arose as to whether FEMA would be responsible for any administrative expenses incurred in conjunction with administering a crisis counseling program, including training. The major costs for the grantee (overhead, office space, etc.) are part of the grant, as is the training program cost. Any FEMA staff time in conjunction with the program operation is part of FEMA's normal role in monitoring disaster program delivery.

Qualifications for Program Professionals

One comment stated: "There are no minimum qualifications required for any of the positions for administering the program. The program manager should at least have clinical experience." The rule itself does not address positions which are to be filled by the State, or any qualifications for such positions. This gives the State flexibility to determine what kind of staff it needs to administer the program. If the qualifications listed in the grant proposal for certain State positions do not meet NIMH's approval upon review, NIMH will recommend disapproval until the deficiencies are corrected.

Environmental Considerations

This regulation is procedural and FEMA has determined that there will be no significant impact on the environment caused by its implementation. Recently, an amendment to FEMA's final rule on Environmental Considerations (44 CFR Part 10) was published, which provided a categorical exclusion for Crisis Counseling Assistance and Training.

Regulatory Flexibility Act

This rule has been determined not to be a "major rule" within the meaning of the Regulatory Flexibility Act (5 USC 601), for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more;

(2) It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) It will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, an initial regulatory flexibility analysis will not be prepared.

Authority

This rule is issued under the authority of section 602 of the Disaster Relief Act of 1974 (Pub. L. 93-288).

Content of the Rule

The rule implements section 413 of the Disaster Relief Act of 1974. It states procedures for obtaining financial assistance for providing crisis counseling services to victims of a major disaster declared under the Act.

List of Subjects in 44 CFR Part 205

Community facilities, Disaster assistance, Grant programs, Housing and community development.

PART 205—[AMENDED]

Accordingly, FEMA revises 44 CFR 205.59, as follows:

§ 205.59 Crisis Counseling Assistance and Training.

(a) *Purpose.* This section establishes the policy, standards, and procedures for implementing section 413 of the Act, Crisis Counseling Assistance and Training. FEMA will look to the Director, National Institute of Mental Health (NIMH), as the delegate of the Secretary of Health and Human Services (HHS).

(b) *Definitions.* (1) "Assistant Associate Director" means the head of the Office of Disaster Assistance Programs, FEMA; the official who

approves or disapproves a request for assistance under section 413 of the Act.

(2) "Crisis" means any life situation resulting from a major disaster or its aftermath which so affects the emotional and mental equilibrium of a disaster victim that professional mental health counseling services should be provided to help preclude possible damaging physical or psychological effects.

(3) "Crisis counseling" means the application of individual and group treatment procedures which are designed to ameliorate the mental and emotional crises and their subsequent psychological and behavioral conditions resulting from a major disaster or its aftermath.

(4) "Federal Coordinating Officer (FCO)" means the person appointed by the Associate Director to coordinate Federal assistance in an emergency or a major disaster.

(5) "Grantee" means the State mental health agency or other local or private mental health organization which is designated by the Governor to receive funds under section 413 of the Act.

(6) "Immediate services" means those screening or diagnostic techniques which can be applied to meet mental health needs immediately after a major disaster such as those which may be provided at disaster assistance centers. Funds for immediate services may be provided directly by the Regional Director to the State or local mental health agency, prior to and separate from the regular application process of crisis counseling assistance.

(7) "Major disaster" means any hurricane, tornado, storm, flood, highwater, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act, above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of State and local governments, and disaster relief organizations alleviating the damage, loss, hardship, or suffering caused thereby.

(8) "Project Officer" means the person assigned by the Secretary, HHS, to monitor a crisis counseling program, provide technical assistance and guidance, and be the contact point within HHS for program matters.

(9) "Regional Director" means the director of a regional office of FEMA, or the Disaster Recovery Manager, as the delegate of the Regional Director.

(10) "Secretary" means the Secretary of HHS or his/her delegate.

(11) "State Coordinating Officer (SCO)" means the person appointed by the Governor to act in cooperation with the FCO.

(c) *Agency Policy.* (1) It is agency policy to provide crisis counseling services, when required, to victims of a major disaster for the purpose of relieving mental health problems caused or aggravated by a major disaster or its aftermath. Assistance provided under this section is short-term in nature and is provided at no cost to eligible disaster victims.

(2) The Regional Director and Assistant Associate Director, in fulfilling their responsibilities under this section, shall coordinate with the Secretary.

(3) In meeting the responsibilities under this section, the Secretary or his/her delegate will coordinate with the Assistant Associate Director.

(d) *State Initiation of the Crisis Counseling Program.* (1) Assessment. To obtain assistance under this section, the Governor or his/her authorized representative must initiate an assessment of the need for crisis counseling within 10 days of the date of the major disaster declaration. The purpose of the assessment is to provide an estimate of the size and cost of the program needed and to determine if supplemental assistance is required. The factors in the assessment must include those described in paragraph (d)(3)(ii) (C) and (D) of this section.

(2) *Immediate Services.* If, during the course of the assessment, the State determines that immediate mental health services are required because of the severity and magnitude of the disaster, and if State or local resources are insufficient to provide these services, the State may request and the Regional Director, upon determining that Stated resources are insufficient, may provide funds to the State, separate from the application process described in the remainder of this section. The Regional Director shall consult with the Secretary in evaluating the need for immediate services and the State's capability for providing the services. Immediate services are not intended to be a replacement for the regular program. Therefore, funding shall be granted only for that period of time that does not exceed 60 days following the declaration of the disaster, except that if an application for the regular program under paragraph (d)(3) of this section has been submitted, funding for immediate services may continue until a decision has been made on that application.

(3) Application for Regular Program. Assistance under section 413 is provided primarily in the form of a grant to a State, local or private mental health organization designated by the Governor to administer the crisis counseling program. The Governor or his/her authorized representative shall submit an application to the Assistant Associate Director, through the Regional Director, and simultaneously to the Secretary, not later than 60 days following the declaration of the major disaster.

(i) The application represents the Governor's agreement and/or certification:

(A) That the requirements are beyond the State and local governments' capabilities;

(B) That the program, if approved, will be implemented according to a plan approved by the Assistant Associate Director;

(C) To maintain close coordination with and provide reports to the Regional Director, the Assistant Associate Director, and the Secretary; and

(D) To include mental health disaster planning in the State's emergency plan prepared under Title II, Pub. L. 93-288.

(ii) The application must include:

(A) Standard Form 424;

(B) The geographical areas within the designated disaster area for which services will be supplied;

(C) An estimate of the number of disaster victims requiring assistance. This documentation of need should include the extent of physical, psychological, and social problems observed, the types of mental health problems encountered by victims, and a description of how the estimate was made;

(D) A description of the State and local resources and capabilities, and an explanation of why these resources cannot meet the need; and

(E) A plan of services as described in paragraph (d)(4) of this section.

(4) Plan of Services. (i) State administered programs. In accordance with paragraph (d)(3)(ii)(D) of this section, the Governor must submit a plan of services to the Regional Director. The plan of services must include:

(A) The manner in which the program will address the needs of the affected population, including the types of services to be offered, an estimate of the length of time for which mental health services will be required, and the manner in which long-term cases will be handled;

(B) A description of the organizational structure of the program, including designation by the Governor of an individual to serve as administrator of the program. If more than one agency will be delivering services, the plan to coordinate services must also be described;

(C) Training plans. If a training program for staff is planned, it must be described, and the number of workers needing such training must be indicated;

(D) Facilities to be utilized, including plans for securing office space if necessary to the project; and

(E) A detailed budget, including identification of the resources the State and local governments will commit to both services and training, proposed funding levels for the different agencies if more than one is involved, and an estimate of the required Federal contribution.

(ii) Public or private mental health agency programs. If the Governor determines during the assessment that because of unusual circumstances or serious conditions within the State or local mental health network, the State cannot carry out the crisis counseling program, he/she may identify a public or private mental health agency or organization to carry out the program or request the Regional Director to identify, with the assistance of the Secretary, such an agency or organization. Preference should be given to the extent feasible and practicable to those public and private agencies or organizations which are located in or do business primarily in the major disaster area. In order to obtain the financial assistance requested by the Governor, this agency or organization must submit a plan of services, as in paragraph (d)(4) of this section. The Governor's application is not complete without this plan of services.

(e) *Assignment of Responsibilities.* (1) The Regional Director shall:

(i) In the case of a request for immediate services, acknowledge receipt of the request, verify (with assistance from the Secretary) that State resources are insufficient, approve or disapprove the State's request, and obligate and advance funds for this purpose;

(ii) In the case of a regular program application:

(A) Acknowledge receipt of the request;

(B) Request the Secretary to conduct a review to determine the extent to which assistance requested by the Governor or his/her authorized representative is warranted;

(C) Based on the recommendation of the Secretary, recommend approval or disapproval of the application for assistance under this section; and forward the recommendation and documentation to the Assistant Associate Director;

(D) Assist the State in preliminary surveys and provide guidance and technical assistance (through the Secretary) if requested to do so; and

(E) Look to the Secretary for program oversight and monitoring.

(2) The Secretary shall:

(i) Provide technical assistance to the Regional Director in reviewing a State's application, to a State during program implementation and development, and to mental health agencies, as appropriate;

(ii) At the request of the Regional Director, conduct a review to verify the extent to which the requested assistance is needed and provide a recommendation on the need for supplementary Federal assistance. The review must include:

(A) A verification of the need for services with an indication of how the verification was conducted;

(B) Identification of the Federal mental health programs in the area, and the extent to which such existing programs can help alleviate the need;

(C) An identification of State, local, and private mental health resources, and the extent to which these resources can assume the workload without assistance under this section, and the extent to which supplemental assistance is warranted;

(D) A description of the needs; and

(E) A determination of whether the plan adequately addresses the mental health needs;

(iii) If the application is approved, provide grant assistance to States or the designated public or private entities;

(iv) If the application is approved, monitor the progress of the program and perform program oversight;

(v) Coordinate with, and provide program reports to, the Regional Director and the Assistant Associate Director; and

(vi) Make the appeal determination involving allowable costs and termination for cause as described in paragraph (h)(3) of this section.

(3) The Assistant Associate Director shall:

(i) Approve or disapprove a State's request for assistance based on recommendations of the Regional Director and the Secretary;

(ii) Obligate funds and authorize advances of funds to the Department of Health and Human Services;

(iii) Request that the Secretary designate a Project Officer; and

(iv) Maintain liaison with the Secretary.

(f) *Time Limitations.* (1) Application filing. The Governor or his/her authorized representative must, not later than 60 days from the date of declaration of a major disaster, submit an application to the Regional Director.

(2) Program period. The authorized program period shall not exceed nine months from the first day disaster crisis counselors are trained, or if training is not part of the program, the first day services are provided, except that upon the request of the Regional Director and the Secretary, the Assistant Associate Director may authorize up to 90 days of additional program period because of documented extenuating circumstances.

(g) *Eligibility Guidelines.* (1) For services. An individual may be eligible for crisis counseling services if he/she was a resident of the designated major disaster areas or was located in the area at the time of the major disaster and if:

(i) He/she has a mental health problem which was caused or aggravated by the major disaster or its aftermath; or

(ii) He/she may benefit from preventive care techniques.

(2) For training. (i) Those mental health specialists who are employed under or are consultants to the crisis counseling program are eligible for the specific instruction that may be required to enable them to provide professional mental health crisis counseling to eligible individuals.

(ii) All Federal, State and local disaster workers responsible for assisting disaster victims are eligible for general instruction designed to enable them to deal effectively and humanely with disaster victims.

(h) *Grant Awards.* (1) The amount of any regular program grant award shall be determined on the basis of the Secretary's estimate of the sum necessary to carry out the grant purpose. The Assistant Associate Director will, depending on availability of funds, advance funds to HHS for regular program funding. The Regional Director may advance funds to a State for immediate services.

(2) Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of any approved application.

(3) Several other regulations of the Department of Health and Human Services apply to grants under this

section. These include, but are not limited to:

45 CFR Part 16—HHS grant appeals procedures
42 CFR Part 50, Subpart D—PHS grant appeals procedures
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures (indirect cost rates and other cost allocations)
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services (effectuation of Title VI of the Civil Rights Act of 1964)
45 CFR Part 81—Practice and procedure for hearings under Part 80
45 CFR Part 84—Nondiscrimination on the basis of handicap in Federally-assisted programs
45 CFR Part 86—Nondiscrimination on the basis of sex in Federally-assisted programs
45 CFR Part 91—Nondiscrimination on the basis of age in Federally-assisted programs.

(4) Any funds granted pursuant to this section shall be expended solely for the purposes specified in the approved application and budget, these regulations, the terms and conditions of the award, and the applicable cost principles prescribed in Subpart Q of 45 CFR Part 74.

(i) *Reporting Requirements.* (1) Grantees (States, public or private agencies). The grantees shall submit the following reports to the Secretary, the Regional Director, and the State Coordinating Officer:

(i) Quarterly progress reports, as required by the Regional Director or the Secretary;

(ii) A final program report, to be submitted within 45 days after the end of the program period;

(iii) An interim accounting of funds, to be submitted with the final program report;

(iv) A final accounting of funds, if required, upon completion of the audit; and

(v) Such additional reports as the FCO, SCO, or Secretary may require.

(2) The Secretary. As part of project monitoring responsibilities, the Secretary shall report to the Assistant Associate Director and to the Regional director at least quarterly on the progress of crisis counseling programs, in a report format jointly agreed upon by the Secretary may also be required to provide special reports, as requested by the FCO. The Secretary shall require progress reports and other reports from the grantee to facilitate his/her project monitoring responsibilities.

(j) *Financial Accountability.* All Federal funds made available to grantees under this section shall be properly accounted for as Federal funds in the accounts of the grantees. The Secretary is accountable to FEMA for funds made available to the Department under section 413. The Secretary shall, within 90 days of completion of a program, submit to the Assistant Associate Director a final accounting of all expenditures for the program and return to FEMA all excess funds. Attention is called to the requirements of 44 CFR Subpart I, relating to the reimbursement of Federal agencies by FEMA.

(k) *Federal Audits.* The crisis counseling program is subject to Federal audit. The Associate Director, the Regional Director, the FEMA Inspector General, the Secretary, and the Comptroller General of the United States, or their duly authorized representatives, shall have access to any books, documents, papers, and records that pertain to Federal funds, equipment, and supplies received under this section for the purpose of audit and examination.

Dated: February 13, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-5560 Filed 3-8-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

List of OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's list of OMB approved information collection requirements contained in the Commission's Rules.

This action is necessary to comply with the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

This action will provide the public with a current list of information collection requirements in the Commission's Rules which have OMB approval.

EFFECTIVE DATE: March 11, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jerry Cowden, Office of Managing Director (202) 632-7513.

SUPPLEMENTARY INFORMATION: List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies), Reporting and recordkeeping requirements.

Order

In the matter of editorial amendment of § 0.408 of the Commission's Rules.

Adopted: March 4, 1985.
Released: March 5, 1985.

1. Section 3507(f) of the Paperwork Reduction Act of 1980 requires agencies to display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement.

2. Section 0.408 of the Commission's Rules displays the OMB control numbers assigned to the information collection requirements contained in the Commission's Rules. OMB control numbers assigned to Commission forms are not listed in this section since those numbers appear on the forms.

3. This Order amends § 0.408 to remove listings of information collections which the Commission has eliminated or to add listings of new information collections which OMB has approved.

4. Authority for this action is contained in section 4(i) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's Rules. Since this amendment is editorial in nature, the public notice, procedure, and effective date provisions of 5 U.S.C. 553 do not apply.

5. Accordingly, it is ordered, that § 0.408 of the rules is amended in accordance with the attached appendix, effective on the date of publication in the **Federal Register**.

6. Persons having questions on this matter should contact Jerry Cowden at (202) 632-7513.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Appendix

PART 0—[AMENDED]

47 CFR Part 0 is amended to read as follows:

1. In 47 CFR 0.408, paragraph (a) is amended by adding a sentence to read as follows:

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

(a) *Purpose.* * * * OMB control numbers assigned to Commission forms are not listed in this section since those numbers appear on the forms.

* * * * *

2. In 47 CFR 0.408, paragraph (b) is amended by removing the following rule sections and their corresponding OMB control numbers:

* * * * *

(b) * * *

22.303	3060-0150
22.304	3060-0150
22.307	3060-0150
22.309	3060-0150
22.312	3060-0150
73.66	3060-0158
73.274	3060-0155
73.295	3060-0159
73.574	3060-0156
73.642	3060-0153
73.677	3060-0152
73.1810 (including footnote)	3060-0013
73.1810 (including footnote)	3060-0060
73.1830	3060-0125
73.1850	3060-0163
73.3548	3060-0189
73.4020	3060-0191
73.4025	3060-0196
74.603	3060-0244

* * * * *

3. In 47 CFR 0.408, paragraph (b) is amended by adding the following rule sections and their corresponding OMB control numbers:

* * * * *

(b) * * *

2.955	3060-0329
15.09(b)	3060-0329
15.814(b)	3060-0329
15.834(b)-(c)	3060-0329
18.80	3060-0328
18.105(c)-(d)	3060-0328
18.141(d)	3060-0328
18.142(b)	3060-0328
18.182	3060-0328
18.183	3060-0328
43.31	3060-0058
43.61	3060-0106
73.68	3060-0321
73.69	3060-0326
73.1400	3060-0320
80.403	3060-0325
97.36(c)	3060-0323

* * * * *

4. In 47 CFR 0.408 paragraph (b) is amended by changing "22.501(1)(10)(ii)" to "22.501(l)(10)(ii)". (**Note:** The paragraph designation is changed from the numeral "1" to the letter "l.")

[FR Doc. 85-5725 Filed 3-8-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 69

[CC Docket No. 78-72; Phase I; FCC 85-87]

MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Final rule. Extension of existing waiver.

SUMMARY: This Order applies interstate single line end user charges to party-line subscribers, and extends until further order the existing waiver from the local transport provisions of the Commission's access charges rules. These actions have been taken to facilitate the development of charges that correspond more closely to the underlying cost characteristics that are associated with the provision of those services.

EFFECTIVE DATE: February 28, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kent R. Nilsson, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-6363.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking, CC Docket No. 78-72, Phase I, FCC 84-604 (released December 28, 1984), 49 FR 50413 (December 28, 1984).

List of Subjects in 47 CFR Part 69

Communications Common Carriers.

Memorandum Opinion and Order

In the matter of MTS and WATS Market Structure (CC Docket No. 78-72; Phase I).

Adopted: February 22, 1985.

Released: February 27, 1985.

Before the Commission:

I. Introduction

1. In a Notice of Proposed Rulemaking released on December 28, 1984 ("*Notice*"), we requested comments on, *inter alia*, whether we should amend or waive the provisions of Part 69 of our Rules governing multi-party subscriber line charges[1] and local transport charges.[2] In the *Notice*, we established an expedited comment schedule[3] to permit us to resolve these issues prior to March 1, 1985, the date on which the exchange carriers are required to file their access tariffs for the year beginning June 1, 1985.[4] In this Order, we amend our rules to require that multi-party subscriber line charges be assessed at the same monthly rate as single-party subscriber line charges.[5] We also extend, until further order, the existing waiver of our rules with respect to the computation of local transport charges.[6]

II. Discussion

A. Multi-Party Subscriber Line Charges

2. In the initial *Access Charge Order*,[7] we directed that multi-party subscriber line charges be calculated by dividing the single-party charge by the number of subscribers sharing each party line.[8] On reconsideration, we amended the rule to permit charges to be calculated on the basis of the average level of subscription or "fill" in each class of party-line service.[9] Those determinations were appealed to the United States Court of Appeals for the District of Columbia Circuit, and were subsequently remanded for further consideration.[10] In effect, the Court held that the Commission had not fully considered record evidence suggesting that the multi-party rate structure we

---

[1] *MTS and WATS Market Structure*, CC Docket 78-72, Phase I, Notice of Proposed Rulemaking, FCC 84-604 (released December 28, 1984) at paras. 2-7.

[2] *Id.* at paras. 11-13.

[3] *Id.* at para. 23.

[4] *See* § 69.3 of the Commission's Rules, 47 CFR 69.3 (1984).

[5] *See* § 69.203 of the Commission's Rules, 50 FR 944 (January 8, 1985).

[6] *AT&T Petition for Waiver of §§ 69.1(b), 69.3(c), 69.4(b)(7) and 8, 69.111 and 69.112 of the Commission's Rules and Regulations*, 94 FCC 2d 545 (1983) ("*Transport Waiver Order*"); *MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, *Memorandum Opinion and Order*, 97 FCC 2d 834 (1984) at para. 88.

[7] *MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, 93 FCC 2d 241 (1983) ("*Access Charge Order*"), *modified on reconsideration*, FCC 83-536, 48 FR 10319, 54 RR2d 615 (released on August 22, 1983) ("*First Reconsideration Order*"), *further modified on reconsideration*, FCC 84-36, 49 FR 7810, 55 RR2d 785 (released February 15, 1984) ("*Second Reconsideration Order*"), *aff'd in part, remanded in part, Nat'l Ass'n of Regulatory Utility Comm'rs v. FCC* ("*NARUC v. FCC*"), 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, —— *U.S.L.W.* —— (Feb. 19, 1985).

[8] *Access Charge Order* at 349. *See* 47 CFR 69.104(c) (1983).

[9] *First Reconsideration Order* at Appendix A, § 69.104(c).

[10] *NARUC v. FCC*, *supra* note 7, 737 F.2d at 1127.

had devised (1) would result in subscriber line charges for multi-party subscribers that would not correspond to the costs associated with the provision of multi-party service, and (2) would provide "an artificial economic incentive" that would induce single-party subscribers to migrate to multi-party service.[11]

3. Comments and data submitted in response to the *Notice* strongly suggest that the costs of providing multi-party services are not proportional to either the level of subscriber fill or the maximum number of subscribers that could be accommodated by a particular grade of multi-party service.[12] This conclusion is based on several factors.

First, multi-party service is frequently provided by "bridging" parties at the central office.[13] In such cases, loop plant that is capable of providing single-party service is connected at the central office to provide multi-party service. This leads to the somewhat anomalous result that party-line service to "bridged" subscribers may entail per-subscriber costs that are equal to or greater than those incurred on behalf of single-party subscribers.[14] Second, engineering design considerations that are unique to multi-party service result in telephone plant that is more complex and more expensive than telephone plant that is devoted to single-party service.[15] Third, maintenance expenses are evidently higher on multi-party lines,[16] as are other, non-capital related, operating expenses.[17] In addition, certain traffic sensitive costs may also be higher for party-line service. For example, the absence of automatic number identification on party lines necessitates operator handling of toll and other measured services.[18]

4. These factors support the conclusion that our existing rule for multi-party subscriber line charges is not consistent with our objective of tailoring subscriber line charges to the cost characteristics of the underlying services. Moreover, the present rule has created an unintended and undesired incentive for single-party subscribers to migrate to multi-party service offerings.[19] As the Rural Telephone Coalition points out, where such migration occurs, "[i]f bridging is used all the loops remain in use but, if true party lines are created, plant is idled while revenue requirements which must be recovered from subscribers remain."[20] We thus conclude that we should modify the existing rule (1) to avoid inducing an unintended subscriber migration from single-party to multi-party service, and (2) to conform multi-party subscriber line charges more closely to the underlying nature of the costs that are associated with the provision of multi-party service.[21]

5. In the *Notice*, we suggested that one alternative to the present rule would be to assess an identical subscriber line charge on single-party and multi-party subscribers. Such a policy would not tend to induce migration from single-party to multi-party service. However, before increasing the multi-party subscriber line charge to the level found to be appropriate for single-party subscribers, we must consider whether that increase would be justified on the basis of the interstate non-traffic sensitive costs that are associated with the provision of multi-party service. As described above, the record in this proceeding supports a finding that these costs are in many cases only slightly less, and in some cases equal to or even greater, than the costs of single-party service. Furthermore, as we stated in the *Notice:*

> Even if a party-line rate should be somewhat lower than a single-line rate in a system of subscriber line charges that reflects most non-traffic sensitive costs, there may be no reason to distinguish between party-line and single-line customers for purposes of assessing initial charges of $2.00 or less. Such charges would not recover the full costs that are attributable to either single-line or party-line customers."[22]

This position has not been contested in the comments and is explicitly supported by a number of parties, who contend that the best approach to multi-party subscriber line charges would be to assess those charges at the single-party level for the 1985 and 1986 exchange carrier switched access filings.[23] We thus conclude that subscriber line charges should be identical for both single-party and multi-party subscribers.[24]

---

[11] *Id. at* 1127–28.

[12] *See* Comments of the Rural Telephone Coalition (hereinafter, "RTC Comments") as supplemented on January 23, 1985, with appendices; Comments of Pacific Bell Telephone Company (hereinafter, "Pacific Bell Comments") at 8; Comments of Rochester Telephone Corporation (hereinafter, "Rochester Comments") at 2–4; Comments of United Telephone System, Inc. (hereinafter, "United Comments") at 2–4; Comments of the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (hereinafter, "U.S. West Comments") at 2–4; Comments of the United States Telephone Association (hereinafter, "USTA Comments") at 2.

[13] Rochester Comments at 3; RTC Comments at 4; U.S. West Comments at 3; United States Telephone Association Comments (hereinafter "USTA Comments") at 2–3.

[14] GTE Telephone Companies' Reply Comments at 3–6. U.S. West Comments at 3; RTC Comments at 3–5; USTA Comments at 2.

[15] "There are substantial cost benefits to be obtained from the use of single-party technology. Single party service greatly simplifies subscriber loop plan [sic] design since ringer isolators, bridge tap isolators and different ringer configurations for automatic number identification arrangements are not needed. Single party service results in quieter rural circuits and in simpler and less costly designs for pair gain equipment." RTC Comments at 5.

[16] Rochester Comments at 4.

[17] *See* Pacific Bell Comments at 8. ("In California, although capital costs for party line services are slightly lower than single line service, annual expenses are substantially higher.")

[18] Rochester Comments at 4. Rochester also stated that billing errors occur more frequently with multi-party services. A higher billing error frequency rate would presumably entail additional clerical expense.

[19] RTC Comments at 5.

[20] RTDC Comments at 4.

[21] *Accord* Comments of the Utah Public Service Commission and the Utah Division of Public Utilities, *passim.*

[22] *Notice* at para. 7.

[23] USTA Comments at 3; RTC Comments at 6; United Comments at 4; Rochester Comments at 4; U.S. West Comments at 4; Comments of the Bell Telephone Co. of Pennsylvania, the Chesapeake and Potomac Telephone Companies, the Diamond State Telephone Co., the Illinois Bell Telephone Co., the Indiana Bell Telephone Co., the Michigan Bell Telephone Co., the New England Telephone and Telegraph Co., the New Jersey Bell Telephone Co., the New York Telephone Co., the Ohio Bell Telephone Co., the South Central Bell Telephone Co., the Southern Bell and Telegraph Co., Wisconsin Bell, Inc. (collectively, "BCR Comments") at 6. In addition, an interexchange carrier also supported identical subscriber line charges. Comments of Satellite Business Systems at 1.

[24] Under this approach, the end user common line charge for each terminating line that is rated as multi-party service shall be the same as the single-party end user common line charge for that category of service. This means that: (1) A multi-party residential subscriber with one terminating line will be assessed the single-line charge; (2) a multi-party residential subscriber with two or more terminating lines will be assessed the single-line charge for each of those lines; (3) a multi-party buisness subscriber with one terminating line will be assessed the single-line charge; and (4) a multi-party business subscriber with two or more terminating lines would be assessed the multiline business charge for each of those lines.

With respect to the last category, the comments did not focus on whether different principles should apply to multi-party, multiline business subscribers, in light of the fact that the single-party multiline business charge is limited not to $1.00/$2.00 over the next two years, but only to the $6.00 cap provided in section 69.202(b) of our rules. While the access tariff of the National Exchange Carrier Association ("NECA") lists subscriber line charges for multi-party, multiline business subscribers, (*see* NECA Tariff, F.C.C. No. 1, § 4.7(B)) the lack of any comments on this issue may indicate that, as a practical matter, there are few such subscribers. In any event, the record does strongly support the findings that (i) the subscriber fill approach of our previous rule is seriously incongruent with the actual costs of providing party-line service, and (ii) assessing the single-party charge on multi-party service will provide a much closer match between

Continued

6. Accordingly, we hereby adopt the following addition to Subpart C of Part 69 of our rules:

Section 69.203 Interim Common Line Charges.

* * * * *

(e) The End User Common Line charge for each multi-party subscriber shall be assessed as if such subscriber had subscribed to single-party service.[25]

B. Local Transport Waiver

7. In the *Notice*, we requested comments on temporarily continuing the waiver of our rules provided in the *Transport Waiver Order* and the *Second Reconsideration Order*,[26] while we complete our analysis of the transport issues.[27] In light of the comments that have been received, we have concluded that additional time for analysis will be required. In addition, almost all of the commenting parties, including those who support the rate structure for transport provided in our current rules, supported the extension of the waiver at this time.[28] Accordingly, we shall extend the transport waiver until further order.[29]

8. The comments filed on our transport rules in response to the *Notice* will, of course, be considered in our further analysis of those issues. In addition, as we stated in the *Notice*,[30] interested persons may submit additional comments on other waiver options or possible changes in the transport rules when comments are submitted on the other issues discussed in the *Notice*. In particular, we invite such comments in light of two sets of arguments that were presented in comments already filed in response to the *Notice*. First, the Ad Hoc Telecommunications Users Committee contends that:

[T]ermination of the waiver at the earliest possible basis [sic] would: (a) provide greater incentives for interstate carriers, LECs and end users to utilize network facilities more efficiently, and, as a consequence, (b) reduce the possibility of uneconomic bypass of switched access facilities.[31]

Second, the Department of Justice (hereinafter, the "DOJ"), asserts that the "equal [charge] per unit of traffic" requirement is an essential part of the MFJ,[32] which serves the dual purposes of ensuring that (1) AT&T bears a share of the network reconfiguration costs incurred by the BOCs to provide other interexchange carriers with equal access services, and (2) there is a smooth transition to a competitive interexchange marketplace.[33] DOJ has evidently concluded that these purposes would be jeopardized if we were to terminate the waiver and enforce the local transport portions of the rules.[34] Parties are also invited to comment on DOJ's contention that the approach of the MFJ standard for transport charges has certain advantages over the existing Part 69 local transport rules, not only as a transitional approach, but as a permanent feature of the rate structure for access services in an environment with multiple interexchange carriers.[35]

III. Ordering Clauses

9. Accordingly, it is ordered That Part 69 of the Commission's Rules is amended by the addition of § 69.203(e) as shown in Appendix A.

10. It is further ordered That § 69.203(e) shall be effective February 28, 1985. We find good cause for requiring an effective date earlier than 30 days following publication in the **Federal Register** in view of the need for prompt implementation of § 69.203(e) in exchange carrier access tariffs to be filed before March 1, 1985.[36]

11. It is further ordered That the waiver of those sections of Part 69 of the Commission's Rules provided in the *Transport Waiver Order*, as extended in

---

costs and charges. Furthermore, the record is devoid of any quantitative information that would support a multi-party, multiline business charge at some intermediate level, between that derived from the subscriber fill approach and the full, single-party rate. Accordingly, we conclude that the single-party multiline busness rate should apply to multi-party, multiline business subscribers. We find that this approach is both most consistent with our responsibilities under the Act and responsive to the concerns of the Court of Appeals that led it to remand the issue of multi-party charges in *NARUC v. FCC*.

[25] Assessing identical subscriber line charges on multi-party and single-party subscribers would also not be inconsistent with the goals of the Rural Electrification Act of 1936, as well as the Communications Act of 1934. *See* 7 U.S.C. 901–905 (1981); 47 U.S.C. 151 (1982). As discussed above, providing false price signals concerning the relative costs of single-party and multi-party service could create an artificial economic incentive for subscribers to migrate from the former to the latter, which could entail, for some subscribers, an unnecessary (that is regulation-driven, rather than cost-driven) degradation in the quality of service received. Among the factors that affect the relative quality of party-line service are the following:

(1) Data transmissions over party-line facilities are impeded by the noise characteristics that are induced by the additional local loop connections that are associated with party-line service.

(2) Data transmissions on party-lines are susceptible to discontinuities and errors that result from attempts by other subscribers to utilize local loop plant to complete calls. The comparative significance of these impediments will increase as data transmissions increase throughout the United States.

(3) Competition in the retail market for terminal equipment for party-line telephones is hindered by the requirement, in some exchanges, that party-line CPE needs special frequency tuning that corresponds to the signalling frequency associated with the ringing of particular telephones on party-line circuits.

(4) Toll and message rated calls for four-party and eight-party lines must be routed to an operator to identify the calling party for billing purposes, as compared with the higher level of accuracy and processing efficiency that is associated with the use of automatic number identification equipment.

(5) Custom calling features (*e.g.*, abbreviated dialing, call waiting, and call forwarding) cannot be as readily applied to party-lines without special arrangements.

(6) Testing of party-lines is more intricate and time consuming than is the case with single lines.

(7) Party-line service imposes delays upon subscribers in completing calls until the prior or contemporaneous use of common circuit plant by other party-line subscribers has concluded.

See generally, "Preliminary Technical Reference [PUB48501] Local Switching System General Requirements (December, 1980)", Director—Exchange Systems Design, American Telephone and Telegraph Company, 295 North Maple Avenue, Basking Ridge, New Jersey.

[26] *Transport Waiver Order*, *supra* note 6 (establishing waiver for period ending December 31, 1984); *Second Reconsideration Order*, *supra* note 7, at para. 88 (extending waiver through May 31, 1985).

[27] *Notice* at para. 13. The procedural history of the transport waiver and the substantive issues involved are described in the *Notice* at paras. 11–13.

[28] Ad Hoc Telecommunications Users Committee Comments at 2; BCR Comments at 1; BCR Reply Comments at 3; Competitive Telecommunications Association Comments at 3–5; Department of Justice Comments at 7–9; GTE Telephone Companies at 1; GTE Sprint Communications Corporation at 1–2, 5–10; Lexitel Comments at 2–7; MCI Comments at 2–4; MCI Reply Comments at 1–3; Rochester Comments at 4; Southwestern Bell Telephone Co. Reply Comments at 1–3; Southern New England Telephone Co. Comments at 3, 5; Satellite Business System Comments at 1–4; United Comments at 4; USTA Comments at 3–4; United States Transmission Services, Inc. Comments at 3–4; U.S. West Comments at 5–6.

[29] Exchange carriers filing access tariffs during 1985 should assume for the purpose of those filings that the transport waiver will continue through May 31, 1986.

[30] *Notice* at para. 13.

[31] Comments of the Ad Hoc Telecommunications Users Committee at 2.

[32] Modification of Final Judgment, entered in *United States v. American Telephone and Telegraph Co.*, 552 F.Supp. 131 (D.D.C. 1982), *aff'd sub. nom. Maryland v. United States*, 103 S.Ct. 1240 (1983).

[33] DOJ Comments at 4–9.

[34] For example, DOJ states: In fact, the financing of the BOCs' separate intraexchange and exchange access networks, including access tandem switching capacity, could be in question if AT&T could avoid the share of the transitional costs that it would pay under the MFJ's equal-per-unit-of-traffic provision. Additionally, a tariff rule that permitted AT&T to shift all of the access costs of new tandem switches to it competitors (*e.g.*, by permitting AT&T to specify a direct trunking route) would relieve AT&T of its agreement that until September 1, 1991, it would obtain access transport at rates no more favorable, on a usage basis, than that charged other interexchange carriers.

DOJ Comments at 7. In this regard, the views of the Bell Operating Companies with respect to DOJ's assessment would be of considerable assistance.

[35] DOJ Comments at 10–13.

[36] *See* section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. 553(d)(3) (1982), and § 69.3 of the Commission's rules.

the *Second Reconsideration Order*,[37] is extended until further order.

12. It is further ordered That the Secretary shall cause this Memorandum Opinion and Order to be published in the **Federal Register**.[38]

Federal Communications Commission.

(Secs. 4, 201–205, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 201–205)

William J. Tricarico,

Secretary.

Appendix A

PART 69—[AMENDED]

Subpart C of Part 69 of the Commission's Rules is amended as follows: Section 69.203 is amended by adding a new paragraph (e) to read:

§ 69.203 Interim Common Line Charges.

* * * * *

(e) The End User Common Line charge for each multi-party subscriber shall be assessed as if such subscriber had subscribed to single-party service.

[FR Doc. 85–5726 Filed 3–8–85; 8:45 am]

BILLING CODE 6712–01–M

---

[37] *See* n.6, *supra*, and references cited therein.

[38] These actions are taken pursuant to sections 1, 4(j), and 201–205 of the Communications Act of 1934, 47 U.S.C. 151, 154(j), 201–205 (1982). We certify that the Regulatory Flexibility Act is not applicable to the rules we are adopting in this proceeding. Although some local exchange carriers are very small firms, local telephone companies do not appear to fall within the Regulatory Flexibility Act's definition of a "small entity." That Act incorporates the definition of a "small business" in section 3 of the Small Business Act as a definition of a "small entity." The latter definition excludes any business that is dominant in its field of operation. Exchange carriers, even small ones, enjoy a dominant monopoly position in their local service area. The Commission has found all exchange carriers to be dominant in the *Competitive Carrier* proceedings, 85 FCC 1, 23–24 (1980). To the extent that interexchange carriers may be affected by these rules, we hereby certify that these rules will not have a significant economic effect on a substantial number of small entities. In any event, the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164) expressly provides that its provisions are not applicable to rules that involve rates. *See* 5 U.S.C. 601(2) (1984).

Proposed Rules

Federal Register
Vol. 50, No. 47
Monday, March 11, 1985

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 1002 and 1004

[Docket Nos. AO-160-A62 and AO-71-A74]

Milk in the Middle Atlantic and New York-New Jersey Marketing Areas; Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends expanding the Middle Atlantic and New York-New Jersey marketing areas to include 20 east central and northeastern Pennsylvania counties based on industry proposals considered at a public hearing held in July-October 1983 on 24 separate days. The Middle Atlantic marketing area would be expanded to include 5 additional unregulated east central Pennsylvania counties and the New York-New Jersey marketing area would be expanded to include 15 additional unregulated northeastern Pennsylvania counties. The decision also would revise the location adjustment provisions of the two orders to more closely align fluid milk (Class I) prices at various plant locations in the expanded territory. The order expansions and changes in location adjustments are needed to reflect current marketing conditions and to assure orderly marketing in the two Federal order marketing areas.

DATE: Comments are due on or before April 10, 1985.

ADDRESS: Comments (six copies) should be filed with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-7183.

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.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments will promote orderly marketing of milk by producers and regulated handlers.

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small business. This recommended decision contains an economic analysis and takes into consideration the impact of the proposed changes in regulation on the dairy industry, including to the extent necessary, the impact of such changes on small businesses. Although this decision is not identical to a regulatory flexibility analysis, it is based on the record evidence obtained at a public hearing and therefore serves the same purpose.

Prior document in this proceeding:

Notice of Hearing: Issued June 17, 1983; published June 23, 1983 (48 FR 28655).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Middle Atlantic and New York-New Jersey marketing areas. This notice is issued 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 governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C., 20250, by the 30th day after publication of this decision in the **Federal Register**. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Allentown, Pennsylvania, on July 19-August 12 and October 17-26, 1983, and at Philadelphia, Pennsylvania, on September 12-13, 1983 pursuant to a notice of hearing issued June 17, 1983 (48 FR 28655).

This hearing was reopened on several occasions since the initial sessions were held in July-October 1983. The reopened hearings concerned issues that were not included at the July-October 1983 sessions. Set forth below is a summary of those various proceedings.

A public hearing was held on May 23, 1984, that reopened the July-October 1983 hearing pursuant to a notice issued May 2, 1984 (49 FR 19502) concerning proposed amendments to the Middle Atlantic milk order. Based on the evidence presented at the reopened hearing the Assistant Secretary issued a final decision on August 6, 1984 (49 FR 32209) and an order amending the Middle Atlantic milk order, effective September 1, 1984, on August 17, 1984 (49 FR 33431). The September 1 amendments revised "§ 1004.7 Pool plant" provisions to provide that a distributing plant would continue to be fully regulated for the immediately succeeding two months if it meets the total Class I disposition percentage requirement during the prior month and continues to meet the 15 percent in-area Class I disposition requirement during such months. The amendments also revised "§§ 1004.9 Handler and 1004.30 Reports of receipts and utilization" provisions to allow a federation of cooperative associations to act as a handler in diverting the member milk of its individual cooperative associations to nonpool plants and to report such receipts and disposition to the market adminsitrator. Finally the amendments also revised "§ 1004.12 Producer" provisions by increasing from 40 to 50 percent the percentage of a cooperative association or federation of cooperative associations member milk supply that may be diverted from pool plants to nonpool plants.

Another public hearing was held July 25-27, 1984, that reopened the July-

October 1983 hearing pursuant to notices issued June 22, 1984 (49 FR 26239) and July 3, 1984 (49 FR 27769) involving all 45 federal milk orders to consider a proposal to establish a separate class of utilization for milk used to make butter and nonfat dry milk in each milk order. The proposed minimum price under the orders for the new class would be the lower of the presently used Minnesota-Wisconsin price for manufacturing grade milk or a product formula price based on market prices for butter and nonfat dry milk. The issues considered at the July 25–27, 1984 reopened hearing are reserved for a separate decision.

The hearing was reopened again to consider proposed amendments to the Middle Atlantic order on September 13, 1984, pursuant to a notice of hearing issued August 30, 1984 (49 FR 35100). The September 13 reopened hearing concerned proposals to revise the base-excess provisions and the qualification requirements for a reserve processing plant operated by a federation of cooperative associations. Based on testimony presented at the September 13 reopened hearing the Deputy Assistant Secretary on October 17, 1984 (49 FR 42737) issued an emergency partial final decision and on November 6, 1984 (49 FR 44986) the Assistant Secretary issued an order amending the order effective November 14, 1984. The November 14 amendments revised "§ 1004.92 Computation of base for each producer" provisions to include in the computation of a producer's base milk deliveries during the 1984 base-forming period of August through December the dairy farmer's eligible deliveries to plants regulated under other Federal milk orders along with the dairy farmer's deliveries of producer milk under the Middle Atlantic order.

The other proposal considered at the September 13 reopened hearing would permit a federation of cooperative associations to qualify as a pool plant under certain conditions its reserve processing plant that is not completely separated from a nonpool plant located on the same premises. A recommended decision was issued based on the record evidence by the Deputy Administrator on January 29, 1985 (50 FR 4694) concerning this issue. The recommended decision would revise "§ 1004.7 Pool plant" provisions to afford pool plant status to a reserve processing plant operated by a federation of cooperative associations if it is proven to the satisfaction of the market administrator that a pipeline maintained between the pool plant and a nonpool plant operated by another person and located on the same premises is used only to move by-products (not milk) between such plants.

The material issues on the record of the hearing relate to:

1. Expansion of the Middle Atlantic and New York-New Jersey marketing areas.
2. Location adjustments.
3. Tank truck service charge under Order 2.
4. Classification of bulk fluid milk products in ending inventory under Order 2.
5. Pricing and payments for contaminated milk under Order 2.

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. *Expansion of the Middle Atlantic and New York-New Jersey marketing areas.* The marketing area of the Middle Atlantic (Federal Order No. 4) milk order should be expanded to include the additional Pennsylvania Counties of Berks, Carbon, Lehigh, Northampton, and Schuylkill. Further, the marketing area of the New York-New Jersey (Federal Order No. 2) milk order should be expanded to include the Pennsylvania Counties of Bradford, Columbia, Lackawanna, Luzerne, Lycoming, Monroe, Montour, Northumberland, Pike, Snyder, Sullivan, Susquehanna, Union, Wayne and Wyoming. Territories within the boundaries of the expanded part of each marketing area which are occupied by Government (municipal, State or Federal) reservations, institutions or other establishments should be considered as within the respective marketing areas.

The current Order 4 marketing area includes: The District of Columbia; The State of Delaware; in the State of Maryland the counties of Anne Arundel, Baltimore, Calvert, Caroline, Carrol, Cecil, Charles, Dorchester, Fredrick, Harford, Howard, Kent, Montgomery, Prince Georges, Queen Annes, Somerset, St. Marys, Talbot, Washington, Wicomico, and Worchester, and the City of Baltimore; in the State of New Jersey the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Salem, and that part of Ocean County not included in the Order 2 marketing area; in the State of Pennsylvania the counties of Adams, Bucks, Chester, Cumberland, Dauphin, Delaware, Franklin, Fulton, Juniata, Lancaster, Lebanon, Montgomery, Perry, Philadelphia and York; and in the State of Virginia the counties of Arlington, Fairfax, Loudoun and Prince William and the cities of Alexandria, Falls Church and Fairfax.

The current Order 2 marketing area includes: in the State of New York the counties of Albany, Broome, Chemung, Chenango, Columbia, Cortland, Delaware, Dutchess, Greene, Madison, Montgomery, Nassau, Onondaga, Orange, Otsego, Putnam, Rensselaer, Rockland, Schenectady, Schoharie, Schuyler, Sullivan, Tioga, Tompkins, Ulster, Washington, Westchester, and parts of Cayuga, Essex, Fulton, Herkimer, Oneida, Oswego, Saratoga, Steuben, Suffolk, Warren and Yates; and in the State of New Jersey the counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, Warren and the remaining part of Ocean County that is not in the Order 4 marketing area.

Three proposals concerning marketing area expansion were included in the hearing notice. The proposals involved expanding the Order 2 and 4 marketing areas to include 23 east central and northeastern Pennsylvania counties which are presently subject to the regulations of Pennsylvania Milk Marketing Board (PMMB). The PMMB establishes minimum prices for milk at the farm level and at the resale level in seven separate marketing areas which in combination embrace all of the State of Pennsylvania. Two of these seven marketing areas embrace the 23 counties proposed to be included under Federal regulations.

The two PMMB areas involved are: PMMB Area 2 which includes the counties of Berks, Lehigh, and Northampton; and PMMB Area 3 which includes the 20 counties of Bradford, Carbon, Clinton, Columbia, Lackawanna, Luzerne, Lycoming, Monroe, Montour, Northumberland, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne and Wyoming. One proposal would have extended the Middle Atlantic marketing area to include the 3 counties of PMMB Area 2 and 9 of the 20 counties included in PMMB Area 3. Another proposal would have added only the 3 counties in PMMB Area 2 to the Middle Atlantic marketing area. The third proposal would have expanded the New York-New Jersey marketing area to include all of the 20 counties in PMMB Area 3. As described later, all of these proposals were modified by proponents either at the hearing or in post-hearing briefs.

Pennmarva Dairyman's Federation, Inc. (Pennmarva), a federation of cooperative associations primarily associated with the Middle Atlantic market—Capitol Milk Producers Cooperative, Inc., Inter-State Milk

Producers' Cooperative, Dairymen, Inc., Middle Atlantic Division, Maryland and Virginia Milk Producers Association, Inc., and Valley of Virginia Cooperative Milk Producers Association—proposed that the Order 4 marketing area be expanded to include the 12 Pennsylvania Counties of Berks, Carbon, Columbia, Lehigh, Luzerne, Monroe, Montour, Northampton, Northumberland, Schuylkill, Snyder and Union. Through its individual member cooperatives, the federation represents the majority of producers supplying plants presently regulated under Order 4. The other member of Pennmarva at the time of the hearing, Lehigh Valley Farmers Cooperative (Lehigh Valley), did not support the Federation's area expansion proposal. The cooperative's position regarding the area expansion issue as well as other issues considered at the hearing was represented by its marketing agent, Atlantic Processing, Inc. (API).

The Milk Distributors Association of the Philadelphia Area, Inc. (MDAPA) and the New Jersey Milk Industry Association, Inc. (NJMIA), two trade associations of milk dealers who operate regulated distributing plants in the Philadelphia and New Jersey portions of the Order 4 marketing area and the New Jersey portion of the Order 2 marketing area proposed that the Order 4 market be expanded to include the same territory proposed by Pennmarva. At the hearing and in a post-hearing brief the position of these two trade associations was part of a committee comprising 29 handlers who are regulated under either Order 2 or Order 4. This committee (referred to hereinafter as the Ad Hoc Committee) included most of the members of the MDAPA and NJMIA and a number of other handlers regulated under Order 2 who were not members of either association. The Ad Hoc Committee's witness modified the initial proposal submitted by the two handler associations to add to the Order 2 marketing area the eleven other northeastern Pennsylvania counties. The witness stated, however, that regardless of the division of the counties between the two Federal order marketing areas, the Ad Hoc Committee strongly advocated that all 23 counties be included in the marketing area of one of the two orders.

Northeast Dairy Cooperative Federation (NEDCO) and Eastern Milk Producers Cooperative Association (Eastern) proposed that the Order 2 marketing area be extended to include the 20 Pennsylvania counties that make up PMMB Area 3. NEDCO also proposed that the Order 4 marketing area be extended to include the 3 counties comprising PMMB Area 2. At the hearing NEDCO did not offer testimony suppporting this proposal. On questioning, however, the witnesses for both NEDCO and Eastern testified that it was not their intent to have the 20 counties regulated under Order 2 without the three other counties in question included under Order 4. Witnesses representing these two cooperative associations also stated that the 20-county area is an integral part of the Order 2 market because the vast majority of dairy farmers located in these counties are Order 2 producers and the reserve milk supplies for this area are carried by Order 2 producers.

In their post-hearing briefs, all of the proponents of marketing area expansion revised their positions concerning which of the 23 counties should be included in either the Order 2 or Order 4 marketing areas. In this regard, proponents recommended that the Order 4 marketing area be expanded to include the six counties of Berks, Carbon, Lehigh, Monroe, Northampton and Schuylkill and that the remaining 17 counties of PMMB Area 3 be added to the Order 2 marketing area. A basic reason stated for proposing such a configuration was that the 6–17 county split reflects the regulated market where the majority of producers in each of the 23 counties ship their milk. Another reason proponents gave for this division of the counties was that it assures a handler located in Williamsport, Pennsylvania, who would become fully regulated by the proposed area expansion and who has distribution in most of the 23 county area, to be regulated under the New York-New Jersey order without the possibility of the plant switching regulation seasonally back and forth between the two orders.

Although they were not represented at the hearing, two additional handlers joined in the post-hearing brief filed by the Ad Hoc Committee. These handlers, both of whom are located in Johnstown, Pennsylvania (PMMB Area 6), are Galliker's Quality Checked Dairy, a partially regulated distributing plant under Orders 4 and 36 and Johnstown Sanitary Dairy, a fully regulated distributing plant under the Eastern Ohio-Western Pennsylvania order (Order No. 36) with limited distribution in part of the 23-county area.

The proposals to expand the Middle Atlantic and New York-New Jersey marketing areas to include the 23-county area were opposed by API, a federation of 3 cooperative associations including Lehigh Valley Farmers, Dairylea Cooperative and Mt. Joy Farmer's Cooperative Association; Farmers Cooperative Dairy at Hazelton; Valley Farms Dairy at Williamsport; Guers Dairy at Pottsville; Freeman's Dairy at Allentown; several dairy farmer officers of the Berks County Dairy Farmers Association; and 4 dairy farmers who deliver milk to Guers Dairy. The basic reasons opponents gave for opposing the marketing area expansion were that there are no disorderly marketing conditions in the 23-county area and there have been no significant changes in marketing conditions since the March 24, 1975 decision of the Assistant Secretary that denied similar proposals to add the same 23-county area to the Middle Atlantic and New York-New Jersey marketing areas.

This 23-county area has a population of 2.3 million people based on the 1980 census. There are 8 major population centers and 10 smaller but significant population centers within the 23-county area. The 8 major centers and their 1980 population are Allentown (103,758), Scranton (88,117), Reading (78,686), Bethlehem (70,419), Wilkes Barre (51,551), Williamsport (33,401), Hazelton (27,318), and Easton (26,027). The 10 smaller population centers are Pottsville (18,195), Dunmore (16,781), Kingston (15,681), Nanticoke (13,044), Sunbury (12,292), Berwick (11,850), Bloomsburg (11,717), Carbondale (11,255), Emmaus (11,001), and Shamokin (10,357).

The 23-county area borders the Middle Atlantic and New York-New Jersey marketing areas on three sides. The Middle Atlantic marketing area borders the southern and southwestern proposed expanded counties while the New York-New Jersey marketing area borders the eastern and northern proposed expanded area. The proposed expanded area is linked to the major population centers of both the Order 2, and Order 4 markets by a network of limited access highways which included Interstate Routes, the Pennsylvania Turnpike and U.S. Routes. The area also contains numerous resorts in the Pocono Mountains that attract significant numbers of vacationers and second home residents from the major metropolitan centers of New York City and Philadelphia. Thus, this area has strong economic and social ties to the metropolitan areas of the two orders.

Most of the testimony and other evidence presented at the hearing with respect to marketing area extension was related to the PMMB Areas 2 and 3 marketing areas. Thus, the findings and conclusions set forth herein will, by necessity, focus primarily on marketing

conditions prevailing in these 2 areas rather than on a county-by-county basis.

At the time of the hearing, there were 16 [1] distributing plants located in the 23-county area. One of these plants, Dutch Valley Food Co. at Sunbury (a subsidiary of Weis markets), is a pool plant under Order 4. The record indicates that this plant distributes milk in the suburban Philadelphia area and the Harrisburg-Lancastar-York area of the Middle Atlantic market, the 23-county area, the west central area of Pennsylvania (PMMB Area 6) and in portions of Maryland, New Jersey and New York.

Another plant located in the 23-county area is API's distributing plant at Schuylkill Haven which is a temporary pool plant under Order 2. The witness representing API testified that fluid milk is distributed from this plant in Northern New Jersey, New York State, the 23-county area and the Middle Atlantic market. A more detailed account of the distribution from this plant is discussed later on.

Twelve of these plants are operated by proprietary handlers. These are: Blue Ribbon Farm Dairy at West Pittston; Clover Farms Dairy at Reading; Edgewood Farms at Troy; Freeman's Dairy at Allentown; Guers Dairy at Pottsville; Heisler's Cloverleaf at Tamaqua; Hyland Dairy at Wilkes Barre; Longacre's Modern Dairy at Barto; Maurer's Dairy at shamokin; Stocker Brothers at Easton; United Dairies at Sunbury; and Valley Farms Dairy at Williamsport. Five of these plants (Clover Farms, Guers, Longacres, Stocker Bros. and Valley Farms) also are partially regulated distributing plants under the Middle Atlantic order because of limited route distribution in the marketing area. The other plant in this area is operated by Farmers' Cooperative Dairy at Hazelton which is a cooperative association.

Clover Farms also distributes fluid milk in the NY–NJ marketing area. To cover these sales Clover Farms operates a bulk tank unit that is pooled under Order 2. In addition, the record indicates that Clover Farms distributes about 40 million pounds of fluid milk annually in PMMB Areas 2 and 3. A dairy farmer who delivers milk to Clover Farms' plant testified that 91 or 92 dairy farmers deliver milk to that plant.

A witness representing Valley Farms Dairy testified that this company distributes about 60 million pounds of fluid milk annually in 19 Pennsylvania counties. Fourteen of these counties—Bradford, Clinton, Columbia, Lackawanna, Luzerne, Lycoming, Montour, Northumberland, Schuylkill, Snyder, Sullivan, Tioga, Union and Wyoming—are in the territory that was proposed to be added to the marketing areas of the two orders. The other counties in which the handler had route distribution include Dauphin, Juniata and Perry (comprising part of the Middle Atlantic marketing area) and Centre and Mifflin which are part of PMMB Area 6. The Valley Farms witness testified that in its area of distribution its principal competitors are handlers that are regulated under Orders 2 and 4 and with federally unregulated operations. He also indicated that the majority of the handler's supply is obtained from Eastern.

A witness representing Guers Dairy testified that it receives about 15 million pounds of milk annually from 24 dairy farmers. The witness said Guers' Class I utilization was about 90 percent and that about 99 percent of the route distribution from the plant is in Schuylkill County. The remaining 1 percent is distributed in Carbon, Columbia, Dauphin, Luzerne and Northumberland counties. Also, the Guers witness testified that the company competes with at least three Order 4 handlers and three PMMB dealers. Although API distributes milk in the handler's distribution area, the witness held that API was not a competitor because API supplies large chain stores as opposed to the type of customers Guers services.

A witness representing Farmers' Cooperative Dairy testified that the cooperative received nearly 19 million pounds of milk in 1982 from its 50 member dairy farmers. The witness said its Class I utilization was about 75 percent and that about 90 percent of the cooperative's route distribution in in Luzerne County. The remaining 10 percent is distributed in Carbon, Columbia, Lackawanna, Montour and Schuylkill counties. The witness also testified that two Order 4 and two Order 2 handlers distribute milk in the cooperative's principal area of distribution.

The nine other milk dealers in the 23-county area are relatively small in terms of volume. The record evidence indicates they generally confine their fluid milk distribution to the immediate area where they are located.

All of the territory within the 23-county area, with the exception of the counties of Clinton, Potter and Tioga, should be included under Federal regulation. The record evidence indicates that, except for these three counties, substantial volumes of milk are distributed throughout the 23-county area from plants regulated by either Orders 2 or 4.

Data for 1982 indicate that 151.7 million pounds of packaged milk were distributed in PMMB Area 2. Of this total, nearly 81 million pounds (53 percent of the total) were distributed by 17 plants regulated under one of the two orders. Five of these plants were regulated under Order 2, with fluid milk sales in 1982 of nearly 47 million pounds (31 percent of the total), and 12 were regulated under Order 4, with fluid milk sales in 1982 of about 34 million pounds (22 percent). The four plants located in PMMB Area 2, Clover Farms, Freeman's, Longacre's and Stocker Brothers, had fluid milk sales of nearly 70 million pounds (46 percent).

There were 311.5 million pounds of packaged milk distributed during 1982 in PMMB Area 3. Of this total, about 207 million pounds (66 percent of the total) were distributed by eleven plants regulated under the two orders. Five of these plants were regulated under Order 2, with fluid milk sales of 168.5 million pounds in 1982 (54 percent of the total), and six were regulated under Order 4, with fluid milk sales of nearly 39 million pounds in 1982 (12 percent). However, the record does not indicate the extent of fluid milk sales in PMMB Area 3 by the dealers located therein, except for the sales of Dutch Valley and API Schuylkill Haven.

The above data demonstrate the extensive distribution of fluid milk sales in the 23-county area by plants regulated under the two orders. However, the total fluid milk distribution of 215.5 million pounds by Order 2 plants (47 million in PMMB Area 2 and 168.5 million in PMMB Area 3) is not all priced under the order. Data presented by the New York-New Jersey market administrator's office indicated that approximately 88 percent of this distribution comprised "unpriced milk" (i.e., milk that is not subject to the minimum Class price provisions of the order). Thus, even though Order 2 regulated plants distributed 215.5 million pounds in the 23-county area during 1982, probably only 26 million pounds were actually priced under the order.

The ability of some plants under Order 2 to distribute unpriced milk has had an adverse competitive impact upon those handlers regulated by Order 2 who do not use unpriced milk for their distribution in the area and upon all handlers regulated by Order 4 who distribute in the area. The witness representing the Ad Hoc Committee testified that even though many of the

[1] Official notice is taken of the commercial fact that since the close of the hearing Bear Creek Dairy at Jim Thorpe has ceased operations.

Order 2 and Order 4 members of the Committee are located relatively close to this 23-county area they have not achieved the sales volumes in these counties that are commensurate with the scope of their operations. This is because of the wide difference in producer-pay prices between regulated handlers that are required to pay at least the minimum order prices on all fluid milk sales compared to other regulated handlers that pay such prices on only those sales within the order's defined marketing area. He stated that only Federal regulation of this territory would assure that all handlers distributing in the area have uniform prices for raw milk.

At this juncture, it is appropriate to describe the operation of certain provisions under Order 2 which permit price inequities to occur between regulated handlers. Unlike other Federal orders which price all milk received at a regulated plant regardless of whether the milk is disposed of as a fluid milk product within or outside the marketing area, the New York-New Jersey order permits a regulated handler to receive milk from nonfederal order sources for fluid distribution outside the marketing area of any Federal order without having such milk priced under the order.[2] The order provides certain accounting procedures concerning the allocation of such other source receipts to classes of utilization to protect the integrity of the order with respect to the regular producers who supply the Order 2 market. These procedures are intended to assure that such milk receipt share proportionally with producer milk in the reserve supplies associated with a handler's overall fluid operation. Consequently, plants that have most of their receipts utilized in Class I (about 90 percent Class I) find it economically feasible to utilize the pass-through provisions and use "unpriced milk" to supply their sales in nonfederal order areas.

Much of the testimony and other evidence presented at the hearing regarding the marketing area extension issue focused on API's Schuylkill Haven, Pennsylvania, distributing plant which operates under competitive conditions in unregulated markets that differ from those of other regulated handers. This plant has fluid milk distribution throughout the 23-county area, in the New York-New Jersey marketing area and, to a limited extent, in the Middle Atlantic marketing area. At the time of the hearing, it also operated distributing plants at Lansdale, Pa. and Baltimore, Md. and a reserve processing plant at Allentown, Pa. These latter three plants are all regulated under Order 4.[3]

The Schuylkill Haven plant is a temporary pool plant under Order 2 because of its distribution of Class I milk in the North Jersey and Catskill mountain areas of the New York-New Jersey marketing area. The witness representing API testified that distribution in the Order 2 marketing area from this plant represents about 25 percent or more of its receipts from dairy farmers and bulk tank units. Because the plant's total Class I utilization is 90-95 percent, API can utilize the "pass-through" provisions of Order 2 which permits it to use "unpriced milk" for its Class I sales in the 23-county area. Also, since API is a federation of cooperative associations and since PMMB regulations provide for the individual-handler pooling of producer returns, it is not subject to the PMMB minimum producer price regulations with respect to its sales in the 23-county area. This combination of being able to use "unpriced milk" under Order 2 for its fluid distribution in the 23-county area and being exempt from the PMMB producer pricing provisions allows API to settle with its member cooperatives at the prevailing Federal order producer blend prices (either the Order 4 base and excess prices or the Order 2 blend prices) for the higher valued Class I milk it distributes outside Federal order areas. Proponents of marketing area expansion claim that this ability of API to pay its producers a competitive price for milk it sells for Class I use in the 23-county area gives it a significant price advantage when competing for fluid milk sales with regulated proprietary handlers who must pay the full Class I price for all of the milk they sell for fluid use.

To illustrate the magnitude of this advantage, the record evidence indicates that for 1982 the Order 4 Class I price at the Schuylkill Haven location (81–90 mile zone) was $15.172 while the weighted average blend price was $13.665, a cost advantage to API of nearly $1.50 per hundredweight vis-a-vis an Order 4 pool distributing plant located in the same mileage zone. An exhibit entered into evidence indicated that this advantage to API amounted to about $2.3 million annually of additional income.

Other evidence in the record indicates the growth of the Schuylkill Haven operation from 1973 to 1982. During the years of 1973 and 1974, Lehigh Valley Farmers (the forerunner to API and now a member of the federation) operated the Schuylkill Haven plant. In 1973, the Schuylkill Haven plant handled only 105 million pounds of milk and in 1974, 115 million pounds. Also, at that time there was little or no distribution in the Order 2 marketing area from the plant. Dairylea (which joined API and began having its milk processed at Schuylkill Haven In November 1982) operated a processing plant in Scranton, Pennsylvania, in 1973 and 1974 which had distribution primarily in PMMB area 3. During the intervening years from 1974 to 1982 the Scranton plant became an Order 2 temporary pool plant when Dairylea began distributing milk from that plant into the New York State portion of the Order 2 marketing area. In November 1982, Dairylea closed the Scranton plant and transferred the processing of that milk to the Schuylkill Haven plant. In 1982, the Schuylkill Haven plant had fluid milk distribution of nearly 260 million pounds (this includes the distribution from the Scranton plant prior to its closing), of which about 60 million pounds were distributed in the Order 2 marketing area and about 198 million pounds were distributed in the 23 Pennsylvania county area. This growth in total distribution from the Schuylkill Haven plant between 1973 and 1982 (105 million pounds represented an increase of about 150 percent. It must be concluded that this 150 percent increase in distribution is attributable, in large measure, to the fact that the Schuylkill Haven operation over a period of years has had a raw product cost advantage over other regulated handlers of as much as $1.50 per hundredweight on a large portion of its fluid milk sales.

The record evidence also indicates that some of the reserve milk supplies associated with the Schuylkill Haven plant's fluid sales in the 23-county area is carried by Order 4 producers. Pennmarva's witness testified that although Order 4 producers are not sharing in the Schuylkill Haven plant's Class I sales a large portion of the reserve milk supply (i.e., excess milk) associated with those sales in the 23-county area is pooled as producer milk on the Middle Atlantic market through API's Allentown pool manufacturing plant. The pooling of this excess milk on the Middle Atlantic market lowers the uniform prices to those Order 4 producers who regularly supply the market because API accounts to the pool for this milk at the order's lower valued Class II price (which averaged $12.51 in 1982) and receives the higher

[2] Referred to as unpriced milk and the pertinent provisions of the order are commonly referred to as "pass-through" provisions.

[3] Since the close of the hearing, the Allentown plant has become a nonpool plant.

valued uniform base price ($13.81 in 1982) for 50 percent or more of this milk and the uniform excess price ($12.37 in 1982) for the remainder of the milk. Thus, API retains for itself the sales of the higher valued Class I milk sold in the 23-county area from its Schuylkill Haven plant and causes Order 4 producers to subsidize its excess milk supplies by pooling such milk on this market.

API's witness did not refute the above described testimony of Pennmarva's witness. The witness agreed that if a nonfederal order producer delivering to the Schuylkill Haven plant had some milk delivered to API's Allentown plant such milk would be considered producer milk under Order 4. Although he thought that most of the reserve milk API might move to Allentown from Schuylkill Haven would be producer milk under Order 2, he was not certain how Lehigh Valley Farmers handled their excess milk that was associated with the Schuylkill Haven plant.

Regulated handlers testified that with respect to the local dealers located in the 23-county area that are subject to the PMMB regulations they likewise have a competitive advantage, although not as great as the advantage API's Schuylkill Haven plant enjoys. The minimum prices which the local dealers must pay for milk purchased from dairy farmers are established under the regulations of the PMMB. The PMMB Class I prices for milk used in fluid milk products that are distributed in the two designated PMMB areas are tied to the Order 2 and Order 4 Class I prices. In PMMB Area 2 the Class I price is the Order 4 announced Class I price f.o.b. the market minus 28 cents, which is equivalent to a Class I differential of $2.50. In PMMB Area 3 the Class I price is the Order 2 announced Class I price for the 201–210 mile zone, which is equivalent to a Class I differential of $2.25. Although these prices are tied directly to the Class I prices in the two Federal orders, the PMMB Class I prices apply throughout the entire territory within PMMB Areas 2 and 3 and reflect a slightly lower level than the Federal order prices that apply at plants located in these two areas. For example, in PMMB Area 3 the PMMB Class I differential is $2.25 in contrast to a Class I differential at the Schuylkill Haven location (PMMB Area 3) of $2.645 (81–90 mile zone) under Order 4 and $2.426 (121–125 mile zone) under Order 2. Similarly, at the Williamsport location the Order 4 Class I differnential is $2.54 (151–160 mile zone) and the Order 2 Class I differential is $2.294 (181–190 mile zone) while the PMMB Area 3 Class I differential applicable at this plant is $2.25.

The PMMB regulated dealers in the 23-county area pay their producers on the basis of individual-handler pooling of producer returns. Individual-handler pooling generally results in much higher blend prices being paid to producers than the Federal order marketwide pool blend prices. Under individual-handler pooling, procurement advantages accrue to the individual handler who maintains a relatively high blended return to producers. As a consequence, it gives such a handler the ability to select producers on the basis of minimizing procurement costs. If such an individual handler accumulates more than an average proportion of surplus milk the handler is under competitive pressure to reduce its purchases of milk from producers. The record evidence indicates that in the past when such conditions prevailed some of the nonfederally regulated handlers in the 23-county area have ceased receiving milk from some dairy farmers. Although it is not clear on the record where these dairy farmers now deliver their milk it was indicated that some of them now deliver milk to Federal order handlers. Thus, this is another example of Federal order producers carrying the burden of the reserve supplies for these local dealers.

Opponents of the proposals to expand Federal regulation into the 23-county area testified that the economic and regulatory conditions that exist today provide an even lesser basis for Federal order expansion into this area than they did at the time when the Assistant Secretary issued a decision in 1975 denying similar proposals to add the 23-county area to the Order 2 and Order 4 marketing areas. The witness representing API testified that an underlying need for Federal order expansion at the time of the 1974 hearing (the hearing upon which the 1975 decision was based) was the fact that the PMMB Class I prices were considerably below the rapidly increasing Federal order Class I prices. As a consequence of this, the witness said, prices to nonfederal order producers reflected primarily the nearby Federal order blend prices. However, he stated, since the 1975 decision the PMMB has adopted a new system of establishing Class I prices which relates such prices directly to the Federal order Class I prices. Thus, he said, today there are significant differences in prices established by the PMMB and the Federal orders and that today this price alignment is much more stable than it was in 1974.

It is true that the PMMB Class I prices are about the same or only slightly lower than the Federal order prices throughout this territory. However, as set forth previously, a basic problem described on this record is that the dominant distributor (API) of fluid milk throughout the 23-county area is not obligated to either the PMMB or Federal order to pay Class I prices on such sales. Further, API relies on Federal order producers to balance the excess supplies associated with its fluid milk plant. The record evidence also suggests that the majority of nonfederal order producers in the area are still paid on the basis of Federal order uniform producer blend prices. In this regard, of the estimated 550 to 700 nonfederal order producers in the 23-county area, over 500 of them belong to cooperative associations which reblend their proceeds and pay member producers a price based either on the Order 4 uniform base and excess prices or the Order 2 blend price. Thus, even though the PMMB Class I prices are not substantially below the Federal order prices the Federal order blend prices are still used as the basis for paying the vast majority of producers in the area.

Opponents also testified that there has been no significant change in the patterns of handler distribution in the 23-county area since the 1974 hearing was held. They stated that fluid milk sales throughout the 23-county area are still predominantly made by nonfederally regulated handlers and that the biggest change since the 1974 hearing has been a consolidation or merger of dealer operations within the area.

The Assistant Secretary in his 1975 decision denying the proposals to add these counties to the marketing areas of the two Federal orders found that only two Order 4 handlers and one Order 2 handler had distribution in the Allentown-Bethlehem-Easton area (counties of Berks, Lehigh and Northampton). Also, he found that only two Order 4 handlers had sales in the 20-county northeastern Pennsylvania area and that route sales and transfers of pool milk by Order 2 handlers in northeastern Pennsylvania approximated 7 percent of the total fluid milk requirements of that territory. The Assistant Secretary, further, found that the nonfederally regulated Schuylkill Haven plant of Lehigh Valley represented about 40 percent of the sales of the Allentown-Bethlehem-Easton area. Also, he found that the Schuylkill Haven plant and Dairylea's nonfederally regulated plant in Scranton were the two largest nonfederally

regulated plants distributing milk in the 20-county area at that time.

On the basis of the current record the reasons given by the Assistant Secretary in his 1975 decision for not including under Federal regulation the 23-county area no longer exist today. The current hearing record indicates that a significantly different situation exists today with respect to sales in these counties. Today, there are 17 plants regulated under the two orders that distribute milk throughout much of the 23-county area. Also, Dairylea no longer operates its Scranton plant and now has that milk processed at the Schuylkill Haven plant. Further, the Schuylkill Haven plant now is a pool plant under Order 2 and the fluid sales from this plant in 1982 represented about 30 percent of total fluid milk sales in PMMB Area 2 and 50 percent of the total fluid sales in PMMB Area 3. Further, the distribution of fluid milk products from this plant have increased about 150 percent since 1973.

The record also contains other examples of changed marketing conditions in these 23 counties that have occurred since the 1974 hearing was held. For instance, Dutch Valley Food Co. (a subsidiary of Weis supermarkets) did not operate a distributing plant until 1980. Prior to the opening of this plant at Sunbury, Weis supermarkets obtained part of its fluid milk supplies from the API Schuylkill Haven plant, particularly for its stores located in PMMB Areas 2 and 3. Also, with the opening of Dutch Valley's Sunbury plant, the quantity of Order 4 regulated milk distributed in federally unregulated areas of Pennsylvania more than doubled, from about 2.5 million to 6.0 million pounds per month.

Another significant change in milk marketing in the area that occurred since the 1974 hearing involved a nationwide chain of supermarkets (A&P Tea Co.) that formerly operated a distributing plant regulated under Order 4 at Fort Washington, Pennsylvania. In 1982, this plant was sold to a New Jersey handler who operates an Order 2 distributing plant at Flemington, New Jersey. Based on the testimony of API's witness, prior to the change in ownership of the Fort Washington plant the supermarket chain used this plant primarily to serve its stores in Philadelphia, Baltimore, Washington and New Jersey. However, most of the chain's supermarkets in the 23-county area prior to the change in ownership were served by local distributing plants including Dairylea's Scranton plant and API's Schuylkill Haven plant. Commencing in 1983, these stores were served by the Flemington handler.

Several opponent witnesses indicated that a large proportion of the fluid milk distributed in the 23-county area was by Federally regulated vertically integrated handlers who operated both processing plants and retail store outlets. In view of this, opponents argued that such vertically integrated operations did not compete for fluid sales with other handlers because the sales through their own stores were "captive sales." This, opponents stated, removed them from the sphere of competition for wholesale outlets and thus such operations were not affected by any alleged misalignment in procurement costs.

It is true that some fluid milk processors have found it economically advantageous to operate retail outlets in conjunction with their fluid milk processing operations and further that some supermaket chains have found it advantageous to operate their own processing plants. However, the purchaser of the packaged milk is the ultimate customer regardless of whether or not the fluid milk is distributed through a handler's own stores or it is distributed through other outlets. To this extent vertically integrated operations compete with all other handlers for sales and are equally affected by any competitive advantage that one handler may have over another. Accordingly, this argument is not a valid basis for rejecting the marketing area extension proposals.

In a post-hearing brief filed on behalf of three milk dealers, (Guers, Hazelton Farmers Cooperative and Valley Farms) who testified in opposition to the 23-county area extension, it was argued that the adverse effects on their operations from full Federal regulation far outweigh any possible benefit from such action. These milk dealers were particularly concerned with the impact of such regulation on their raw milk costs and administrative expenses. As described previously in this decision, milk dealers that presently are subject only to PMMB regulations generally pay slightly lower prices for milk for fluid use than do Federally regulated handlers who compete for such sales in the same area of competition. However, Federal milk orders give assurance to all regulated handlers that their competitors in the same area of competition have relatively the same product cost for the same use of milk. Thus, if extending Federal regulation, as adopted herein, results in higher product costs to these three milk dealers, it would only be to the extent, that these dealers and others similarly situated would be incurring the same product costs as their competitors.

The brief of the three milk dealers also expressed particular concern with the adverse effects of area expansion on the operations of the Hazelton Farmers Cooperative. In this regard, it was agrued that regulation of the cooperative's plant would jeopardize the existence of the cooperative because of the additional higher costs, including equalization payments into the marketwide pool, that would be imposed upon its member—owners. Since Federal milk orders give assurance to all regulated handlers that their competitors in the marketing area are paying the same prices for their milk there is no basis for the claim that the proposed extension of the marketing areas would force the cooperative or any other local dealer out-of-business. Further, it should be noted that there are several cooperative associations operating successful fluid milk processing plants in the two Federal order markets.

Also, the brief states that Federal regulation of the area could cause some of the PMMB regulated dealers to lose their local milk supplies. This appears to be very unlikely because data entered into evidence indicated that in virtually every one of the 23 counties in question there were more dairy farmers who delivered their milk to one of the two Federal order markets than who delivered to local dealers.

The brief indicated further that the greatest burden of the expanded Federal regulation would be felt by those dairy farmers who are not members of a cooperative association and who deliver milk to the PMMB regulated dealers because the price they receive for milk would decline 75 cents at $1.00 per hundredweight. The record evidence indicates clearly that the local milk dealers and Federally regulated handlers draw their milk supplies from a common production area. Since this decision concludes that the Class I sales in 20 of the 23 counties have now become an integral part of the Middle Atlantic and New-New Jersey markets, it is only reasonable to provide that all dairy farmers associated with each of these two Federally regulated markets share equally in each respective market's total Class I sales.

It is concluded that in light of the consideration set forth herein, the 20-county area of east central and northeastern Pennsylvania is a logical area to be included under federal regulation and appropriately should be incorporated within the respective marketing areas. A uniform price plan

applicable to all handlers buying milk for sale in the expanded areas will stabilize and improve marketing conditions in such areas. Accordingly, regulation of this 20-county area of east central and northeastern Pennsylvania will effectuate the declared policy of the Act by providing for:

(1) The establishment of uniform prices to handlers for milk received from producers according to a classified price plan based upon the utilization made of milk;

(2) An impartial audit it handlers' records to verify the payments of required prices;

(3) A system for verifying the accuracy of weights and butterfat content of milk purchases; and

(4) Uniform returns to producers supplying each respective market based upon an equitable sharing among all producers supplying the expanded markets of the lower returns from the sale of reserve milk which cannot be marketed as Class I milk.

The public interest will be served by the establishment of orderly marketing for milk in the proposed expanded area that will assure a continuing and adequate supply of fluid milk for the area at reasonable prices.

Having concluded that 20 of the 23 east central and northeastern Pennsylvania counties as initially proposed should be included under Federal regulation, the remaining facet of the area expansion issue to be resolved concerns which of such 20 counties should be included in each of the marketing areas of the respective orders.

As noted previously, there were several area expansion proposals that were contained in the notice of hearing and supported at the hearing by cooperative associations and proprietary handlers. Such proposals would have included under regulation 23 east central and northeastern Pennsylvania counties as extensions of either the Middle Atlantic or New York-New Jersey marketing areas. For example, one proposal would have included under the Middle Atlantic order 12 of these counties while another would have added only 3 counties to this order's maketing area. Two other proposals would have added 20 of the 23 counties to the New York-New Jersey marketing area.

In their post-hearing briefs, all of the proponents of marketing area expansion modified their proposals, urging that the 6 counties of Berks, Carbon, Lehigh, Monroe, Northampton and Schuylkill be included in the Middle Atlantic marketing area and the remaining 17 counties be added to the Order 2 marketing area. It was the general consensus of the proponents that the 6-county area was more allied to the Order 4 market than with the Order 2 market from a standpoint of procurement and Class I sales. In view of the extensive operations of the proponents in terms of procurement and fluid milk distribution throughout much of the 23-county area, consideration must be given to the unanimous position of area expansion proponents regarding how the counties should be divided between the two order.

Additional Pennsylvania Counties To Be Added to Middle Atlantic Marketing Area

The Pennsylvania counties to be included in the Middle Atlantic marketing area are Berks, Carbon, Lehigh, Northampton and Schuylkill (referred to hereafter as the "5-county area"). The total 1980 population of this 5-county area was 1,024,191. The principal population centers of the area include Allentown, Bethlehem, Easton, Emmaus, Pottsville, and Reading, with a combined 1980 population of 308,083.

Four of the 5 counties (Berks, Lehigh, Northampton and Schuylkill) join the present marketing area of Order 4. Geographically, the 5-county area forms the southeastern extremities of the 20 east central-northeasterm Pennsylvania county area proposed to be regulated.

This additional territory (5 counties) should be brought under regulation to implement continuing orderly marketing for dairy farmers supplying regulated handlers, as well as unregulated handlers, marketing milk therein. Milk is disposed of in this territory by regulated handlers on routes as well as in the form of bulk supplemental supplies.

Within the 5-county area, milk is distributed by 18 fully regulated handlers. Of this total 12 were regulated by Order 4 and 6 by Order 2. Additionally, there were 10 nonfederally regulated dealers serving the area at the time of the hearing, 6 of which operated partially regulated distributing plants under Order 4 beacuse of limited route distribution in the order's marketing area. Also, six of the seven distributing plants located in the 5-county area would become fully regulated under Order 4.

The record evidence also indicates that dairy farmers located in each of the 5 counties proposed to be included in the Order 4 marketing area supply present Order 4 handlers with substantially more milk than to Order 2 handlers. Data in the record for December 1982 indicate that of the 699 dairy farmers located in the 5-county area 343 delivered their milk to Order 4 plants, 183 delivered their milk to Order 2 plants and the remaining 173 dairy farmers probably delivered either to Federally unregulated plants or to their own operated processing facilities. Based on the testimony of Guers' witness and a dairy farmer who delivered milk to Clover Farms, it appears that these two dealers received milk from about 115 of these 173 dairy farmers. It appears that most of the remaining 58 dairy farmers located in these counties delivered their milk to Freeman's, Heisler's Cloverleaf, Longacre's and Stocker Brothers.

As described previously, since this territory has become an integral part of the Order 4 marketing area, all of the producers located in this common supply area should receive the same uniform base and excess prices for their milk. Further, because of the proximity of these counties to the Middle Atlantic market, handlers located therein must purchase their milk supplies in competition with handlers regulated under this order. At plants located in this area, the monthly uniform prices under Order 4 exceed similar prices under the New York-New Jersey order. Consequently, full regulation of these plants under the New York-New Jersey order could cause serious procurement problems for them.

Adding these five counties to the Middle Atlantic marketing area should assure that each of the six dealers located therein who would become regulated under this order will not shift regulation to the Order 2 market due to any slight shift in their sales patterns. Record evidence indicates there is the possibility that Freeman's Dairy could shift regulation between the two orders if Carbon and Northampton counties were not included within the same marketing area as Lehigh county. In view of the foregoing considerations, it is concluded that this 5-county area should be included in the Middle Atlantic marketing area. Under present circumstances, greater equity among both handlers and producers will be achieved through the inclusion of this territory under Order 4.

Monroe County, however, should be added to the Order 2 marketing area. This county was one of the six counties that the expansion proponents recommended in their briefs to be included in the Order 4 marketing area. The record evidence indicates, however, that at the time of the hearing there were apparently no Order 4 distributing plants serving the county. Instead, the record shows that at least three Order 2 plants and two partially regulated distributing plants (one of which would

become fully regulated under Order 2 as a result of this proposed action) distribute milk in the county. For this reason, it is concluded that the majority of sales in this county are more closely associated with the New York-New Jersey market than with the Middle Atlantic market and, thus, should not be included in the Order 4 marketing area.

Additional Pennsylvania Counties To Be Added to New York-New Jersey Marketing Area

Fifteen northeastern Pennsylvania counties (referred to hereinafter as the "15-county area") should be added to the New York-New Jersey marketing area. These counties are:

Bradford	Pike
Columbia	Snyder
Lackawanna	Sullivan
Luzerne	Susquehanna
Lycoming	Union
Monroe	Wayne
Montour	Wyoming
Northumberland	

This area had a population of 1,191,374 persons in 1980. The principal population centers of the area are Berwick, Bloomsburg, Carbondale, Dunmore, Hazelton, Kingston, Nanticoke, Scranton, Shamokin, Sunbury, Wilkes Barre and Williamsport. The combined population of these centers in 1980 totalled 303,364.

The inclusion of this 15-county area under Order 2 will bring under full regulation seven distributing plants, all of which are located in the area. These plants are: Valley Farms Dairy at Williamsport, Farmers Cooperative Dairy at Hazelton, United Dairies at Sunbury, Blue Ribbon Dairy at West Pittston, Edgewood Farms at Troy, Hyland Dairy at Wilkes-Barre and Maurer's Wayside Dairy at Shamokin. At the time of the hearing the Valley Farms Dairy plant was a partially regulated distributing plant under the Middle Atlantic order.

Inclusion of these 15 counties in the New York-New Jersey marketing area also would continue the regulation under Order 2 of the API Schuylkill Haven plant. Under this situation, all of the fluid milk distribution from that plant into these counties and into the five counties being added to the Middle Atlantic marketing area would now be fully priced under Order 2. Likewise, any other Order 2 regulated plant that uses "unpriced milk" for its distribution in these proposed regulated counties also would have such distribution fully priced under the order. Testimony at the hearing indicated that at least one other Order 2 regulated plant, Durling Farms at Whitehouse, N.J., also uses "unpriced milk" for its distribution in these counties.

This 15-county area had become essentially a part of and closely identified with the New York-New Jersey marketing area. Testimony on the record indicates that over 50 percent of the milk distributed in these counties is from plants regulated under Order 2. By far the most significant of these plants is API's Schuylkill Haven plant.

Testimony presented by several witnesses indicates that of the seven presently federally unregulated plants located in the 15-county area only Farmers' Cooperative Dairy and Valley Farms Dairy distribute fluid milk outside these counties. The record evidence indicates that Farmers' Cooperative Dairy has limited distribution in Carbon and Schuylkill Counties, but this distribution probably amounts to less than 5 percent of their total distribution. Valley Farms, in addition to its distribution in eleven of the 15 counties, also has distribution in three counties in the present Middle Atlantic marketing area plus one county that would be added to the Middle Atlantic marketing area and in four other Pennsylvania counties which would continue to be unregulated by either Federal order.

Valley Farms' witness testified that his company opposed any extension of Federal regulation into the unregulated area in which it distributes milk. However, he said, if the marketing areas of these two Federal orders are extended into its distribution area then the milk dealer would prefer to be regulated under Order 2. He indicated that regulating its plant under Order 2 would only increase its Classs I price by 5 to 10 cents per hundredweight as compared to a 30-cent increase if the plant were regulated under Order 4. Also, he indicated that if the plant were regulated under Order 2, it would have available the "pass-through" provisions which would allow his company to use "unpriced milk" to cover its sales outside the expanded Federal order marketing areas.

The Valley Farms representative also urged that the respective marketing area boundaries be drawn so that Valley Farms would be assured continuity insofar as which order the plant would be regulated under. He emphasized that this was an important consideration since Valley Farms has widespread distribution throughout the 23-county area plus limited distribution in the present Order 4 marketing area. In the absence of such assurance, he stated that shifting regulation of the plant between the orders would have an adverse impact on his producers because of the different producer payment plans under the two orders. The marketing area extension of the two orders adopted herein should satisfy the concerns of the Valley Farms witness in this regard.

The record evidence also indicates that over 75 percent of the dairy farmers located in the 15-county area are producers under Order 2. Data indicate that of the approximately 2,750 dairy farmers located in the 15-county area 2,153 delivered their milk to plants that were regulated under Order 2 and 228 delivered to plants regulated under Order 4. The residual 369 dairy farmers probably either delivered to PMMB dairies or operated their own processing facilities. Based on the testimony of API's and Eastern's witnesses, it appears that many of these 369 dairy farmers deliver their milk to either API's Schuylkill Haven plant or to the Valley Farms plant.

The Pennsylvania counties of Clinton, Potter and Tioga should not be added to the New York-New Jersey marketing area. Proponents of marketing area extension, either at the hearing or in their post-hearing briefs, included these three counties in the territory proposed for inclusion in the New York-New Jersey marketing area.

These three counties are located in the northwest corner of PMMB Area 3 and generally are more sparsely populated than the 20 other counties involved in the hearing. The 1980 census indicates there were 97,670 people living in these counties. Although the evidence indicates that over 90 percent of the 655 dairy farmers located in these counties are producers on the Order 2 market, no fluid milk processing plants are located therein. There are two Order 2 regulated plants located in Tioga County but they are manufacturing plants and transfer stations.

Neither Order 2 nor Order 4 regulated handlers are substantially involved in distributing fluid milk products in these counties. The witness representing the Ad Hoc Committee testified that none of the committee members distributes fluid milk products in these three counties. Except for Valley Farms, no other handler who either is presently regulated or would be regulated under the expanded orders as herein adopted indicated they had distribution in the three counties. The Valley Farms' witness testified that his company has fluid milk distribution in Clinton and Tioga counties. However, Valley Farms should not be at a competitive disadvantage on these sales because they could avail themselves of the pass-through provisions under Order 2 and

use "unpriced milk" for that distribution. If API also has distribution in these counties from their Schuylkill Haven Plant, they, too, could use the pass-through provisions in Order 2 for such distribution.

A witness representing Upstate Milk Cooperative of Le Roy, New York, testified in opposition to the inclusion of Potter County in the Order 2 marketing area. The witness said his cooperative association is the dominant distributor of fluid milk in the county. He indicated that the milk for this distribution is processed at Jamestown or Arcade, New York. Other major distributors of fluid milk in the county are Meadowbrook Dairies of Cuba, New York, and Modern Dairies of Saint Marys, Pennsylvania, neither one of which are regulated under a Federal order. Further, the witness said, no federally regulated milk is distributed in Potter County. No other witness at the hearing refuted this testimony.

Upstate's witness also testified that if its dairy farmer members who deliver milk associated with these Potter County sales become producers under Order 2 their prices would be lowered about 30 cents per hundredweight. He stated that these dairy farmers as well as the dairy farmers who deliver to the two other processing plants he mentioned are located north and west of the county and are not oriented to the Order 2 market. He indicated further that all of the dairy farmers located in Potter County are presently producers under Order 2. Thus, expansion of the Order 2 marketing area into Potter County would not affect the status of the dairy farmers located in the county but could adversely affect other dairy farmers who deliver to plants located west and north of the county and who presently have little or no association with the Order 2 market.

For the reasons set forth above it would not be appropriate on the basis of this record to include Clinton, Potter and Tioga Counties in the Order 2 marketing area. Accordingly, the proposals to add these counties to the Order 2 marketing area are denied.

In the attached order language the Borough of Surf City in Ocean County, New Jersey has been added to the Middle Atlantic marketing area. This is to correct an inadvertent error of omission in the marketing area definition that was made at the time the Middle Atlantic milk order was promulgated. The Middle Atlantic order merged the marketing areas of the previous Delaware Valley, Upper Chesapeake Bay and Washington, D.C. orders under a single order. The borough of Surf City, New Jersey, prior to the merger, was part of the former Delaware Valley marketing area.

It is concluded also that, except as modified by this decision, the present provisions of the Middle Atlantic and New York-New Jersey orders are equally appropriate for the extended marketing areas of the respective orders. Accordingly, they are hereby adopted for the identical reasons as set forth in the appropriate decisions adopting such provisions for each order.

2. *Location Adjustments.*[1] The same structure of location pricing now used for each order in determining the applicable Class I prices and uniform prices to producers at various locations should be continued under the expanded orders with certain modifications. A summary of the modifications adopted for each order follows.

a. *Middle Atlantic order.* The location adjustment rate should be 2.2 cents per hundredweight for each 10-mile distance or fraction thereof at all plant locations more than 55 miles from the city hall in Philadelphia, Pennsylvania, and also more than 75 miles from the nearer of the city hall in Baltimore, Maryland, or the zero milestone in Washington, D.C. Location adjustments at plants in the Pennsylvania counties of Berks, Dauphin and Lebanon, however, should be limited to 10-cents per hundredweight.

Under the present terms of the order, the Class I and base prices applicable at all plant locations more than 55 miles from the city hall in Philadelphia, Pennsylvania, and also more than 75 miles from the nearer of the city hall in Baltimore, Maryland, or the zero milestone in Washington, D.C., are reduced 1.5 cents for each 10-mile distance or fraction thereof that such plant is from the nearest of such basing points.

b. *New York-New-Jersey order.* The present 15-cent fixed transportation differential on Class I and uniform prices applicable within the 1–70 mile zone should be extended to include the 71–80 mile zone. No other changes in the order's pricing structure are adopted.

There were four separate proposals listed in the hearing notice that would modify the location pricing structure of the orders. The basic thrust of three of the proposals was to align prices as closely as possible at various locations in the area proposed to be added to the marketing areas of Orders 2 and 4. A secondary purpose of such proposals was to reduce the disparity in the cost of Class I milk to handlers presently operating pool plants under either Orders 2 or 4. The other proposal was offered as a means of correcting an alleged intramarket competitive situation for handlers located in the south central Pennsylvania area of the Middle Atlantic marketing area. Several modifications of these proposals were proposed at the hearing by two cooperative federations. Conversely, a number of other producer groups either at the hearing or in their post-hearing briefs opposed any changes in the respective orders' pricing structure.

SCP Dairy Industry Association (SCP), a group of South Central Pennsylvania handlers operating pool distributing plants under Order 4, submitted a proposal that would reduce the Class I differential in Order 4 from $2.78 to $1.90. At the hearing, however, the association abandoned the proposal. No other support was offered at the hearing for the proposal.

Although it did not indicate any preference, the Ad Hoc Committee proposed two possible options that would affect the price alignment between Orders 2 and 4 at a number of presently regulated plants and at other plants that would become fully regulated as a result of expanding the respective orders' marketing areas. As proposed, option 1 would amend Order 2's transportation differential provisions to provide for a schedule of zone differential rates for Classes I–A and I–B milk that would be applicable to 11 designated Pennsylvania counties, 9 of which would be newly regulated counties. The effect of this proposal would, on a plant to plant basis, result in about the same Class I price for each plant whether such plant was regulated under Order 2 or Order 4.

The other option proposed by the Ad Hoc Committee would also amend Order 2. It would revise the schedule of transportation differentials for Classes I–A and I–B milk by increasing each 10-mile zone from 71 through 190 miles by 15 cents per hundredweight. Although this option would not achieve the degree of alignment that option 1 would, its intent, nevertheless, was to provide price alignment at newly regulated Order 2 plants with newly regulated Order 4 plants as a result of marketing area expansion.

A spokesman for the Ad Hoc Committee testified that either of the two options proposed was offered to correct in part a potential inequitable competitive situation that could occur if the marketing areas of Orders 2 and 4 were extended to northeastern Pennsylvania, as proposed, without

[1] Referred to as "location differentials" under the Middle Atlantic order and as "transportation differentials" under the New York-New Jersey order.

changing the application of location adjustments at plants which would become fully regulated for the first time. According to the spokesman, another purpose of the proposal was to better align Order 2 prices applicable at a regulated plant (Ft. Washington, Pennsylvania) under Order 4 so as to reduce the incentive for this plant to switch regulation to Order 2 because of a substantial price advantage.

In support of the proposal, the committee's witness presented a tabulation which showed the applicable Class I prices under Orders 2 and 4 at various plant locations for presently regulated plants and plants that would become regulated if the marketing areas of the two orders were expanded. This comparison showed Class I price differences ranging from 15 cents to 38 cents per hundredweight that presently exist between the two orders at the same plant location. The witness stated that it was the position of the handler group that it is essential for orderly marketing that the applicable Class I price at a particular plant location be structured so as to minimize price differences that a regulated handler might have under one order over a competing handler regulated by another order.

Tuscan Dairy Farms, (Tuscan) an operator of an Order 2 pool distributing plant and a member of the Ad Hoc Committee, submitted a proposal that would apply a 15-cent fixed transportation differential on all Class I milk distributed within the 1–175 mile freight zones of Order 2. Thus, under the proposal, irrespective of its location, the operator of a pool plant would pay an additional 15 cents on all Class I milk distributed within such 1–175 mile zones.

A representative of Tuscan testified that under the present order competing handlers located outside the 1–70 mile zone have a price advantage over handlers located within the 1–70 mile zone in competing for fluid milk sales because of higher transportation allowances. The witness contended that this gives such distant plants a definite competitive edge without the near-in plants, such as the Tuscan plant, being able to meet such competition because it must pay the higher zone price plus the additional trucking costs to haul packaged milk to the area of competition.

As an example, the witness cited a recent competitive experience that Tuscan had with a pool distributing plant located in the 171–175 mile zone. He stated that this distant plant took a sizeable wholesale account away from Tuscan in a town just 17 miles from Tuscan's plant. In order to meet this competition, the spokesman claimed that Tuscan was forced to reduce milk prices charged at 8 other nearby stores that the handler served. This, he argued, creates disruptive marketing practices which leads to disorderly marketing. It was the spokesman's belief that such disruptive practices could be mitigated by adopting the proposal.

SCP, whose entire membership was also part of the Ad Hoc Committee, submitted a proposal that would change the location pricing structure of Order 4. The proposal, as published in the hearing notice, would reduce the order's present no location adjustment zones from 0–55 miles and 0–75 miles, respectively, to 0–45 miles from specified locations. It would also increase the order's location adjustment rate applicable to Class I prices from 1.5 cents to 2 cents per hundredweight. As was indicated by proponent's witness, SCP was not proposing any change in the order's location adjustment provisions applicable to uniform base prices to producers.

A representative of SCP testified that the basic purpose of the proposal was to improve the alignment of class I prices in a segment of the middle Atlantic marketing area in which members of SCP compete with one another for Class I sales. The witness contended that the present 75-mile base zone provision of the order places Lancaster and York based handlers in the same pricing zone (no location adjustment zone) as Baltimore handlers even though they have little competitive relationship with the Baltimore based handlers. According to the group's spokesman, the Harrisburg-Lancaster-York area is a closely related competitive market wherein the Harrisburg area handlers have under the order at least a 12 cents per hundredweight lower Class I price than either the Lancaster or York-based handlers. He added that adoption of the proposal would provide a more appropriate price relationship in this area. However, the witness testified that SCP would not support increasing the location adjustment rate from 1.5 cents to 2.0 cents per 10 miles without reducting the 55-mile and 75-mile limits to 45 miles as proposed.

Pennmarva opposed SCP's proposal arguing that it would: (1) Create unequal pricing in a comnom market segment where equal pricing now exists; (2) reduce producer returns; (3) impair the handling of the market's reserve milk supplies; and (4) result in uneconomical movements of milk supplies among pool processing plants as well as on diversions to nonpool manufacturing plants.

At the hearing and further supported in its post-hearing brief, Pennmarva proposed two modifications to the pricing structure of Order 4. The modifications proposed would reduce the order's Class I price level by 8 cents per hundredweight and increase the order's location adjustment rate applicable to Class I milk and producer base milk from 1.5 cents per hundredweight to 2.2 cents per hundredweight per each 10 miles. Such modifications were made, however, on the basis that the federation's area expansion proposal is adopted.

According to Pennmarva's spokesman, the basis of the federation's proposed modifications in the pricing structure of Order 4 is to provide closer inter-order price alignment of Class I differentials at plants distributing in the proposed expanded area of the two orders without causing any net reduction in the Order 4 uniform base price to producers. Through an exhibit, which was received into evidence, the witness showed a comparison of the applicable Orders 2 and 4 Class I differentials at various plants serving the 12-county area that Pennmarva initially proposed to have added to the Order 4 marketing area.

This exhibit revealed that the applicable order differentials at the various plants serving the proposed expanded area varied considerably and in most cases the Order 2 Class I differential was substantially lower than the comparable Order 4 differential. Because of such differences, the proponent federation claimed that without any change in the Order 4 location price structure there would be adequate incentive for a handler serving the proposed expanded area to shift its plant's regulation from Order 4 to Order 2 which would ultimately cause instability because of Class I sales shift from one order to the order.

Pennmarva's witness also argued that the proposal to increase Order 4's location adjustment rate from 1.5 cents per hundredweight to 2.2 cents per hundredweight for each 10 miles is needed to reflect the current location value of producer milk at country locations. The witness testified that the order's present location adjustment rate is not sufficient to cover the current differential cost of moving milk from country delivery points to Philadelphia. In this regard, he prepared a chart, which was received into evidence, showing Inter-State's current differential cost of moving milk from various country delivery points to market center points. In describing the make-up of the chart, the witness indicated that it was

prepared to show the added charge to Inter-State made by haulers for transporting milk from a country receiving location at which the basic rate applies to a location at which an additional charge applies and relating those differential charges to distance. He testified that "a regression performed on 59 observations of movements of raw milk from farm pick-up area to plants in the Order 4 market, yield a variable cost of moving such milk per 10 miles, of 2.29 cents, where the cost of the haul was dependent, and the mileage traveled (in 10-mile zones) the independent variable."

In explaining the effect of Pennmarva's other proposed modification to reduce the Class I differential by 8 cents per hundredweight, the proponent witness testified that such reduction would largely offset any increase in the Order 4 base price to producers that would result from expanding the order's marketing area as proposed by Pennmarva.

Even though Pennmarva, in its post-hearing brief, modified its position regarding the area expansion issue, the federation stated that it continues to support the proposed modifications of the pricing structure of Order 4 as initially proposed at the hearing. In this regard, the federation stated that such proposed modifications are equally applicable to the revised marketing area configuration advocated by Pennmarva in the brief.

At the hearing and in its post-hearing brief, API proposed three changes regarding price alignment between the two orders. As noted by API's spokesman, the proposed changes, which would change the price structure under both orders, would apply equally to Class I and producer prices. The proposed changes would: (1) Increase the Order 4 location adjustment rate from 1.5 cents per hundredweight per 10 miles to 2.2 cents per hundredweight per 10 miles (2) apply location adjustments under Order 4 in 10-mile increments beginning at the nearest of the market centers of Baltimore, Philadelphia and Washington, D.C. and (3) extend Order 2's present 15-cent per hundredweight fixed transportation differential on Class I and uniform prices within the 1–70 miles zone to include the 71–80 miles zone.

The basis of API's proposed changes in the Order 4 pricing structure was to more nearly reflect current transportation costs in the location adjustment rates and to improve the alignment of Order 4 prices with similar prices under Order 2. It claimed that such proposed changes would also closely align prices on an intramarket basis. In this regard, the federation's witness argued that applying location adjustments beginning at the market centers of Order 4 will provide prices at a distant plant location which takes into account the cost of transporting that milk into the market center(s) and be closely aligned with prices applicable at a plant in the market center.

The spokesman for API testified that the purpose of its proposal to extend Order 2's 15-cent fixed transportation differential on Class I and uniform prices to an additional zone (71–80 mile zone) was to reduce the incentive for an Order 4 pool distributing plant (Fort Washington, Pennsylvania plant) to switch pool status to Order 2 because of lower costs for Class I milk. The witness contended that this modification is the only price change under Order 2 that is necessary at this time to permit a more equitable competitive situation for regulated handlers between the two markets involved.

NFO, which represents producers supplying regulated handlers under both Orders 2 and 4, was opposed to any change in the pricing structure of either order. It contended that, in general, the proposals: (1) Would not benefit producers because most of them would reduce producer prices; (2) would not be beneficial to consumers because handlers may not necessarily pass on any of the price reductions that could result from the proposed changes; (3) would disrupt competitive practices among handlers by misaligning prices on both an intermarket and intramarket basis; and (4) place too much importance on basing location adjustments reflecting the movement of packaged milk rather than appropriately relating the location value of milk to costs incurred in transporting milk from farms and country plants to distributing plants in the major consuming centers of the two markets.

Although neither producer organization testified at the hearing regarding the location adjustment issue, both NEDCO and Eastern submitted post-hearing briefs opposing any change in the pricing structure of Order 2 as it relates to the New York segment of the present marketing area. While recognizing the need for aligning Class I prices at plants located in the expanded marketing areas, these two producer organizations were particularly concerned that a number of the proposals and modifications would adversely affect the present alignment of Class I prices applicable to metropolitan area plants with competing "upstate" New York plants.

A number of changes in the location adjustment provisions of the two orders should be adopted. However, the adopted changes differ in some respects from what the several proponents proposed and supported at the hearing. Nevertheless, the main purpose of such changes is essentially the same as was advanced at the hearing by proponents, i.e., to correct an aberration in pricing that can result from the application of the present location adjustment provisions of the two orders to plants that would become fully regulated and are located within the 20-county area proposed to be added to the marketing areas of the respective orders. An additional need to modify the application of location adjustments is to more closely align the two markets' Class I prices applicable at a presently regulated Middle Atlantic distributing plant that has substantial distribution in the New York-New Jersey marketing area.

The present location pricing structures of the two orders were designed to encourage the movement of milk from production areas to the principal consuming centers of each market where it is processed for fluid use. Additionally, they were developed to maintain reasonable intra- and inter-market price alignment which is essential to the attraction of milk supplies to the various locations where needed. Consequently, such resulting prices have been established at a level found necessary to assure adequate supplies of milk for each plant associated with the respective markets.

The record evidence indicates there is a broad area of overlapping sales, in which handlers regulated under the two orders actively compete for fluid outlets, and a significant overlap of supply areas for both markets. Under these circumstances it would not be possible to long maintain orderly marketing in the region in question unless there were a close interrelationship of handler milk costs and producer returns. It is quite apparent that orderly marketing could not persist if the present location adjustment provisions of the Middle Atlantic order established the effective price at the various plant locations in the expanded territory.

Accordingly, the modifications in the location adjustment provisions of the two orders herein adopted will provide reasonable price alignment reflecting the existing competitive situation in the general region. They will help insure handlers competing for supplies and sales in the same geographic locations relatively equal product costs and thus remove a potential source of market

instability which could otherwise result. At the same time, the adopted modifications will have minimal impact on prices that the present regulated handlers are required to pay for milk for Class I use under each order.

The location adjustment rate of 1.5 cents per hundredweight per each 10 miles under the Middle Atlantic order should be increased to 2.2 cents. This increase in the location adjustment rate will reflect the higher hauling costs that prevail today for transporting milk from country supply areas to metropolitan centers where the fluid milk is consumed. Such increase also will provide closer price alignment at distributing plants throughout the 20 counties that will become regulated as a result of this decision. As indicated previously, the distribution areas of handlers that would be fully regulated under either of the two expanded orders overlap extensively with each other. For some plants, any substantial change in sales in a particular market could result in a shift of regulation from one order to another. This could result from either a gain or loss in sales or from a business decision on the part of a handler to achieve lower product costs. Also, to a substantial extent, the supply areas of the proposed expanded markets are intermingled, with producers being so located that they have general accessibility to plants that would be regulated under either expanded order. Essentially, proponents of revising the respective orders' location adjustment provisions testified that reasonable interorder price alignment could be achieved so long as the prices of the two orders applicable at the same plant location did not differ by more than 15 cents per hundredweight.

Within this context, the only change that should be made in the location adjustment provisions of Order 2 is that the present 15-cent fixed transportation differential on Class I and uniform producer prices be extended an additional zone (71–80 miles zone). This proposed change will reduce the incentive for the Fort Washington Order 4 pool distributing plant to switch pool status to Order 2 because of significantly lower costs for Class I milk under the latter order. The record does not support any other change in the location pricing structure of Order 2.

It is necessary, however, to limit the effect of the change in location adjustment provisions under the Middle Atlantic order in the Pennsylvania counties of Berks, Dauphin and Lebanon to 10 cents per hundredweight. Such a limit is needed to continue the historical intraorder price relationship among handlers in this general area, which includes the population centers of Harrisburg, Lancaster, Lebanon, Reading and York. If the 2.2 cents per 10-mile rate were to apply to plants in Berks, Dauphin and Lebanon Counties, then handlers located in these three counties could have Class I prices that are 17 to 20 cents per hundredweight lower than the prices paid by competing handlers who are located only about 25 miles away in Lancaster and York Counties. Limiting the location adjustment to 10 cents in Berks, Dauphin and Lebanon Counties will continue about the same price structure that presently exists in this heavily populated 5-county area.

While the Ad Hoc Committee's proposed location pricing scheme would have the effect of increasing the Order 2 Class I prices at several plant locations, it would also disrupt the historical farm or producer price relationships throughout and beyond the territory proposed to be regulated. Under this latter situation, producers would have an added incentive to want to deliver their milk only to the plants located nearest their farms. This is because they would not be reimbursed through higher prices for the additional hauling costs involved in moving milk greater distances to plants at the market centers where milk is needed for fluid processing. If this were allowed to occur, the likely result would be to increase the total handling and transportation costs for some handlers as opposed to others in obtaining adequate supplies. Accordingly, the Ad Hoc Committee's proposed location pricing scheme for Order 2 as it would apply to the proposed territory to be regulated and beyond would be inappropriate and could contribute to disorderly marketing conditions.

The argument of Tuscan that it has substantial sales in certain segments of the market in competition with other Order 2 handlers that have lower costs provides no basis, in itself, for requiring such handlers to pay 15-cents per hundredweight more for Class I milk distributed in Tuscan's sales area (0–175 mile zone area). It is not the purpose of the order to guarantee a handler relatively equal pricing with such handler's competition regardless of where the handler chooses to market milk. When a handler chooses to sell milk in a lower priced area, the handler must assume any competitive risk involved. It would be uneconomic to have the order provide a handler with cost comparability at any location the handler may choose to distribute milk.

The SCP proposal that would have applied a location adjustment at Order 4 plants 45 miles or more from the nearest of Baltimore, Philadelphia and Washington, D.C., should not be adopted. Although the thrust of the proposal was to improve the intraorder price relationship among Harrisburg-Lancaster-York, Pennsylvania, handlers, it would have had a much broader impact on the order's price structure at various locations. Under the proposal, the application of such location adjustments would have reduced the Class I prices at regulated plants in the Lancaster-York area as well as a number of other locations. Consequently, the proposal would have changed substantially the location pricing structure of the order.

Beyond this, the record evidence does not demonstrate that the present order's Class I price structure applicable to the Harrisburg-Lancaster-York area is inappropriate or is contributing to disorderly marketing. To the contrary, it appears that the order's present price structure is providing adequate supplies at all locations within the area in question where producer milk is received. It also is providing the necessary price alignment in the various segments of the area where there is extensive competition for fluid milk sales. Accordingly, the same price structure that now applies at plants in the Lancaster-York area should be continued under the expanded order.

As noted earlier, however, the applicable location adjustment at plants in the Pennsylvania counties of Berks, Dauphin and Lebanon should be limited to minus 10-cents per hundredweight. Specifying a maximum location adjustment of 10 cents at plants located in these three counties recognizes that such plants are located relatively near each other and compete for supplies and sales with nearby plants (Lancaster-York plants) at which no location adjustments apply.

The API proposal made at the hearing which would have applied under Order 4 a location adjustment at plants more than 10 miles from the nearest basing point of Baltimore, Philadelphia or Washington should be denied. Applying location adjustments in such a manner would have reduced the Class I and uniform prices at nearly all plants associated with the Middle Atlantic market. This would have significantly altered the historical price relationships which have existed for many years among fully regulated plants under Order 4. There is no compelling evidence on this record to justify any change in interplant price relationships

among those fully regulated plants under the order at which no location adjustments apply.

Pennmarva's proposal to reduce the Order 4 Class I differential from $2.78 to $2.70 likewise should be denied. Proponent testified that the proposal was a necessary feature of its overall objective to improve price alignment at various plant locations between the two orders. The intent of the proposal as indicated by proponent's spokesman was to maintain the same return to Order 4 producers for milk that they now receive, after giving consideration to the effect of the proposed area expansion.

The proposal should be denied primarily for two reasons. First, the marketing area expansion of the Middle Atlantic order as adopted herein, and which is very similar to the one recommended by Pennmarva in its post-hearing brief, would only have a minimal impact on returns to producers. Consequently, adoption of the proposal could have a negative effect on producer returns, which would be contrary to proponent's intent of the proposed Class I price reduction.

Also, the proposed Class I price reduction could disrupt the close price alignment that now exists between Order 2 and Order 4 at the market centers of New York City and Philadelphia. It is essential that the Class I prices under the two orders at these two locations be closely aligned because of the intense intermarket competition. To do otherwise could lead to an unstable market situation.

Under the Middle Atlantic order, the uniform base price paid producers delivering to plants at which location adjustments apply should continue to be adjusted at the same rates applicable to Class I milk so as to reflect the value of milk f.o.b. the plant to which it is delivered. Such application of location adjustments to the uniform base price recognizes that producer milk received at plants in the market center(s) has a greater value to handlers than milk received at distant plants. Accordingly, producers delivering milk directly to the market center receive a uniform base price applicable at that location while those delivering to distant plants receive a lower price. If this were not the case, as was advocated by the spokesmen for SCP and the Ad Hoc Committee, a producer would have no incentive to deliver milk directly to a market center plant instead of to a closer pool plant outlet located nearer to the production area. Therefore, the uniform base price paid to a producer under Order 4 should continue to be at the same rate and for the same reason as location adjustments apply to the Class I price.

3. *Tank truck service charge deductions under Order 2.* The proposal that would revise the method of determining the maximum allowable tank truck service charge deductions by a handler from producer payments under Order 2 should not be adopted.

The order now permits handlers through negotiations with their producers or their cooperatives to recover any farm-to-first plant hauling costs. However, any such deduction plus the transportation credit and plus the amount of the increase in class use location value of the milk at the plant compared to the unit may not exceed the actual transportation costs incurred.

Tuscan proposed that, in computing the maximum negotiable hauling deduction from producers, costs associated with moving direct-shipped milk from a bulk tank unit to a plant should reflect a "fair market value of all transportation services, including general overhead" rather than be based on actual transportation costs as is now the case. According to the handler's witness, the principal intent of the proposal is to enable a proprietary handler that hauls its own milk to recover from producers similar hauling costs that are now reflected in the hauling charge or rates of independent haulers.

Proponent's witness testified that the problem the proposal attempts to mitigate stems from the basis used by the market administrator in allowing only costs of items directly related to the transportation of milk from the farm to first plant of receipt. The Tuscan witness claimed that the cost verification method used by the market administrator, which is based on the actual costs reported to the Internal Revenue Service for tax purposes, is not in accordance with sound accounting principles. He was particularly concerned with the market administrator's determination with respect to depreciation allowances for the 9 tank trucks used by Tuscan in transporting milk from producers' farms to its processing plant.

Proponent's witness said that the handler operates 9 bulk tank trucks and maintains a spare used in picking-up milk at producers' farms. When the present provisions were incorporated into the order on September 1, 1981, he testified that these tanks had a depreciated value for income tax purposes of only $2.161 but their replacement value was much greater than that. However, he stated that in computing the tank truck service charge the market administrator allowed Tuscan only to use the book depreciated value of the tanks rather than their actual replacement value. He also said that the market administrator permits Tuscan to include the cost of direct labor and parts when the tanks need repair or servicing, but does not allow the handler to include the cost of the garage, heat, lights, etc. as part of total transportation costs. The witness indicated that the adoption of its proposal would allow Tuscan to increase the bulk tank service charge about 3 cents per hundredweight.

This proposal should not be adopted. It would permit a handler that operates its own farm pickup trucks to charge producers a bulk tank service charge that exceeded actual hauling expense. For example, if a handler could include in its hauling charge the cost of the bulk tank trucks on the basis of replacement costs, the handler could collect from the producers involved several times over the original investment in the tank trucks. Also, with respect to general overhead, the handler could assess producers for expenses that are not related to the farm to plant transportation function. In essence, this proposal if adopted, would provide handlers who operate their own farm pickup trucks with a means of effectively reducing the minimum class prices established by the order by allowing handlers to pass some of their costs of milk on to their producers in the form of higher hauling charges.

Beyond this, if adopted , the proposal would not necessarily provide assurance that costs of direct-shipped milk would be uniform among handlers without the market administrator developing and adopting an elaborate uniform system of cost accounting. To do this, would place an administrative burden on both handlers and the market administrator and would not be cost effective.

In view of these considerations, the proposal is denied.

4. *Classification of bulk fluid milk products in ending inventory under Order 2.* No change should be made in the present provisions of Order 2 concerning the classifcation of bulk fluid milk products in ending inventory. Under the existing order, ending inventories of bulk fluid milk products are classified as Class II and subject in the following month to reclassification as determined through the order's allocation and assignment procedure of receipts to utilization.

NEDCO proposed that all bulk fluid milk products in ending inventory be classified pro rata to the receiving

handler's utilization. The basis of the federation's proposal stemmed from an amendment to the order on September 1, 1981, which authorized a negotiable bulk tank truck service charge. Under this provision, a handler is permitted to recover any farm-to-first plant hauling costs that are in excess of the transportation pool credit and the amount that the class use location value at the plant of first receipt exceeds its location value where the milk was accounted for as a receipt in the bulk tank unit from which the milk was transferred.

Proponent contended that because the present order classifies all bulk milk in transit from farm to plant at the end of a month as Class II regardless of how it is finally used and which is accounted for in accordance with the market administrator's "Classification and Accounting Rules and Regulations", the allowable tank truck service charge to producers on such classified milk movements is substantially higher than that for similar milk movements classified as Class I. With respect to the market administrator's "Classification and Accounting Rules and Regulations", they specify that bulk tank unit milk transferred (picked up at the farm) in the current month, and which is actually received in the following month at the plant of first receipt, is considered as received at the plant in the month the milk is shipped and included in such plant's closing inventory and classified as Class II regardless of how it is finally utilized in the following month.

In outlining the problem, proponent's witness testified that the difference between the use location value of milk classified during the month as Class I and Class II and which is moved from the 201–210 mile zone to the 1–10 mile zone is 51 cents per hundredweight. Under this example, the withness stated that the allowable tank truck service charge to producers for moving milk for Class II purposes between these zones is 51 cents per hunderdweight higher than for moving milk for Class I purposes. The witness argued that since ending inventories of bulk tank unit milk in transit are largely used in Class I but are all classified in Class II, milk producers and their cooperatives are forced to absorb unfair and unrealistic higher bulk tank service charges than if such milk were classified according to its ultimate use.

The witness added that this economic burden on a cooperative occurs because the tank truck service charge assessed against a producer member by the cooperative is based on where most of a producer's milk is delivered. Hence, according to the witness, it is impractical, if not impossible, to pass back directly to producers the higher bulk tank service charge that may be assessed on bulk milk in transit at the end of the month. In this regard, the federation's spoksman testified that the estimated cost to the federation of not being able to collect from its producer members the higher bulk tank charge on such milk was $48,000 during the first six months of 1983. However, NEDCO in its post-hearing brief, indicated that upon review the $48,000 figure was overstated because of the inclusion of unrelated losses in the figure. Regardless of the magnitude of the cost to NEDC, however, it urged that the closing inventory provisions be revised so that "all tank truck service charges to producrers will be computed on actual utilization".

The proposal should not be adopted. It cannot be concluded on the basis of the record evidence that the magnitude of the problem warrants special consideration through the adoption of the proposal. The record does not support changing the present order's entire classification scheme pertaining to closing inventories of bulk fluik milk products solely to mitigate the effect on the negotiable bulk tank truck service charge from the inclusion in Class II of bulk milk in transit at the end of the month. To do otherwise could have a significant impact on the total amount of bulk milk in ending inventories that would be classified as Class I. In turn, it could result in a handler being required to pay the Class I price for some bulk milk in the month prior to its actual use in such class. At present interest rates, this could substantially increase a handler's cost of milk and cash-flow position. Accordingly, the proposal is denied.

5. *Pooling and pricing milk under Order 2 that is contaminated with antibiotics.* Proposals that would change the method of pricing and payments to producers for contaminated milk under Order 2 should not be adopted.

The North Atlantic Milk Processors' Association (NAMPA), a trade association of milk manufacturers and processors regulated by Order 2, proposed two changes regarding the treatment of contaminated milk under Order 2. The first proposal would eliminate a handler's minimum payment obligation to producers or cooperative associations for milk that was contaminated or was unfit to be sold as market milk at the time of receipt. To implement the intent of this proposal, NAMPA proposed that the "Pool milk" provisions of the present order be revised to exclude from this definition any receipt from a producer which is determined by a state regulatory agency to be contaminated or otherwise not meeting the requirements for market milk, including any milk produced on a dairy farm during the period of days when such production is required to be excluded as marketable milk by the state regulatory agency having authority in the matter.

NAMPA's other proposal would amend the order's "Time and rate of payments" provisions to permit a handler to deduct from monies due a producer any penalty assessed against such producer by a state regulatory agency and also any damages to a handler resulting from the failure of a producer to comply with such regulations.

The president of NAMPA, who also is president of Friendship Dairies, Inc., a regulated handler under Order 2, testified on behalf of the association in support of the proposals. According to the witness, the purpose of the proposals was to conform Order 2 to the State of New York's regulations with respect to "contaminated milk." In this regard, he stated that the regulations pertaining to the production of Grade A milk in the State of New York require that if the milk from a dairy farmer contains any detectable antibiotics, such milk must be excluded from the plant's receipts for two to four days depending upon the frequency of the violation or, in lieu of the exclusion, a fine may be levied upon the dairy farmer in an amount equivalent to the value of milk produced during such otherwise exclusionary period. The witness stated that the exclusionary period did not include the days in which the milk was actually contaminated because such milk must be destroyed under all circumstances. The witness testified that officials of the NYS Department of Agriculture informed him that the intention of the law was to permit the receiving handler of the contaminated milk to both levy and retain the fine assessed against the producer involved. He claimed that the state regulation is in direct conflict with the provisions of Order 2 because the market administrator would not permit a handler to deduct the fine from the monies due a producer for payment of milk receipts.

To illustrate further the need for such amendments, the witness described an incident that occurred in 1982 at Friendship Dairies' plant involving contaminated milk. He said that unknown to the handler at the time, highly contaminated milk was picked up

at a producer's farm which was commingled with other producer milk in a bulk tank pickup truck. At the Friendship plant, the load of contaminated milk was diluted further when it was pumped into the plant's 50,000 gallon silo tank. However, because of the time required to run a test to determine whether or not any of the milk was contaminated, some of the milk had already been processed into cheese, cheese products, and butter. He indicated further that in the course of a routine inspection by the NYS Department of Agriculture, it was determined that the milk products manufactured from this batch of milk were contaminated. Consequently, the State Department of Agriculture immediately embargoed the sale of such products. The witness added that by the time the embargo was removed, Friendship could no longer sell the dated products in normal commercial channels and thus had to sell them at a specially reduced price. He indicated that this incident cost Friendship Dairies between $500 and $2,000. He stated that the Order 2 market administrator would not allow him to recover such losses from the producer who initially was responsible for the contaminated milk.

At the hearing, an NFO witness testified in opposition to these two proposals dealing with contaminated milk. Also, API and Eastern filed post-hearing briefs opposing the proposals. These producer organizations were opposed to any action that would relieve handlers of making minimum payments to producers and cooperative associations for any milk, including contaminated milk, that a handler receives. In this regard, opponents held that it was the responsibility of the receiving handler to assure that "unmarketable" milk does not become commingled with the rest of such handler's total milk supply. They claimed that the proposed handler authorization under the order for withholding payments to producers and cooperatives would be a punitive measure and as such would go beyond the intended purpose of the order.

It is apparent from the record evidence that the incidence of antibiotic contamination is not a significant problem in terms of the overall milk supply for Order 2. In fact, the proponent indicated that the problem he sought to correct by the proposals occurred only once and that he was not aware of any other instances in which it had occurred. The witness also indicated that his company is taking steps through several screening procedures to prevent the possibility of receiving contaminated milk in the future. There is every indication on the record that producers and handlers continue to provide high quality milk and dairy products.

The proposals would result in an extension of the Federal order program with respect to the establishment and enforcement of quality standards for milk. The establishment and enforcement of such standards are the function of other jurisdictions that have the responsibility for assuring the maintenance of minimum quality standards relating to public health considerations. The order regulates only the economic aspects of milk marketing while other agencies have the responsibility for developing and enforcing standards to promote the public health. The proposals would require the market administrator to interpret the regulations of NYS with respect to whether or not a producer had delivered contaminated milk and establish guidelines to determine the amount of the fines and damages a handler could charge to the producer. This would amount to placing the market administrator in the position of enforcing health laws established by other agencies and would result in an inappropriate expansion of the scope of the marketing order.

The proposals also would apply only to the New York producers who deliver milk to the Order 2 market since the problem confronting the proponent stems from the NYS Regulations only. Proponent said he had not considered similar regulations that apply in the several other states in which Order 2 producers are located. Data in the record indicate that during 1982 Order 2 producers were located in the states of New York, New Jersey, Pennsylvania, Maryland and Vermont. In view of this, the proposals would have no bearing on the producers located outside New York State.

It would not be appropriate to allow a regulated handler to receive producer milk that meets the Grade A fluid milk requirements and pay a price for the milk below the Order's minimum prices because milk delivered by such producer previously had been contaminated. This would be a primary result of the proposal. Such a provision would be contrary to one of the basic purposes of the Order which is to assure that all handlers are paying uniform prices for milk. Accordingly, for the reasons set forth above, the proposal is hereby 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 supplement those that were made when each of the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby 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;

(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; and

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreement and the order as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct,

or affect interstate commerce in milk or its products.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement for each marketing area is not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proosed to be amended. The following order amending the orders, as amended regulating the handling of milk in the aforesaid marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1004 and 1002

Milk marketing orders, Milk, Dairy products.

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. In § 1004.2, paragraphs (d)(2)(ii) and (e) are revised to read as follows:

§ 1004.2 Middle Atlantic marketing area.

* * * * *

(d) * * *

(2) * * *

(ii) The boroughs of:

Barnegat Light, Beach Haven, Harvey Cedars, Ship Botton, Surf City, Tuckerton.

(e) In the State of Pennsylvania, the counties of:

Adams, Berks, Bucks, Carbon, Chester, Cumberland, Dauphin, Delaware, Franklin, Fulton, Juniata, Lancaster, Lebanon, Lehigh, Montgomery, Northampton, Perry, Philadelphia, Schuylkill, York.

* * * * *

2.In § 1004.52, paragraph (a) is revised to read as follows:

§ 1004.52 Location differentials to handlers.

(a) For that milk received from producers and from a handler described in § 1004.9(c) at a pool plant and which is assigned to Class I milk, subject to the limitations pursuant to paragraph (b) of this section, and for other source milk for which a location adjustment is applicable, the Class I price shall be reduced by the amount stated in paragraph (a) (1) and (2) of this section for the location of such plant.

(1) For a plant located in any of the following Pennsylvania counties, the adjustment shall be minus 10 cents.

Berks
Dauphin
Lebanon

(2) For a plant located outside the area described in paragraph (a)(1) of this section, and which is 55 miles or more from the city hall in Philadelphia, Pennsylvania, and also 75 miles or more from the nearer of the zero milestone in Washington, D.C., or the city hall in Baltimore, Maryland, (all such distances to be based on the shortest highway distance as determined by the market administrator), the adjustment shall be minus 2.2 cents per 10 miles distance or fraction thereof that such plant location is from the nearest of such basing points.

* * * * *

3. Section 1004.75 is revised to read as follows:

§ 1004.75 Location differentials to producers and on nonpool milk.

(a) In making the payments required pursuant to § 1004.73, the uniform price for base milk computed pursuant to § 1004.61(b) shall be reduced by the amounts set forth in § 1004.52 according to the location of the plant where the milk being priced was received.

(b) For purposes of computations pursuant to §§ 1004.71 and 1004.72 the weighted average price shall be reduced by the amounts set forth in § 1004.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class II price.

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. Section 1002.3 is revised to read as follows:

§ 1002.3 New York-New Jersey marketing area.

"New York-New Jersey marketing area" (hereinafter called the "marketing area") means all of the territory within the boundaries of the city of New York, and the counties and parts of counties set forth below together with all piers, docks, and wharves connected therewith, and all craft moored thereat, and including territory within such boundaries which is occupied by Government (municipal, State, Federal, or international) reservations, installations, institutions, or other establishments.

New York Counties

Albany, Broome, Cayuga (except the townships of Sterling, Victory, Conquest, and Montezuma), Chemung, Chenango, Columbia, Cortland, Delaware, Dutchess, Essex (Schroon, Ticonderoga, Crown Point, and Moriah townships only), Fulton (except the township of Stratford), Greene, Herkimer (except the townships of Webb, Ohio, and Salisbury), Madison, Montgomery, Nassau, Oneida (except the townships of Ava, Boonville, Forestport, and Florence), Onondaga, Orange, Oswego (except the townships of Redfield and Boylston), Otsego, Putnam, Rensselaer, Rockland, Saratoga (except the townships of Day, Edinburg, and Providence), Schenectady, Schoharie, Schuyler, Steuben (Addison, Corning, and Erwin townships only), Suffolk (except Fisher's Island), Sullivan, Tioga, Tompkins, Ulster, Warren (except the townships of Johnsburg, Thurman, and Stony Creek), Washington, Westchester, Yates (except the townships of Italy, Middlesex, and Potter).

New Jersey Counties

Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean (except the boroughs of Barnegate Light, Beach Haven, Harvey Cedars, Ship Bottom, Surf City, Tuckerton, and the townships of Barnegat, Eagleswood, Lacery, Little Egg Harbor, Long Beach, Ocean, and Stafford), Passaic, Somerset, Sussex, Union, Warren.

Pennsylvania Counties

Bradford, Columbia, Lackawanna, Luzerne, Lycoming, Monroe, Montour, Northumberland, Pike, Snyder, Sullivan, Susquehanna, Union, Wayne, Wyoming.

2. In § 1002.51, paragraph (c) is revised to read as follows:

§ 1002.51 Transportation differentials.

* * * * *

(c) The differential rates applicable at plants shall be set forth in the following schedules:

A-freight zone (miles)	B-classes 1-A and 1-B (cents per cwt)	C-class II (cents per cwt)
1 to 10	+59.0	+8
11 to 20	+56.8	+8
21 to 25	+54.6	+8
26 to 30	+54.6	+7
31 to 40	+52.4	+7
41 to 50	+50.2	+7
51 to 60	+48.0	+6
61 to 70	+45.8	+6
71 to 75	+43.6	+6
76 to 80	+43.6	+5
81 to 90	+26.4	+5
91 to 100	+24.2	+5
101 to 110	+22.0	+4
111 to 120	+19.8	+4
121 to 125	+17.6	+4
126 to 130	+17.6	+4
131 to 140	+15.4	+3
141 to 150	+13.2	+3
151 to 160	+11.0	+2
161 to 170	+8.8	+2
171 to 175	+6.6	+2
176 to 180	+6.6	+1
181 to 190	+4	+1
191 to 200	+2.2	+1
201 to 210	0.0	0
211 to 220	−1.5	0
221 to 225	−3.0	0
226 to 230	−3.0	−1
231 to 240	−4.5	−1
241 to 250	−6.0	−1
251 to 260	−7.5	−2
261 to 270	−9.0	−2
271 to 275	−10.5	−2
276 to 280	−10.5	−3
281 to 290	−12.0	−3
291 to 300	−13.5	−3
301 to 310	−15.0	−4
311 to 320	−16.5	−4
321 to 325	−18.0	−4
326 to 330	−18.0	−5
331 to 340	−19.5	−5
341 to 350	−21.0	−5
351 to 360	−22.5	−6

A-freight zone (miles)	B-classes 1-A and 1-B (cents per cwt)	C-class II (cents per cwt)
361 to 370	−24.0	−6
371 to 375	−25.5	−6
376 to 380	−25.5	−7
381 to 390	−27.0	−7
391 to 400	−28.5	−7
401 and over	−30.0	−8

(Secs. 1–19, 48 Stat. 31, as amended 7 U.S.C. 601–674)

Signed at Washington, D.C., on March 5, 1985.

William T. Manley,

Deputy Administrator, Market Programs.

[FR Doc. 85–5675 Filed 3–8–85; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1094

[Docket No. AO–103–A44]

Milk in the New Orleans-Mississippi Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts changes in the New Orleans-Mississippi milk order. The order changes would add 12 counties of northeastern Mississippi to the marketing area. Plant location adjustments to prices would be revised to accommodate the area expansion. Also, the proportion of member milk that must be received at pool distributing plants for a cooperative association to qualify its plant for pooling is reduced five percentage points. The order changes were considered at a public hearing held on August 28, 1984, in Tupelo, Mississippi. The order changes were requested by several cooperative associations and are necessary to reflect current marketing conditions and to insure orderly marketing conditins in the New Orleans-Mississippi marketing area.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Marketing Specialist, Diary Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–6274.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Section 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

William T. Manely, Deputy Administrator, Agricultural Marketing Sevice, has certified that this action will not have significant economic impact on a substantial number of small entities. The amendments will promote orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceedings:

Notice of Hearing: Issued July 24, 1984; published July 30, 1984 (49 FR 30316).

Recommended Decision: Issued January 14, 1985; published January 18, 1985 (50 FR 2678).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the New Orleans-Mississippi marketing area. 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 (7CFR Part 900), at Tupelo, Mississippi on August 28, 1984. Notice of such hearing was issued on July 24, 1984, and published July 30, 1984 (49 FR 30316).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on January 14, 1985, 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.

The material issues on the record related to:

1. Marketing area expansion.
2. Handler location adjustments.
3. Pooling a cooperative association plant.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

The New Orleans-Mississippi milk order should be changed to add 12 Mississippi counties to the marketing area. The 12 counties are: Alcorn, Benton, Chickasaw, Clay, Itawamba, Lee, Monroe, Pontotoc, Prentiss, Tippah, Tishomingo, and Union.

Also, the above counties of Chickasaw, Clay, and Monroe should be added to the present Zone 5 of the order marketing area. The remaining 9 counties would be added to a new Zone 6.

At present, Zone 5 of the Order 94 marketing area comprises the Mississippi counties of Calhoun, Coahoma, Grenada, Quitman, Tallahatchie, and Yalobusha. A location adjustment of minus 65 cents applies to Class I and uniform prices at pool plants located in the Zone, and that rate would not be changed. The applicable Class I differential for the Zone is $2.20.

For Zone 6, a location adjustment of minus 75 cents would apply, and the applicable Class I differential would be $2.10. Also, the minus 75-cent adjustment would apply to a plant located in the State of Mississippi, but outside the marketing area.

It is anticipated that two added pool distributing plants would be subject to the minus 75-cent adjustment, one added pool distributing plant to the minus 65-cent adjustment, and none to the adjustment outside the marketing area but within Mississippi.

A third change to the order would lower to 45 percent (from 50 percent) the proportion of member milk that must be received at pool plants for a cooperative association to qualify its plant for pooling.

The marketing area and location adjustment changes were proposed by Associated Milk Producers, Inc. (AMPI), and Dairymen, Inc. (DI). The cooperative plant pooling change was proposed by Gulf Dairy Association, Inc. (Gulf).

Proponents' Presentation

The Following points were made by witnesses for AMPI and DI in connection with their proposals.

A. *A representative of Barber Pure Milk Company of Tupelo, Mississippi (Barber), testified for AMPI as follows:*

1. Barber operates a fluid milk plant at Tupelo, Mississippi, regulated under the Alabama-West Florida Federal milk order.

2. If the marketing area is expanded, the plant would be regulated by the New Orleans-Mississippi order.

3. Approximately 52 percent of Barber's milk sales from the Tupelo plant is distributed in the proposed 12-county area, a lesser amount in the Alabama-West Florida marking area, and a small quantity in the Memphis marketing area.

4. Barber purchases milk from Northeast Mississippi Milk Producers, Inc., and from AMPI.

5. There are 15 handlers who have Class I sales in the 12-county area.

6. Thirteen of the 15 handlers have been regulated for a substantial period of time under various Federal milk marketing orders.

7. The remaining two handlers are Turner Dairies at New Albany.

Mississippi (Turner), and Reese Dairy at Amory, Mississippi.

8. Turner, New Albany was fully regulated for the first time in July 1984 by the Memphis order.

9. Turner was regulated by the Memphis order as a result of some distribution in that order area by a former Sealtest distributor, acquired by Turner when the Sealtest plant in Memphis, Tennessee, closed.

10. Barber does not know if its purchase price for milk is competitive with an unregulated plant and if the sales of an unregulated plant are audited.

11. The milk business is very competitive and a cent per gallon can make a very large difference in the marketplace. Barber could be uncompetitive with an unregulated handler who is not paying at least the same Federal order Class I price as Barber.

12. The entry of an unregulated source of milk in the 12-county area has resulted in an erosion of resale prices. In 1983, Malone and Hyde in Nashville, Tennessee, sold fluid milk products in northeastern Mississippi under their private label on a "drop price" basis. Drop price sales do not include services.

13. Turner, in order to meet competition from Malone and Hyde, offered full service sales at "drop prices."

14. Barber's margins declined in order to meet this competition.

15. Barber, with the help of AMPI, conducted a 12-county sales survey.

16. The major portion of Class I sales in the 12-county area are by handlers fully regulated.

17. If the 12-county area is not included in the New Orleans-Mississippi marketing area, disruptive and disorderly marketing conditions will result.

18. Barber estimates that Turner disposes of 850,000 pounds of Class I sales per month into northeastern Mississippi and that Turner would be regulated under the New Orleans-Mississippi order.

19. Sales of only 1,000 pounds per day into the Memphis order marketing area are sufficient to fully regulate a plant under that order.

B. *A representative of AMPI testified as follows:*

1. AMPI estimates that approximately 5.5 million pounds of fluid milk products per month are disposed of in the 12-county area.

2. More than 86 percent of Turner's fluid milk sales from the New Albany plant are in the 12-county area.

3. AMPI delivers milk to Barber at Tupelo, Mississippi, and Turner at New Albany, Mississippi.

4. AMPI also delivers milk to other handlers selling in the 12-county area.

5. All of this milk, except the milk delivered to Turner, is producer milk under some Federal order.

6. AMPI, in July 1984, delivered approximately 70 percent of Turner's milk receipts.

7. AMPI expects five of its members to become independent producers shipping to Turner.

8. Milk from some of the members of the Northeast Mississippi Milk Producers, Inc., will be delivered to Turner as nonmember milk.

9.Turner is offering more for milk than AMPI is able to pay.

10. Turner is almost 100 percent Class I utilization.

11. If Turner buys milk at what amounts to a blend price, that price becomes its Class I milk cost.

12. The difference between a fully regulated handler's classified use value and the blend price, is available to an unregulated handler to use for distribution of packaged fluid milk products or to acquire a supply of milk.

13. AMPI expects Turner to continue to purchase milk from the cooperative in order to balance its supply.

14. Turner could supply this 12-county area from its plants at Covington, Tennessee, or Fulton, Kentucky.

15. Turner, during the flush production months, has the ability to cut back on AMPI or other cooperatives supplying milk. Therefore, some other Federal order would be carrying the burden of that surplus.

16. At the present time, Turner has the flexibility in any month to avoid regulation by shifting sales from its Covington, Tennessee, or Fulton, Kentucky, plants.

17. Turner Dairies in Covington, Tennessee, supplies a distribution point at Houston, Mississippi, which is in the 12-county area.

18. AMPI believes that the 12-county area should be included in the marketing area in order to preserve orderly marketing.

19. Turner would have a procurement and distribution advantage in the absence of the expansion of the marketing area because of their ability to become unregulated.

20. The advantage is even greater in the summer months when the utilization percentages under the New Orleans-Mississippi order are approximately 65 percent Class I and 35 percent Class II. Since Turner is almost 100 percent Class I, it could pay dairy farmers on this 65–35 percent blend price value and have a substantial price advantage.

21. Since all of Turner's Class II distribution comes from its Covington, Tennessee, plant, the Memphis order producers bear this burden.

22. If the 12-county area becomes part of the marketing area, New Orleans-Mississippi handlers would have almost 77 percent of the Class I sales in this area. Georgia order handlers would have about 3.8 percent, Paducah order handlers 2 percent, and Memphis handlers 7 percent.

23. Turner was regulated by the Memphis order for July 1984 because of the small quantities of fluid milk products disposed of in that market.

24. There is free and unrestricted movement of Grade A milk in the 12-county area because of reciprocal agreements. Grade A health requirements for the 12-county area are administered by the State of Mississippi and are based on the U.S. Public Health Code.

25. AMPI supports D.I.'s proposal to change the minus plant location adjustment from a minus 65 cents to a minus 75 cents for a plant located in the State of Mississippi but outside the marketing area.

C. *A representative of DI testified as follows:*

1. DI supports AMPI proposals 3 and 4. The proposals of both organizations are identical in purpose.

2. The proposals to restructure Zone 5 and add a Zone 6 will result in reasonable alignment of Class I prices under the order with Class I prices under nearby or adjacent Federal orders.

3. The recent purchase of the New Albany plant by Turner Dairies has intensified the need for Federal regulation in the 12-county area.

4. The New Albany plant prior to July 1984, was not regulated.

5. Regulatory status of the New Albany plant can be affected by rearranging sales between Turner's plants at Covington, Tennessee, Fulton, Kentucky, and New Albany, Mississippi.

6. The twelve county area should be regulated in order to promote equitable treatment among all handlers selling Class I milk within the area.

7. Adoption of the proposals will price producer milk on a uniform basis to all competing handlers and eliminate the opportunity for a handler in the area to purchase milk advantageously on a blend or flat price basis.

8. The inclusion of this area in any other Federal milking marketing area would not be logical because of the clear interrelationship between this area

and the current New Orleans-Mississippi order marketing area.

9. DI supplies Turner Dairies at Fulton, Kentucky, and other handlers who distribute fluid milk products in the 12-county area.

10. Unless the proposals to expand the marketing area are adopted, DI believes that disorderly marketing conditions will develop in the area.

11. Unregulated handlers can pay higher than the blend price and still have an advantage.

The proposals to expand the marketing area also were supported by a proprietary handler and two cooperative associations.

A witness for Borden, Inc. (Borden) testified that Borden has three fluid milk plants regulated under the New Orleans-Mississippi milk order. The Borden plant at Jackson, Mississippi, he said, sells fluid milk products in the 12-county area.

The witness stated that at one time Borden enjoyed the benefits of having an unregulated plant at Pensacola, Florida. He said that if Borden is going to be regulated, all handlers should be regulated. The witness testified that if an unregulated plant is surrounded by regulated plants, the unregulated plant has a price advantage in acquiring milk. This, he says, is because the unregulated plant can pay a higher price for milk from independent dairy farmers than a cooperative association can pay its members. A cooperative has taken on the responsibility of balancing the milk supply to regulated handlers in the market. The Borden witness said that even though an unregulated plant may pay more than the blend price for its milk, its total costs are lower than regulated plants paying class prices.

A witness for Southern Milk Sales, Inc., testified that it delivers milk to plants regulated under the New Orleans-Mississippi milk order and supports the AMPI proposals. Also, a witness for Gulf Dairy Association, Inc., testified that it supports all proposals.

Opponent's Presentation

The marketing area proposals were opposed by Turner Dairies (Turner) on the following basis:

1. Turner sales were fully regulated, except for the period of January 1984 through June 1984.

2. DI was the most disturbing influence in the market at the time Turner acquired the New Albany, Mississippi, plant.

3. Turner's plant at New Albany, Mississippi, was fully regulated in July 1984 and not marginally regulated by the Memphis milk order.

4. In July 1984, approximately 189,000 pounds of fluid milk products or 17 percent of Turner's receipts were disposed of in the Memphis marketing area. This is far more than the minimum sales requirement in order to be regulated under the Memphis milk order.

5. At no time has Turner's New Albany plant paid less than the Memphis or New Orleans-Mississippi blend price for milk.

6. Because a cooperative association is not regulated on what it pays for milk, Turner does not know their costs.

7. Turner does not understand why its plant at New Albany, Mississippi, prior to July 1984, would be a disturbing influence in the New Orleans-Mississippi market.

8. Premiums charged by cooperative associations are a disturbing influence in the market.

9. The 12-county area more logically is associated with the Memphis milk order area than with the New Orleans-Mississippi milk order area. In July 1984, on the basis of the total number of handlers selling in the 12-county area, 26 percent of the handlers were regulated by the Memphis milk order and only 16 percent were regulated by the New Orleans-Mississippi milk order.

10. Publications written by the United States Department of Agriculture, in Turner's opinion, say that a milk plant should be regulated by the milk order area that is close to the area that the plant serves.

11. Disturbing factors in the market, far more often, come from other places than the entry of Turner's New Albany plant. The Malone and Hyde plant, for example, regulated under the Memphis order, but located in Nashville, Tennessee, was a disturbing factor.

12. In July 1984, the New Albany, Mississippi, plant received over 1.1 million pounds of milk and disposed of 1.0 million pounds or better than 90 percent as Class I. Seventeen percent of the total Class I sales was in the Memphis marketing area and the balance was disposed of in the 12-county area.

13. The acquisition of a former Sealtest distributor, who served part of the Memphis marketing area, was the reason for Turner's sales in that area for July 1984.

14. Turner acquired the New Albany plant in January 1984 and at that time the volume of milk at the plant was small. Most of Turner's packaged milk disposed of in the 12-county area in early 1984 came from its plants at Fulton, Kentucky, and Covington, Tennessee.

15. The New Albany, Mississippi, plant has been upgraded to handle more volume.

16. Additional milk needed at the New Albany, Mississippi, plant is purchased from AMPI. Turner expects to take on about 10 AMPI and Northeast Mississippi Dairymen Association members as independent dairy farmers delivering milk to the New Albany, Mississippi plant.

17. The price they pay for milk at New Albany, Mississippi, is related to the Federal order blend price.

Discussion of the Issues

1. Orderly marketing conditions for all milk dealers who sell fluid milk products in the counties of Alcorn, Benton, Chickasaw, Clay, Itawambe, Lee, Monroe, Pontotoc, Prentiss, Tippah, Tishomingo, and Union, in northeastern Mississippi, can be assured by adding the 12 counties to the New Orleans-Mississippi, marketing area (order No. 94).

The proposal to add the 12 counties to the New Orleans-Mississippi marketing area was made by Associated Milk Producers, Inc. (AMPI), and by Dairymen, Inc. (DI). AMPI has members whose milk is processed and distributed in the 12-county area. The cooperative supplies milk to the Barber Pure Milk Company (Barber) at Tupelo, Mississippi, (Lee County), and to Turner Dairies (Turner) at New Albany, Mississippi, (Union County). The cooperative also supplies milk to 6 handlers outside the 12-county area, in Mississippi and 3 other states, who sell fluid milk products in the 12 counties and are regulated by various Federal milk order. For July 1984, AMPI supplied 70 percent of the milk receipts of Turner at New Albany.

AMPI is concerned that if the 12 counties are not included in the New Orleans-Mississippi marketing area, Turner would have the option to become unregulated at any time, with a competitive advantage in milk procurement and distribution over regulated handlers selling milk in the 12 counties.

A witness for DI testified that the January 1984 purchase of the plant at New Albany by Turner has intensified the need for the Federal regulation of all handlers distributing milk in the 12 counties.

A principal witness for AMPI was a representative of Barber who described disorderly marketing conditions that result when an unregulated milk handler exploits that status in competition with regulated handlers.

As indicated, the 12 counties are in northeastern Mississippi. The population of the counties was 297,964 or about 11.8 percent of the population of the State of Mississippi, based on the United States Census of 1980. At that time, Tupelo, which is near the center of the 12-county area, had about 25,000 persons and was the largest population center for the area.

The handling of milk in the 12 counties is in the current of interstate commerce, and directly burdens, obstructs, and affects interstate commerce in milk and milk products. Also, the Grade A health requirements for the 12 counties are based on the recommended U.S. Public Health Service Code, and are administered by the State of Mississippi.

In July 1984, fifteen milk handlers were selling fluid milk products in the 12-county area. Eight of them were from Mississippi, four of them from Tennessee, and one each from Alabama, Kentucky, and Arkansas. It is estimated that the milk handlers distributed about 4.9 million pounds of fluid milk products in the area for that month. Fourteen of the milk handlers were regulated by various Federal milk orders. Reese Dairy at Amory, Mississippi (Monroe County) was the only unregulated milk handler with fluid sales in the 12-county area in July 1984.

Three of the handlers selling fluid milk products in the 12-county area are regulated by the New Orleans-Mississippi order, three by the Alabama-West Florida order, five by the Memphis order, and one each by the Paducah, Central Arkansas and Georgia order.

The estimated percentages of total Class I sales in the 12 counties by handlers for July 1984 are as follows:

Handlers	Percentage
1—Order 7 (Georgia)	3.75
3—Order 93 (Alabama)	46.58
3—Order 94 (New Orleans)	16.07
5—Order 97 (Memphis)	26.30
1—Order 99 (Paducah)	2.03
1—Order 109 (Cent. Arkansas)	0.20
1—Unregulated	5.07
15 Handlers	100.0

Turner, New Albany, became regulated by the Memphis order in July 1984. Previously, the plant was unregulated. It became regulated by the Memphis order when some distribution in that area by a former Sealtest distributor was acquired by Turner when the Sealtest plant at Memphis was closed. In July 1984, about 189,000 pounds of fluid milk products or 17 percent of the New Albany plant receipts were disposed of in the Memphis marketing area. Turner sells about 850,000 pounds of fluid milk products per month in the 12-county area, and would be regulated by the New Orleans-Mississippi order if the 12 counties are added to the New Orleans-Mississippi marketing area.

Turner acquired the New Albany plant on January 1, 1984. It upgraded the plant, and put additional equipment in it to handle more volume. The objective was to save hauling costs from its plants at Fulton, Kentucky, and Covington, Tennessee, by buying milk in the 12-county area and processing it and selling it there.

Historically, the previous owners of the New Albany plant were supplied with milk by producers who were not members of a cooperative association. Turner has continued that policy except that in expanding the New Albany operation, Turner has bought milk from AMPI on a regular basis. Some of that supply is now being supplanted by 10 newly acquired independent producers who formerly were members of AMPI and the Northeast Mississippi Dairymen's Association.

The need to include the 12-county area in the New Orleans-Mississippi marketing area is centered on the operations of Turner Dairies. Although the New Albany plant was regulated by the Memphis order at the time of the hearing, previously it was unregulated. In that capacity, it contributed to disorderly marketing conditions for milk in the 12-county area. If the 12 counties are not added to the New Orleans-Mississippi marketing area, the previous disorderly marketing conditions could be repeated.

Turner operates plants at New Albany, Mississippi; Covington, Tennessee; and Fulton, Kentucky. At present, all the plants are regulated by Federal milk orders. If the 12 counties are not included in the New Orleans-Mississippi marketing area, the Turner plant at New Albany could be operated as an unregulated plant.

Turner at Fulton, Kentucky historically has been regulated under the Paducah, Kentucky, milk order, and the Turner plant at Covington, Tennessee, has been regulated by the Memphis order. Prior to July 1984, the New Albany plant had not been regulated by any Federal milk order. By rearranging sales among its three plants, Turner could determine the regulatory status of the New Albany plant.

In operating an unregulated plant, Turner would not be obliged to pay an order Class I price for milk as regulated competitors must do. In July 1984, the Turner Class I utilization was 91 percent of producer receipts at the New Albany plant. Even though, in an unregulated capacity, Turner might pay a Federal order blend price to producers, the firm still would have a competitive advantage over regulated handlers in procuring or selling milk. This results because Turner would not have to pay an order Class I price for its high Class I utilization.

The uniform prices to producers under the New Orleans-Mississippi order for 1983 reflected an average Class I utilization of 63 percent. The average uniform price of the New Orleans-Mississippi order for 1983 was $14.47 a hundredweight for milk testing 3.5 percent butterfat. The average Class I price was $15.39, a difference of 92 cents a hundredweight. At 46.5 quarts a hundredweight, the difference amounts to 1.98 cents a quart, or 8 cents a gallon.

Turner testified that in an unregulated capacity the firm has paid its producers the New Orleans-Mississippi blend price. When the Turner plant is unregulated and buys milk at a Federal order blend price, that price becomes its effective Class I price. The difference between the order Class I price and the blend price is what would be available to Turner to use competitively in milk procurement or distribution.

When the Turner plant at New Albany was unregulated, the firm became involved in at least one price war with another milk handler. The disorderly marketing conditions that resulted were detrimental to regulated handlers distributing fluid milk products in the 12-county area. The competitive advantage that Turner could exploit as an unregulated milk handler could be detrimental to orderly marketing even without price wars. Milk handlers who can buy milk on an unregulated basis can be a disruptive factor in competing with handlers who are regulated and who must account for fluid milk sales at the Class I prices of an order.

Turner opposed the proposals concerning the 12 counties chiefly on the basis that the area was more appropriately associated with the Memphis order because the largest block of handlers distributing in the 12 counties, five out of fifteen, are regulated by the Memphis order.

The addition of the 12 counties to the New Orleans-Mississippi marketing area, specifically, is supported by the record. Five handlers distributing in the 12 counties are regulated by the Memphis order. However, excluding Turner, New Albany, the distribution of four Memphis handlers in the 12-county area amounted to 9 percent of the fluid sales there in July 1984. Turner's fluid milk disposition in the 12-county area

for the month amounted to 850,000 pounds compared with 189,000 pounds in the Memphis order. Also, a majority of Barber's fluid sales would be in the New Orleans-Mississippi order with the 12-county area included. Turner and Barber account for over 55 percent of the fluid sales in the 12 counties. Three New Orleans-Mississippi handlers account for an additional 16 percent—a total of 71 percent for the 5 handlers. It is concluded that adding the 12 counties to the New Orleans-Mississippi marketing area would be reasonable and appropriate.

All participants at the hearing who testified on this issue, except Turner, supported the addition of the 12 counties to the New Orleans-Mississippi marketing area. The witnesses included representatives of Barber Pure Milk Company, Borden, Inc., Associated Milk Producers, Inc., Dairymen, Inc., Southern Milk Sales, and Gulf Dairy Association.

The record is clear that by not having the 12 counties included in the New Orleans-Mississippi marketing area, Turner Dairies could exploit the competitive advantage available to it from an unregulated status whenever it chose to do so. However, if this option were available for Turner Dairies, or any milk firm similarly situated, disorderly marketing conditions could result.

By including the 12 counties in the New Orleans-Mississippi marketing area, the milk of all handlers distributing there would be accounted for on a classified-price basis. This would eliminate the option of a handler, such as Turner, to buy producer milk on a blend or flat price basis and thereby gain a competitive advantage in the cost of milk over competing handlers who are buying milk on a Federal order classified-price basis.

It is concluded that the adoption of the proposal would promote competitive equity in the cost of milk among handlers, and provide greater marketing stability for the 12 counties than has been the case previously. Inclusion of the 12 counties in the New Orleans-Mississippi marketing area is needed to minimize disruptive marketing conditions for milk in northeastern Mississippi. The public interest will be served by assuring orderly marketing for milk in the 12-county area that will provide a continuing and adequate supply of fluid milk for the area at reasonable prices.

2. The plant location adjustments to Class I and uniform prices that were proposed by AMPI and DI should be adopted.

The cooperatives proposed that Chickasaw, Clay, and Monroe Counties, Mississippi, be added to present Zone 5 of Order 94. In Zone 5 a plant location adjustment of minus 65 cents is applicable, or a Class I differential of $2.20. The cooperatives also proposed that a new Zone 6 be provided consisting of the Mississippi counties of Alcorn, Benton, Itawamba, Lee, Prentiss, Pontotoc, Tippah, Tishomingo, and Union. The Zone 6 location adjustment would be minus 75 cents, or a Class I differential of $2.10. Also, the minus 75-cent adjustment would apply to a plant located in the State of Mississippi, but outside the marketing area. These adjustments would provide reasonable and appropriate Class I price alignment with other Federal milk orders.

The Class I differential of the Barber plant at Tupelo, Mississippi, is $2.10 under the Alabama-West Florida order, and would be the same under Zone 6 of the New Orleans-Mississippi order.

The Turner plant at new Albany, Mississippi, regulated by the Memphis order, has a Class I differential of $2.075. Under the amendment adopted herein, if the Turner plant at New Albany were regulated by Order 94, the applicable Class I differential would be $2.10.

This differential is appropriate for the Barber and Turner plants. The chief competition of the Barber plant outside the 12-county area of northeastern Mississippi is with plants regulated by the Alabama-West Florida order. When the Barber plant is regulated by the order, the applicable Class I differential is $2.10. Thus, being regulated by Order 94 will not change principal competitive price relationships for the plant. Also, the new Zone 6 for Order 94 corresponds geographically with Zone 1 of the Alabama-West Florida order applicable to 11 counties of northern Alabama.

Because Class I differentials of Federal milk orders generally increase 1.5 cents for each 10 miles of distance from Eau Claire, Wisconsin, a Class I differential of $2.10 for Zone 6 of Order 94 that corresponds with Zone 1 of Order 93 will maintain this price aligment policy.

The Class I differential of $2.10 will be appropriate for the Turner plant at New Albany because the plant is located in Zone 6 within 23 miles of Tupelo, Mississippi. The record evidence is that 83 percent of Turner's fluid sales are in the 12-county area, and that a principal competitor is Barber. It is appropriate that the Class I differentials applicable at these plants be the same considering prevailing marketing conditions.

The inclusion of Chickasaw, Clay, and Monroe Counties in the present Zone 5 of Order 94, with a Class I differential of $2.20 also is appropriate. The three countries are a logical extension eastward to the Mississippi-Alabama line. Also, the Zone 5 differential will maintain proper alignment of the Zone 5 Class I price with a counterpart Class I price zone under Order 93. The differential would apply to Reese Dairy, Amory, Mississippi, in Monroe County. In July 1984, the plant distributed and estimated 250,000 pounds of fluid milk products in the 12-county area. This distribution represented an estimated 5 percent of total fluid sales by all handlers in the area, and 100 percent of the Reese plant distribution.

The purpose of the plant location adjustment is to reflect the location value of bulk milk received at a handler's plant in relation to other plants regulated by an order and in relation to prices established under other Federal milk orders. There is no evidence in the record that the adjustments adopted herein would make it difficult for any handler to acquire a supply of milk, or to compete for sales with other handlers.

3. The New Orleans-Mississippi milk order should be changed to provide that a cooperative association deliver each month at least 45 percent of the milk of member producers to pool distributing plants to quality the cooperative's plant for pooling.

The order presently provides that any plant located in the marketing area that is operated by a cooperative association shall be a pool plant if such status is requested by the cooperative association and 50 percent or more of the producer milk of members of the cooperative association is physically received during the month in the form of a bulk fluid milk product at pool distributing plants either direct from farms or by transfer from plants of the cooperative associations for which pool status has been requested, subject to specified conditions. The single change made herein reduces the numeral "50 percent" to "45 percent".

The proponent's witness testified that Gulf Dairy Association operates a fluid milk plant at Kentwood, Louisiana. This plant, he said, normally qualifies as pool plant under the New Orleans-Mississippi milk order by shipping 50 percent of its members' milk to pool distributing plants.

The witness indicated that Gulf markets a relatively small volume of milk and they are not in the business to sell Class III milk. Gulf sometimes has some excess supplies due to variations in production and sales.

Proponent's witness said that presently, milk production is substantially down in the Kentwood,

Louisiana, region. Therefore, Gulf is not experiencing any difficulty in shipping 50 percent of its members' milk to pool distributing plants.

The spokesman indicated, however, that in prior years, when milk production was higher, the plant often experienced difficulty in meeting the 50 percent shipping requirement. Gulf does not know in advance if variations in production and sales will enable the association to meet the 50 percent shipping standards. Furthermore, the witness said, if the plant were qualified as supply plant, only 45 percent of its members' milk would have to be transferred to pool distributing plants to qualify its plant for pooling.

The cooperative association's plant at Kentwood, Louisiana, functions as a "balancing plant." When milk is temporarily not needed by distributors, producers can pool their milk by delivery to a balancing plant. The plant becomes an outlet for reserve milk without involving the need to divert milk from distributing plants in order to keep the milk pooled.

Although milk should be moved, when possible, directly from the farm to distributing plants, there are occasions when balancing plants are called upon for supplemental supplies. Pool status for balancing plants facilitates the transfer of milk from the plant to distributing plants.

It is necessary, however, that there be a reasonable demonstration that the milk pooled through balancing plants be a part of the regular market supply. Milk should not be permitted to be associated with the market merely for manufacturing purposes since this would reduce returns to producers and discourage the production of an adequate supply of milk by those producers regularly supplying the fluid market. Any shipping requirements for a balancing plant would be inconsistent with the balancing function of the plant. For this reason, the pooling of a cooperative balancing plant should be contingent o 1 its function with respect to the milk supply for the fluid market and this is reasonably reflected in how much of the cooperative's total milk supply from member producers is furnished to pool distributing plants.

When the balancing plant provisions were first adopted, (Final Decision, 41 FR 4542, January 26, 1976), the 50 percent pooling standard was considered reasonable in view of marketing conditions at that time. The 50 percent standard demonstrated a substantial association of the cooperative's total milk supply with the fluid market and minimized the opportunity to pool unneeded milk through balancing plants.

Marketing conditions since 1976 have changed substantially in the New Orleans-Mississippi market. Class I utilization, as a percentage of producer milk for the year 1976, dropped from a yearly average of 70 percent [1] to 63.5 percent for 1983. Although Class I utilization for the first 6 months of 1984 is higher than the same period of 1983, this is due to the substantial decline in milk production. Milk production for the first six months of 1984 declined from 613.0 million pounds to 538.7 million pounds for the same period of 1983 or 13.8 percent. Milk production throughout the southeastern region of the United States has declined in response to several national programs intended to reduce the national surplus of milk and the Government's purchase of diary products under the price support program.

Based on marketing conditions, it is concluded that there is merit to the proposal, particularly since the shipping standard for a supply plant during the months of August through November is 45 percent.

On the basis of this record, it is concluded that lowering the balancing plant performance percentage would not create any disorderly marketing conditions or lower the returns of producers by pooling unneeded milk. The plant is located in the marketing area which encompasses most of the production area and provides a service for the market.

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 supplement those that were made when the New Orleans-Mississippi order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(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 price 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 whole milk, and be in the public interest;

(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;

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreement and the order as hereby proposed to be amended, are in the current of interstate commerce or direcely burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in §1094.85 of the aforesaid tentative marketing agreement and the order as proposed to be amended.

Rulings on Exceptions

No exceptions were filed.

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 order regulating the handling of milk in the New Orleans-Mississippi marketing area, 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

[1] Official notice is taken of "Federal Milk Order Market Statistics, Annual Summary for 1978," USDA-AMS, Statistical Bulletin 575, June 1977.

agreement, be published in the **Federal Register**. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

December 1984 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 New Orleans-Mississippi 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 such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1094

Milk marketing orders, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674)

Signed at Washington, D.C., on: March 5, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing & Inspection Services.

Findings and Determinations

Order [2] Amending the Order, Regulating the Handling of Milk in the New Orleans-Mississippi Marketing Area

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(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 New Orleans-Mississippi marketing area. 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 pure and wholesome milk, and be in the public interest;

(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;

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1094.85.

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in the New Orleans-Mississippi marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Agricultural Marketing Service, on January 14, 1985, and published in the **Federal Register** on January 18, 1985 (50 FR 2678), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

1. In § 1094.2, Zone 5 is revised to read as follows:

§ 1094.2 New Orleans-Mississippi marketing area.

* * * * *

Zone 5

Mississippi Counties

Calhoun, Chickasaw, Clay, Coahoma, Grenada, Monroe, Quitman, Tallahatchie, Yalobusha.

* * * * *

2. In § 1094.2, add a new Zone 6 to read as follows:

§ 1094.2 New Orleans-Mississippi marketing area.

* * * * *

Zone 6

Mississippi Counties

Alcorn, Benton, Itawamba, Lee, Pontotoc, Prentiss, Tippah, Tishomingo, Union.

3. In § 1094.7, paragraph (c) is revised to read as follows:

§ 1094.7 Pool plant.

* * * * *

(c) Any plant located in the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and 45 percent or more of the producer milk of members of the cooperative association is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool status under this paragraph has been requested, subject to the following conditions:

* * * * *

4. In § 1094.52, paragraph (a)(1), the table is revised to read as follows:

§ 1094.52 Plant location adjustment for handlers.

(a) * * *

(1) * * *

Adjustment per hundredweight

Zone 1—No adjustment.
Zone 2—Minus 18 cents.
Zone 3—Minus 40 cents.
Zone 4—Minus 55 cents.
Zone 5—Minus 65 cents.
Zone 6—Minus 75 cents.

* * * * *

5. In § 1094.52, paragraph (a)(3) is revised to read as follows:

§ 1094.52 Plant location adjustments for handlers.

(a) * * *

[2] 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.

[3] For a plant located in the State of Mississippi outside the marketing area the adjustment shall be minus 75 cents;

* * * * *

[FR Doc. 85-5673 Filed 3-8-85; 8:45 am]
BILLING CODE 3410-02-M

---

7 CFR Part 1126

[Docket No. AO-231-A51]

Milk in the Texas Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision provides that the handler and producer location adjustments be increased by 18 cents per hundredweight in the Houston portion of the Texas marketing area. The price increase is necessary to reflect increases in hauling costs and to assure the orderly marketing of substantial quantities of milk that must be shipped long distances to supply the fluid milk needs of the most heavily populated area in the market. The decision also provides for a change in the computation of the uniform price to allow for a reduction in the producer-settlement fund reserve balance. The amendments are based on the record of a public hearing held October 4–7, 1983, in Irving, Texas.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments will promote orderly marketing of milk by producers and regulated handlers.

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. Interested parties testified and presented evidence with respect to the probable impacts of various combinations of the pricing changes that were proposed, and such impacts were considered in the economic analysis that sets forth the need for the proposed amendments contained herein.

Prior documents in this proceeding:

Notice of Hearing: Issued August 29, 1983; published September 1, 1983 (48 FR 39643).

Correction to Notice of Hearing: Published September 12, 1983 (48 FR 40894).

Extension of Time for Filing Briefs: Issued November 25, 1983; published December 12, 1983 (48 FR 54243).

Partial Recommended Decision: Issued December 6, 1983; published December 12, 1983 (48 FR 55290).

Correction to Partial Recommended Decision: Published December 19, 1983 (48 FR 56060).

Extension of Time for Filing Briefs and Exceptions: Issued December 22, 1983; published December 29, 1983 (48 FR 57310).

Extension of Time for Filing Exceptions: Issued January 27, 1984; published February 1, 1984 (49 FR 4006).

Extension of Time for Filing Exceptions: Issued February 21, 1984; published February 24, 1984 (49 FR 6910).

Partial Final Decision and Termination of Proceeding: Issued May 14, 1984; published May 17, 1984 (49 FR 20825).

Recommended Decision: Issued October 25, 1984; published October 31, 1984 (49 FR 43692).

Extension of Time for Filing Exceptions: Issued November 29, 1984; published December 5, 1984 (49 FR 47495).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Texas marketing area. 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 Irving, Texas, on October 4–7, 1983. Notice of such hearing was issued on August 29, 1983, and published on September 1, 1983 (48 FR 39643).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Programs, on October 25, 1984, 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:

1. In issues No. 3, one paragraph has been added after the 17th paragraph, four paragraphs after the 44th paragraph, two paragraphs after the 47th paragraph, four paragraphs after the 55th paragraph, two paragraphs after the 60th paragraph, one paragraph after the 61st paragraph, and two paragraphs after the last (65th) paragraph.

2. In issue No. 4, one paragraph has been added after the last paragraph.

3. In the Rulings on Proposed Findings and Conclusions, one paragraph has been added after the last paragraph.

The material issues on the record relate to:

1. The Class III price level for producer milk used in butter, nonfat dry milk and cheddar cheese for December 1983, and March through June 1984.

2. Whether an emergency exists to warrant the omission of a recommended decision and the opportunity to file written exceptions thereto with respect to issue No. 1.

3. The Class I price level and location adjustments within the marketing area.

4. The Class II price level and location adjustments within the marketing area.

5. Location adjustments applicable for milk delivered to plants located outside the marketing area.

6. Classification of milk contaminated with antibiotics.

7. Shipping percentages applicable to pool supply plants.

8. Computation of the uniform price.

This decision deals only with issues 3 through 8. Issues 1 and 2 were considered in a previous decision on the record:

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Background for Pricing Proposals Concerning Material Issues 3, 4, and 5

Schepps Dairy, Inc. (Schepps), which operate a pool distributing plant in Dallas, offered and supported proposals to revise the pricing structure under the Texas order. Generally, the proposals are intended to increase the difference between minimum order prices applicable at plants located in northern portions of the marketing area (primarily Dallas) and southern portions of the marketing area (primarily Houston) because of increases in the cost of hauling milk. These proposals (proposals 3 and 4 as contained in the Notice of Hearing) included a restructing of Class I location adjustments

applicable inside and outside the marketing area; the implementation of direct-delivery differentials in certain pricing zones in conjunction with or as an alternative to a revision of Class I location adjustments; and the implementation of plus location adjustments for milk in Class II uses in certain pricing zones. These proposals are the subject of material issues 3, 4, and 5 as set forth previously. The proposal are included as a group in this background discussion because the proponent presented them as alternative means for dealing with a common problem. In addition, opposing parties viewed the pricing proposals as a unit. This discussion contains background information on pricing issues in the Texas market and the basic arguments presented by proponents and opponents. A more detailed examination of each of the material issues follows this background discussion.

The current zone pricing structure under the Texas order dates to the July 1, 1975, merger of six smaller markets into the Texas marketing area. Official notice was taken of the Assistant Secretary's decision of May 2, 1975 (40 FR 20004) that accomplished this action. For pricing purposes, the Texas marketing area was divided into 12 pricing zones. Location adjustments were specified for each zone (groups of counties) that resulted in Class I prices that were essentially the same as the prices applicable in such areas under the formerly separate marketing orders. Zone 1 (which includes the Dallas/Ft. Worth area) was established as the basing point at which location the Class I price to handlers and the blend price to producers are announced each month. A zero location adjustment applies to plants in Zone 1 and the Class I price is the Minnesota-Wisconsin price for the second preceding month plus $2.32 per hundredweight. Plus adjustments to the Zone 1 price were established for each succeeding zone, ranging from plus 6 cents in Zone 2 (Tyler, Marshall) to plus 75 cents in Zone 12 (Edinburg, Harlingen). The plus adjustments apply to milk used in fluid milk products (Class I uses) by plants in each zone as well as to the blend price payable to producers whose milk is received in each zone. It is note that a thirteenth zone (Zone 1–A) was added to the marketing area effective January 1, 1983. The plant location adjustment in Zone 1–A is minus 12 cents from the Zone 1 price and is identical to the location adjustment applicable to such area under the Texas order prior to its inclusion in the marketing area.

The current zone pricing system under the order results in increasing, from North to South Texas, minimum order Class I prices to handlers and blend prices payable to producers. The price differences among the various cities in the marketing area were unchanged (with some minor exceptions) by the merger of the marketing area. Consequently, the current 36-cent Class I price difference between Dallas and Houston dates to the 1968 decision that implemented the South Texas milk order effective October 1, 1968. This price difference represented the cost of transporting bulk milk from Dallas to Houston based on a transportation rate of 1.5 cents per hundredweight per 10 miles. Official notice is taken of the Under Secretary's final decision issued August 8, 1968 (33 FR 11486) to implement the South Texas order. A review of this decision indicates that the same transportation rate was used to establish Class I prices under the former San Antonio, Austin-Waco and Corpus Christi orders. The Class I prices under these orders reflected the Class I price under the North Texas order plus 1.5 cents per hundredweight for each 10 miles between Dallas and the various basing points under the respective other orders.

The 1975 merger decision considered various proposals to increase Class I prices throughout the market and to change the relative price relationship between certain zones within the marketing area. One proposal would have increased the Class I price applicable at plants in the base zone (Zone 1–Dallas/Ft. Worth) by 58 cents per hundredweight. This proposal reflected the Class I price applicable at Eau Claire, Wisconsin, plus an adjustment for transportation to Dallas at 2 cents per hundredweight per 10 miles rather than the traditional 1.5-cent rate. Another proposal would have altered the location adjustments within the marketing area to reflect a transportation rate of 2.2 cents per 10 miles, which would have increased the Class I price difference between Dallas and other cities in the marketing area.

The 1975 merger decision acknowledged the fact that transportation costs had increased since 1968. However, the decision stated that market supply-demand conditions must be considered along with the cost of transporting milk from distant supply areas when determining the appropriate minimum order Class I price. The Assistant Secretary concluded that in spite of some increases in hauling costs, raw milk supplies were being made available to handlers in all parts of the marketing area and that substantial quantities of raw milk were being moved from the North Texas supply area to the consumption centers in South Texas. Thus, the decision concluded that the supply-demand relationship for the combined markets indicated that the prevailing Class I price structure was bringing forth an adequate, but not excessive, supply of milk for consumers. A high minimum price level could stimulate additional production, not needed for fluid use, thereby resulting in a misallocation of agricultural resources. The decision also set forth, in substantial detail, the need to maintain an alignment of Class I prices among the various consumption centers within the marketing area to reflect the economic service performed in moving milk to such consumption centers from the heavy production areas in North Texas. Particularly noteworthy with respect to this proceeding was the conclusion that there was a greater economic service provided by producers for San Antonio area handlers than Houston area handlers since San Antonio is further from the North Texas supply area than is Houston.

In this proceeding, Schepps makes some of the same arguments that were presented in 1957 to attempt to justify increasing location adjustments to reflect a higher transportation rate than 1.5 cents per hundredweight per 10 miles. The stated objectives of Schepps' proposals is to restore price uniformity among producers and handlers by having order prices reflect the cost of transporting milk to plants located in deficit supply areas of the market. Schepps contends that since the present zoned Class I price structure does not cover the cost of hauling milk, market forces establish prices that are not uniform among either handlers or producers. Specifically, Schepps contends that the market price structure allows handlers in South Texas to obtain milk supplies at prices that do not reflect the full cost of transporting milk from the North Texas supply area. As a result, Schepps contends that producers are subsidizing in part the cost of the economic service they provide in shipping milk substantial distances to South Texas plants and, consequently, returns to producers are not uniform. Also, Schepps contends that the prices paid for milk in Class I uses by North Texas handlers are also used to subsidize, in part, the cost of moving milk to South Texas plants with whom North Texas handlers compete for sales of fluid milk products in South Texas. Schepps concludes that the resulting nonuniformity of prices to

handlers and returns to producers are inconsistent with the requirements of the Agricultural Marketing Agreement Act of 1937, as amended; represent disorderly marketing conditions; and are the direct result of the failure of the order minimum price structure to reflect the cost of transporting milk.

Schepps' pricing proposals were opposed by a large number of handlers who are regulated under the order. In total these handlers (The Southland Corporation; Borden, Inc.; Carnation Company; Foremost Dairies, Inc.; Blue Bell Creamery; H. E. Butt Grocery Company; Hygeia Dairy Company, Inc.; and Safeway Stores, Inc.) operate 22 of the 34 distributing plants that are fully regulated under the order. Such handlers also operate at least 13 other plants that distribute fluid milk and dairy products within the Texas marketing area and seven nonpool plants at which milk pooled under the Texas order is processed into Class II products.

These handlers contended that the proposals should be denied because the proposed price adjustments: (1) Would result in substantial cost increases to South Texas area handlers and consumers and generally discriminate against South Texas handlers; (2) would disrupt competitive conditions among handlers by distorting the inter- and intra-order alignment of prices; (3) are unrelated to any competent testimony that could establish the cost of hauling milk and, further, are inconsistent with any argument that hauling costs have increased because of proposed price reductions in North Texas areas; (4) are unnecessary because adequate supplies of milk are being made available to handlers throughout the entire market; (5) would not benefit producers, and further, were not supported by producers who proponent claims are subsidizing the cost of hauling milk to South Texas plants; and (6) cannot be adopted because the Department failed to comply with the requirements of the Regulatory Flexibility Act prior to the hearing.

Basically, opponents argue that adequate supplies of milk are being made available to all handlers throughout the marketing area under the current pricing structure in the market. They contend that since there is an adequacy of supply, and that milk is moving substantial distances under the current price structure, there is no basis upon which the Secretary can justify a price increase in South Texas areas. They further contend that the purpose of the proposals is nothing more than an attempt to improve proponent's competitive position with respect to packaged fluid milk sales in certian South Texas areas (primarily San Antonio and Houston) that account for about one-half of proponent's total fluid milk sales. Consequently, opponents contend that the purpose of the proposals is the same as that advanced by the same proponent at the hearing to merge six marketing areas under the Texas order, and that the proposals should be denied on the same basis as set forth by the Assistant Secretary in denying similar proposals in the 1975 merger decision. In this regard, opponents cite the decision's conclusion concerning the need to maintain Class I price alignment among Federal order markets and within the Texas market on the same basis, as well as the finding that milk moved substantial distances to meet all handlers' needs despite the fact that hauling costs exceeded the transportation rate reflected under the order. Opponents point out that the rational advanced in the 1975 decision was upheld in *Schepps Dairy, Inc.* v. *Bergland*, 628 F. 2d 11, (D.C. Cir. 1979).

Opponents further contend that the issue raised by Schepps is one that primarily affects milk produces who pay the cost of hauling milk to plants. They point out that no producers or their cooperative associations supported Schepps' proposal. In this regard, Mid-America Dairymen, Inc., (Mid-Am) opposed those parts of the proposal that would reduce prices in Zone 1 (Base Zone) and at Aurora, Missouri. Mid-Am represents producers who are located in Zone 1 and the cooperative also operates a supply plant that is located at Aurora, Missouri, that is pooled under the Texas order. Mid-Am contends that the proposed lower price for these areas would reduce milk production in such areas, thus jeopardizing the maintenance of milk supplies that are necessary to meet the fluid milk needs of southern deficit production areas. Mid-Am also contended that the proposed lower Zone 1 price would disrupt the price alignment among Federal order markets and that if any such price reduction is to be pursued it should be considered on a broader scale to consider the Class I price alignment with surrounding markets. Mid-Am contends that if a price incentive is necessary to attract milk to deficit southern areas, it should be accomplished by increasing prices in such areas rather than by reducing prices in Zone 1. Several nonmember producers also opposed any price reduction in Zone 1.

Associated Milk Producers, Inc. (AMPI), a cooperative association that represents a substantial majority of the dairy farmers who furnish milk to handlers located throughout the marketing area, presented no testimony and took no position either in support of or in opposition to the proposed pricing changes in the marketing area. In its brief, AMPI opposed the changes in location adjustments at plants located outside the marketing area. One other interested party who operates a pool distributing plant in Zone 1–A (Preston Dairy) supported increasing the location adjustments under the order for deficit supply areas in the south to recognize increases in transportation costs that have occurred since the 1960's. One additional handler, Land O'Pine Dairy, who operates a pool distributing plant at Lufkin (Zone 4), proposed that Zones 2 and 4 be included in the same pricing zone. The handler stated that the basis for this modification is to improve his competitive position with respect to plants located in Zone 2 that now have a 12-cent lower Class I price under the order than applies to Zone 4.

3. *The Class I price level and location adjustments within the marketing area.* The order should be amended to increase the plus location adjustment in Zone 8 (Houston-Beaumont) to 54 cents per hundredweight. The 18-cent per hundredweight increase in the Class I and blend prices is necessary to reflect increases in hauling costs and to assure an adequate supply of milk for fluid use for the largest consumption center in the marketing area and to promote the orderly marketing of the substantial volumes of milk that must be shipped great distances from the major production areas in the market to meet the fluid milk needs of this deficit supply area. No other pricing changes that were proposed should be adopted on the basis of this record.

As previously stated in the background for the pricing issue, Schepps offered two proposals to revise the pricing structure under the order. One of the proposals would move the base zone (the zone at which location adjustments do not apply) southward from Zone 1 to Zones 3, 4, and 5. The current Class I differential in Zone 1 that is added to the basic formula price to establish the Class I price for the month is $2.32 per hundredweight. Movement of the base zone to the south would result in a reduction of the Class I price in Zones 3, 4, and 5. The proposal would also establish minus location adjustments from the new base zone for Zones 1, 1–A, and 2. Plus adjustments to the new base zone price are proposed for Zones 6 through 12. In conjunction with the location adjustments, Schepps also proposed that direct-delivery

differentials be applied to Zones 8 and 9 in the amount of 18 and 6 cents, respectively.

The objective of the proposal is to increase the difference in the order Class I and blend prices between northern and southern portions of the marketing area to reflect increases in the cost of hauling milk. For purposes of illustrating the magnitude of the proposal, the Class I differentials that would result in each zone are set forth below. The proposed differentials are compared to the current order Class I differentials that apply to plants in each zone as a result of current order location adjustments. The location adjustments that establish Class I prices at plants in each zone are also used to adjust the blend price to producers for milk received at plants in such zone. Although each zone consists of groups of counties, the major cities within such zones are indicated below for reference purposes.

CLASS I DIFFERENTIALS

Zone/cities	Dollars per hundredweight		
	Current	Proposed	Difference
1-A Burkburnett	$2.20	$2.10	−.10
1 Dallas, Ft. Worth	2.32	2.22	−.10
2 Tyler, Marshall	2.38	2.27	−.12
3 Waco	2.47	2.32	−.15
4 Lufkin	2.50	2.32	−.18
5 Bryan	2.52	2.32	−.20
6 Abilene, San Angelo	2.57	2.62	+.05
7 Austin	2.62	2.67	+.05
8 Beaumont, Houston	2.68	2.95	+.27
9 San Antonio	2.74	2.89	+.15
10 Victoria	2.85	2.94	+.09
11 Corpus Christi	2.98	3.07	+.09
12 Edinburg, Harlingen	3.07	3.16	+.09

Schepps presented an alternative to the above proposal that was advanced by proponent as his preferred method of increasing prices in southern areas. This proposal would establish direct-delivery differentials to be paid by plants located in Zones 2 through 12 to their dairy farmer suppliers. Such differentials would apply to all milk received by handlers, regardless of use, and would be applied in addition to the current order location adjustments. For Zones 2 through 5, a direct-delivery differential of 10 cents per hundredweight would be established. A direct-delivery differential of 5 cents, 19 cents, 36 cents, and 23 cents would be established for Zones 6 through 9, respectively. The proposed direct-delivery differentials for Zones 10 through 12 would be 19 cents per hundredweight.

Either of the proposals would significantly increase the effective transportation allowance under the order to move milk from north to south, with particular emphasis on the Houston and San Antonio zones. The proposed Class I price at Houston would be 72 or 73 cents per hundredweight higher than the Class I price at Dallas compared to the 36-cent difference that currently exists. Based on the mileage from Dallas to Houston, the proposed price change would reflect a transportation rate of about 3 cents per hundredweight per 10 miles compared to the 1.5-cent rate currently reflected under the order. Also, the proposed price difference between Dallas and San Antonio would reflect a transportation rate slightly below 2.5 cents per hundredweight based on the mileage from Dallas to San Antonio.

Schepps contends that hauling costs have increased significantly since 1968. As evidence to support this claim, Schepps relied upon USDA and university hauling cost studies and changes in indices reported by the Bureau of Labor Statistics that relate to hauling costs. Based on these studies, Schepps contends that a 3.6-cent per hundredweight per 20-mile hauling rate would be a reasonable approximation of the current cost of hauling bulk milk. Schepps contends that such rate is supported by the company's own experience in shipping packaged fluid milk products. Schepps testified that its current hauling costs for packaged products is 4.1 cents per hundredweight per 10 miles and that, based on comparative studies that indicate about a 15 percent higher cost for packaged than for bulk milk, a 3.6-cent rate is reasonable. Also, Schepps testified that its hauling costs had increased by 267 percent from 1970 to 1982 and that, therefore, the 240 percent proposed increase (from 1.5 cents to 3.6 cents) is appropriate.

Schepps further testified that such transportation rate is supported by the bulk milk hauling costs charged by AMPI that increased from $1.00 per loaded mile to $1.60 per loaded mile from 1978 to 1980. Schepps testified that such cost equates to a rate of 3.52 cents per hundredweight per 10 miles based on the average weight of 45,500 pounds of tank loads of milk received by Schepps from AMPI during August 1 through September 18, 1983. Schepps further contended that the 3.6-cent rate is consistent with the findings of the Assistant Secretary concerning hauling costs in the March 30, 1983, decision concerning the Georgia and certain other milk marketing orders (48 FR 14604).

Schepps argues that the failure of the order to reflect current transportation costs results in producer and handler inequities that are intensified by the disparate geographic distribution of population and milk production within the Texas marketing area. Schepps presented evidence concerning the population changes that occurred within the current Texas order pricing zones between 1970 and 1980 and statistics from the office of the market administrator. These statistics concern the percentage of milk priced in the various pricing zones that is produced in the major milk producing counties in the market, the relationship of milk production by zone to the volume of bulk milk received by plants in the same zone, the distances that bulk milk moves to supply the needs of fluid milk plants in the various zones, and maps that indicate the changes in the source of supply for the various pricing zones over time.

Schepps' testimony relative to the above statistics addressed primarily the circumstances existing with respect to Houston, (Zone 8). Schepps contends that Zone 8 is extremely deficit in terms of local production, and that substantial quantities of milk must be shipped long distances to meet the fluid milk needs of Zone 8 plants. Schepps points out that more than 50 percent of the bulk fluid milk needs of Zone 8 plants is shipped more than 250 miles and that the per hundredweight cost is 90 cents based on current hauling rates of 3.6 cents per 10 miles. Consequently, Schepps argues that the additional 54 cents in hauling costs that is not reflected in the order (now a 36-cent price difference between Dallas and Houston) is absorbed by producers who supply Zone 8 plants. Since most of such milk is shipped by AMPI, Schepps contends that AMPI is unable to return as high a price to its member producers as are returned to the nonmember producers that are located in the heavy production areas of the market around Sulphur Springs (Hopkins County), despite the fact that AMPI charges in excess of the order's minimum prices to the handlers the cooperative supplies. Schepps contends that handlers in Zone 1 (some of whom also operate plants in Zone 8) are able to purchase milk from nonmember producers at a lesser cost than is charged by AMPI but are able to return a blend price to nonmember producers that is in excess of the order blend because such handlers do not have the burden of subsidizing the cost of transporting milk to deficit southern markets. Consequently, Schepps argues that neither returns to producers nor costs to handlers are uniform as a result of transportation cost subsidization by AMPI that is incurred by supplying deficit southern markets such as Houston.

Schepps also presented additional information concerning his actual cost for milk received from AMPI at his Dallas plant as well as comparisons between such cost and a constructed cost for AMPI milk received at Houston on the basis of AMPI price announcements. Schepps notes that prior to May 1983, the difference between AMPI's announced prices at Dallas and Houston reflected a greater amount of the actual, additional transportation cost incurred in shipping milk to Houston. However, Schepps testified that he was charged the Houston price at his Dallas plant on that portion of his total fluid milk sales in Zone 8, which represent about one-half of his total sales. As a result, Schepps contends that he was charged a price that reflected a part of the cost incurred by AMPI in shipping milk to Houston, and that such charge represents a cost for a service Schepps did not receive. In addition, Schepps contends that such charge was in effect used to subsidize the cost of hauling milk to plants in Houston with whom Schepps competes for fluid milk sales in the Houston area. Since May of 1983 Schepps contends that a significant transportation subsidy exists since the over-order pricing structure was revised to result in a price difference of 36 cents between Dallas and Houston.

As a result of all of the above, Schepps contends that neither costs to handlers nor returns to producers are uniform under current marketing conditions. Opponents of the proposal, in addition to their views previously set forth, contend that Schepps' claims of disorder are a result of AMPI pricing practices and are a matter to be settled between AMPI and Schepps. Schepps' counter argument to such claim is that because of competitive conditions in the marketplace, AMPI is unable to institute an equitable pricing structure to reflect the cost of transporting milk that is not provided for under the order.

Resolution of the Class I pricing issue involves the consideration of the overall Class I price level for the market that is necessary to result in an adequate supply of milk for fluid use as well as the differences in the value of milk at various locations within the market that may be necessary to encourage its movement from where it is produced to where it is needed. As indicated hereafter, some intra-market price adjustment is necessary to provide incentives for milk movements. However, there is no indication that the overall price level in the market is inappropriate in terms of the overall market supply/demand relationship.

Although the Texas market can be characterized as having a relatively tight supply/demand situation compared to other Federal order markets, the market has experience a general increase in supplies in recent years that is representative of the national supply situation. For example, the Class I utilization of producer milk for the Texas market declined from 74.5 percent in 1981 to about 69 percent in 1982 and the monthly Class I utilization of producer milk during January through August of 1983 was below the Class I utilization during each of the corresponding months in 1982. In fact, concern with respect to handling the amount of milk available for manufacturing was the issue that was dealt with in a previous decision issued on the record of this proceeding.

Although the market supplies have increased, there has not been a sufficient showing by proponent that the Class I price level should be reduced in the primary northern production regions of the Texas market. In fact, proponent's only attempt to justify the proposed Class I price reduction in northern areas was that such reductions were necessary to offset the proposed price increases in southern portions of the marketing area so that the overall impact on returns to producers would be minimal. This aspect of the proposal, which was opposed by Mid-Am and independent milk producers, could jeopardize the maintenance of adequate supplies of milk in the heavy producing regions of the market that are necessary to meet the fluid milk needs of deficit producing regions of the market. In addition, the proposed Class I price reductions in northern areas would significantly alter the pricing relationship with other Federal order markets whose pricing provisions are not open for consideration on this record.

The price reduction aspect of the proposals must be denied primarily on the basis that there has been no showing that the increases in production in recent years are a result of the Class I differential. The recent supply/demand situation in the Texas market is not materially different from the national dairy situation where production has exceeded the demand for dairy products. National production increases have been in response to the price support levels established for manufactured dairy products as well as to other economic factors affecting the production and sale of milk and dairy products. Efforts are currently being taken under the price support program to deal with the surplus situation on a national basis. There is no indication that there need be any further incentive to encourage a reduction of production by reducing the Class I price level under the Texas order. In fact, any further reduction in prices applicable to the major milk production areas of the Texas market, in addition to the efforts being made under the price support program, could jeopardize the maintenance of an adequate supply of milk for current and anticipated future fluid milk needs in the market. Consequently, those portions of Schepps proposals that would reduce prices in certain portions of the market (Zones 1–A through 5) must be denied at this time. Such conclusion thus places a constraint on the remaining consideration of the issue to one of considering what plus adjustments to the base zone price may be necessary.

In this regard, there can be no significant increase in returns to producers at this time that would tend to bring forth additional supplies of milk. Such action would be contrary to efforts currently being taken under the price support program to reduce the overall supply of milk on a national basis. Any increase in producer returns that may be necessary must be kept to the minimum level necessary to encourage the movement of milk to deficit areas. In this regard, proponent's preferred option of establishing direct-delivery differentials on top of existing location adjustments would increase producer returns more than any other alternative proposed. It was estimated that the total adoption of such proposal would increase returns to dairy farmers by about $339 thousand to $346 thousand per month. Proponent argues that such an increase would be appropriate because it would not affect the pool value of the milk involved and thus would not increase the blend price since the additional dollars to cover transportation would accrue only to those producers who actually delivered milk to plants located in Zones 2 through 12. However, it is the total impact of the proposal on returns to producers that must be considered, not just the impact on pool proceeds. In this regard, the proposed increase in returns to producers under the direct-delivery proposal is more than is considered necessary to encourage the movement of milk to deficit supply areas.

A partial application of proponent's direct-delivery differential proposal with respect to certain areas (such as Zones 8 and 9) also should not be adopted. Direct-delivery differentials, as

proposed, would apply to all milk delivered by producers directly from farms to plants regardless of whether such milk is utilized in Class I, II, or III uses. Application of such differentials to Class II and III uses at plants in Zones 8 and 9 raises issues with respect to the appropriate price levels of milk in such uses. Although this is discussed more fully under issue number 4, application of such differentials are, to an extent, contrary to the need to maintain a uniform application of the classification and pricing of milk in Class II and Class III uses. Such issues broaden the scope of the proceeding beyond what is necessary to consider the intra-market pricing of milk in fluid uses in the Texas market.

Exceptions filed on behalf of Schepps contend that the implementation of the direct-delivery differential proposal would remove any rational basis for AMPI to continue over-order prices at current levels and, thus, total returns to producers would not be enhanced. There is no basis in the record to support such claim or to alter the conclusion, as hereinafter set forth, that only a minimal price adjustment in Zone 8 is necessary at this time.

Although there are sufficient supplies of milk overall that are associated with the Texas market, certain portions of the market are extremely deficit in terms of local production. As a result, substantial amounts of milk must be shipped long distances to meet the fluid milk needs of certain southern portions of the marketing area. The current order price structure is based on the need to increase prices from north to south and maintains an alignment of prices among plants to provide an incentive for milk to move from where it is produced to the consuming centers where it is needed. In this regard, opponents' contention that they would be placed at a competitive disadvantage in making fluid milk sales relative to plants in northern areas is misplaced. It is true that significant price differences among nearby plants would result in competitive inequities among such plants in selling fluid milk products. However, the primary emphasis with respect to the alignment of prices must be placed on the alignment of prices among various locations that is necessary to attract a supply of milk to such locations from areas that must be relied upon for sources of supply. If prices are too low at any location relative to another area that relies upon the same source of supply, there is a danger that the lower priced area will not be able to procure a sufficient supply of milk. The appropriate alignment of prices must be a reflection of the difference in the cost of transporting milk to the alternative outlets from a common production area. It is, however, impossible to establish a precise alignment of prices among areas because of the variability in the costs of hauling milk. At best, an alignment of prices usually represents an average of the variable costs of hauling milk that is representative of market experience.

Also, it is not necessary at all times to recognize the average cost of hauling milk to alternative outlets, particularly in areas where, or during periods when, there are substantial supplies of relatively nearby milk available to meet fluid milk needs. In effect, in such situations, milk is made available because of a lack of alternative outlets. No price adjustments are necessary to reflect increased hauling costs if there is sufficient evidence that ample supplies are being made available under orderly marketing practices and under circumstances from which it could be concluded that sufficient supplies of milk are likely to continue to be made available.

The record indicates that milk is moving substantial distances to meet fluid milk needs and that plants operating in the various pricing zones throughout the marketing area appear to be adequately supplied. However, contrary to the views expressed by opponents of any pricing changes, the current adequacy of supply is not the sole basis for determining whether price changes in any area are necessary. The testimony reveals that the market pricing structure, as it currently exists and has been modified during recent years, has resulted in nonuniform returns to producers and nonuniform costs to handlers. These inequities among producers and handlers are not conducive to the orderly marketing of milk that must be transported substantial distances on a continuing basis to meet the fluid milk needs of certain southern deficit areas. A failure to recognize the minimum price adjustments that are necessary could jeopardize the continued movement of milk from northern production areas to southern consumption centers.

The population of the Texas marketing area increased by 28.6 percent from 1970 to 1980. However, there are three dominant consumption centers within the marketing area (Zone 1–Dallas/Ft. Worth; Zone 8–Houston/Beaumont; and Zone 9–San Antonio) that combined, accounted for about 67 percent of the total marketing area population. From 1970 to 1980, the population increase for Zones 1, 8, and 9 was 24.2, 37.8 and 20.2 percent, respectively. With the increase in population, Zone 8 accounted for 29 percent of total marketing area population in 1980, surpassing Zone 1 as the most heavily populated area. In 1980, Zone 1, accounted for 27.6 percent of marketing area population, versus 28.5 percent in 1970. Also, Zone 9 accounted for 10.5 percent of total population in 1980, down from 11.2 percent in 1970. All other pricing zones, although representing a relatively small proportion of total population, have shown increases in population from 1970 to 1980, ranging from 2.3 percent in Zone 1–A to 51.2 percent in Zone 12.

The increasing population, particularly in the major population centers in Zones 8 and 9, continues to rely on the major milk producing regions in North Texas for fluid milk needs. The degree to which each of the pricing zones must rely on alternative sources of supply is illustrated by record evidence that compares the milk production within each zone to the actual receipts of bulk fluid milk at distributing plants in each zone. The ratios of production to receipts, in addition to identifying those deficit zones that must rely on alternative sources of supply, identify those zones that contain sufficient reserve supplies for the deficit areas.

On an individual zone basis, the greatest surplus of production relative to individual zone fluid milk receipts is within Zones 3 and 5. During May 1983, production within Zones 3 and 5 represented 2,666 percent and 698 percent, respectively, of the bulk fluid milk received at distributing plants within such zones. During the same month, production within Zones 1–A and 4 represented 210 and 238 percent of the bulk milk receipts aqt distributing plants within such zones. In Zone 1, which has the greatest volume of production, production represented 145 percent of bulk milk receipts at such plants. Zone 2, which is east of Dallas, is deficit in terms of local production (production was 39 percent of bulk milk receipts) but contains only 2.85 percent of marketing area population and is surrounded by Zones 1, 3, and 4 that have a surplus of production relative to bulk receipts at distributing plants in such zones. Zone 6, which is the West Texas area, including Abilene and San Angelo, is reasonably well balanced in terms of zone production and receipts. In May of 1983, Zone 6 production represented 117 percent of bulk milk receipts, while such ratio was 95 percent in October 1982 when the market supply/demand relationship is tighter.

Collectively, Zones 1–A through 6 of the Texas market contain sufficient supplies of milk in excess of the fluid milk needs of those zones to meet the fluid milk demands of the more southern zones of the marketing area. However, the greatest volume of production is included within Zones 1 and 3, which contain 9 of the top 10 milk producing counties in the Texas marketing area, and which are nearest alternative sources of supply for the southern pricing zones.

The ratios of zone production to bulk fluid milk receipts at distributing plants illustrate the degree to which Zones 7 through 12 are deficit in terms of zone production. During May of 1983, the ratios of production within each zone to the amount of bulk milk received were 48.4 percent for Zone 7 (Austin), 13.5 percent for Zone 8 (Houston), 30.8 percent for Zone 9 (San Antonio), 44.2 percent for Zone 11 (Corpus Christi), and 42.0 percent for Zone 12 (Edinburg). No ratios were computed for Zone 10 since there are no longer any distributing plants located in such zone. The most deficit zones contain the major consumption centers of Houston and San Antonio. During October 1982, when the market supply/demand relationship was tighter than in May 1983, the ratios of production to receipts for Zones 8 and 9 were 11.7 and 24.8 percent, respectively. The size of these consumption centers, in conjunction with the degree to which they are deficit producing areas, amplifies the need to maintain a pricing structure to assure these areas of a sufficient supply of milk. However, consideration must also be given to the distances that such deficit consumption centers must reach to obtain sufficient supplies of milk.

Evidence in the record establishes that plants located in the southern deficit Zones 7 through 12 (exclusive of Zone 10) must reach out varying distances to obtain the necessary supplies of milk for fluid use. As one would expect, plants in Zone 7, which is adjacent to the supplies of milk available in Zones 3 and 5, reach out the least distance to obtain their supplies. In July 1983, the weighted average distance of acutal milk movements to Zone 7 plants was about 84 miles from Austin, with over 90 percent of the milk movements being less than 150 miles. For Zone 8, however, the weighted average distance of milk movements to Houston was almost 200 miles. In terms of milk movements in 50-miles increments, 49 percent of the milk supplies originated between 251 and 300 miles from Houston and more than half of the milk shipped to Houston fluid milk plants was produced more than 251 miles from Houston.

Plants at San Antonio in Zone 9 reach out about 161 miles, on a weighted average basis, to obtain milk supplies. About 40 percent of the milk received at distributing plants originated in areas between 201 and 250 miles from San Antonio. Consequently, plants in Zone 9 do not reach out quite as far for milk as plants in Zone 8, although San Antonio is about 33 miles farther south from Dallas than is Houston.

The weighted average distance of milk movements to plants in Zones 11 and 12 is about 118 and 120 miles, respectively. Most of the milk supplies for Zone 11 are obtained from areas within 200 miles of Corpus Christi whereas plants in Zone 12 reach between 201–250 miles from Edinburg for a large proportion of total supplies.

Milk moves greater distances on a regular basis to meet fluid milk needs of plants in Zones 8 and 9 (Houston and San Antonio) that with respect to the other southern deficit zones. Also, it is obvious that substantial quantities of milk must be transported over these long distances to meet the needs of these major population centers. Also, record evidence establishes that both the distances and quantities moved have increased substantially over a period of years (1961 to 1983) and that the greatest northward expansion of the procurement areas has occured with respect to Zones 8 and 9.

The current distance from which Zone 8 plants must obtain milk supplies extends to the heavy milk producing counties in North Texas that are located northeast of Dallas. This area includes Hopkins County, which is the largest milk producing county in the Texas marketing area, as well as three of the other top ten producing counties (Franklin, Upshur and Wood). More than half of the bulk milk shipped to Zone 8 distributing plants originates beyond 251 miles from Houston, and the distance from Houston to Sulphur Springs (the County Seat of Hopkins County) is 253 miles.

Zone 8 plants also obtain substantial volumes of milk from the heavy producing areas of Comanche and Erath Counties that are located southwest of Dallas. Stephenville, the County Seat of Erath County, is 267 miles from Houston.

Plants in Zone 9 also reach to the heavy producing areas of north Texas for substantial supplies of milk, primarily the counties of Comanche and Erath. San Antonio is 205 miles from Stephenville and about 40 percent of the milk shipments to Zone 9 plants originate between 201 and 250 miles from San Antonio. The procurement area for Zone 9 does not extend to any significant degree to the Hopkins County area, which is about 335 miles from San Antonio as measured to Sulphur Springs.

The purpose of the current order pricing structure of increasing prices from north to south is to provide assurance that milk will move to the deficit southern consumption centers. From the previous description of the relationships of the locations of supplies of and demand for fluid milk, it is obvious that such a pricing structure continues to be necessary under current marketing conditions. However, it appears that a consideration of whether the current order location adjustments are continuing to provide the necessary price incentives for milk movements is critical only with respect to Zones 8 and 9. These zones contain major consumption centers, are extremely deficit in terms of local production, and must obtain increasing supplies of milk from distant alternative sources.

In this regard, no significant testimony or evidence was presented with respect to the need to adjust prices because of disorderly marketing conditions in zones other than Zones 1, 8, and 9. It appears that the price changes that would result from proponents' proposals were an attempt to maintain an alignment of prices among zones, with some adjustments for individual zone supply/demand relationships, on the basis of a higher transportation rate. For the most part, however, proponents' testimony concerning disorderly marketing conditions resulting from a current inadequacy of location adjustments and the need to increase southern prices centered primarily on the price relationships among Zones 1, 8, and 9, and in particular with the current price level in Zone 8.

For the previous reasons, it does not appear necessary at this time to undertake a total restructuring of the price relationships among all pricing zones in the marketing area. However, consideration of the current prices applicable in Zones 8 and 9 and their relationship to each othe and to the current Zone 1 prices is necessary.

It is obvious that the current alignment of prices among Zones 1, 8, and 9 at the rate of 1.5 cents per hundredweight per 10 miles does not reflect the current cost of hauling milk. No testimony or evidence presented by any interested party disputed this fact, although opponents contend that there is no credible evidence from which a hauling cost reflecting average, marketwide hauling experience can be

derived. Further, they contend that no marketing problems exist even though hauling costs are not covered by current location adjustments since milk is currently moving long distances and all plants receive sufficient supplies of milk. This latter argument is superficial in that it totally disregards the inequities that are occuring among producers and handlers and the potential for such inequities to disrupt the movement of substantial quantities of milk to expanding consumption centers in South Texas, particularly Houston. Also, there is sufficient evidence in the record from which a conservative estimate of hauling costs can be incorporated in a location adjustment that will provide a greater measure of equity among market participants and a greater incentive for southern shipments of milk.

Additional transportation costs that are not reflected in order location adjustments must be either paid for by the handler receiving the milk or subsidized through a net reduction in returns to producers who supply such plants. Either option can result in inequities among market participants if there is a disproportionate application of the additional costs. The problem is, of course, a matter of degree, which depends on how much milk must be moved, the distance involved, and the transportation rate.

AMPI is the largest supplier of milk to handlers located throughout the marketing area and represents about two-thirds of the producers who supply the market. AMPI also markets the milk of Mid-Am producers through arrangements between the two cooperatives. AMPI establishes prices to buying handlers in excess of Federal order minimum Class I prices. These over-order prices cover a variety of services provided to handlers, including the cost of hauling milk from where it is produced to where it is needed for fluid use.

Record evidence established that the over-order charges varied over time and were also subject to various competitive credits from such prices and that hauling surcharges of varying amounts were also established. For most of the 1981 through 1982 period, the end result of the announced prices was that Class I prices in Houston were about 72 cents per hundredweight higher than in Dallas. This would indicate that such over-order prices represented differences in the location value of milk on the basis of a more current transportation rate. Since May of 1983, however, the over-order price structure was modified so that the difference in prices between Dallas and Houston reflected only the 36-cent price difference that applies under the order.

Since the order location adjustment does not cover the cost of hauling milk to Houston, AMPI producers must be subsidizing the additional transportation cost incurred in supplying Houston handlers under the pricing structure established in May 1983. The subsidization of transportation costs results in a lower blend price to AMPI producers relative to those producers who do not incur the additional transportation costs that result from supplying distantly located deficit southern zones of the marketing area. Substantial quantities of milk are shipped to Zones 8 and 9 from the heavy milk producing regions located northeast and southwest of Dallas. Record evidence established that there are a large number of nonmember producers located in the heavy northeast production area but that there is no nonmember milk shipped from there to Houston. Consequently, it is AMPI producers who bear the burden of shipping milk to Houston and as a result there are inequities among producers in the heavy northeast milk producing countries.

There is no detailed information in the record that establishes precisely the extent to which AMPI pays prices are less than prices to other producers who supply the Texas market. However, testimony does indicate that AMPI pay prices have been slightly below the order blend price while pay prices to nonmember producers who supply Zone 1 plants have been in excess of the order blend price. However, even if additional information on AMPI pay prices were included in the record, it would not be known to what extent the Texas market AMPI pay prices are affected by the total marketing operations of AMPI, which extends well beyond the Texas market and includes all of the Federal order markets covered by AMPI's Southern Region. The AMPI Southern Region includes all of the area from Texas to Kansas and New Mexico to Alabama. However, this information is not necessary. Since substantial quantities of AMPI milk are shipped to deficit southern areas and additional transportation costs are not recovered under the current pricing structure, returns to AMPI logically must be reduced relative to other producers who do not incur the additional transportation costs that are not reflected in the order.

As previously stated, prior to May 1983, the difference in market Class I prices at Dallas and Houston reflects the higher cost of the service involved in supplying Houston area plants. The net differences in over-order Class I prices are computed by subtracting the order Class I price from the AMPI announced Class I price, and then adjusted by the competitive credit applicable to the Dallas and Houston areas. For all of 1981 and the first two months of 1982, the Houston area competitive credit (or discount) was 26 cents per hundredweight less than the Dallas area credit. During most of the remaining months in 1982, the difference in the credits was 16 cents per hundredweight. Application of the lower credit for Houston area handlers resulted in a higher Houston Class I price relative to Dallas. However, during this entire period, the Houston area credit was applied by AMPI to receipts at Schepps' Dallas plant on that portion of Schepps' sales in Houston (about one-half of Schepps' total sales of packaged fluid milk products). This meant that Schepps was paying a higher price for milk sold in Houston than for milk sold in Dallas, and that such higher price approached the price paid by Houston handlers even though the milk was being received at Dallas from nearby production areas. To the extent that the AMPI price differences between Dallas and Houston reflect the additional cost of hauling milk, the application of the Houston area credit to receipts at Dallas represents a charge for a service that Schepps did not receive, namely, the transportation of milk to Houston. Consequently, costs among handlers that resulted from the application of over-order prices to recover hauling costs not reflected under the order were not uniform or related to specific services.

For 1981 through April 1983, AMPI's announced prices were adjusted to include a hauling surcharge for the delivery of milk to certain areas. From January 1981 through February 1982, the hauling surcharge to Houston was 10 cents per hundredweight higher than for delivery to Dallas. In March 1982, the difference in the hauling surcharge was increased to 20 cents and beginning in May 1983, the difference in the hauling surcharge between Dallas and Houston was eliminated. The most recent changes in the over-order price structure were implemented in view of the impact of the overall supply/demand balance in the market that was resulting in a loss of fluid markets by AMPI.

The previous and current over-order price structure has been affected by competitive conditions that are influenced by market supply/demand relationships. There is every indication that at times there has been a lack of

uniformity in costs to handlers and returns to producers that is not representative of orderly marketing conditions. The inequities among handlers and producers, to a large degree, are a result of the failure of the order pricing structure to reflect a sufficient amount of the current cost of hauling milk. The magnitude of the deficiency is amplified because of the substantial distances involved and the amounts of milk that must be moved to the major consumption centers in the South. Consequently, a greater transportation allowance needs to be considered under the order to attract milk to the deficit Zones 8 and 9 from the nearest alternative sources of supply that are available to meet fluid milk needs.

Exceptions filed on behalf of handlers who operate distributing plants in Zone 8 (Borden, Inc.; Carnation Co.; Safeway Stores, Inc.; and The Southland Corporation) contend that the previous findings concerning the existence of inequities among producers and handlers are not supported by substantial evidence. Exceptors contend that there is no evidence to establish that a difference in pay prices to producers is a result of AMPI subsidizing hauling costs to Houston and, further, that the Secretary has no authority to bring about uniformity in actual pay prices to producers. They contend that differences in pay prices do not mean that there are disorderly marketing conditions and that the Secretary's power to address disorderly marketing conditions is limited to those conditions which cause unreasonable changes in supplies and prices. They conclude that there are no disorderly marketing conditions since Houston handlers are obtaining an adequate supply of milk and that there is no indication that there will be any future problems in obtaining milk supplies. Exceptors further state that at the time of the hearing, they were paying 87 cents per hundredweight in excess of the order Class I price, 19 cents of which is a hauling surcharge. Consequently, they contend, that with the 19-cent hauling surcharge and the 36-cent location adjustment for Zone 8, they were paying for the cost of hauling milk to Houston. Furthermore, they contend that since no AMPI witness was available to explain the purpose for which premium dollars were spent, there is no assurance that the additional 68-cent premium above the hauling surcharge was not available to cover transportation costs. With respect to the issue of whether costs to handlers are uniform, exceptors contend that the recommended decision attempts to establish uniform costs among handlers in all areas in which they seek to compete for fluid milk sales. Exceptors state that the Act requires that handlers' costs be the same as all other handlers in the same location and that there was no contention that Schepps paid any more or less for milk than competitor plants located in Dallas.

Exceptors' views overlook basic market facts and evidence contained in the record and logical conclusions that are set forth in this decision, which establish the need to increase the location adjustment in Zone 8. The Houston area has experienced a significant increase in population and an increasing proportion of milk supplies from distant areas must be obtained to meet fluid milk needs. At the same time, transportation costs have increased to the point that the current Zone 8 location adjustment no longer represents a sufficient degree of the added service or cost involved in supplying milk to plants in such area. Although the record indicates that Zone 8 plants have obtained sufficient supplies of milk it also establishes that, because of higher transportation costs and various changes in the over-order pricing structure, inequities exist both among producers and handlers. These inequities are representative of disorderly and unstable marketing conditions that threaten the continued availability of milk supplies for Zone 8 plants and, therefore, must be addressed by the Secretary under the purposes and requirements of the Act. Certainly it is appropriate for the Secretary, under the authority of the Act, to review and rectify those marketing conditions (such as nonuniform returns to producers and costs to handlers) that result from a failure of the order to reflect an appropriate location value of milk.

The record establishes the existence of various over-order prices as well as changes in the over-order pricing structure over time. Although exceptors contend that they paid the full hauling cost, and thus there could be no producer subsidy, the record establishes that the same premium, including that 19-cent surcharge, applied to all handlers. Therefore, the net difference in the charge between Dallas-area and Houston-area plants was 36 cents per hundredweight. Also, AMPI testified that virtually all of the over-order charge was absorbed in the cost of moving milk from where it is produced to where it is needed. Since 36 cents does not cover the cost, logically, AMPI producers must be subsidizing the cost of hauling milk to Zone 8 plants and their returns are therefore lower than the returns to other producers located in the heavy northeast production area who do not incur the cost of shipping milk to Houston.

Prior to the revision of the pricing structure in May 1983, a greater proportion of the hauling cost is evident in the difference in prices between Zones 1 and 8. However, as previously stated, the higher Houston price was applied to Schepps in Zone 1. Consequently, contrary to exceptors' contentions, prices were not uniform among handlers as at least two different prices applied at the same location. Also, it is obvious that Schepps paid a higher price than competitors in Dallas.

Contrary to exceptors' contentions, the change in the location adjustment provided herein is not intended in any way to equate costs among all handlers on the basis of the areas in which they seek to compete. The price change is based on the nedd to reflect a greater proportion of the current hauling costs in the current order location adjustments to assure that sufficient supplies of milk will be made available to Houston—area plants and to lessen the inequities that have and are continuing to occur among handlers in Dallas and producers in northeast Texas because of costs associated with supplying Houston handlers. The location adjustment increase applies uniformly to all handlers at the same locations.

There is no broad-based statistical evidence in the record from which any precise transportation rate can be calculated that would represent a marketwide average variable cost of hauling milk. However, evidence presented through a number of witness indicated various costs or charges that are applicable in the Texas and surrounding marketing areas for hauling bulk milk. The hauling charges ranged from $1.60 to $1.80 per loaded mile. The lower charge, which converts to a rate of 3.2 to 3.5 cents per hundredweight per 10 miles, depending on the weight of the load, is AMPI's freight rate quotation for hauling services provided to buyers and such charge was also attributed to an independment hauler. In addition, Mid-Am indicated that it pays $1.64 per loaded mile for transporting milk on regular long distance hauls. Although this evidence does not establish a precise average or standard market price for milk transportation services, it does show that the cost of hauling bulk raw milk is significantly greater than 1.5 cents per hundredweight per 10 miles.

In view of the lack of centainty over the extent to which hauling costs have increased, a conservative estimate of hauling costs should be used to consider

the location adjustment change that is necessary at this time. If location adjustments were based on a rate in excess of costs, significant economic incentive could be created to move milk to obtain hauling profits. A conservative hauling rate, which falls short of covering actual costs, would maintain incentives to implement hauling efficiencies.

In view of the above, the hauling rate should be slightly below the lowest rate identified on the record as being representative of the cost of hauling milk in the Texas marketing area. It is concluded that a rate of 3 cents per hundredweight per 10 miles should be used to consider the location adjustments that are appropriate for Zone 8 and 9 of the marketing area. Such rate should encourage the continued implementation of hauling efficiencies and at the same time cover a significantly greater proportion of current hauling costs than are currently reflected under the order.

Exceptions filed on behalf of Schepps and Houston handlers contend that the 3-cents rate does not reflect current hauling costs. Schepps contends that such rate is insufficient to cover current costs in that hauling charges identified in the record were in excess of 3.5 cents per hundredweight per 10 miles. Houston handlers, although acknowledging that 1.5 cents does not cover current costs, contend that there is no evidence to support the conclusion that the 3-cent rate represents a conservative estimate of current costs.

The record identifies a number of current charges that prevail in the marketing area for hauling bulk milk as previously discussed. As previously stated, the record does not establish a precise, average, marketwide rate of transportation. It does, however, contain sufficient information to establish a conservative rate. The arguments presented in exceptions do not provide a basis for altering the conclusion that a lower rate than those in evidence would provide incentive for transportation efficiencies while also covering a significantly greater proportion of current costs than are now reflected under the order.

As previously stated, the current relationship of prices among Zones 1, 8 and 9 is based on the distance between Dallas and Houston and Dallas and San Antonio. Application of the 1.5-cent rate to the current distance of 237 miles between Dallas and Houston results in a 36-cent higher price at Houston. Also, on the same basis, the 270 miles between Dallas and San Antonio results in approximately a 42-cent higher price at San Antonio relative to Dallas. The merger decision concluded that the resulting price relationship between Houston and San Antonio was appropriate because San Antonio was further from the North Texas supply area than Houston.

Continuing to align prices from Dallas but at the higher transportation rate of 3 cents per hundredweight would result in location adjustments of 72 cents in Zone 8 and 81 cents in Zone 9. However, in addition to using a higher transportation rate, a refinement of the alignment of prices is necessary to better reflect the different distances that milk must move from common supply areas to alternative outlets, and because of an increase in production in certain areas that are advantageously located to supply the fluid milk needs in Zone 9.

Plants in Zone 9 receive substantial quantities of milk from the heavy producing Comanche-Erath County area that is located southwest of the Dallas/Ft. Worth Area. This area is 205 miles from San Antonio (as measured to Stephenville, the County Seat of Erath County). This two-county area also furnishes substantial supplies of milk to Zone 8 handlers but is 267 miles from Houston. On this basis, the location adjustment should be lower for Zone 9 than for Zone 8, which is contrary to the current alignment of prices under the order. Producers in the Stephenville area provide a lesser service by supplying Zone 9 handlers than they provide in supplying Zone 8 handlers since they are 62 miles closer to San Antonio than Houston.

Since Zone 9 handlers have been able to secure a supply of milk from increased production that has occurred in the Comanche-Erath County area, the appropriate location adjustment for Zone 9 should be based on this supply area. However, this two-county area also supplies the major Dallas/Ft. Worth consumption area in Zone 1. The Stephenville area is 97 and 67 miles from Dallas and Ft. Worth, respectively. (Official notice is taken of the Official State Mileage Guide, Texas Statistical Research Service, Austin, Texas.) Producers supplying the Dallas/Ft. Worth area receive the Zone 1 price and must pay the farm-to-plant hauling cost. Consequently, in order to be indifferent to supplying the San Antonio area, only the additional mileage in moving milk to San Antonio must be considered in establishing the Zone 9 location adjustment. Based on the Dallas/San Antonio alternative, there is a difference of 108 miles, which equates to a location adjustment of 33 cents with the 3-cent hauling rate. Based on the Ft. Worth-San Antonio comparison, the location adjustment would be 42 cents, (205 + 67 = 138 or 14 ten-mile increments × 3¢) which is the current location adjustment for Zone 9. Consequently, even though hauling costs have increased, no price increase is necessary for Zone 9 because of the increase of production in an area that is advantageously located to supply the fluid milk needs of handlers operating plants in Zone 9.

The same procedure as previously set forth for Zone 9 should also be used to consider the appropriate location adjustment for Zone 8. To the extent that Zone 8 needs to rely on the Stephenville area for a source of supply, the location adjustment for Zone 8 would need to result in a price that would make Stephenville area producers indifferent to supplying San Antonio or Houston. As such, the price at Houston would have to cover the additional distance that milk must be hauled to supply Houston rather than San Antonio. In this case, the additional distance is 62 miles, which translates to a 21-cent higher price at Houston than at San Antonio. In other words, based on price adjustments from Dallas, the Zone 8 location adjustment would be 63 cents.

However, in establishing location adjustments, incentives should be created to attract milk from the nearest alternative supply areas that are available to supply fluid milk needs. In this case, Houston is nearer to the heavy supply areas that are located northeast of Dallas (the Hopkins County area) than to the Stephenville area. Houston is 253 miles from Sulphur Springs (the County Seat of Hopkins County), about one ten-mile zone closer than Houston is from Stephenville. Although a greater proportion of the supplies for Houston plants originates in the Stephenville area than in the Sulphur Springs area, the Zone 8 location adjustment should be based on the price incentive necessary to attract milk supplies from the nearer Sulphur Springs area.

As was the case with the Stephenville area, the Sulphur Springs area supplies a substantial proportion of the fluid milk needs of the large Dallas/Ft. Worth consumption center. In order to establish an incentive for milk to move to Houston, the Zone 8 location adjustment must reflect the additional miles involved in hauling milk to Houston rather than Dallas. In this case, Houston is 174 miles farther from Sulphur Springs than is Dallas. Thus, the 18 ten-mile zones at 3 cents per ten miles require a location adjustment of 54 cents in Zone 8, an increase of 18 cents over the current location adjustment.

The modification to the Zone 8 location adjustment is the only price

change that is necessary at this time. The higher price will cover a greater proportion of current transportation costs, establish a greater degree of equity among producers and handlers, provide a greater assurance that supplies of milk will be made available to supply the fluid milk needs of the largest consumption center in the marketing area and promote stable and orderly marketing conditions as required by the Act. Also, the increased location adjustment represents a refinement of the current price alignment among Zones 1, 8 and 9 by recognizing the nearest alternative different sources of supply for Zones 8 and 9 and the proximity of such supply areas to Zone 1 consumption centers.

Exceptions filed on behalf of Schepps and Houston handlers contend that the recognition of actual and potential supply areas in considering the price adjustments necessary for Zones 8 and 9 represents a significant departure from the historical practice of basing location adjustments on mileage from Dallas. Proponent contends that the use of incremental mileage (for example, the difference between the mileage from Sulphur Springs to Dallas and the mileage from Sulphur Springs to Houston) results in an understatement of the price adjustment that is necessary to cover the cost of hauling milk to Houston. Opponents contend that the procedure: (1) Was not noticed for hearing; (2) was not advocated by any witness; (3) is not utilized in establishing location adjustments under any other Federal milk order; (4) ignores the realities of the way milk moves; (5) discriminates against Houston handlers since Zone 8 is the only pricing zone that has a location adjustment that recognizes distance from its source of supply; and (6) if used for other pricing zones, would destroy any concept of price alignment among competing dealers and cause extraordinary supply dislocations throughout the market.

This decision sets forth the alternative pricing proposals contained in the Notice of Hearing to revise the pricing structure under the order, including price increases of 27 to 36 cents for Zone 8 and price increases of 15 to 23 cents for Zone 9. Within the context of these proposals, and in conjunction with the record evidence concerning the current and potential supply areas for plants in Zones 8 and 9, it is appropriate to recognize the realities of the way milk moves in considering the price adjustments that are necessary. Although no witness advocated the specific methodology used to consider the price adjustment provided herein, several witnesses recognized the obvious importance of actual and potential supply areas in determining price adjustments that might be necessary in any area, as well as the difference in the cost of hauling milk from a common supply area to alternative outlets. In addition, although location adjustments have primarily been based on distances from Dallas in the past, recognition of the supply area was considered in the past in establishing the current price adjustment for Zone 9 as previously set forth in this decision. Evidence in this record establishes that the Zone 9 location adjustment should not be based on the mileage from Dallas because of the increase in milk supplies located nearer to San Antonio than the supplies of milk located northeast of Dallas. A failure to recognize this basic change, and continuing to base the Zone 9 location adjustment on the total mileage between Dallas and San Antonio, would result in establishing a Zone 9 price that is higher than necessary to attract a supply of milk from the nearer production area. Likewise, basing the Zone 8 location adjustment on the distance between Dallas and Houston would result in a need to establish a price that would be in excess of the price necessary to attract milk from supply areas that must be relied on to provide a sufficient supply of milk for fluid use. Consequently, the rationale set forth in this decision for the price increase in Zone 8, as well as the denial of any price increase in Zone 9, recognizes the realities of way bulk milk moves in the market and is sound in its economic reasoning. Also, the decision is consistent with the application and purposes of location adjustments throughout the Federal milk order system; namely, to reflect the cost of transporting milk from production areas to consuming centers.

Houston handlers also contend that recognition of the actual supply area in establishing zone prices provides the opportunity for cooperative associations to manipulate order prices by altering the source of supply for particular consumption centers. In this regard, potential alternative sources of supply that are located nearer to consumption centers are also considered in establishing location adjustments. This decision establishes the location adjustment for Zone 8 on the basis of the nearer Sulphur Springs supply area rather than on the supply area southwest of Dallas that currently furnishes a greater proportion of the milk supply for Zone 8 handlers.

Opponents' contention that a misalignment of prices would result if the approach used to consider the appropriate location adjustments for Zones 8 and 9 were also used for all other zones is a moot issue since no other price adjustments are provided. A price increase for Zone 8 is necessary to establish orderly marketing conditions by reflecting a greater proportion of the cost of hauling milk to Zone 8 plants. Also, a refinement of the alignment of prices among Zones 1, 8 and 9 is necessay because of the increase in milk production in counties southwest of Dallas that is available to plants in Zones 1, 8 and 9. Furthermore, the Zone 8 price increase is reviewed in light of the current prices applicable in other zones to determine if a significant misalignment of prices would result that would disrupt or hinder the ability of plants in the various zones to attract sufficient supplies of milk. As hereinafter set forth, it is concluded that the Zone 8 price increase would not result in a misalignment of prices among plants in the various pricing zones.

The price increase in Zone 8 that improves the price alignment among Zones 1, 8 and 9, does not significantly disrupt the price alignment among Zone 8 and other zones of the marketing area. Distributing plants located at Lufkin and Bryan (which are in Zones 4 and 5, respectively) are 119 and 95 miles from Houston. Under the current order price structure, the Houston price is 16 cents higher than the price at Bryan and 18 cents higher than the price at Lufkin. With the price increase at Houston, the Zone 8 price will be 34 cents higher than the price at Byan and 36 cents higher than the price at Lufkin.

Based on the distance from Bryan to Houston, and the 3-cent hauling rate, a precise alignment of prices between Bryan and Houston would be accomplished with a 50-cent location adjustment at Houston, rather than the 54-cent adjustment adopted herein. The additional 4 cents that is provided herein should help attract milk from the Zone 5 area, yet it would not be so great as to jeopardize the maintenance of a supply of milk for the one distributing plant in Zone 5. As previously stated, there is a substantial amount of production in Zone 5 that is in excess of the bulk fluid milk receipts at the distributing plant in such Zone. Also, fluid milk needs are relatively small as the total population in Zone 5 represents only about 1.7 percent of total marketing area population.

Based on the distance between Lufkin and Houston and the 3-cent hauling rate, the 36-cent higher price at Houston

relative to Lufkin represents a precise alignment of prices. Beaumont, which is located in Zone 8 northeast of Houston, is 108 miles from Lufkin. Consequently, the price at Beaumont will be only 3 cents per hundredweight higher than the price in Lufkin plus the implied transportation cost of 33 cents between Lufkin and Beaumont.

The price increase in Zone 8, although designed to provide the incentive for milk supplies to be procured from the nearest heavy producing area around Sulphur Springs, results in a total expansion of the theoretical procurement area for Zone 8 plants. The higher price shifts the procurement area to the west and northwest towards the Zone 9 procurement area. It has already been noted that both zones procure milk supplies from the Comanche-Erath County area even though the current Zone 8 price is not currently competitive in such area relative to the Zone 9 price. Even though the proposed Zone 8 price moves the potential supply area for Houston towards the San Antonio supply area, the price would not be so high as to jeopardize the supply of milk for Zone 9 plants that are advantageously located with respect to the heavy producing Comanche-Erath County area.

The Zone 8 price incease also shifts its theoretical procurement area south towards Corpus Christi by about 60 miles. Such shift does not extend into the current primary procurement areas of plants located in Zones 11 and 12 to any signficant degree. Most of the milk supplies for plants in these zones are procured from areas in competition with Zone 9 plants and the price relationships in Zones 9, 11 and 12 are not altered in this decision.

Additional arguments in exceptions filed on behalf of Houston handlers contend that the Zone 8 price increase discriminates against such handlers who now will have a disadvantage in competing with handlers in Zone 9 to the west and handlers in Zone 4 to the east. Exceptors contend that if hauling costs have increased, they have increased for everyone and that there is no basis for establishing a location adjustment reflecting a 3-cent per hundredweight hauling rate for Zone 8 plants while location adjustments for other zones reflect a 1.5-cent hauling rate.

As previously stated, the purposes of location adjustments is to provide incentives for the delivery of supplies of bulk milk to various plant locations. The evidence in the record establishes that the cost of hauling milk to Houston is in excess of the transportation allowance provided under the order and that inequities among producers and handlers have resulted because of an inability of the over-order pricing structure to effectively recover the costs or to apportion the costs equitably among handlers. As a result, handlers and producer in northern areas, at various times and to various degrees, have subsidized the costs incurred in shipping milk to the Houston area. Consequently, the major thrust of the pricing proposal and the intent of the decision is to establish a more equitable pricing structure by assessing more of the costs associated with moving the milk into Zone 8 upon those plants that receive the milk and occasion the costs.

The proposed modification to combine Zone 2 and 4 into one pricing zone that was supported by the handler who operates a plant at Lufkin should not be adopted. Proponent's claim of being at a competitive disadvantage in selling fluid milk products in competition with Zone 2 handlers is not a proper basis for the proposed action. The current 12-cent difference in the Class I price between the two zones must be maintained to facilitate the southward movement of milk. If the price in Zone 4 were reduced to the Zone 2 price, the maintenance of the milk supply for the Lufkin plant would be jeopardized because of the incentive for producers to ship milk further south to the deficit Zone 8. The need to maintain the current Zone 4 price at its current level is even greater because of the price increase adopted herein for Zone 8. On the other hand, if the Zone 2 price were increased to the Zone 4 level, such price would be too high relative to the price at Dallas and the proximity of Zone 2 to the heavy northeast Texas production area. As such, an increase in the Zone 2 price would negate the primary objective of the price increase in Zone 8 to attract a supply of milk from the northeast Texas supply area.

The handler who operates the plant in Zone 4 requested that the previous conclusions denying the proposal to combine Zones 2 and 4 into one pricing zone be reconsidered. However, no arguments were presented that would indicate a need to alter the findings and conclusions concerning the proposal.

Opponents to the pricing proposals contend that the proposals cannot be considered because the Department failed to publish an initial regulatory flexibility analysis prior to holding the hearing, which they contend is required by the Regulatory Flexibilty Act.

Section 608c(4) of the Agricultural Marketing Agreement Act of 1937, as amended, provides that the Secretary must base a marketing order on evidence contained in the record of a public hearing. Therefore, proceedings to amend Federal milk orders are governed by sections 556 and 557 of Title 5 of the United States Code. Under these "formal" rulemaking procedures, decisions can be based only on evidence contained in the record of a public hearing. As a result, it would not be appropriate for the Secretary to publish an analysis containing conclusions that describe the impact of the proposals on small businesses prior to holding a public hearing to gather evidence on which the decision must be based. Therefore, publication of an analysis or a certification that the proposed amendments, if promulgated, would not have a significant economic impact on a substantial number of small entities is not made until the recommended or final decision stage of a proceeding that provides for amendatory action.

The notice scheduling the hearing specifically invited interested parties to present evidence on the probable impact on small businesses of the hearing proposals or modifications of the proposals for the purpose of tailoring their applicability to small businesses. In opposing any of the pricing changes, opponents testified to the probable impacts of various combinations of proposed pricing changes in terms of changes in the value of producer milk and cost to handlers.

This testimony on the probable impact of the proposed pricing changes was condidered in this decision which contains a certification that the proposed amendments, which include the minimum price change for Zone 8, will not have a significant economic impact on a substantial number of small entities. The 18-cent price increase in Zone 8 will not be significant, as it represents only a 1.2 percent increase from the minimum order Class I price at Houston in effect at the time of the hearing. As discussed in this decision, the price increase is intended to cover only a part of the current cost of shipping milk long distances on a regular basis to meet increased fluid milk needs of the largest population center in the marketing area. As an intentional consequence the amendment will have only a minimum impact on returns to producers so as not to encourage additonal production or to further discourage the production of milk that is necessary to meet the fluid milk needs of the market.

Execptions filed on behalf of Houston handlers request that, in the event that their arguments in opposition to any price do not prevail, amendatory action be delayed until June 1, 1985, when existing school contracts expire.

Exceoptors contend that annual school contracts are awarded on bid basis and that an increase in the minimum order price would immediately force handlers having such contracts into loss situations.

Record evidence indicates that school contracts are awarded to bedders who prevail by fractions of a cent. However, there is no evidence in the record to indicate how handlers anticipate monthly changes in prices or how such changes may be incorporated into school contracts. In the absence of any evidence concerning potential problems with existing contracts, it cannot be concluded that it is necessary to delay implementation of the amended order.

4. *The Class II price level and location adjustments within the marketing area.* No changes should be made with respect to pricing of milk in Class II uses under the order.

Milk in Class II uses is currently priced at the same level throughout the marketing arrea, as is the case in nearly all Federal order markets. The Class II price is the price for milk in Class III (manufactured) uses plus a formula derived differential. The Texas order Class III price is the same as the minimum Class II price under 32 other Federal order markets and the classification of milk in such uses is uniform throughout most Federal order markets.

Schepps proposed that for certain pricing zones the Class II price under the Texas order be subject to the same location adjustments that were proposed to apply in those zones to Class I milk. Specifically, Schepps proposed that the Class II price for plants in Zones 6 through 12 be increased from the Class II price announced for the market. Proposed increases to the Class II price for these zones were: Zone 6, 30 cents; Zone 7, 35 cents; Zone 8, 45 cents; Zone 9, 51 cents; Zone 10, 62 cents; Zone 11, 75 cents; and Zone 12, 84 cents. For Zones 1 thorugh 5, no location adjustments were proposed so that Class II prices would be the same as the Class II price that currently applies throughout the marketing area.

The plus location adjustments were proposed for those zones that proponent considers to be deficit in terms of milk production. Proponent contends that since plants in these deficit zones must reach out to alternatives areas for sources of supply, the prices they pay for milk should cover the transportation cost incurred in moving milk to their plants regardless of whether the milk is utilized in Class I or Class II uses. Proponent contends that producers who ship milk to plants incur the transportation cost for total milk shipments, regardless of how it is used. Proponent also contends that the higher Class II prices in deficit zones would provide an incentive for milk in Class II uses to be processed at plants in surplus production zones of the market rather than in deficit supply areas. Proponent contends that this would result in overall marketing efficiences by eiminating the transportation costs for the liquids that are eliminated in the process of making Class II products.

Opponents of the pricing proposals opposed this proposal on the basis that it not only discriminates against South Texas handlers relative to handlers in North Texas, but would place South Texas handlers at a competitive disadvantage with respect to substantial competition from Class II manufacturers throughout the country. They contend that the proposal would result in marketing inefficiencies in that South Texas handlers could not afford to utilize surplus cream in Class II products that is associated with the standardization of producer milk use in fluid milk products. They contend that the incentives for handlers to attemept to receive milk uniformly on a seven-day basis would be reduced because of the inability to utilize those receipts in Class II uses. Opponents also contend that the proposal would provide an economic incentive for South Texas handers to use manufactured milk ingredients (such as butter and nonfat dry milk) to make Class II products rather than fluid cream. They contend that this would result in a lowering of returns to producers since the manufactured ingredients would be priced at the Class III (manufacturing) level rather than at the Class II price.

Increasing Class II price through location adjustments would not provide any incentive for milk to be shipped from the relatively surplus areas of the Texas market to those more deficit areas of the market on a direct farm-to-plant shipped basis. The blend price payable to producers is adjusted by the same location adjustments that are applicable to milk in Class I uses. For example, producers who supply plants in Zone 8 would receive a blend price that is 54 cents per hundredweight higher than the blend price payable to producers who supply plants in Zone 1, as adopted under the previous issue. Consequently, the application of Class II location adjustments, all other things being equal, would result in an increase in the total value of milk pooled under the order and, consequently, increase the blend price level to all producers supplying the market. There is no indication that producer returns need be increased to provide an additional incentive to producers to increase production to satisfy the Class I and Class II needs of the market.

More importantly, however, the proposed increase in the Class II price level through location adjustments ignores the need to maintain uniformity in both the classification and pricing of milk in other than fluid milk uses in view of the competitive situation among handlers and producers over a much broader area than occurs with the sale of fluid milk products. The uniform pricing and classification provisions for 39 Federal order markets became effective on August 1, 1974, and official notice is taken of two decisions issued by the Assistant Secretary on February 19, 1974, concerning such provisions under 32 orders (Georgia, et. al., 39 FR 8452, 8712, 9012) and under seven orders (Chicago Regional, et. al., 39 FR 8202). There "uniform classification" proceedings involved all of the then existing Federal order markets that were subsequently merged to form the Texas marketing area, except the South Texas marketing area. However, the South Texas order was also amended effective August 1, 1974, after the issuance of a separate decision based on evidence presented at the hearing to merge the marketing areas of six Texas orders. Consequently, official notice is also taken of the Deputy Assistant Secretary's decision of April 24, 1974 (39 FR 14950). The decision concluded that it was necessary to implement the uniform classification and pricing provisions under the other Texas orders and that procedures to merge the marketing areas could not be completed by the August 1 effective date. The decision concluded that an interim implemetation of the uniform classification and pricing provisions in the South Texas order was necessary because of the substantial competition between South Texas handlers and handlers regulated under the other Texas orders.

The marketing of Class II products is conducted on a wider regional basis, relative to the marketing of fluid milk products, as was recognized in the uniform classification and pricing decisions, and is illustrated by the examples of the locations of plants that distribute such products in the Texas marketing area. Consequently, the competitive relationships among handlers and producers extend far beyond the Texas marketing area. The record of this proceeding does not demonstrate that the minimum order value of milk in Class II uses in certain zones of the Texas marketing area should be significantly different than the

value of Class II milk in other Federal order markets. If there were a need to consider a higher value of milk in such uses, the competitive relationship among handlers and producers over a broad area is necessarily involved and cannot be appropriately addressed in an amendatory proceeding involving one market.

Exceptions filed on behalf of Schepps contend that the major issue to be decided with respect to pricing milk in Class II uses is whether producers or handlers should bear the cost of shipping milk to deficit areas for Class II uses. Such contention does not provide a basis for revising the pricing of milk in Class II uses under the Texas order for reasons previously set forth.

5. *Location adjustments applicable for milk delivered to plants located outside the marketing area.* No change should located outside the marketing area.

The order currently provides for adjusting the Class I and producer prices for milk received at plants that are not located in the marketing area. The provisions were established when the present Texas marketing area became regulated under one order and are necessary to price Texas order producer milk that may be diverted to distantly located plants for manufacturing, as well as to establish prices at distant plants that may become associated with the Texas market. The Texas order Class I and producer prices at plants outside the marketing area but in Texas and most of Oklahoma are adjusted for location on a zone pricing basis but are related to Class I prices under Federal orders applicable in those areas. At most other out-of-area plants, a minus location adjustment applies at the rate of 1.5 cents per hundredweight for each 10 miles that such plant is located from Dallas. No location adjustments apply at plants in Louisiana, New Mexico, or El Paso County, Texas.

Schepps proposed that the location adjustment for plants located in the States of Oklahoma, Arizona, Colorado, Kansas, Missouri, Arkansas and Louisiana be computed on the basis of the difference between the Texas order Class I price and the Federal order Class I prices applicable in such States. For any specific plant in such States, the location adjustment would be the difference between the current Zone 1 Class I price and the Class I price applicable at such plant if it had been regulated under the Federal order for the marketing area nearest to such plant as measured from the plant to the zero pricing point in the orders applicable in such a State. For locations outside the above-listed States, the location adjustment would be the difference between the announced Texas order Class I price (the price that applies in Zones 3, 4 and 5 under Schepps' in-area pricing proposal) and the higher of the Class I prices at Dallas, Abilene and San Antonio reduced by 3.6 cents per hundredweight per 10 miles that the plant is located from each of these cities.

Proponent contends that the out-of-area location adjustment proposal is necessary to maintain price alignment betweem the Texas order and other Federal order markets, even though the differentials between markets do not reflect the cost of hauling milk. For more distant areas than those in the listed States, the location adjustment rate advocated by Schepps. Proponent contents that use of such rate would establish an economic incentive for milk to be shipped to the Texas market when needed.

The proposal was opposed by Mid-Am because it would result in a change in pricing at the cooperative's supply plant in Aurora, Missouri. Mid-Am contends that the proposal would increase the current minus 60-cent location adjustment at its plant to as must as minus 99 cents per hunderweight. Mid-Am contends that such price reduction would jeopardize the maintenance of a reserve supply of milk for the Texas market. Mid-Am points out that milk is currently shipped from its plant to Texas pool distributing plants and that, based on projected population increases for the State of Texas, there will be an increasing need for the Texas market to rely on areas such as southwest Missouri for supplemental supplies of milk. Mid-Am contends that the present method of calculating location adjustments for the Aurora plant has not resulted in any disorderly marketing conditions.

In its brief, AMPI opposed the out-of-area location adjustment proposal because of pricing disparities that would result at locations in New Mexico and areas in the State of Texas that are outside the Texas marketing area. For example, AMPI pointed out that the proposal would result in a price at El Paso, Texas, that would be about $1.00 per hunderweight lower than the price at that location under the Rio Grande Valley order.

The major thrust of the out-of-area location adjustment proposal was to maintain the relationship of prices among the Texas and other orders that currently exists. Apparently, such proposal was considered necessary to conform with the overall intra-market pricing changes that were proposed that included a 10-cent reduction in the current Zone 1 price and the southern movement of the base zone to Zones 3, 4 and 5. However, since these changes were denied as indicated under issue number 3, conforming changes are not necessary to maintain the current price relationship and, thus, the issue is moot.

It must also be pointed out that the mechanics of the proposal were deficient in maintaining current price relationships as evidenced by the change in location adjustments that would occur at various locations. Proponent offered no evidence to establish any need for changes in location adjustments in these out-of-area locations. It should also be pointed out that even if the proposal had resulted in maintaining the current price relationship, the location adjustments could be subsequently modified on the basis of amendatory proceedings for the other markets rather than for the Texas market. Although there is a need to maintain a coordination among order prices, it would be preferable that the Texas order prices at all locations be made on the basis of a hearing for the Texas market.

6. *Classification of milk contaminated with antibiotics.* A proposal to permit the pooling at certain contaminated milk without such milk being either received at or diverted from pool plants should not be adopted.

The Southland Corporation proposed that the "Producer milk" and "Classes of utilization" provisions of the order be amended to permit the pooling of milk that is rejected by a handler because of antibiotic contamination. Under the proposal, rejected, contaminated, tank truck loads of milk would be treated as producer milk (except for the milk of the producer'(s) responsible for the antibiotics) and would be classified and priced under the order, provided that the market administrator is notified of the rejection and given the opportunity to verify the antibiotics. Such milk could be disposed of by the handler for animal feed or be dumped and thus be subject to Class III utilization and pricing to the handler. Producers, except the producer(s) responsible for the contamination problem, would receive the order blend price.

The Southland Corporation operates five distributing plants under the order, four of which are either totally or partially supplied by nonmember producers. Southland's witness testified that the purpose of the proposal is to alleviate to some extent problems incurred in handling milk from nonmember producers that is contaminated with antibiotics. Such milk cannot be disposed of for human

consumption, and Southland takers precautions to prevent the receipt of such milk in its fluid milk plants by performing tests to detect for the presence of antibiotics on each tank truck before unloading the milk. This initial test takes 15 to 30 minutes to complete. If the test is positive, the tanker is held while a second test is positive, the load is rejected.

Southland testified that prior to September 1982, there was an outlet for manufacturing animal feed from such rejected milk. Disposition to the manufacturing plant qualified as a diversion, and, thus, Southland was able to pool the milk of the producers who did not cause the problem. Southland stated that its returns for such milk were small, but that the company's total cost of the milk was the difference between its returns from the sale of the milk and the Class III price applicable to Southland for such milk under the order. Producers who did not cause the problem, but whose milk was nevertheless contaminated by being commingled with other milk in the tank truck, received the order blend price.

Southland further testified that the outlet for processing such milk into animal feed discontinued receiving the milk in September 1982, and that there is no other outlet available that provides the opportunity for the contaminated milk to be pooled on a diverted basis. Furthermore, according to Southland, the only feasible outlet that the company has found provides no return and, thus, Southland's cost for the milk of the producers who did not cause the problem is the order blend price. Although the order does not require payment for milk that is not received by a handler, Southland feels compelled to return such price to producers since the milk is contaminated through no fault of their own and to preserve such producers as a source of supply.

AMPI opposed the proposal on the basis that the pooling provisions of the order should not be relaxed in any way to permit milk to share in the pool if it is not physically received at a pool plant or diverted to a nonpool plant. Furthermore, AMPI testified that since such milk must be dumped or disposed of for other than human consumption according to Texas Health Department regulations, it should not be pooled under the order. AMPI further opposed the proposals on the basis that the cost of administering the order would be increased because the market administrator would have to physically verify the rejection, the reason for the rejection, the disposition of the milk and also verify the identify of the producer who caused the problem whose milk would not be pooled. AMPI further testified that the proposal would place the market administrator in the position of performing the duties of a "duly constituted regulatory agency" for determining quality standards, and that the performance of such duties goes beyond the role of Federal milk orders. AMPI also testified that adoption of the proposal could set a precedent for other proposals to pool milk (that is neither received nor diverted) that a handler claims is not suitable for processing for any number of reasons pertaining to quality and flavor.

AMPI further contended that the proposal does not address the solution to the problem. AMPI suggested that all segments of the industry should work together to obtain better enforcement of existing health regulations by regulatory agencies. Also, AMPI contended that adoption of the proposal would weaken the industry incentive to develop programs to avoid the incidence of antibiotic contamination.

Record evidence does not indicate that the incidence of antibiotic contamination is any significant problem in terms of the overall milk supply. Industry efforts outside the order provisions, as portrayed by the activities of Southland and AMPI, are geared to prevent the delivery or receipt of any contaminated milk. There is every indication that producers and handlers have significant incentives to continue to provide high quality milk and dairy products.

The proposal should not be adopted because it would result in an extension of the Federal order program to establishing and enforcing quality standards for milk. The establishment and enforcement of such standards are the function of other jurisdictions that have the responsibility for assuring the maintenance of minimum quality standards relating to public health considerations. The Texas order refers to the applicable health authorities in general terms as "a duly constituted regulatory authority" to encompass the full range of agencies that may have the authority to establish the state or local health standards, including various health departments and state departments of agriculture. The order refers to these agencies in the various pool plant and producer milk definitions. In order to market milk or dairy products under the Texas order, milk plants and dairy farmers must be approved by a duly constituted regulatory agency for the production, disposition, processing or packaging of Grade A milk. Once approval is obtained from the appropriate agencies, the marketing of such milk and dairy products is regulated under the terms and provisions of the order. The order thus regulates only the marketing activities while other agencies have the responsibility for developing and enforcing the standards to promote the public health.

If a handler were to reject milk under the proposal, the market administrator would have no specific standards within the order to determine whether such milk should or should not be rejected. Presumably, in the absence of such standards, the market administrator would have to rely upon standards developed by other regulatory agencies that are responsible for the public health. This would amount to placing the market administrator in the position of enforcing health laws established by other agencies and would result in an inappropriate expansion of the scope of the marketing order.

7. *Shipping percentages applicable to pool supply plants.* No change should be made to the current shipping standards for pooling supply plants under the order.

The order currently provides for the pooling of two categories of supply plants if certain minimum performance standards are met in supplying the fluid milk needs of distributing plants. The pooling standard for one category of supply plants is based on shipments to pool distributing plants while the pooling standard for the other category of supply plants recognizes shipments to distributing plants that are regulated under other orders. The pooling standards for pooling both categories of supply plants, however, are similar in that 50 percent or more of such plants' Grade A receipts must be shipped to distributing plants during the month in order to attain pool plant status. During the months of August and December, however, the shipping standard is 15 percent of receipts if the supply plant was pooled during the immediately preceding month. Also, any supply plant that is pooled during each of the immediately preceding months of September through January retains pool plant status during the months of February through July without making qualifying shipments, unless the plant operator requests nonpool status.

Mid-Am proposed that the order be amended to provide the Director of the Dairy Division with the authority to temporarily increase or decrease the order shipping standards by up to 10 percentage points if the Director finds that such revision is needed to either obtain needed shipments or to prevent

uneconomic shipments. Before making such a finding, the Director would investigate the need for the revision, either on his own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director would issue a notice stating that a temporary revision of the shipping standard is being considered and inviting views of interested persons concerning the proposed revision. After evaluating such views, the Director would then decide whether a temporary revision is warranted.

Mid-Am's witness pointed out that under current procedures the order shipping standards can be revised only through a time-consuming amendatory proceeding or by a suspension action. In addition, changes accomplished through suspension are limited because of procedural requirements to relaxing rather than increasing the shipping standards. Thus, Mid-Am contends that the inclusion of a provision to adjust the supply plant shipping standards on a temporary basis would enhance the ability of the order to deal in a timely manner with short-run changes in supply/demand conditions. Mid-Am further testified that, for the purposes of its proposal, a temporary period is defined as one or more months during the qualifying period when supply plants must make shipments to distributing plants to obtain pool plant status.

The basic thrust of Mid-Am's proposal is to provide for additional flexibility under the order to deal with short-run changes in supply/demand conditions. Also, Mid-Am contends that a temporary revision of the shipping standards could be accomplished more rapidly than a suspension action.

The Mid-Am witness testified that its supply plant located at Aurora, Missouri, which has been pooled under the order since August 1982, would be the only plant affected by the proposal. The witness stated that if the proposal had been in effect in August of 1983, Mid-Am would have requested a reduction of 10 percentage points in the shipping standards. The witness contended that shipments were made from the supply plant to pool distributing plants during that month solely for the purpose of meeting the pooling standards since the milk was not needed by distributing plants. The witness stated that the cooperative was unaware that it could not meet the shipping standards without making unnecessary shipments until it was too late to request a suspension of the supply plant pooling standards for August.

AMPI supported the proposal for essentially the same reasons presented by Mid-Am. The AMPI witness testified that the purpose of pooling standards for supply plants is to assure that such plants would ship milk at the times and in the quantities needed to meet fluid milk needs, but that supply plants should not be forced to make uneconomic shipments to distributing plants when milk is not needed. The witness testified that at times additional shipments were made from its supply plant located in Hillsboro, Kansas, to Texas pool distributing plants to meet the pooling standards, particularly during the months of August and December 1982.

At the time of the hearing there were only two supply plants pooled under the order. In addition to Mid-Am's plant at Aurora, Missouri, a pool supply plant operated by Southern Milk Sales at Yantis, Texas, was pooled under the order on the basis of shipments to pool distributing plants during October 1983. This plant has been pooled under various pooling categories during 1982 and 1983, including the provisions for pooling a cooperative association plant that are not at issue under the Mid-Am proposal. (Official Notice is taken of the Market Administrator's monthly *List of Handlers*, January 1982 through October 1983). An additional supply plant operated by AMPI at Hillsboro, Kansas, ceased being pooled under the Texas order effective August 1, 1982.

Proponent's contention that the proposal could be effective in bringing forth additional quantities of milk for fluid use, should the need arise, is not supported by the prevailing supply structure of the market. The Texas market distributing plants are basically supplied on a direct-shipped basis with little reliance on supply plant shipments to meet the fluid milk needs of the market. As indicated by Mid-Am, the proposal would apply essentially to only one supply plant. Consequently, any temporary action to increase the shipping standard by the full 10 percentage points would have virtually no impact in bringing forth any significant quantity of milk to meet the fluid milk needs of a market that pools in excess of an average of 349 million pounds of producer milk per month.

Rather than temporarily increasing the shipping standards, it appears that the major concern of proponent is to provide a mechanism to temporarily lower the shipping standards, particularly for the months of August and December. In this regard, the current supply plant pooling standards have been in effect since the Texas order was implemented July 1, 1975, and there have been no suspension actions taken to relax the pooling standards for supply plants under the order. The current pooling standards were based on marketing conditions existing at that time and specifically recognized the seasonal changes in supply/demand conditions during August and December by providing a pooling standard of 15 percent for plants pooled in the immediately preceding months, rather than the 50 percent standard applicable during the remaining shipping period for supply plants. A review of the seasonal variation in the percentage of producer milk in Class I uses does not indicate that the shipping standard for August and December are out of line with marketwide supply/demand conditions. In any event, because of the limited shipping standard during these months, any additional flexibility provided by the authority to lower the shipping standard, versus a suspension of the pooling standards, is of dubious value.

Proponent's major contention is that the proposal would provide for a mechanism to reduce the pooling standard more quickly than can be accomplished through current suspension procedures. This is simply not the case. The proposal provides for the issuance and publication of proposed rule making with the opportunity for public comment, and the issuance of and publication of final temporary rules. Essentially, this is the same procedure that is applicable to suspension actions. Therefore, if supply plant operators do not recognize or anticipate changes in supply/demand conditions in time to request a suspension action, there would also be insufficient time to request a temporary lowering of the supply plant shipping standards. In such a situation, the proposal would be of no useful value to proponents.

8. *Computation of the uniform price.* A minor revision should be made in the order provisions concerning the computation of the uniform price as proposed by the Dairy Division. Specifically, the 4-cent per hundredweight lower limit on the amount to be retained in the producer-settlement fund should be removed. Adoption of the proposal, which was not opposed by any interested party, will provide for the opportunity to reduce the reserve balance in the producer-settlement fund.

The producer-settlement fund reserve is maintained through the computation of the uniform price. Each month, current order provisions require that not less than one-fourth of the unobligated

balance in the producer-settlement be added to the handlers' value of milk. Also, the order requires that not less than 4 cents nor more than 5 cents per hundredweight be subtracted from the total aggregate value of milk to maintain the producer-settlement fund reserve for subsequent months. The purpose for the reserve under the order is to facilitate the handling of audit adjustments on handlers' receipts and dispositions.

Unlike most Federal orders, the Texas order provides for a payment system whereby all obligations by plants for milk purchased from producers and cooperatives are paid to the producer-settlement fund. The market administrator then pays producers and cooperatives, as well as handlers who wish to pay their own producers, from the producer-settlement fund. The order provides that any shortage in payments by any handler be reflected by reduced payments to such handler or the handler's producer suppliers and that producer-settlement funds not be used to supplement such payments. Also, as a result of the payment practices under the order, the producer-settlement fund reserve is not necessary for handling audit adjustments. Such adjustments are handled by debiting and crediting handler accounts each month.

Under current order operations, the entire unobligated balance in the producer-settlement fund is added to the current month's uniform price computation. However, between 4 and 5 cents per hundredweight must then be deducted from the uniform price computation. This results in a producer-settlement fund balance of a minimum of about $150,000 on a monthly basis.

Such a balance in the producer-settlement fund is not necessary under the current payment practices under the order. Elimination of the current lower 4-cent limit that can be deducted in the uniform price computation will provide the means by which the producer-settlement fund reserve can be reduced.

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.

A ruling of the Administrative Law Judge to which a specific objection was taken in a brief has been reviewed. An objection was raised by the attorney representing Schepps Dairy to the Administrative Law Judge excluding the admissions of two exhibits offered as evidence. The exhibits were marked for identification and were proffered as an offer of proof when the Administraitve Law Judge excluded them.

The exhibits are reproductions of advertisements that were included in a supplement to a newspaper published in Sulphur Springs, Texas. The advertisements for a grocery and feed store contain milk prices reportedly paid to producers in Zone 1 by cooperatives and proprietary handlers including AMPI, Cabell, Foremost, Metzgers, Mid-Am, and Southern Milk for August 1982 through July 1983. A witness for Schepps testified that the store proprietor told him how he obtained the information which was used for the store advertisements. According to arguments presented at the hearing and in the brief, the exhibit should have been received to illustrate the disparity among pay prices to producers in Zone 1 and that the accuracy of the prices was corroborated by witnesses representing AMPI and Mid-Am. An attorney representing handlers who oppose Schepps' proposals objected to the exhibit as being hearsay, while the attorney for AMPI objected on the basis of the information being totally unreliable for the purpose of comparing the listed prices.

In rejecting the exhibits, the Administrative Law Judge noted that the pay prices listed in the exhibit were not reported by a newspaper, but were inserted by a grocery and feed store. The Administrative Law Judge's ruling to exclude the exhibits has been reviewed in light of the arguments presented and is affirmed on the basis that the exhibits are not sufficiently reliable sources of information on the magnitude of the pay price differences among producers. The reliability of the exhibits is so attenuated by the particular hearsay nature of the information that they are not the sort of evidence, "upon which responsible persons are accustomed to rely." (7 CFR 900.8(d)(1)).

Schepps excepted to the affirmation of the Administrative Law Judge's ruling and reiterated the arguments that were presented in briefs. These arguments were previously considered and do not provide a basis for reversing the ruling of the Administrative Law Judge.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Texas order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(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 order regulating the handling of milk in the Texas marketing area, 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 order as

hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

December 1984 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 Texas 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 such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1126

Milk Marketing Orders, Milk, Dairy products.

Signed at Washington, D.C., on: March 6, 1985.

Karen Darling,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85-5723 Filed 3-8-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 80N-0419]

Aphrodisiac Drug Products for Over-the-Counter Human Use

Correction

In FR Doc. 85-676 beginning on page 2168 in the issue of Tuesday, January 15, 1985, make the following correction:

On page 2170, first column, in § 310.528(a), in the second line, "gotu kola ginseng," should read "gotu kola, Korean ginseng,".

BILLING CODE 1505-01-M

21 CFR Part 334

[Docket No. 78N-036L]

Laxative Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

Correction

In FR Doc. 85-668 beginning on page 2124 in the issue of Tuesday, January 15, 1985, make the following correction:

On page 2130, first column, last line of the column, insert the following after "word": " 'warning' be replaced by the signal word".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[EE-1-85]

Restrictions on Church Tax; Inquiries and Examinations; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing Temporary Procedure and Administration Tax Regulations § 301.7611-1T (Treasury Decision 8013) relating to the procedures for conducting church tax inquiries and examinations. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed before May 10, 1985. The regulations are proposed to apply to all church tax inquiries and examinations beginning after December 31, 1984 and are proposed to be effective after December 31, 1984. Examinations commenced prior to January 1, 1985, will be conducted pursuant to section 7605(c) of the Internal Revenue Code of 1954.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-1-85), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Monice Rosenbaum of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T (EE-1-85), 202-566-3938 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amends 26 CFR by adding a new § 301.7611-1T. The final regulations which are proposed to be based on the temporary regulations would amend 26 CFR by adding new § 301.7611-1 to Part 301 (Procedure and Administration). The regulations are proposed to be issued under the authority contained in section 7805 of the Code (68A Stat. 917, 26 U.S.C. 7805). For the text of the temporary regulations, see F.R. Doc. 85-5750 (T.D. 8013) published in the Rules and Regulations portion of this issue of the **Federal Register**.

Special Analysis

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting the temporary regulations referred to in this document as final regulations, consideration will be given to any written comments that are submitted (preferably 8 copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Monice Rosenbaum of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 301

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

Disclosure of information, Filing requirements.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 85-5751 Filed 3-7-85; 10:13 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Formula Grants for Juvenile Justice

Correction

In FR Doc. 85-3507 beginning on page 6098 in the issue of Wednesday, February 13, 1985, make the following correction on page 6101:

§ 31.301 **[Corrected]**

In the first column, in § 31.301(e) remove the fourth line and add, "the fund allotment under section 222(a), of a State which chooses not to participate or loses its eligibility to participate in the formula grant program, directly available to local public and private nonprofit agencies within the nonparticipating State. The funds may be used only for the purpose(s) of".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Public Comment Period and Opportunity for Public Hearing on Modified Portions of the Maryland Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and hearing on the substantive adequacy of a program amendment submitted by the State of Maryland as a modification to its permanent regulatory program which was conditionally approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Maryland submission consists of proposed regulation changes to the State requirements governing the use of explosives. The submission is intended to satisfy a required amendment to the State's program and also makes certain additional changes to the State's proposed regulations approved by the Director on January 22, 1985.

This notice sets forth the times and locations that the Maryland program and proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before 4:00 p.m. on April 10, 1985 will not necessarily be considered. A public hearing on the proposal will be held from 7:00 p.m. to 9:00 p.m. on April 1, 1985 at the Maryland Bureau of Mines office listed below under **"SUPPLEMENTARY INFORMATION"**. Any person interested in making an oral or written presentation at the hearing should contact Mr. Danny Ellis at the OSM Charleston Field Office by the close of business on or before March 26, 1985. If no one has contacted Mr. Elllis to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Ellis, a public meeting, rather than a hearing, will be held and the results of the meeting included in the Administrative Record.

ADDRESS: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Attention: Maryland Administrative Record, Telephone: (304) 347-7158

See **"SUPPLEMENTARY INFORMATION"** for addresses where copies of the Maryland program, the amendment and the administrative record on the Maryland program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSM Charleston Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Danny Ellis, Acting Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION: Copies of the proposed modifications to the program, the Maryland program, and the administrative record on the Maryland program are public review and copying at the OSM offices and the Office of the State Regulatory Authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158

Office of Surface Mining Reclamation and Enforcement, 1100 L Street NW., Room 5124, Washington, D.C. 20240, Telephone: (202) 343-7896

Maryland Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532, Telephone: (301) 689-4136.

In addition, copies of the proposed amendment are available for inspection and copying during regular business hours at the following location: Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, Morgantown, West Virginia 26505, Telephone: (304) 291-5821.

For Further Information Contact: Mr. Danny Ellis, Acting Field Office Director, Charleston Field Office, Office of Surface Mining, 603 Morris Street, Charleston, West Virginia 25301; Telephone: (304) 347-7158.

Background on the Maryland Program

The Maryland program was conditionally approved by the Secretary of the Interior on December 1, 1980 (45 FR 79430-79451). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Maryland program can be found in the December 1, 1980 **Federal Register**. On February 18, 1982, following submission of program amendments to satisfy the conditions of program approval, the Maryland program was fully approved by the Secretary (47 FR 7214-7217).

Submission of Revisions

On May 28, 1984, Maryland submitted statute and regulations and other material which would establish requirements for the training, examination and certification of blasters working in surface coal mining operations and revise the State's performance standards for the use of explosives. Additional information was submitted on June 13, 1984. These materials were later supplemented by additional information submitted by the State on October 5, 1984. These proposed modifications were approved by the Director on January 22, 1985 (50 FR 2782-2785). The Director's approval required that one provision of the proposed requirements for the use of explosives be revised and submitted as

a program amendment by March 25, 1985. The required amendment related to the provisions of 30 CFR 816.62(a) which requires information on how to request a preblasting survey to be provided to residents or owners of dwellings or other structures within ½ mile of the permit area at least 30 days prior to blasting. The proposed regulations which are currently being considered are intended to address this required amendment and make other revisions as desired by the State. Most of the revisions are editorial in nature and have no effect on the requirements approved by the Director on January 22, 1985. All of the changes are identified in the January 30 submission. The Director is now seeking public comment on the adequacy of these proposed modifications. If the modifications are approved, they will become part of the Maryland program and the required amendment will be satisfied.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (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. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 920

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

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: March 6, 1985.

John D. Ward,

Director, Office of Surface Mining.

[FR Doc. 85-5719 Filed 3-8-85; 8:45 am]

BILLING CODE 4310-05-M

---

30 CFR Part 950

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Wyoming Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for a public hearing on an amendment submitted by the State of Wyoming to amend its permanent regulatory program which was conditionally approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the water quality provisions of the approved program which are administered by the Wyoming Water Quality Division.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment and information pertinent to the public hearing.

DATES: Written comments not received on or before 4:00 p.m. on April 10, 1985 will not necessarily be considered. A public hearing on the proposal will be held, if requested on April 5, 1985, at the address listed below under **"ADDRESSES."**

Any person interested in making an oral or written presentation at the hearing should contact Mr. William Thomas at the OSM Casper Field Office by 4:00 p.m. on April 1, 1985. If no one has contacted Mr. Thomas to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Thomas, a public meeting, rather than a hearing may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public meeting will be held at the Herschler Office Building, 122 W. 25th Street, Cheyenne, Wyoming 82002.

Written comments should be mailed or hand-delivered to Mr. William R. Thomas, Office of Surface Mining Reclamation and Enforcement, P.O. Box 1420, 935 Freden Building, Pendell Boulevard, Mills, Wyoming 82644.

See **"SUPPLEMENTARY INFORMATION"** for address where copies of the Wyoming program amendment and administrative record on the Wyoming program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSM Casper Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644, Telephone: (307) 261-5824.

SUPPLEMENTARY INFORMATION: Copies of the Wyoming program amendment, the Wyoming program and the administrative record on the Wyoming program are available for public review and copying at the OSM offices and the office of State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room, 1100 L Street NW., Washington, D.C. 20005

Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644

Wyoming Department of Environmental Quality, Land Quality Division, Herschler Office Building, 122 W. 25th Street, Cheyenne, Wyoming 82002.

Background

The general background on the permanent program, the general background on the State program approval process, the general background on the Wyoming program, and the conditional approval can be found in the Secretary's Findings and conditional approval published in the November 26, 1980 **Federal Register** (45 FR 78637-78684).

Proposed Amendment

On January 22, 1985, the State of Wyoming submitted to OSM an amendment to its approved permanent regulatory program. The amendment addresses water quality standards and related provisions that are administered by the Wyoming Water Quality Division. Specifically, the amendment consists of proposed regulations addressing definitions relating to water quality, effluent limitations for coal mining operations, water testing procedures, discharge points, application requirements for

construction of sedimentation control facilities, minimum design standards for sedimentation control facilities and enforcement of the water quality provisions.

OSM is seeking comment on whether the Wyoming proposed modifications are consistent with the requirements of the Federal provisions and satisfy the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17.

The full text of the program modification submitted by Wyoming for OSM's consideration is available for public review at the addresses listed under "ADDRESSES."

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (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. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 950

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

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: March 6, 1985.

John D. Ward,
Director, Office of Surface Mining.

[FR Doc. 85-5718 Filed 3-8-85; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD13 85-03]

Seattle Opening Day Yacht Parade and Crew Race

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal establishing a restricted zone in the areas of Union Bay, Portage Bay and Lake Washington on May 3, 1985 from 3:00 p.m. until 4:00 p.m. and on May 4, 1985 from 8:00 a.m. until 3:00 p.m. This action is required to permit the conducting of an approved marine event. It is intended to restrict general navigation in the area for the safety of the spectators and participants in the event.

DATE: Comments must be received on or before April 5, 1985.

ADDRESS: Comments should be mailed to Commander, U.S. Coast Guard Group, 1519 Alaskan Way South (Pier 36), Seattle, WA 98134. Normal office hours are 7:30 a.m. to 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant John M. HOLMES, Operations Officer (206) 442-1874.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD13 85-03) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rule making process.

Drafting Information

The drafters of this notice are Lieutenant John M. Holmes, USCG, Project Officer, USCG Group Seattle, Operations Office and Lieutenant Commander D. Gary Beck USCG, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Proposed Regulation

The annual yachting season Opening Day Yacht Parade, sponsored by the Seattle Yacht Club, is scheduled to be held on the 3rd and 4th of May 1985, in the Lake Washington Ship Canal between Portage Bay and Webster Point. The event will begin at 3:00 p.m. and end at 4:00 p.m. on May 3 and begin at 8:00 a.m. and end at 3:00 p.m. on May 4. Crew races will be conducted in the area between 3:00 p.m. and 4:00 p.m. on May 3 and 11:00 a.m. and 12:00 noon on May 4. As a result of these events, traffic in Portage Bay, Portage Cut (also known as Montlake Cut) and Bay Reach will be congested. For this reason it is proposed that sailing vessels in the restricted zone maneuver by propelling machinery. Use of spinnakers will be allowed if the vessel's ability to maneuver is not jeopardized. By the authority contained in Title 46, U.S.C. 454 as implemented by Title 33, Part 100, U.S. Code of Federal Regulations, a Special Local Regulation controlling navigation on the water described will be promulgated. The waters involved will be patrolled by vessels of the U.S. Coast Guard. Coast Guard Officers and/or Petty Officers will enforce the regulation and cite persons and vessels in violation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. No major shipping industry or trade will be interfered with.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Proposed Regulations: In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding § 100.35-1301 to read as follows:

§ 100.35–1301 Lake Washington/Portage Bay/Union Bay/opening day crew race and yacht parade.

(a) This event will take place on May 3, 1985 between 3:00 p.m. and 4:00 p.m. and on May 4, 1985 between the hours of 8:00 a.m. and 3:00 p.m.

(b) Patrol of the described areas will be under the direction of a designated Coast Guard Patrol Commander. This individual is empowered to control the movement of vessels on the parade course and in the adjoining water areas. The Coast Guard Patrol Commander will exercise the authority granted herein prior to, during, and after the parade for such time as he finds it necessary for the safe and orderly conduct of the program. Portage Cut will be closed to all traffic except crew shells and vessels in the parade from 3:00 p.m. to 4:00 p.m. on May 3, 1985, and from 10:30 a.m. until the termination of the yacht parade on May 4, 1985.

(c) All sailing vessels in the restricted zone shall use propelling machinery for maneuvering. Spinnakers may be used, in addition to propelling machinery, to the extent that control of the vessel is not impaired.

(d) Specific areas restricted to general navigation or anchorage from 3:00 p.m. to 4:00 p.m. on May 3 and from 8:00 a.m. until termination of the yacht parade on May 4 are:

(1) The waters of Portage Bay Southeast of a line running from the Western corner of the pier (Showboat) 70 yards South of 47°39'N, 122°18'40"W, 425 yards South-West across Portage Bay to the North-West corner of the "L" shaped moorage (at the foot of East Shelby St.) at 47°39'52"N, 122°18'52"W

(2) All waters of Portage Cut (also known as Montlake Cut), to Union Bay Channel Buoy 27 and Union Bay Channel Buoy 28.

(3) All waters between an East and West line connecting Union Bay Channel Buoy 27, Union Bay Channel Buoy 29 and Union Bay Channel Buoy 31 and Webster Point Light 33 and an East/West line connecting Union Bay Channel Buoy 28, Union Bay Channel Buoy 30, 470 yards East of Union Bay Channel Buoy 30 to a point 80 yards South of Webster Point Light 33.

(4) The waters between the judging and reviewing vessels and the Southern edge of the channel described above. This area is south of Union Bay Channel Bouy 28 and North of Foster Island. The judging and reviewing vessels will be identified by appropriate signs.

(e) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the patrol vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(46 U.S.C.A. 454; 49 U.S.C. 108; 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: March 1, 1985.

H.W. Parker,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 85–5711 Filed 3–8–85; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 166

[CGD 84–010]

Port Access Study, Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: Notice of study results.

SUMMARY: The purpose of this notice is to publish results of the Port Access Route Studies announced in the **Federal Register** on March 19, 1984 (49 FR 10127; corrected at 49 FR 14538) and on July 10, 1984 (49 FR 28074). These studies encompassed two areas in the Gulf of Mexico, one in the vicinity of the Galveston approach, and the other in the vicinity of the Louisiana Offshore Oil Port (LOOP). As a result of these studies, the Coast Guard recommends that:

a. A new fairway be established to permit deep draft vessels to navigate safely around the area of the Heald Bank shoals in the approach to Galveston.

b. The existing fairway system in the approach to LOOP remain as it was originally established.

c. The existing LOOP fairway system be incorporated into Part 166 of Title 33 Code of Federal Regulations, to consolidate all fairways in a single Part.

ADDRESSES: The Eighth Coast Guard District Port Access Route Study documents on which the present notice is based are available for inspection and copying at the office of the Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593, between the hours of 8 a.m. and 4 p.m., Monday through Friday. The report is on file under the docket number of this notice [CGD 84–010].

Details of this report are also available from the Eighth Coast Guard District Commander (mps), Eighth Coast Guard District, Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130, telephone (504) 589–6901.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Young, Office of Navigation (G–NSR–3), Room 1408, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington D.C. 20593, telephone (202) 245–0108, between 8:00 a.m. and 3:30 p.m., Monday through Friday. Information is also available from LCDR Mike Brown, Eighth Coast Guard District (mps), at telephone (504) 589–6901.

SUPPLEMENTARY INFORMATION:

Background

In February 1983, Conoco, Inc., requested that the Coast Guard modify the LOOP Safety Fairway to allow exploratory drilling in one segment. The Fairway, in which no fixed structures are permitted, was established in December 1980 (45 FR 85644; 33 CFR 150). A tract within the fairway was leased by Conoco in March 1982. Conoco requested that a segment of the two-mile wide fairway be reduced to a one mile width to allow surface occupancy in the tract, half of which extends into the safety fairway. In the alternative, Conoco proposed that the whole fairway be relocated either one mile to the west, or approximately eight miles to the east. The Coast Guard initiated this study to evaluate Conoco's proposals.

The Coast Guard Study also examined an existing fairway in the approach to Galveston, on the advice of the Houston/Galveston Navigation Safety Advisory Committee. In 1983, the Committee advised the Coast Guard that there was a shoaling problem in the vicinity of Heald Bank. There are four fairway approaches to Galveston. The northwest-southeast leg of the Galveston Entrance Fairway [33 CFR 166.200(d)(10)], is the most direct route for the majority of traffic using the Houston/Galveston port complex. Within this fairway there is an area of shallow water (approximately 34 feet). The Coast Guard estimates that 27% of the inbound vessels and 34% of the outbound vessels on this route have drafts greater than 30 feet. Many of these vessels leave the fairway to avoid the shallow water and navigate where they have greater under-keel clearance. The Advisory Committee recommended that the Coast Guard designate a secondary fairway through deeper water. The notice of study proposed two alternative configurations on which strong objections were received. A more favorable configuration was developed during the study.

The Ports and Waterways Safety Act (92 Stat. 1473, 33 U.S.C. 1223, hereinafter

referred to as the Act) authorizes the Coast Guard to designate necessary fairways to allow vessels unobstructed, safe access to U.S. ports. The Act also gives the Coast Guard discretionary authority to modify or relocate existing safety fairways to accommodate other uses such as offshore mineral exploration and exploitation (33 U.S.C. 1223(4)(c)(5)(C)). Safety fairways are areas in which no fixed structures are permitted, and therefore may inhibit exploration and exploitation of mineral resources in the area so designated. Fairways may be viewed as a necessary compromise between convenient mineral exploitation and concern for navigation safety. In order to ensure that the interests of all affected parties are considered, the Act mandates that a port access route study be conducted when new fairway areas are contemplated. Publication of a study notice advises all bidders in future lease sales within the study area that occupancy rights may be restricted by a routing system developed as a result of the study [33 U.S.C. 1223(4)(c)(2)].

To be effective a fairway must be reliable, stable and functional. A fairway must be a reasonable port access route which can be relied upon the mariner. To be safe and effective, a fairway must be clearly marked on navigation charts, and mariners must have confidence that a charted location is, in fact, the actual location and boundary of the fairway. To encourage the maximum use of fairways, it is imperative that they be charted, fixed, and relatively permanent.

Changes to the fairway network fall into two categories: adjustment of the configuration within the boundary of the existing fairway, and establishment of a new fairway in a previously undesignated area. Changes to existing fairways or creation of new fairways can only be accomplished by rulemaking. The purpose of this study is to determine whether rulemaking is appropriate or feasible under two separate circumstances in the Gulf of Mexico.

Guidance for making adjustments to existing fairways is provided in the Ports and Waterways Safety Act:

> The Secretary may, from time to time, as necessary, adjust the location or limits of designated fairways of traffic separation schemes, in order to accommodate the needs of other uses which cannot be reasonably accommodated otherwise: Provided, that such an adjustment will not, in the judgment of the Secretary, unacceptably adversely affect the purpose for which the existing designation was made and the need for which continues. (33 U.S.C. 1223(4)(c)(5)(C))

This three-pronged test requires that the Coast Guard give consideration to the following:

a. Whether the adjustment is "necessary," i.e., whether other uses, such as resource exploration and exploitation, can be reasonably accommodated if the fairway is not changed. The test of reasonableness consists of several factors including cost, time, and technical convenience. The Coast Guard will normally accept information form the requesting party as prima facie evidence of need; however, supporting information may be submitted by the Minerals Management Service or another government agency.

b. Whether the existing port access route is still needed.

c. Whether the adjustment would continue to provide an acceptable level of navigation safety. The Act states "* * * that such adjustment will not * * * *unacceptably* adversely affect the purpose for which the existing designation was made" (emphasis added). The purpose of fairways is to provide safe access to U.S. ports, a route along which no fixed structures will obstruct the flow of navigation and pose an unacceptable risk of a casualty. Where a need for the fairway continues to exist, and where the existing fairway network is considered safe, an adjustment that is less navigationally safe could be acceptable only if it was also justified by other considerations and did not result in an unsafe condition.

In effect, a relocation of an existing fairway is equivalent to the establishment of a new fairway and must be accomplished in compliance with all statutory requirements for a new designation [33 U.S.C. 1223(4)(c)].

In the interest of promoting a multiple use approach to offshore waters, the Coast Guard, as far as practicable, will try to minimize impacts on leases which were granted before a study of the need for a fairway was announced.

As a result of both the Port Access Route Study conducted in 1979–1981 encompassing the entire Gulf of Mexico, and the Deepwater Port licensing process for the Louisiana Offshore Oil Port, the Coast Guard concluded that the fairway network in the Gulf of Mexico is effective, and that no additional general studies of the Gulf are needed (46 FR 49989, October 8, 1981). The Coast Guard conducted the present study as a result of two specific requests for fairway adjustments. This study included consideration of minimum fairway width, the existing fairway configuration, and several alternative configurations.

Method

The Port Access Route Study for both the LOOP and Galveston Approaches was conducted by the Eighth Coast Guard District. The study encompassed the two following areas:

a. The area in the vicinity of the Louisiana Offshore Oil Port (LOOP) bounded by a line connecting the following geographic positions:

Latitude	Longitude
29°00'00" N	90°10'00" W
29°00'00" N	89°30'00" W
27°40'00" N	89°30'00" W
27°40'00" N	90°10'00" W

b. An area in the vicinity of the Galveston Entrance bounded by a line connecting the following geographic positions:

Latitude	Longitude
29°00'00" N	94°40'00" W
29°00'00" N	93°50'00" W
28°40'00" N	93°50'00" W
28°30'00" N	93°18'00" W
28°30'00" N	93°50'00" W
28°00'00" N	93°50'00" W
28°00'00" N	94°40'00" W

The Port Access Route Study for these areas was performed in accordance with section 4(c)(3) of the Ports and Waterways Safety Act. The study involved contacts with other Federal agencies, state government officials, and representatives of a wide variety of interests in the area. Discussions we held with representatives of Shell, Texaco, Conoco and the Louisiana Offshore Oil Port. The Coast Guard received 29 written comments as a result of this study.

Discussion of Comments

Comments received on issues of significance to the study are summarized below.

LOOP Approach

a. Fifteen comments were received on the alternative of reducing the LOOP Fairway in width from two miles to one mile for a short stretch. Nine were in favor and six opposed. The commenters in favor were all oil interests while those opposed represented both oil and transportation interests. Those in favor supported the alternative because it would open an additional area for exploration while not affecting any additional lease tracts. Those opposed to the alternative objected because it could require vessels to make two additional course changes and would be less navigationally safe. One commenter said the lack of position-fixing accuracy

offshore at the distance contemplated was such that having only a one mile wide fairway was inadequate for the mariner.

In addition, some commenters felt that deleting part of the fairway would put them at a competitive disadvantage as bids for offshore tracts in the current fairway were calculated with a risk factor based on the restrictions on exploration in portions of the block and the higher costs involved in directional drilling. According to these commenters, making those blocks accessible to fixed surface structures now by lifting the restriction would negate that risk factor after the bids had been made and the tracts leased.

b. Fourteen comments were received on the alternative of relocating the LOOP Fairway one mile to the West. Five were in favor and nine opposed. The five commenters in favor were all oil interests who supported the alternative because it would open currently leased blocks to exploration. The nine opposed represented navigation and other oil interests. The navigation interests were opposed to the alternative because they felt the existing fairway was adequate and well known. They felt it would be confusing to the mariner for the fairway to be relocated. In addition, they were concerned about the precedent that any fairway relocation would have in regard to other Gulf Fairways. These navigation interests felt that stability of fairway locations was imperative and were concerned that once the precedent of relocating fairways was started the location of fairways would be constantly changing, causing severe difficulties for the mariner.

The oil and gas interests against the relocation alternative were opposed because the relocation would adversely affect the ability to explore and exploit their existing leases. In addition, two of the commenters felt that the relocation of the fairway would put them at a competitive disadvantage as outlined above.

c. Seventeen comments were received on the alternative of relocating the LOOP Fairway approximately 8 miles to the East. Ten were in favor and seven opposed. In addition, one commenter recommended a fairway configuration similar to this alternative. The commenters supporting the alternative were oil interests, who supported the proposal for the reasons given above in paragraph b, and one navigation interest who supported the alternative because it would involve shorter transit times. Those opposed to the alternative represented both navigation and oil interests that objected for the same reasons as listed in paragraphs a and b above.

Galveston Approach (Heald Bank Shoals)

a. Six comments were received on the alternative of a new fairway approximately 34 miles off the Galveston Entrance. Five were in favor and one opposed. Those in favor supported the alternative because it would allow transiting vessels to avoid the shoaling in the vicinity of Heald Bank. The commenter in opposition objected because the alternative would pass over that commenter's leased tract.

b. Nine comments were received on the alternative of establishing a new fairway approximately 68 miles off the Galveston Entrance. Six were in favor and three opposed. The commenters supporting the alternative were in favor becasue it would allow transiting vessels to avoid the shoaling in the vicinity of Heald Bank. Those opposing the proposal objected because the alternative would cross over their leased tracts.

c. Other alternative fairway configurations were developed during the study. A further opportunity for comment will be offered when a Notice of Proposed Rulemaking is published.

Fairway Width and Configuration

Seven comments were received on the issue of how wide fairways should be. Five of the commenters recommended that the minimum fairway width be at least two miles, while two commenters felt that a fairway width of less than two miles was acceptable. The comments from the navigation interests were unanimous in the opinion that two miles was the minimum safe width for any safety fairway.

Conclusions

Fairway Widths and Configurations

Although many considerations will influence the appropriate width of a safety fairway, experience over many years in the Gulf of Mexico has indicated that a two mile width is effective. The Eighth Coast Guard District has concluded that a two mile width is the minimim acceptable width for a fairway in which deep draft vessels are expected to operate in an area of concentrated offshore drilling activity. This is based in part on comments received from the marine industry, and on data generated as a result of a study conducted for the Environmental Impact Statement during the licensing process for the Louisiana Offshore Oil Port before the LOOP fairways were established. That study concluded that a 1.5 mile wide fairway was the minimum safe width for one-way deep draft traffic. This 1.5 mile width was predicated on 400,000 dwt vessels, the largest likely to be utilizing LOOP. The largest vessel likely to be using other fairways in the Gulf of Mexico is approximately 160,000 dwt. A vessel of 160,000 dwt and one of 400,000 dwt have similar maneuverability problems with respect to stopping distance and turning radius, and the need for a wide navigable area for executing course changes. The Eighth Coast Guard District considers 1.5 miles an effective minimum width for most Gulf fairways. However, for fairways supporting 2-way deep draft traffic, a Closest Point of Approach (CPA) of not less than one-half mile between vessels is desirable. A minimum fairway width of 2 miles allows for these dimensions without forcing vessels to transit too closely to structures which may be located along the boundary of the fairway.

The Eighth Coast Guard District also concluded that this two mile width standard should be maintained throughout the entire length of a fairway, except for its terminus, because reductions in width require additional course changes and because no one can predict where meeting or overtaking situations will occur along a fairway. Since platforms and drilling rigs can presently be located to the edge of a fairway, any reduction in width can lead to "choke points." Such choke points in the middle of a fairway reduce the level of safety and will generally not be acceptable.

The Coast Guard received no specific comments on the design and configuration of safety fairways. However, on the basis of experience and maneuvering characteristics of deep draft vessels, the Eighth Coast Guard District recognizes the following as reasonable guidelines for fairway design:

a. In consideration of the principles of ships' routing adopted by the International Maritime Organization (IMO), each segment of a fairway should be as straight as possible. The IMO principle states:

> Course alterations along a route should be as few as possible and should be avoided in the approaches to convergence areas and route junctions or where crossing traffic may be expected to be heavy.

Although IMO does not adopt fairway systems as it does traffic separation schemes, the principle is applicable to both.

b. A second IMO principle is also relevant: "The number of convergence areas and route junctions should be kept to a minimum, and should be as widely separated from each other as possible."

LOOP

The following factors had a significant influence on the Eighth Coast Guard District's recommendation not to adjust the LOOP fairway to allow for a drilling operation by Conoco:

a. Nature and degree of risk involved. Tankers bound for LOOP can carry an average of 1.6 million barrels of crude oil. A casualty involving one of these vessels could result in significant environmental damage.

b. Serious navigation safety concerns about reducing the width of an existing, effective fairway.

c. The type of vessel traffic and potential traffic density using the existing fairway. LOOP is designed to accommodate very large crude carriers (VLCC) over 150,000 dwt with limited maneuverability.

d. Objections by the State of Louisiana (Louisiana Offshore Terminal Authority, Department of Transportation and Development) to any change to the system which has proven its effectiveness.

e. Actual and constructive notice that the fairway restrictions were effective when the Conoco lease was acquired.

f. The uniqueness of the LOOP fairway insofar as it was designed during a complex licensing process for the first deep water port on the U.S. OCS, during which navigation safety was scrutinized and projections of growth over the 20 year license were considered.

g. Potential and direct impacts on tracts leased before the study was announced which would result from any navigationally sound alternate relocation of the fairway.

In summary, the Eighth Coast Guard District determined that several alternative fairway configurations could meet the navigation needs now met by the existing fairway; but all such configurations would pass over blocks which were leased before the study was announced. Under the Act, the Coast Guard cannot deny the effective exercise of those lease rights by the establishment of a fairway. Comments on specific alternatives from affected leaseholders indicated strong objection to the locations because of inhibitions on their ability to develop their leases. Also, comments were received which objected to the changes of status of the Conoco tract, since the original bidding had taken the fairway into account.

Based on available data, the Eighth Coast Guard District can only conclude that it would be impossible to select an alternative routing which would not deny the effective exercise of a lease right. In light of the above the Coast Guard does not find it feasible to proceed with rulemaking as, in the absence of information to the contrary, it appears that any relocation which would not unacceptably adversely affect navigation safety would interfere with the effective exercise of preexisting lease rights. Since navigation safety is not now in jeopardy, the Coast Guard is not compelled to arbitrate between oil and gas leaseholders on a case-by-case basis.

It is clear from the present study that requests for fairway adjustments can be handled most expeditiously if the following is available.

a. A showing of need for a fairway adjustment (i.e., evidence that a use of the area cannot be reasonably accommodated unless the boundary or location of the fairway is adjusted).

b. Specific alternative fairway configurations which would fit logically within the overall existing fairway system.

c. Written statements from each potentially affected leaseholder that no objection will be raised to the proposed fairway adjustment.

d. Certification from the Minerals Management Service that no person would be deprived of an effective exercise of a lease right if the fairway was established as proposed; and an estimated value of unleased tracts within the proposed fairway.

e. Certification from the Corps of Engineers that no person would be deprived of the effective exercise of a permit right if the fairway was established as proposed.

This kind of information would permit the Coast Guard to study the specific navigation safety aspects of the fairway adjustments, separately from the issues of potential lease infringements.

One minor, technical amendment to the LOOP fairway, is recommended at this time. The provisions of the present LOOP fairway are contained in 33 CFR 150, the Deepwater Port Regulations, as an Annex. Since all other safety fairway regulations were adopted from the Corps of Engineers and promulgated in 33 CFR 166, the Eighth Coast Guard District recommends that the LOOP fairway regulations be incorporated into Part 166 for consistency.

Additionally, some doubt was raised during the study as to the sufficiency of the anchor clearance regulations now contained in 33 CFR 166.200(b)(2) for the LOOP approach. This matter will be addressed in detail in a future rulemaking document.

Galveston Approach (Heald Bank)

The following factors had a significant influence on the Eighth Coast Guard District's recommendation to establish a new fairway in the vicinity of Heald Bank in the approach to Galveston.

a. The charted depth of the fairway in the vicinity of Heald Bank.

b. The draft of vessels intended to use the existing fairway.

c. The requirement of deep draft vessels to leave the fairway to find adequate under-keel clearance, thus being forced to navigate among offshore structures with increased risk of ramming.

d. The maneuverability restrictions of the deep draft vessels as related to the effective width of the fairway.

e. Potential and direct impacts on leased tracts which would result if the proposed fairway was established.

The design criteria used in developing the recommended alternative fairway are as follows: it was to be at least 2 miles wide; it was to avoid, as far as practicable, any acute angles in necessary course changes.

Several alternative fairway configurations were evaluated. The Eighth Coast Guard District recommends that a new fairway be established in the area enclosed by rhumb lines joining at the following geographical positions:

Latitude	Longitude
28°57'15" N	94°23'55" W
28°51'30" N	93°56'30" W
28°48'30" N	93°51'45" W
28°55'15" N	94°23'55" W

The fairway would be identified as the Heald Bank Cutoff Safety Fairway. It would be approximately 25 miles long, and approximately 40 miles offshore and lies in the area between the two alternatives described in the study notice. It would run generally east-west (104° T–284° T) and would join the north-south segment of the Galveston Entrance fairway. It would slightly affect one leased tract (High Island Area A–45). But the tract was leased *after* the notice of study was published, with knowledge of the restrictions associated with a fairway designation. Moreover, the fairway would only infringe on a small segment of the tract. Navigationally, it is the most satisfactory among the alternative configurations because it joins the northwest-southeast and the north-south segments of the Galveston Entrance Fairway at very shallow angles. Also, it

affects a minimum of unleased tracts, which is compatible with a multiple use approach to offshore waters.

Implementation

Implementation of the above study recommendations will require the following:

a. The existing LOOP Fairway will be promulgated in 33 CFR Part 166. This will be accomplished as an administrative action in a Final Rule.

b. The recommended new Heald Bank Cutoff Safety Fairway will be published as a notice of proposed rulemaking. This action is scheduled for Fall 1985.

Dated: March 6, 1985.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 85-5710 Filed 3-8-85; 8:45 am]

BILLING CODE 4910-14-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1154

Enforcement of Nondiscrimination on the Basis of Handicap in Architectural and Transporation Barriers Compliance Board Programs

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Architectural and Transportation Barriers Compliance Board (ATBCB).

DATES: To be assured of consideration, comments must be in writing and must be postmarked or received on or before July 9, 1985.

Comments should refer to specific sections in the regulation.

ADDRESSES: Comments should be sent to: Merrily Raffa, General Counsel, ATBCB, Room 1010, 330 C Street, SW, Washington, D.C. 20202.

Comments received will be available for pubic inspection in Room 1010 from 9 a.m. to 5:30 p.m. Monday through Friday. Copies of this notice are available on tape for those with impaired vision. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Merrily Raffa, General Counsel, or Linda Potter, Attorney, ATBCB, Room 1010, 330 C Street, SW., Washington, D.C. 20202, (202) 245-1801 (Voice or TDD).

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Architectural and Transportation Barriers Compliance Board. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (sec. 119, Pub. L. 95-602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that

> No otherwise qualified handicapped individual in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794) (amendment italicized).

The substantive nondiscrimination obligations of the agency, as set forth in this proposed rule, are, for the most part, identical to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13, 901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.;* 124 Cong. Rec. 13, 897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

This regulations has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justic under Executive Order 12250 (45 FR 72995, 3 CFR 1980 Comp., p. 298) and distributed to Executive agencies on April 15, 1983.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR 1978 Comp., p. 206).

As an independent regulatory agency, the Architectural and Transportation Barriers Compliance Board voluntarily submitted this regulation to the Office of Management and Budget for review in accordance with Executive Order 12291. This regulation carriers out current policies of the ATBCB and, therefore, it is not considered a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127). Accordinly, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601-612).

Section-by-Section Analysis

Section 1154.101 Purpose.

Section 1154.101 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 1154.102 Application.

The proposed regulation applies to all programs or activities conducted by the agency.

Section 1154.103 Definitions.

"Agency." For purposes of this regulation "agency" means the Architectural and Transportation Barriers Compliance Board.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice. The Assistant Attorney General is a member of the Board and may serve as Chairperson. Nevertheless, the functions assigned to the Assistant Attorney General and the Chairperson are distinct, and the Board finds no conflict in having one individual function in both capacities.

"Auxiliary aids." "Auxiliary aids" means services and/or devices that enable persons with impaired sensory, manual, and/or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used

auxiliary aids. Although auxiliary aids are required explicitly only by § 1154.160(a)(1), they may also be necessary to meet other requirements of the regulations.

"Complete complaint." The definition of "complete complaint" enables the agency to determine the beginning of its obligation to investigate a complaint (see § 1154.170(d)).

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The phrase, "or interest in such property," is deleted, because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used in § 1154.149, § 1154.150 and § 1154.170(f).

"Handicapped person." The definition of "handicapped person" is identical to the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31).

"Qualified handicapped person." The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Subparagraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified handicapped person" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified person is one who can achieve the purpose of the program without modifications in the program that would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979).

In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *id.* at 410.

We have incorporated the Court's language in the definition of "qualified handicapped person" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable a handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some handicapped people from some programs, it requires that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

In determining whether a modification fundamentally alters the nature of the program, the mission of the agency—achieving accessibility for handicapped persons—must be given considerable weight. Considerable weight must also be given to the fact that the vast majority of people served by the agency are handicapped. In keeping with the spirit of its mission, the agency must be particularly careful about investigating all possible alternatives when it determines that an action is not required by section 504.

The agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in §§ 1154.150(a)(2) and 1154.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the handicapped person to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under the first subparagraph, subparagraph 2 adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 1154.110 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The process shall include consultation with interested persons, including consultation with handicapped persons or organizations representing handicapped persons. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

Section 1154.111 Notice.

Section 1154.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other

public places; or the broadcast of information by television or radio

Section 1154.130 General prohibitions against discrimination.

Section 1154.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 1154.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a privision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 1154.130. When there is no applicable subsequent privision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Subparagraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. The later sections on program accessibility (§§ 1154.149—1154.151) and communications (§ 1154.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, subparagraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the agency's programs or activities. Subparagraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

Subparagraph (b)(1)(v) prohibits the agency from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

Subparagraph (b)(1)(vi) prohibits the agency from limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Subparagraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped persons access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This subparagraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped persons an effective opportunity to participate.

Subparagraph (b)(4) specifically applies the prohibition enunciated in § 1154.130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Subparagraph (b)(4) does not apply to construction of additional buildings at an existing site.

Subparagraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

Paragraph (c) provides that programs conducted purusant to Federal statute or Executive order that are designed to benefit only handicapped persons or a given class of handicapped persons may be limited to those handicapped persons.

Section 1154.140 Employment.

Section 1154.140 prohibits discrimination on the basis of handicap in employment by Executive agencies. This regulation is in accord with a decision of the Fifth Circuit that holds that, despite the resulting overlap of coverage with section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), Congress intended section 504 to cover the employment practices of Executive agencies. The court also held that in order to give effect to both section 504 and section 501, the administrative procedures of section 501 must be followed in processing section 504 complaints. *Prewitt* v. *United States Postal Service*, 662 F.2d 292 (5th Cir. 1981).

Consistent with that decision, this section provides that the standards, requirements, and procedures of section 501 of the Rehabilitation Act, as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, shall be those applicable to employment in federally conducted programs or activities. In addition to this section, § 1154.170(b) of this regulation specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap.

Section 1154.149 Program accessibility: Discrimination prohibited.

Section 1154.149 states the general nondiscrimination principle underlying the program accessibility requirements of sections 1154.150 and 1154.151.

Section 1154.150 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56–41.57), with certain modifications. Thus, § 1154.150 requires that the agency's program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons. The regulation also makes clear that the agency is not required to make each of its exisitng facilities accessible(§ 1154.150(a)(1)). However, § 1154.150, unlike 28 CFR 41.56–41.57, places explicit limits on the

agency's obligation to ensure program accessibility (§ 1154.150(a)(2)).

Subparagraph (a)(2) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This subparagraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 1154.160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modifications sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981). Thus, in *APTA* the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation. The court in *APTA* noted "that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities." 655 F.2d at 1278.

The inclusion of subparagraph (a)(2) is an effort to conform the agency's regulation implementing section 504 to the Supreme Court's interpretation of the statute in *Davis* as well as to the decisions of lower courts following the *Davis* opinion. This subparagraph acknowledges, in light of recent case law, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. The failure to include such a provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This subparagraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to handicapped persons. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that handicapped persons receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 1154.150(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether an action will result in a fundamental alteration or undue financial and administrative burdens, the mission of the agency—achieving accessibility for handicapped persons—must be given considerable weight. Considerable weight must also be given to the fact that the vast majority of people served by the agency are handicapped. In keeping with the spirit of its mission, the agency must be particularly careful about investigating all possible alternatives when it determines that an action is not required by section 504. Moreover, in determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 1154.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burden rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons have been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 1154.170.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 1154.151 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 1154.51 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101–19.600 to 101–19.607. This standard, promulgated by the General Services Administration (GSA) pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C 4151–4157), incorporates the Uniform Federal Accessibility Standard developed by GSA, the United States Postal Service, the Department of Defense and the Department of Housing and Urban Development (49 FR 31527 (1984)). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards. However, the ATBCB is encouraged to utilize the Minimum Guidelines and Requirements for Accessible Design, 36 CFR 1190, where to do so would enhance accessibility. The Minimum Guidelines, established by the ATBCB, are the basis for the Uniform Federal Accessibility

Standard and represent current ATBCB policy.

Existing buildings leased by the agency after the effective date of this regulation are not required to meet the new construction standard. They are subject, however, to the requirements of § 1154.150. Furthermore, in determining which space to lease, the agency must be cognizant of the fact that not only are a significant number of current ATBCB staff handicapped, but, by statute, at least five of the public Board members must be handicapped. It would be unconscionable for the ATBCB ever to lease space inaccessible to its own Board members.

Section 1154.160 Communications.

Section 1154.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 1154.160(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 1154.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 1154.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble § 1154.150(a)(2)). Unless not required by § 1154.160(d), the agency shall provide auxiliary aids at no cost to the handicapped person.

It is our view that compliance with § 1154.160 would in most cases not result in undue financial and administrative burdens on the agency. In determining whether an action will result in a fundamental alteration or undue financial and administrative burdens, considerable weight must be given to the fact that the mission of the agency is to achieve accessibility for handicapped persons. Considerable weight must also be given to the fact that the vast majority of people served by the agency are handicapped and many are vision, speech, and hearing-impaired. In keeping with the spirit of its mission, the agency must be particularly careful about investigating all possible alternatives when it determinnes that an action is not required by section 504. Moreover, in determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 1154.160 would fundamentally alter the nature of a program or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 1154.170.

In some circumstances, a notepad and written materials may be sufficient to permit effective communications with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to make clear to the public (1) the communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision, speech and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 1154.160(a)(1)(ii)). For example, the agency need not provde eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities.

Section 1154.170 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The agency is required to accept and investigate all complete complaints (§ 1154.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ 1154.170(e)).

Paragraph (f) requires the agency to notify its Director of Compliance and Enforcement upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act of section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) was designed, constructed, or altered in a manner that does not provide ready access and use to handicapped persons.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 1154.170(g)). One appeal within the agency shall be provided (§ 1154.170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ 1154.170(i)).

Paragraph (l) permits the agency to delegate its authority for investigating compliants to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

List of Subjects in 36 CFR Part 1154

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped.

Nondiscrimination, Physically handicapped.

For the reasons set forth in the preamble, Chapter XI of title 36 of the Code of Federal Regulations is proposed to be amended as follows:

Part 1154 is added to read as follows:

PART 1154—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Sec.
1154.101 Purpose.
1154.102 Application.
1154.103 Definitions.
1154.104–1154.109 [Reserved]
1154.110 Self-evaluation.
1154.111 Notice.
1154.112–1154.129 [Reserved]
1154.130 General prohibitions against discrimination
1154.131–1154.139 [Reserved]
1154.140 Employment
1154.141–1154.148 [Reserved]
1154.149 Program accessibility: Discrimination prohibited
1154.150 Program accessibility: Existing facilities
1154.151 Program accessibility: New construction and alterations
1154.152–1154.159 [Reserved]
1154.160 Communications
1154.161–1154.169 [Reserved]
1154.170 Compliance procedures
1154.171–1154.999 [Reserved]

Authority: 29 U.S.C. 794.

§ 1154.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1154.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 1154.103 Definitions.

For purpose of this part, the term—

"Agency" means the Architectural and Transportation Barriers Compliance Board.

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means service or devices that enable persons with impaired sensory, manual, and/or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's actions in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebal palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such impairment.

"Qualified handicapped person" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; and

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 1154.104–1154.109 [Reserved]

§ 1154.110 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the

agency shall proceed to make the necessary modifications.

(b) The agency shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

§ 1154.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 1154.112—1154.129 [Reserved]

§ 1154.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any rights, privilege, advantage, or opportunity rejoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive Order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive Order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 1154.131–1154.139 [Reserved]

§ 1154.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR Part 1613, shall apply to employment in federally-conducted programs or activities.

§§ 1154.141—1154.148 [Reserved]

§ 1154.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 1154.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 1154.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usuable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1154.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of

aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activites to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 1154.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR §§ 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 1154.152–1154.159 [Reserved]

§ 1154.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants, beneficiaries, and members of the public by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision, speech or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entronce to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1154.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such brudens, the agency shall take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 1154.161—1154.169 [Reserved]

§ 1154.170 Compliance procedure.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 CFR 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Equal Employment Opportunity Director.

(d) The agency shall accept and investigate all complete complaints over which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Director of the Compliance and Enforcement Division of any complaint alleging that a building or facility is not readily accessible to and usable by handicapped persons. The Director of the Compliance and Enfrocement Division shall determine whether or not the building or facility is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or

section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792).

(g) Within 180 days of the receipt of a complete complaint over which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 1154.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Chairperson.

(j) The agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination of the appeal.

(k) The time limits cited in (g) and (h) above may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

§§ 1154.171—1154.999 [Reserved]

Signed this 27th day of February, 1985.

Madeleine Will,

Acting Chairperson Architectural and Transportation Barriers Compliance Borad.

[FR Doc. 85-5737 Filed 3-8-85; 8:45 am]

BILLING CODE 6820-BP-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD-FRL-2793-3]

Requirements for Preparation, Adoption, and Submittal of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment of notice of proposed rulemaking and notice of availability.

SUMMARY: On December 7, 1984 (49 FR 48018), EPA proposed certain amendments to its regulations concerning air quality models used to estimate ambient concentrations of air pollutants, and proposed to substitute by reference a revised version of its Guideline on Air Quality Models.

By inadvertence, the draft revised Guideline included a paragraph (8.2.1.3) that expressed interpretations of EPA's National Ambient Air Quality Standards (NAAQS). EPA does not intend the draft revised Guideline to address these questions of interpretation of the NAAQS, and paragraph 8.2.1.3 is hereby withdrawn from it.

EPA also gives notice that it has recently added three documents to Docket Number A-80-46, the docket established for the above-referenced rulemaking proposal. EPA intends to rely on these documents as support for parts of its promulgation. These documents, which are available for public inspection and comment, are: (1) A Method for Calculating Dispersion Modeling Uncertainty Applied to the Regulation of an Emission Source (Doc. No. IV-G-1); (2) An Evaluation of Results from the CDM Plume Sigmas, Buoyancy-Induced Dispersion and Wind Speed Profile Exponents (Doc. No. IV-G-2); and (3) Summary of Complex Terrain Model Evaluation (Doc. No. IV-A-1).

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Source Receptor Analysis Branch (MD-14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711; (919) 541-5561.

Dated: March 1, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85-5699 Filed 3-8-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[EPA Docket Nos. 107PA-20, 21, 22; A-3-FRL-2793-4]

Attainment Status Designations; Pennsylvania

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request from the Commonwealth of Pennsylvania to revise the attainment status designation of twenty-five (25) areas in Pennsylvania with respect to Total Suspended Particulates (TSP). EPA is also proposing to approve a request from the Commonwealth to revise the attainment status designation of the Upper Beaver Valley Air Basin from "Cannot Be Classified" to "Better Than National Standards" with respect to Sulfur Dioxide (SO_2). Furthermore, EPA is proposing to approve a request from the Commonwealth to revise the attainment status designation of four (4) counties from "Does Not Meet Primary Standards" (nonattainment) to "Cannot be Classified or Better Than National Standards" (attainment/unclassifiable) with respect to Ozone.

Additionally, EPA is proposing to disapprove the Commonwealth's request to redesignate three (3) counties with respect to the ozone NAAQS. The intent of this notice is to discuss the results of EPA's review of the Commonwealth's redesignation request and to solicit public comments on the revisions and EPA's proposed action.

DATE: Comments must be submitted on or before April 10, 1985.

ADDRESSES: Copies of the proposed redesignation request and accompanying support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, Curtis Building, Tenth Floor, Sixth & Walnut Streets, Philadelphia, PA 19106, Attn: Donna Abrams

Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120, Attn: Mr. Gary Triplett.

All comments on the proposed revisions submitted within 30 days of publication of this notice will be considered and should be directed to Mr. Glenn Hanson, Chief of the PA/WVA Section of the EPA, Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106, EPA Docket Nos. 107-PA-20, 21, 22.

FOR FURTHER INFORMATION CONTACT: Donna Abrams (3AM11) at the EPA, Region III address above or call (215) 597-9134.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Clean Air Act (Act) the Administrator of EPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for all areas within each State (see 43 FR 8962 (March 3, 1978)). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

Total Suspended Particulate Matter

The Pennsylvania Department of Environment Resources (DER) has

submitted to the U.S. Environmental Protection Agency (EPA), on July 27 1984, a request to have the following areas redesignated with respect to TSP:

Coplay Boro, Whitehall Twp., Northampton Boro, Allen Twp., City of Monessen, Rostraver Twp., Aliquippa Boro, Baden Boro, and Midland Boro redesignated from "Does Not Meet Primary Standards" to "Better Than National Standards."

Pottstown Boro, South Coatesville Boro, City of Lancaster, Manheim Twp., remaining portions of the Lower Bearver Valley Air Basin, Wesleyville Boro and Lawrence Park Twp., redesignated from "Does Not Meet Secondary Standards" to "Better Than National Standards."

West Pottsgrove Twp., Upper Pottsgrove Twp., City of Coatesville, and Doylestown Twp., redesignated from "Cannot Be Classified" to "Better Than National Standards."

East Conemaugh Boro, Franklin Boro, Ellwood City Boro, City of Sharon, and the City of Farrell redesignated from "Does Not Meet Primary Standards" to "Does Not Meet Secondary Standards."

The air quality data for January 1982 through the end of 1983 indicate that these areas show no violations of the TSP air quality standards. EPA has examined the air quality data collected from the monitoring sites used to demonstrate attainment and found that the data were collected in accordance with all EPA requirements. In addition, these areas all have an approved control strategy which is covered in Article III of the Pennsylvania Air Resources Regulations, § 123.11 (particulate matter emissions).

Sulfur Dioxide

On July 27, 1984, the Pennsylvania Department of Environmental Resources also submitted a request to have the Upper Beaver Valley Air Basin redesignated from "Cannot Be Classified" to "Better Than National Standards" for SO_2.

The only major source of SO_2 in Lawrence County is the Pennsylvania Power Company's West Pittsburgh station. The Pennsylvania Power Company constructed a new 750-foot stack in order to reduce the local impact of their emissions at ground level. Under Federal regulations, only that portion of the stack height, termed the good engineering practice (GEP) height, can be allowed for use in the compliance case modeling. EPA determined this height to be 475 feet. The previous stack height (prior to construction of the new "tall stack") was 230 feet. Also as part of the construction, Pennsylvania Power Company combined the flue gases from their other existing stacks into this one stack for purposes of installing an electrostatic precipitator in order to control the emissions of particulate matter into the environment.

On November 9, 1984 (49 FR 44878), EPA proposed revised stack height regulations in response to the recent court decision [*Sierra Club* v. *U.S. EPA*, 719 F.2d 436 (D.C. Cir. 1983)]. When the revised stack height regulations are finalized, SIP's may need to be revised to incorporate and implement specific provisions necessary to carry out the requirements contained in the revised regulations.

EPA is today proposing to redesignate the Upper Beaver Valley Air Basin from cannot be classified to better than national standards in accordance with interim guidance established for redesignations of this type established on August 17, 1984, "Impact of the Stack Heights Decision by the Supreme Court on the Stack Height Interim Policy", Darryl D. Tyler, Director, Control Programs Development Division. When the final stack height regulations are finalized, this source will be reviewed in order to determine if it incorporates and implements the specific provisions contained in the new regulations.

The air quality data for January 1982 through the end of 1983 indicate that this area shows no violations of the SO_2 air quality standards. EPA has examined the air quality data collected from the monitoring site used to demonstrate attainment and found that the data were collected in accordance with all EPA requirements. Also, the H. E. Cramer modeling study (EPA–903/9–18–001) has demonstrated SO_2 attainment for the Upper Beaver Valley Air Basin, considering the greater of either the SIP allowable emission rate or the actual emission rate for the sources in that area. Additionally, the Upper Beaver Valley Air Basin has an approved control strategy, for sulfur compound emissions, which is covered in Article III of the Pennsylvania Air Resources Regulations, Section 123.25(c).

Ozone

On July 27, 1984, the Pennsylvania Department of Environmental Resources submitted a request to have the following counties redesignated from "Does Not Meet Primary Standards" to "Cannot Be Classified or Better Than National Standards": Bedford, Blair, Cambria, Centre, Clearfield, Indiana, and Somerset.

When considering a redesignation request for Ozone, a number of criteria must be considered. The most important is the National Ambient Air Quality Standard (NAAQS) for ozone which is specified in 40 CFR Part 50. The NAAQS for ozone is defined to be violated when the annual average expected number of daily exceedances of the standard (0.12 parts per million (ppm), 1-hour average) is greater than one (1.0). A daily exceedance occurs when the maximum hourly ozone concentration during a given day exceeds 0.124 ppm ("Guidelines for the Interpretation of Ozone Air Quality Standards," EPA–450/4–79–003). The expected number of daily exceedances is calculated from the observed number of exceedances by making the assumption that non-monitored days (invalid or incomplete) have the same fraction of daily exceedances as those observed on monitored days (EPA–450/4–79–003).

Specific criteria for ozone redesignation reviews are given in a December 7, 1979, policy memorandum from Richard G. Rhoads, former Director of U.S. EPA's Control Programs Development Division, and an April 21, 1983, policy memorandum from Sheldon Meyers, Director, Office of Air Quality Planning and Standards. These memoranda indicate that the average number of expected exceedances for each monitoring site is to be based on ozone concentrations contained in the most recent 3 years of data, if 3 years of data are available.

For a non-monitored area, EPA considers its proximity to major precursor source areas (generally major urban areas) and wind directions. Data from areawide ozone-precursor studies in the vicinities of major urban areas, such as St. Louis and Philadelphia, as well as data from rural monitoring sites in Region III, indicate that ozone transport, at significant levels, can occur over considerable distances downwind from urban areas. Based on these studies and data, and in the absence of any monitoring data, counties immediately downwind from major urban areas are generally assumed to be nonattainment.

Given the regional nature of ozone concentrations, as confirmed in the St. Louis and Philadelphia studies, it is reasonable to assume that non-monitored counties adjoining monitored nonattainment areas are, themselves, probable nonattainment areas. The probability of nonattainment is particularly high in those counties which are both immediately downwind of major urban areas and adjoining geographically similar monitored rural nonattainment areas.

The results of EPA's review of the Commonwealth's proposed ozone redesignations are presented below. The presentation is divided into two sections: proposed approval and proposed disapproval.

Proposed Approval

EPA finds that a redesignation of several counties in Pennsylvania is approvable at this time. Based on EPA's review of available ambient ozone monitoring data, and on the proximity of some of these counties to a major urban area, EPA believes that four counties in Pennsylvania's redesignation request have attained the ozone NAAQS. Included below is a table which

contains a brief explanation of the basis for each proposed approval.

Counties requested by DER to be redesignated attainment	EPA comment
Cambria	No monitored exceedances in the last three years (82-84).
Clearfield	Rural area with no monitoring data. Adjacent to Cambria Co. which has measured attainment.
Indiana	Rural area with no monitoring data. Adjacent to Cambria Co. which has measured attainment.
Somerset	Rural area with no monitoring data. Adjacent to Cambria Co. which has measured attainment.

In addition, the areas covered by statewide RACT regulations will remain in effect after this designation.

Proposed Disapproval

EPA finds that a redesignation of three Counties is not approvable at this time. Included below is a table which contains a brief explanation of the basis for each proposed disapproval:

Counties requested by DER to be redesignated attainment	EPA comment
Blair	82-84 data shows four exceedances. Therefore, the average number of exceedances per year, of the ozone NAAQS, is greater than one.
Bedford	Rural area with no monitoring data. Adjacent to Blair County which has monitored nonattainment.
Centre	Rural area with no monitoring data. Adjacent to Blair County which has monitored nonattainment.

Interested parties are invited to submit comments on this action. EPA will consider comments received within 30 days of publication of this notice.

Under 5 U.S.C. section 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

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

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407))

Dated: December 6, 1984.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 85-5701 Filed 3-8-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

Administration of Grazing—Exclusive of Alaska; Amendments to Grazing Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would provide procedures for carrying out the requirements of the 1985 Interior Appropriations Act which were applicable to livestock grazing lessees and permittees on the date of enactment of the Act and identifies the authorities of the Bureau of Land Management for implementing these requirements.

DATE: Comments should be submitted by May 10, 1985. Comments received or postmarked after the above date may not be considered as part of the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert Alexander, (202) 653-9210.

SUPPLEMENTARY INFORMATION: Under Pub. L. 98-473, the Department of the Interior Appropriations Act of 1985, Congress provided "That the dollar equivalent of value, in excess of the grazing fee established under law and paid to the United States Government, received by any permittee or lessee as compensation for an assignment or other conveyance of a grazing permit or lease, or any grazing privileges or rights thereunder, and in excess of the installation and maintenance cost of grazing improvements provided for by the permittee in the allotment management plan or amendments or otherwise approved by the Bureau of Land Management shall be paid to the Bureau of Land Management * * *."

Congress further provided "[t]hat if the dollar value prescribed above is not paid to the Bureau of Land Management, the grazing permit or lease shall be canceled."

This proposed rulemaking would set out the procedure that would be followed by the Bureau of Land Management in carrying out the existing statutory requirements. The proposed rulemaking reflects the intent of the Act that the excess dollar equivalent amount received by a permittee or lessee for subleasing a grazing permit or lease must be paid to the United States and establishes the procedures that will be used by the Bureau of Land Management in meeting its responsibility as an agent of the United States under this Congressional mandate. If the dollar equivalent is not paid within 30 days, the Act requires that the lease or permit be cancelled. Even though this is a proposed rulemaking requesting public comment, the public should understand that the provisions of the Act were effective as of the date of its enactment, October 12, 1984, and notice is hereby given that the Bureau will fulfill its responsibility under the Act and collect any obligations due and owing the United States since the Act's effective date.

The following discussion summarizes the specific provisions of the proposed rulemaking, and explains their basis and purpose.

Section 4100.0-3 Authority.

This section would be revised to include citation of the Department of the Interior Appropriations Act for Fiscal Year 1985 as the legal authority for this proposed rulemaking.

Section 4100.0-5 Definitions.

This rulemaking would place two new definitions in § 4100.0-5. The word "control" would be defined to mean responsibility for and providing care and management of base property and/or livestock. The definition of control is important because of its use in the definition of the prohibited act of subleasing.

The term "subleasing" would be defined as the act of a permittee or lessee entering into an agreement that either (1) allows someone other than the permittee or lessee to graze livestock on the public lands without controlling the base property supporting the permit or lease or (2) allows grazing on the public lands by livestock that are not owned or controlled by the permittee or lessee. The definition of subleasing is consistent with the existing regulatory requirements that any person grazing livestock on public lands must own or control base property and livestock. (See 43 CFR 4110.1 and 4130.5(a).)

Section 4130.5 Ownership and identification of livestock.

This section would be revised by adding two new paragraphs, §§ 4130.5(d) and 4130.5(e). The new provisions would require that in cases

where a permittee or lessee controls, but does not own the livestock which graze on the public lands, any agreement between the permittee or lessee and the person owning the livestock shall be filed with the authorized officer. Further, the proposed rulemaking would clarify the existing reqiurement that the brand and other identifying marks on the livestock controlled but not owned by the permittee or lessee be filed with the authorized officer. These clarifying provisions would enable the authorized officer to review leasing arrangements and assure that they are consistent with regulation requirements.

Section 4140.1 Prohibited Acts.

This section would be revised by adding a new paragraph to § 4140.1(a)(6) to establish that subleasing, as defined earlier, is prohibited on public lands and other lands where grazing is administered by the Bureau of Land Management. Existing regulations do not explicitly establish subleasing as a prohibited act. Subleasing implicitly violates either §4110.1's requirement of owning or controlling base property or §4130.5(a)'s requirement of owning or controlling the livestock which graze the public lands. This proposed rulemaking would assist in the public understanding that subleasing is prohibited by first defining subleasing in §4100.0-5 and then including subleasing among the acts and practices which are prohibited by § 4140.1

Section 4170.1 Penalties.

This section would be revised by inserting a new paragraph (d) which carrys out the Congressional mandate and establishes that a permittee or lessee who engages in subleasing as defined in § 4100.0-5 must pay the Bureau of Land Management any amount or dollar equivalent value of all compensation received for a sublease which exceeds the sum of the grazing fee plus the amount spent for installation and maintenance of range improvements. As required by the Act, if that amount is not paid to the authorized officer within 30 days, the permit or lease shall be cancelled. However, the monetary payment will not affect the penalty that may be imposed by the authorized officer for subleasing or other additional penalties that may be imposed by the authorized officer upon the sublessor for making unauthorized use of grazing pursuant to § 4140.1(a). The purpose of this section is to integrate the Department of the Interior's requirements concerning ownership and control of livestock grazing on the public lands with the requirements of the 1985 Appropriations Act.

The Department of the Interior Appropriations Act for Fiscal Year 1985 was signed on October 12, 1985, and applies to the 1985 fiscal year and it is important that the Department identify the requirements that the Act places on permittees and lessees and to establish the Bureau of Land Management's authority to implement the Act's provisions. This proposed rulemaking would establish the procedures that will be used by the Bureau of Land Management to meet its responsibility under the Act.

The primary author of this proposed rulemaking is Robert Alexander, Division of Rangeland Resources, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This proposed rulemaking contains no new information collection requirements. Information to be collected under this proposed rulemaking has already been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0047.

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management.

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315 et seq.), the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.), the Public Rangelands Improvement Act of 1978, (43 U.S.C. 1901 et seq.), and the Department of Interior Appropriations Act for Fiscal Year 1985 (Pub. L. 98-473), it is proposed to amend Part 4100, Group 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 4100—[AMENDED]

1. Section 4100.0-3 is revised by adding a new paragraph (g) to read as follows:

§ 4100.0-3 Authority.

* * * * *

(g) The Department of the Interior Appropriations Act for Fiscal Year 1985 (Pub. L. 98-473).

§ 4100.0-5 [Amended]

2. Section 4100.0-5 is amended by adding in appropriate order definitions of the following terms:

" 'Control' means being responsible for and providing care and management of base property and/or livestock."

" 'Subleasing' means the act of a permittee or lessee entering into an agreement that either (1) allows someone other than the permittee or lessee to graze livestock on the public lands without controlling the base property supporting the permit or lease or (2) allows grazing on the public lands by livestock that are not owned or controlled by the permittee or lessee.

2. Section 4130.5 is amended by adding new paragraphs (d) and (e) to read:

§ 4130.5 Ownership and identification of livestock.

* * * * *

(d) Where a permittee or lessee controls but does not own the livestock which graze on the public lands, any agreement between the permittee or lessee and the person owning the livestock shall be filed with the authorized officer.

(e) The brand and other identifying marks on livestock controlled, but not owned, by the permittee or lessee shall be filed with the authorized officer.

3. Section 4140.1 is amended by adding a new paragraph (a)(6) to read as follows:

§ 4140.1 Acts prohibited on public lands.

(a) * * *

(6) Subleasing as defined in this subpart.

4. Section 4170.1-1 is amended by adding a new paragraph (d) to read:

§ 4170.1-1 Penalty for violations.

* * * * *

(d) Any person who is found to have violated the provisions of § 4140.1(a)(6) since October 12, 1984, shall be required to pay to the authorized officer the dollar equivalent value, as determined by the authorized officer, of all compensation received for the sublease which is in excess of the sum of the established grazing fee and the cost of

installation and maintenance of authorized range improvements. If the dollar equivalent value is not received by the authorized officer within 30 days of receipt of the final decision, the grazing permit or lease shall be cancelled. Such payment shall be in addition to any other penalties the authorized officer may impose under § 4170.1–1(a) of this title.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

February 24, 1985.

[FR Doc. 85–5642 Filed 3–8–85; 8:45 am]

BILLING CODE 4310–84–M

Notices

Federal Register
Vol. 50, No. 47
Monday, March 11, 1985

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

Soil Conservation Service

Middle River Watershed Project, GA; Intent to Deauthorize Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Middle River Watershed project, Franklin and Stephens Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: B. C. Graham, State Conservationist, Soil Conservation Service, 355 East Hancock Avenue, Athens, Georgia 30601, telephone: 404-546-2273.

SUPPLEMENTARY INFORMATION: A determination has been made by B.C. Graham that the proposed works of improvement for the Middle River project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from B.C. Graham, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A-05 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

B. C. Graham,
State Conservationist.
March 4, 1985.

[FR Doc. 85-5739 Filed 3-8-85; 8:45 am]
BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[Case No. 653]

Paul C. Carlson and C-O Manufacturing Co., Inc.; Order

The Office of Export Enforcement, International Trade Administration, U.S. Department of Commerce (Department), initiated administrative proceedings pursuant to Section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420 (1982)) (the Act),[1] and Part 388 of the Export Administration Regulations (currently codified at 15 CFR Parts 368-399 (1984)) the Regulations) against Paul C. Carlson (Carlson) and C-O Manufacturing Company, Inc. by issuing Charging Letters alleging that Carlson and C-O Manufacturing Company, Inc. violated §§ 387.2, 387.3, 387.5 and 387.6 of the Regulations.

The Department, Carlson and C-O Manufacturing Company, Inc. have entered into a Consent Agreement whereby each party has agreed that the matter will be settled by denying Carlson and C-O Manufacturing Company, Inc. all validated license export privileges and reexport authorizations for a period of 15 year from the date of this Order.

The Hearing Commissioner approves the Consent Agreement.

It is therefore ordered,

First, For a period ending 15 years from the date of this Order, Carlson and C-O Manufacturing Company, Inc. are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction which requires a validated export license or reexport authorization from the Office of Export Administration:

(a) Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any validated export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to commodities and technical data which require a validated license or reexport authorization under the Regulations;

(b) Such denial of export privileges shall extend not only to Carlson and C-O Manufacturing Company, Inc. but also to their agents, employees and successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which Carlson or C-O Manufacturing Company, Inc. is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services;

(c) No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data which are subject to the denial of export privileges set out herein, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Carlson, C-O Manufacturing Company, Inc. or anyone who is now or may be subsequently

[1] The authority granted by the Act terminated on March 30, 1984. The Regulations have been continued in effect by Executive Order 12470, 49 FR 13099, April 3, 1984, under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (1982)).

named as a related party, or whereby Carlson, C–O Manufacturing Company, Inc. or any related party may obtain any benefit therefrom or have any interest in or participation therein, directly or indirectly: (i) apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshippment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for Carlson, C–O Manufacturing Company, Inc. or any related party denied export privileges; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States;

Second, The Charging Letters, the Consent Agreement and this Order shall be made available to the public, and this Order shall be published in the Federal Register.

This Order is effective immediately.

Dated: March 5, 1985.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85–5685 Filed 3–8–85; 8:45 am]

BILLING CODE 3510-DT-M

[A–428–037]

Drycleaning Machinery From West Germany; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on drycleaning machinery from West Germany. The review covers the two known manufacturers and/or exporters of this merchandise to the United States, two consecutive periods from July 1, 1980, through October 31, 1982, and certain other U.S. sales deferred from the last administrative review. The review indicates the existence of dumping margins during the periods.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value on each of the sales during the periods. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 11, 1985.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–1130.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 1256) the final results of its last administrative review of the antidumping finding on drycleaning machinery from West Germany (37 FR 23715, November 8, 1972) and announced its intent to conduct the next administrative review. The Department has now conducted that review.

Scope of the Review

Imports covered by the review are shipments of drycleaning machinery. Such merchandise is currently classifiable under item 670.4100 of the Tariff Schedules of the United States Annotated.

The review covers the two known manufacturers and/or exporters of this merchandise to the United States, Boewe Maschinenfabrik GmbH and Seco Maschinenbau GmbH & Co., two consecutive periods from July 1, 1980, through October 31, 1982, and certain other U.S. sales deferred from the last administrative review. We will review the remaining previously deferred sales in a subsequent review.

Multimatic, Inc., the U.S. susidiary of Seco, failed to provide certain data requested during our on-site verification of its response to our questionnaire. For that firm, we used the best information available for the missing data.

United States Price

In calculating United States price the Department used either purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"), as appropriate. Purchase price and ESP were based on the c.i.f. delivered, packed price to the first unrelated purchaser in the United States. Where applicable, we made adjustments for U.S. and foreign inland freight, U.S. customs duties, ocean freight, marine insurance, brokerage charges, commissions to unrelated parties, and the U.S. subsidiary's selling expenses. We also made adjustments, where appropriate, for any increased value resulting from further assembly performed on the imported merchandise after importation and before its sales to an unrelated purchaser in the U.S. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used either home market price, when sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison, or prices to a third country (United Kingdom) when there were insufficient quantities of such or similar merchandise sold in the home market to provide a basis for comparison, both as defined in section 773 of the Tariff Act.

We made adjustments, where applicable, for inland freight, cash discounts, differences in commissions to unrelated parties, direct advertising, guarantee, credit and packing costs. We made further adjustments, where applicable, for differences in the physical characteristics of the merchandise and for indirect selling expenses to offset U.S. selling expenses in ESP calculations.

Where possible, we compared sales by Boewe's American subsidiary (Boewe Systems and Machinery) to distributors with Boewe's sales in West Germany through agents to end-users. However, when there were no contemporaneous home market sales through agents, we compared sales to distributors in the U.S. with direct sales to end-users in the home market. We made no adjustment for claimed level of trade differences because the claims were not adequately quantified.

We disallowed claimed adjustments for warranty, servicing, product maintenance, sales office expenses, research and development expenses, payments to retired agents and certain advertising expenses, certain "other" payments made on behalf of the customer, technical services, traffic department expenses, certain management expenses, general and administrative expenses because these claimed adjustments were either inadequately quantified, not directly related to the sales used for comparison purposes, or not selling expenses. We also disallowed claimed adjustments for "trade-in losses" by Boewe and Seco as price reductions. We do not consider the amounts deducted from the price of a new machine for a trade-in to be a discount. The amount of the credit is a measure of the value to the company of the used machines. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminary determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Boewe Maschinenfabrik GmbH	7/1/80-10/1/81	17.45
	11/1/81-10/31/82	.45
Seco Maschinenbau GmbH & Co	7/1/80-10/1/81	10.70
	11/1/81-10/31/82	9.96

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required for those firms. Because the most recent margin for Boewe is less than 0.50 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall waive the depost requirement for that firm. For any future entries from a new exporter not covered in this or prior reviews, whose first shipment occurred after October 31, 1982, and who is unrelated to any reviewed firm, a cash deposit of 9.96 percent shall be required. These deposit requirements and waiver are effective for all shipments of West German drycleaning machinery entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

March 4, 1985.

[FR Doc. 85-5683 Filed 3-8-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-410]

Termination of Antidumping Investigation; Certain Large Diameter Carbon Steel Welded Pipes From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On March 1, 1985, Berg Steel Pipe Corporation withdrew its antidumping petition, filed on March 21, 1984, on Certain Large Diameter Carbon Steel Welded Pipes from Brazil. Based on the withdrawal, we are terminating the investigation.

EFFECTIVE DATE: March 11, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Aceto, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377-3534.

SUPPLEMENTARY INFORMATION:

Case History

On March 21, 1984, we received a petition from Berg Steel Pipe Corporation filed on behalf of the U.S. industry producing certain large diameter carbon steel welded pipes.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated the investigation on April 10, 1984, (50 FR 15248). On May 7 the ITC found that there is a reasonable indication that imports of Certain Large Diameter Carbon Steel Welded Pipes from Brazil materially injure, or threaten material injury to, a United States industry. On August 28, 1984 we made a preliminary determination that Certain Large Diameter Carbon Steel Welded Pipes from Brazil was being or was likely to be, sold in the United States at less than fair value. On January 28, 1985, we made a final determination that Certain Large Diameter Carbon Steel Welded Pipes from Brazil was being or was likely to be, sold at less than fair value (50 FR 3823).

Scope of Investigation

The merchandise covered by this investigation is certain large diameter carbon steel welded pipes of circular cross section, with an outside diameter greater than 16 inches, not suitable for use in boilers, superheaters, heat exchangers, condensers, and feedwater heaters and not cold drawn.

At the time this case was initiated, this merchandise was provided for in item numbers 610.3211 and 610.3251 of the Tariff Schedules of the United States Annotated (TSUSA). In April, 1984, the TSUSA numbers were changed. Item number 610.3211 is now classified under item numbers 610.3262 and 610.3264. This merchandise includes American Petroleum Institute (A.P.I.) and non-A.P.I. welded carbon steel oil well casing.

Withdrawal of Petition

On March 1, 1985, petitioner notified us that it was withdrawing its petition, and requested that the investigation be terminated. Under section 734(a) of the Act, as amended by section 604 of the Trade and Tariff Act of 1984, upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. This withdrawal is based on arrangements with the Government of Brazil to limit the volume of imports of this product. We have assessed the public interest factors set out in section 734(a)(2) of the Act and consulted with potentially affected producers, workers, and consuming interests. On the basis of our assessment of the public interest factors and our consultations with affected interests, we have determined that termination would be in the public interest.

We have notified all parties to the investigation of petitioner's withdrawal and our intention to terminate. For these reasons we are terminating our investigation.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

March 1, 1985.

[FR Doc. 85-5684 Filed 3-8-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-008]

Yarns of Polypropylene Fibers From Mexico; Final Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration Import Administration, Commerce.

ACTION: Notice of final results of administrative review of suspension agreement.

SUMMARY: On October 11, 1984, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on yarns of polypropylene fibers from Mexico. The review covers the period February 7, 1983, through June 30, 1983.

We gave interested parties an opportunity to comment on the preliminary results. After review of all timely comments received, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: March 11, 1985.

FOR FURTHER INFORMATION CONTACT: Stephen Nyschot or Patricia Stroup, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 39890) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on yarns of polypropylene fibers from Mexcio (48 FR 5581, February 7, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Mexican yarns of polypropylene fibers. Such merchandise is currently classifiable under items 310.0214, 310.1114, 310.5015, 310.5051, 310.6029, 310.6038, and 310.800 of the Tariff Schedules of the United States Annotated. Yarns of polypropylene fibers are used primarily in the manufacture of fabrics, particularly those for upholstery.

The review covers the only know exporter of Mexican yarns of polypropylene fibers to the United States, Industrias Polifil, S.A. de C.V., the signatory to the suspension agreement.

The review covers the period February 7, 1983, through June 30, 1983, and eight programs: (1) CEDI, (2) FOMEX, (3) CEPROFI, (4) FONEI, (5) FOGAIN, (6) state tax incentives, (7) import duty reductions and exemptions, and (8) NDP preferential price discounts.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received timely comments in the form of questions from the American Textile Manufacturers Institute ("the Institute"), the Amalgamated Clothing and Textile Workers Union and the International Ladies Garment Workers Union ("the Unions").

Comment 1: Did the Department examine the possiblity that Polifil benefited from equity infusions by Nacional Financeria, S.A. ("NAFINSA") into Polifil's parent company, Grupo Pliana, or from other NAFINSA subsidies conferred on the parent?

Department's Position: The Department has examined only NAFINSA loans and found them not to be countervailable. (*See* Final Affirmative Countervailing Duty Determination on oil country tubular goods from Mexico (49 Fr 47054, November 30, 1984)). Until we received the Institute's and the Unions' comments, the issue of NAFINSA equity infusions into Grupo Pliana had never been raised. We have not examined this issue.

Comment 2: Did the Department consider whether benefits conferred on Grupo Pliana under any of the eight programs in our review flowed to Polifil?

Department's Position: Until we received the Institute's and the Unions' comments, the issue of benefits passing through Grupo Pliana to Polifil had not been raised. We have not specifically examined this issue. However, our examination of Polifil's books and records during verification unearthed no benefits under the eight programs examined.

Final Results of the Review

After review of the timely comments received, the final results of the review are the same as the preliminary results. We determine that Polifil has complied with the terms of the suspension agreement for the period February 7, 1983, through June 30, 1983. Therefore, the suspension agreement for Mexican yarns of polypropylene fibers shall remain in effect.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: March 5, 1985.

Alan F. Holmer,

Deputy Assistant Secretary Import Administration.

[FR Doc. 85–5707 Filed 3–8–85; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued a second amendment to an export trade certificate of review to Crosby Trading Company ("Crosby"). This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on the certificate. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to the certificate as "Export Trade Certificate of Review, application number 84–2A002."

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(b), which requires the Secretary of Commerce to publish in the **Federal Register** a summary of each certificate issued. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

The initial export trade certificate of review issued to Crosby (49 FR 25889, June 25, 1984) protected only Crosby for planning activities associated with

formulating an export joint venture, and allowed meetings with interested producers to occur within a thirty day period. The first amendment to the certificate (49 FR 47519, December 5, 1984) extended the protection of the certificate during the planning stage to firms named as members.

The second amendment extends the period within which Crosby and interested producers may hold planning stage discussions to March 31, 1985, and allows three such meetings. The second amendment also removes protection from four firms that determined that they do not wish to participate in the proposed export joint venture. Accordingly, the following firms are deleted as members: Westvaco Corporation, New York, NY, National Distillers and Chemical Corporation, New York, NY, Georgia-Pacific Corporation, Atlanta, GA, and Monsanto Company, St Louis, MO.

Effective Date

In accordance with section 304(a)(2) of the Act and 15 CFR 325.7, this amendment is effective from December 20, 1984, the date on which the application was deemed submitted. The certificate remains effective through May 27, 1985.

A copy of each certificate is available for inspection and copying in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Consitution Avenue, NW., Washington, D.C. 20230.

Richard H. Shay,

Acting General Counsel.

[FR Doc. 85-5762 Filed 3-8-85; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Modification No. 1 To Permit No. 435; Dr. Roger Payne

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), § 222.25 of the Regulations Governing Endangered Species Permits (50 CFR Part 222), Scientific Research Permit No. 435 issued to Dr. Roger Payne, 191 Weston Road, Lincoln, Massachusetts 01773, on October 5, 1983, is modified to extend the period of authorized taking for five years.

Accordingly, Section B-8 is deleted and replaced by: "8. This Permit is valid with respect to the taking authorized herein until December 31, 1987."

This modification was effective January 1, 1985.

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115;

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: February 28, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-5741 Filed 3-8-85; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service; Proposed Modification to Permit No. 464 (P77 #9); Northwest and Alaska Fisheries Center

Notice is hereby given that the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 2725 Montlake Boulevard East, Seattle, Washington 98112 has requested a modification of Permit No. 464 issued on April 25, 1984 (49 FR 17795) under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulation Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting an increase in the dose rate of Ketamine hydrochloride to insure full immobilization of seals, to administer a pre-Ketamine hydrochloride injection of the sedative Xylazine to reduce the chances of elephant seals exhibiting breath-holding behavior; and an increase in the number of animals that may be killed or injured prior to the suspension of research activities. Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in the modification are summaries of those of the Applicant.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW, Washington, D.C.;

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and

Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE, Seattle, Washington 98115.

Dated: March 1, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-5740 Filed 3-8-85; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Agent Assistance in the Licensing of Government-Owned Patents

The Office of Federal Patent Licensing (OFPL), Center for the Utilization of Federal Technology, has received custody from other agencies of a number of U.S. and foreign patent rights assigned to the United States of America.

To broaden the marketing of inventions which have already been licensed nonexclusively, OFPL is prepared to make similar agreements with selected, qualified patent-licensing or technology-transfer agents and brokers to locate additional, prospective licensees thereby making the benefits of such inventions more extensively and expeditiously available to the public.

Parties qualified for this program should make their interest, capabilities and prior experience known in writing to: David T. Mowry, Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 85-5743 Filed 3-8-85; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Levels for Certain Cotton Textile Products Produced or Manufactured in Brazil

March 5, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 11, 1985. For further information contact James Nader, International Trade Specialist (202) 377-4212.

Backgrond

A CITA directive dated March 28, 1984 (49 FR 13064) established restraint limits for certain specified categories of cotton and man-made fiber textiles and textile products, including Categories 314 (poplin and broadcloth) and 320 (other woven fabrics, n.e.s.), produced or manufactured in Brazil and exported during the agreement year began on April 1, 1984 and extends though March 31, 1985. Under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement of March 31, 1982, as amended, between the Governments of the United States and the Federative Republic of Brazil, and at the request of the Government of the Federative Republic of Brazil, the Government of the United States has agreed to increase the consultation levels for Categories 314 and 320 to 1,900,000 and 4,400,000 square yards, respectively, for the current agreement year. The letter to the Commissioner of Customs which follows this notice further amends the March 28, 1984 directive to icrease these levels.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR. 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

March 5, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury Washington, D.C.

Dear Mr. Commissioner: This directive futher amends, but does not cancel, the directive of March 28, 1984, which established import restraint limits for certain categories of cotton and man-made fiber textiles and textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1984.

Effective on March 11, 1985, the directive of March 28, 1984 is heaby further amended to include the following adjusted restraint levels for cotton textile products in Categories 314 and 320:

Category	Adjusted 12-mo restraint level [1]
314	1,900,000 square yards.
320	4,400,000 square yards.

[1] In levels have not been adjusted to account for any imports exported after March 31, 1984.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenanan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-5688 Filed 3-8-85; 8:45 am]

BILLING CODE 3510-DR-M

New Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

March 5, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 11, 1985. For further information contact James Nader, International Trade Specialist, (202) 377-4212.

Background

On July 2, August 30, November 2, November 15 and December 28, 1984, notices were published in the **Federal Register** (49 FR 27194, 34391, 44119, 45207 and 50423) which established restraint limits (variously) for cotton and man-made fiber textile products in Categories 317, 334, 339, 369pt (only shop towels in T.S.U.S.A. 366.2740), 630 and 640, produced or manufactured in Indonesia and exported during designated periods. The limits for Categories 317 and 339, among others, are filled.

During consultations held January 17-19, 1985, pursuant to the terms of their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, the Governments of the United States and the Republic of Indonesia agreed to establish specific limits for all of the foregoing categories. As stipulated in the bilateral agreement, the new specific limits for Categories 317, 334, 369pt. (shop towels) and 640 have been prorated to conform to the applicable call periods and apply to goods exported during those periods. The limits for Categories 339 and 639 are annual limits applicable to goods exported during the twelve-month period which began on July 1, 1984 and extends through June 30, 1985.

On December 24, 1984 a further notice was published in the **Federal Register** (49 FR 49879) announcing that, as of January 1, 1985, the Committee for the Implementation of Textile Agreements, in order to prevent market disruption, would direct the U.S. Customs Service, as appropriate, to permit entry into the United States for consumption, or withdrawal from warehouse for consumption, of such goods which were exported during a prior restraint period in excess of the restraint limit at a prescribed rate per month during each of the first five months of the following period. CITA had decided, in the case of imports in Categories 317 and 339, exported from Indonesia on and after July 31, 1984 to direct Customs to permit entry in amounts not to exceed 1,800,000 square yards in Category 317 and 48,000 dozen in Category 339 during each of the thirty-day periods beginning on March 11, 1985. The thirty-day periods are stipulated in the letter to the Commissioner of Customs which follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July

16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

March 5, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, directives of June 27, August 27, October 29, December 21, 1984 and February 7, 1985 which established restraint limits (variously) for cotton and man-made fiber textile products in Categories 317, 334, 339, 369pt. (only TSUSA number 366.2740), 639 and 640, produced or manufactured in Indonesia and exported during the designated periods.

Effective on March 11, 1985, the foregoing directives are hereby amended to include the following restraint limits for Categories 317, 334, 339, 369pt. (only TSUSA number 366.2740), 639 and 640 for goods exported during the periods indicated:

Category	Restraint limit	Period
317	8,280,000 square yards of which 1,840,000 square yards shall be in TSUS items 320.— through 331.— with statistical suffixes 50, 87, and 93.	July 31, 1984–June 30, 1985.
334	18,240 dozen	Sept. 28, 1984–June 30, 1985.
339	240,000 dozen	July 1, 1984–June 30, 1985.
369pt. (only TSUSA 366.2740)	502,500 pounds	Oct. 30, 1984–June 30, 1985.
639	360,000 dozen	July 1, 1984–June 30, 1985.
640	201,000 dozen	Oct. 31, 1984–June 30, 1985.

Also effective on March 8, 1985, merchandise in Categories 317 and 339 which is in excess of the limits previously established, in the case of Category 317, for exports during the period which began on July 31, 1984 and extends through June 30, 1985, and, in the case of Category 339, for exports during the period which began on July 1, 1984 and extends through June 30, 1985, shall be permitted entry into the United States for comsumption, or withdrawal from warehouse for consumption, in the following amounts during each of the thirty-day periods set forth below:

Category	Amount to be entered per 30-day period
317	1,800,000 square yards.
339	48,000 dozen.

The thirty-day periods shall be as follows:
March 11, 1985 through April 9, 1985.
April 10, 1985 through May 9, 1985.
May 10, 1985 through June 8, 1985.
June 9, 1985 through June 30, 1985.

The committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-5686 Filed 3-8-85; 8:45 am]

BILLING CODE 3510-DR-M

New Limit for Certain Wool Textile Products Produced or Manufactured in the Hungarian People's Republic

March 5, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 11, 1985. For further information contact Eve Anderson, International Trade Specialist (202) 377–4212.

Background

By an exchange of notes dated January 18 and February 6, 1985, the Governments of the United States and the Hungarian People's Republic have agreed to further amend their Bilateral Wool Textile Agreement of February 15 and 25, 1983, as amended, to establish a specific limit of 50,000 dozen for wool sweaters in Category 445/446, produced or manufactured in Hungary and exported during the fifteen-month period which began on October 1, 1984 and extends through December 31, 1985. The following letter to the Commissioner of Customs establishes the new specific limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5 Schedule 3 of the TARIFF SCHEDULES OR THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

March 5, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Wool Textile Agreement of February 15 and 25, 1983, as amended, between the Governments of the United States and the Hungarian People's Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 11, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in categories 445/446, produced or manufactured in Hungary and exported during the fifteen-month period which began on October 1, 1984 and extends through December 31, 1985 in excess of the following restraint limits:

Category	15-mo restraint limit [1]
445/446	50,000 dozen of which not more than 37,500 dozen shall be in Category 445 and not more than 37,500 dozen shall be in category 446.

[1] The limits have not been adjusted to reflect any imports exported after September 30, 1984.

Textile products in Category 445/446 which have been exported to the United States prior to Octobver 1, 1984 shall not be subject to this directive.

Textile products in Category 445/446 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The levels set forth above are subject to adjustment in the future pursuant to the provisions of the bilateral agreement of February 17 and 25, 1983, as amended, between the Governments of the United States and the Hungarian People's Republic, which provide, in part that: (1) With the exception of Category 433, the restraint limits may be exceeded by not more than five percent during an agreement year, provided the increase is compensated for by an equal decrease in equivalent square yards in another specific limit, other than Category 433; (2) the limits may be increased for carryforward up to 6 percent of the applicable category limit; and (3) administrative arrangements or adjustments

may be made to resolve minor problems arising in the implementation of the egreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foregin affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementaation of Textile Agreements.

[FR Doc. 85-5687 Filed 3-8-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Survey of Former Department of Defense Civilian Employees

Survey results will provide unique data on characteristics of former Department of Defense (DoD) civilian employees which are related to the willingness of critical-skill holders, to return to DoD and to relocate in order to work, and on policy changes possibly required in order to attract an optimum of skilled employees during mobilization.

Responses 12,000 respondents.

Burden hours 6,000.

ADDRESS: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel Vittiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

SUPPLEMENTAL INFORMATON: A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD MI&L (PI), Room 3C800, Pentagon, Washington, DC 20301-4000, telephone (202) 695-0643.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense

March 6, 1985.

[FR Doc. 85-5681 Filed 3-8-85; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary Changes in Per Diem Rates; Travel and Transportation

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Notice of Publication of Changes in Per Diem Rates.

SUMMARY: The Per Diem, Travel Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 126. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, and possessions of the United States. Bulletin Number 126 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: March 1, 1985.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The test of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 126 to the Heads of the Executive Departments and Establishments

Subject: Table of maximum per diem rates in lieu of subsistence for United States Government civilian officers and employees for official travel in Alaska, Hawaii, the Commonwealth of Puerto Rico and possessions of the United States.

1. This bulletin is issued in accordance with Memorandum for Heads of Executive Departments and Establishments from the Deputy Secretary of Defense dated 17 August 1966, subject: Executive Order 11294, August 4, 1966, "Delegating Certain Authority of the President to Establish Maximum Per Diem Rates for Government Civilian Personnel in Travel Status" in which this Committee is directed to exercise the authority of the President [5 U.S.C. 5702(a)(2)] delegated to the Secretary of Defense for Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 125 except for the cases identified by asterisks which rates are effective on the date of this Bulletin.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
*Adak [1]	$119.00
Anaktuvuk Pass	140.00
*Anchorage	116.00
Atqasuk	215.00
Barrow	139.00
Bethel	136.00
Coldfoot	122.00
*College	116.00
Cordova	124.00
Deadhorse	131.00
Dillingham	100.00
Dutch Harbor	105.00
*Eielson AFB	104.00
*Elmendorf	116.00
*Fairbanks	104.00
*Ft. Richardson	116.00
*Ft. Wainwright	104.00
Juneau	109.00
*Ketchikan	113.00
*Kodiak	129.00
*Kotzebue [2]	123.00
*Murphy Dome [2]	104.00
*Noatak	125.00
*Nome	136.00
*Noorvik	123.00

Locality	Maximum rate
*Petersburg	113.00
Point Hope	100.00
Point Lay	179.00
Prudhoe Bay	131.00
Sand Point	103.00
Shemya AFB [3]	30.00
*Shungnak	123.00
*Sitka-Mt. Edgecombe	113.00
*Skagway	113.00
*Spruce Cape	129.00
St. Mary's	100.00
*Tanana	136.00
Valdez	129.00
Wainwright	165.00
*Wrangell	113.00
Yakutat	100.00
All Other Localities [3]	90.00
American Samoa	61.00
Guam M. I.	74.00
Hawaii:	
Hawaii, Island of	63.00
All Other Islands	63.00
Johnson Atoll [4]	21.25
Midway Islands [3]	12.60
Puerto Rico:	
Bayamon:	
12-16—5-15	132.00
5-16—12-15	99.00
Carolina:	
12-16—5-15	132.00
5-16—12-15	99.00
Fajardo (Including Luquillo):	
12-16—5-15	132.00
5-16—12-15	99.00
Ft. Buchanan (Incl. GSA Service Center, Guaynabo):	
12-16—5-15	132.00
5-16—12-15	99.00
Ponce (Incl. Ft. Allen NCS)	92.00
Roosevelt Roads:	
12-16—5-15	132.00
5-16—12-15	99.00
Sabana Seca:	
12-16—5-15	132.00
5-16—12-15	99.00
San Juan (Including San Juan Coast Guard Units):	
12-16—5-15	132.00
5-16—12-15	99.00
All Other Localities	111.00
Virgin Islands of U.S.:	
12-1—4-30	126.00
5-1—11-30	93.00
Wake Island [4]	20.00
All Other Localities	20.00

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska—when Government quarters are not utilized, and quarters are obtained at the Simone Construction, Inc. camp, a daily travel per diem allowance of $71.50 is prescribed to cover the cost of lodging, meals and incidental expenses at this facility.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. The per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4.00 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 6, 1985.

[FR Doc. 85-5682 Filed 3-8-85; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers; Department of the Army

Fort A.P. Hill; Finding of No Significant Impact On The Environment

Commander, Fort A.P. Hill, Attn: ATZM—FHE, Fort A.P. Hill VA 22427, Telephone Number: (804) 633-8215.

To all interested agencies, groups and persons:

1. *Proposed Action:* The proposed action is the cleanup, storage and disposal of Building 225 and all soil in the vicinity that has been contaminated by the herbicides 2,4-D, Silvex and 2,4,5-T as well as dioxin. Building 225 will be demolished and the contaminated soil will be excavated. Contaminated material will be containerized and temporarily stored at Fort A.P. Hill in an approved storage facility pending availability of an Environmental Protection Agency approved disposal/treatment method.

2. *Purpose of the Action:* The purpose of the action is to eliminate a potential for further environmental degradation and possible health effects as a result of the herbicide and dioxin contamination.

3. *Alternatives Considered:*

a. Status Quo.

b. Demolition and storage of Building 225. Placement of impermeable cap on contaminated soil and install fencing around area.

c. Demolition of Building 225. Excavation of contaminated soil. Containerization of contaminated material. Pay contractor to remove and store material until acceptable disposal/treatment method available.

d. Demolition of Building 225. Excavation of contaminated soil. Containerization and storage of contaminated material in existing approved Hazardous Waste Storage Facility on federal property other than Fort A.P. Hill.

e. Demolition of Building 225. Excavation of contaminated soil. Containerization and shipment of contaminated material to Johnson Island for incineration as part of research burn to be conducted by EPA.

f. Preferred alternative. Demolition of Building 225. Excavation of contaminated soil. Containerization and temporary storage of contaminated material in approved storage facility to be constructed at Fort A.P. Hill until approved disposal/treatment method becomes available.

4. *Environmental Impact of the Proposed Action:* It has been determined that the preferred alternative would not constitute an action significantly affecting the quality of the human environment. Accordingly, the Commander, Fort A.P. Hill, has decided not to prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act of 1969 (PL 91-190). Reasons for the decision not to prepare such a statement are as follows:

a. The proposd action will eliminate the potential for contamination of surface and ground water.

b. The proposed action will not significantly affect air quality.

c. The proposed action will not produce solid waste for disposal on the installation.

d. The proposed action will not significantly deplete energy resources.

e. The proposed action will not significantly alter present federal land use patterns.

f. The proposed action will not significantly impact any known or predicted historical or cultural resources.

5. *Environmental Review File:* An environmental review file containing pertinent environmental documents more fully setting forth the reasons why an EIS is not required is available for public examination, upon request, at the Directorate of Facilities Engineering, Fort A.P. Hill, Virginia. Such requests should be directed to the telephone number listed above. All interested agencies, groups, and persons not in agreement with this decision are invited to submit written comments for consideration by the Commander, Fort A.P. Hill within thirty (30) days of the appearance of this notice. Comments should be directed to the address listed above.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 85-5693 Filed 3-8-85; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Board of Visitors to the United States Naval Academy; Meeting

Pursuant to the provisions of the Federal advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Board of Visitors to the United States Navel Academy will meet on 26 March 1985, at the U.S. Naval Academy, Annapolis, Maryland. The session, which is open to the public, will commence at 8:30 a.m. and terminate at 11:55 a.m., 26 March 1985, in Room 301, Rickover Hall.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction,

physical equipment, fiscal affairs, and academic method of the Naval Academy.

For further information concerning this meeting contact:

Rear Admiral Robert W. McNitt, USN (Retired), Secretary to the Board of Visitors, Dean of Admissions, U.S. Naval Academy, Annapolis, Maryland 21402, (301) 267–4361.

Dated: March 7, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–5833 Filed 3–8–85; 8:45 am]

BILLING CODE 3810–AE–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE–FRL–2792–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate, includes the actual data collection instrument. The following ICR is available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM–223); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, S.W.; Washington, D.C. 20460; telephone (202) 382–2742 or FTS 382–2742.

SUPPLEMENTARY INFORMATION:

Resource Conservation and Recovery Program

• Title: RCRA Closure and Post-Closure (EPA #0807) (This is an extension of a previously cleared activity.)

Abstract: In order to obtain a RCRA permit, owners and operators of hazardous waste facilities must prepare plans for properly closing their facilities. These plans give notice to the public about closing a facility; ensure minimum post-closure maintenance; and ensure control of elimination of waste, leachate, and contaminated rainfall or waste decomposition products.

Respondents: Owners and operators of hazardous waste management facilities.

Agency PRA Clearance Requests Completed by OMB

EPA #0160, Pesticides Report for Pesticide Producing Establishments' Form (EPA Form 3540–16), was approved 1/25/85 (OMB #2000–0029: Expires 1/31/88)

EPA #0874, Application for Federal Assistance (Construction), was approved 1/24/85 (OMB #2010–0003: Expires 9/30/87)

EPA #1144, Survey of Antimicrobials Usage in Hospitals, was approved 2/13/85 (OMB #2070–0066: Exipres 1/31/86)

EPA #1166, 404 State Program Annual Report, was approved 10/1/84 (OMB #2090–0011: Expires 10/31/87)

Comments on all parts of this notice should be sent to:

Nanette Liepman (PM–223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation & Information Management Division, 401 M Street, S.W., Washington, D.C. 20460,

and

Nancy Baldwin, Office of Management and Budget, Office of Information and regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, N.W., Washington, D.C. 20503.

Dated: March 4, 1985.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 85–5577 Filed 3–8–85; 8:45 am]

BILLING CODE 6560–50–M

[OW–9–FRL–2793–5]

Tentative Denial of Applications for Variances Submitted Under Section 301(M) of the Clean Water Act; Extension of Public Comment Period; Simon Paper Co. and Louisiana-Pacific Corp.

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of public comment period.

SUMMARY: The United States Environmental Protection Agency (EPA) is today providing notice that the public comment period of EPA's tentative decisions to deny variance requests submitted by the Louisiana-Pacific Corporation, Samoa, California, and the Simpson Paper Company, Fairhaven, California, pursuant to section 301(m) of the Clean Water Act, is being extended.

DATE: Interested persons may submit written comments on the tentative decisions to deny the 301(m) variance requests and on the administrative record to the address below. All comments must be received at the address below on or before April 15, 1985.

ADDRESS: Send written comments on the tentative decisions to U.S. Environmental Protection Agency, Region 9 (ORC), attn: Lorraine Pearson, Regional Hearing Clerk, 215 Fremont Street, San Francisco, California, 94105.

FOR FURTHER INFORMATION CONTACT: For further information on these actions, or to make requests for copies of the Tentative Decision Documents, contact Doug Eberhardt, 301(m) Project Officer, U.S. Environmental Protection Agency, Region 9 (W–5–3), 215 Fremont Street, San Francisco, California 94105, (415) 974–8300.

SUPPLEMENTARY INFORMATION: On January 8, 1983, President Reagan signed into law section 301(m) of the Clean Water Act (CWA), which provides the opportunity for two pulp mills located on the Samoa Peninsula in California to apply to the EPA for permit modifications from nationally applicable Best Practicable Technology (BPT) and Best Conventional Technology (BCT) effluent limitations, and the requirements of section 403 of the CWA, for biochemical oxygen demand (BOD) and pH.

These two companies hold National Pollutant Discharge Elimination System (NPDES) permits numbered CA0005894 and CA0005282. On September 26, 1983, the companies submitted to EPA applications for such variances. EPA requested supplementary information from both applicants on December 29, 1983, and March 15, 1984, and received such information shortly thereafter.

EPA proposes to deny the 301(m) applications. On December 14, 1984, the Regional Administrator, EPA Region 9, signed Tentative Decision Documents denying the 301(m) applications. Notice of the tentative denials was provided on December 20, 1984 (49 FR 49501). EPA held a public workshop on January 23, 1985, in the Council Chambers, Eureka City Hall, for the purpose of explaining to the public the proposed EPA action. A public hearing was held on February 6, 1985, at which time EPA received oral comments and written statements from the public regarding EPA's tentative denials.

Originally, the public comment was scheduled to end on March 1, 1985. Subsequently, EPA has received several requests to extend the comment period from various elected officials, the applicants, and the general public. Given the substantial public interest in these decisions, EPA finds that an extended comment period is appropriate to allow all those interested to comment in more depth on the tentative decisions. Therefore, EPA is now extending the public comment period through April 15, 1985. All interested persons are invited to express their views in writing to EPA. All comments should be mailed in time to be received at the address above before the close of business on April 15, 1985. All substantive comments or questions will be fully considered y EPA in preparing final decisions on the 301(m) applications, and will be responded to in a document accompanying the final decisions.

If EPA issues final denials of these variances, the State of California, a delegated NPDES state, will reissue the NPDES discharge permits under which the applicants are now operating. The new permits would have BPT/BCT effluent limitations. If EPA reverses it decision and issues final approvals of the variances, then EPA will issue the modified NPDES permits with appropriate modified effluent limitations.

Dated: March 1, 1985.

Judith E. Ayres,

Regional Administrator, Region 9.

[FR Doc. 85-5702 Filed 3-8-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59705; FRL 2786-2]

Certain Chemicals; Premanufacture

Correction

In FR Doc. 85-4995, appearing on page 8390, in the issue of Friday, March 1, 1985, in the second column, the thirteenth line from the bottom should read, "Chemical. (G) Polyester/polyol."

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

Bryan Industrial Electronic Inc. and Arnold Anderson; Applications for Hearing

In re applications of Bryan Industrial Electronics, Inc. (CC Docket No. 85-34; File No. 23182-CD-P-4-81). For a construction permit to establish additional two-way facilities near Brenham, Texas to operate on 152.18 MHz for Station KWU336 in the Public Land Mobile Service. Arnold Anderson, (File No. 22491-CD-P-81). For a construction permit to establish additional two-way facilities at Giddings, Texas to operate on 152.18 MHz for Station WQZ970 in the Public Land Mobile Service.

Adopted February 6, 1985.

Released March 7, 1985.

By the Common Carrier Bureau.

1. On July 22, 1981, Arnold Anderson (Anderson) filed an application for a construction permit to establish an additional two-way facility to operate on frequency 152.18 MHz at Giddings, Texas. The application was accepted for filing by Public Notice of August 5, 1981. Bryan Industrial Communications, Inc. (Bryan) filed an application on September 25, 1981, for a construction permit to establish an additional two-way facility near Brenham, Texas, to operate on frequency 152.18 MHz. No pleadings have been filed.

2. After careful examination, we find the applicants to be legally, technically, and otherwise qualified to construct and operate the proposed facilities. We further find that the proposals of Anderson and Bryan to use the same frequency, 152.18 MHz, in the same geographical area are electrically mutually exclusive. Since the application of Arnold Anderson was filed prior to August 1981, these applications are not subject to lottery selection;[1] therefore, a comparative hearing will be held to determine which applicant would best serve the public interest.

3. Accordingly, it is ordered , That the applications of Arnold Anderson (File No. 22491-CD-P-4-81) and Bryan Industrial Electronics, Inc. (File No. 23182-CD-P-4-81) are designated for hearing in a consolidated proceeding pursuant to Section 309(e) of the Communications Act of 1934, as amended, upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each appliant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 37 dBu contours,[2] based upon the standards set forth in § 22.504(a) of the Commission's Rules,[3] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what dispositon of the referenced applications would best serve the public interest, convenience, and necessity.

4. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

5. It is further ordered, That the Chief, Common Carrier Bureau, is made a party to the proceeding.

6. It is further ordered, That the applicants may file written notices of apperance under Section 1.221 of the Commission's Rule within 20 days of the release date of this Order.

7. The Secretary shall cause a copy of this order to be published in the Federal Register.

Michael Deuel Sullivan,

Chief, Mobile Services Division Common Carrier Bureau.

[FR Doc. 85-5728 Filed 3-8-85; 8:45 am]

BILLING CODE 6712-01-M

Charles Ray Shinn et al; Hearing Designation Order

In re applications of Charles Ray Shinn, (MM Docket No. 85-49) Grant Cotton, et. al, d/b/a Cotton Broadcasting Company, file No. BPCT-840820KG, The L Broadcasting Company, File No. BPCT-841004KF, Howard N. Lee and Henry Middleton, d/b/a Raleigh Community Broadcasting Co., Ltd, File No. BPCT-841005KR, P. Michael Shanley and Josie Montgomery, d/b/a Brahman Communications, File No. BPCT-841005KS. For Construction Permit for New Television Station Raleigh, North Carolina, File No. BPCT-841005LE.

Adopted: February 21, 1985

Released: March 8, 1985

By the Chief, Video Services Division:

1. The Commission, by the Cheif, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 50, Raleigh, North Carolina.

---

[1] *See*, Second Report and Order, Gen. Docket 81-768, released May 27, 1983, 91 FCC 2d 911, para. 129.

[2] For the purpose of this proceeding, the interference-free area is defined as the area within the 37 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6404, equation 8.

[3] Section 22.504(a) of the Commission's rules and regulations describes a field strength contour of 37 decibles above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 150 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

2. On October 1, 1984, the Association of Maximum Service Telecasters, Inc. filed an informal objection to the application of Charles Ray Shinn on the grounds that his proposed transmitter site would be short-spaced 3 miles to WUNP–TV, Channel 36, Roanoke Rapids, North Carolina. Section 736.10 of the Commission's Rules requires a minimum separation of 60 miles between a station operating on Channel 50 and a station or city to which Channel 36 is allocated. Accordingly, an issue will be specified to determine whether circumstances exist warranting a waiver of the rule. In assessing the circumstances to determine whether a waiver is warranted, the Administrative Law Judge will consider the fact that other applicants have specified fully spaced sites.

3. No determination has been reached that the tower heights and locations proposed by L Broadcasting Company, Raleigh Community Broadcasting and Brahman Communications would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population which would be served by each. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. Section V–C, Item 10, FCC Form 301, requires that an applicant submit the area and population within its predicted Grade B contour. The figures which Brahman Communications has submitted indicates that the area within its Grade B contour would be 1450 square miles, which would correspond to a Grade B distance of about 21.5 miles. Such a distance, however, does not agree with the figures set out in responses to Section V–C, Item 15, FCC Form 301, or to the contour map which has been furnished accordingly. Brahman Communications must, within 20 days of the date of release of this Order, submit a corrective amendment to the presiding Administrative Law Judge.

6. Section 73.3555(a)(3) of the Commission's Rules states that no license for a television broadcast station shall be granted to any party if such party directly or indirectly owns, operates, or controls or of more broadcast stations in the same service and the grant of such license will result in any overlap of the Grade B contours of the existing and proposed stations, computed in accordance with Section 73.684. Grant Cotton, a 51% general partner of Cotton Broadcasting Company, owns 70.2% of the stock of Family Television Corp., licensee of WLFL—TV, Raleigh, North Carolina. However, an application to assign the license (BALCT–841024KE) of WLFL–TV from Family Television Corp to S&F Communications Corporation was granted on December 21, 1984. The Commission has not been notified that the assignment has been consummated. Mr. Cotton has stated, in his application, that if Cotton Broadcasting is the successful applicant in this proceeding, he will divest himself of all interest in and connection with the licensee of Station WLFL–TV in Raleigh. If the assignment is consummated prior to the termination of this proceeding, the multiple ownership problem would, of course, be moot. Since there is no assurance that the assignment will be consummated, we will continue a grant of Cotton's application on divestiture of his interest in the license of WLFL–TV.

7. Except as indicated by the issues specified below, the applications are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to L Broadcasting Company, Raleigh Community Broadcasting and Brahman Communications, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine with respect to Charles Ray Shinn, whether the proposal is consistent with §73.610 of the Commission's rules and, if not, whether circumstances exist which would warrant a waiver of the rule.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That, Brahman Communications shall submit an appropriate amendment as required by paragraph 5, *supra*, to the presiding Administrative Law Judge within 20 days of the release of this Order.

10. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to isssue 1.

11. It is further ordered, That, in the event of a grant of the application of Cotton Broadcasting Company and the assignment of the license of Station WLFL–TV From Family Television Corp. to S&F Communications Corporation has not been consummated, the grant shall be subject to the following condition:

Prior to the commencement of operation of the television station authorized herein, the permittee shall certify to the Commission that Grant Cotton has divested himself of all interest in and connection with the licensee of Station WLFL–TV, Raleigh North Carolina.

12. It is further ordered, That Association of Maximum Service Telecasters, Inc., is made a party respondent to this proceeding.

13. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the parties respondent herein shall, pursuant to §1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

14. It is further ordered, That the applicants herein shall, purusant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by §73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85–5727 Filed 3–8–85; 8:45 am]

BILLING CODE 6712–01–M

Jackson Company Broadcasting, Inc. and Jerry J. Collins; Hearing Designation Order

In re applications of Jackson Company Broadcasting, Inc. KJCB, Lafayette, Louisiana, Has: 770 kHz, 0.5 kW, 1 kW-LS, DA-N, U Req: 770 kHz, 0.5 kW, 5 kW-LS, DA-2, U MM Docket No. 85-43, File No. BP-830902AD. Jerry J. Collins, Lynn Haven, Florida, Req: 770 kHz, 0.5 kW, 5 kW-LS, DA-2, U File No. BP-831031AQ for construction permit.

Adopted: February 15, 1985.
Released: March 7, 1985.

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-captioned applications for a new broadcast station and for changes in the facilities of an existing station.

2. Except as indicated by the issues specified below the applicants are qualified to construct and operate as proposed.[1] However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify issues to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposals would better provide a fair, efficient and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

3. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine: (a) the areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b), in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

2. To determine in the event that a choice between the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would on a comparative basis, better serve the public interest.

3. To determine in a light of the evidence adduced pursuant to the foregoing issues, which of the applications, if any, should be granted.

4. It is further ordered, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C 20554.

5. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's rules, the parties shall within 20 days of the mailing of this Order, in person or by aattorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

6. It is further ordered, That pursuant to section 311(a) of the communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, the applicants shall give notice of the hearing as prescribed in the rules, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division Mass Media Bureau.

[FR Doc. 85-5730 Filed 3-8-85; 8:45 am]

BILLING CODE 6712-01-M

[1] The facilities specified herein are subject to modification, suspension or termination without right of hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janerio 1981, aand to bilateral and other multilateral agreements between the United States and other countries.

Josie Moore and Felice-Tec; Hearing Designation Order

In re applications of Josie Moore, MM Docket No. 85-50, File No. BPCT-840924KE, Felice-Tec, File No. BPCT-841010KM, for Construction Permit for a New Television Station Big Bear Lake, California.

Adopted: February 25, 1985.
Released: March 7, 1985.

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 59, Big Bear Lake, California.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contours, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

3. No determination has been reached that the tower height and location proposed by each of the applicants [1] would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. Josie Moore's proposed tower is to be located 1.93 miles from the directional tower of AM station KBBV, Big Bear Lake, Califorinia. Because of the proximity of the proposed tower to KBBV, grant of a construction permit to Moore will be conditioned to ensure that KBBV's radiation pattern is not adversely affected by the construction of the proposed station.

5. Section V-C, Item 11, FCC Form 301 inquires whether the city grade contour completely encompasses the principal community. Ms. Moore answered negatively to Item 11; however, she answered affirmatively in the Engineering Statement submitted as an exhibit. Since we can not independently determine from the information before us whether principle city coverage will be provided, Ms. Moore must, within 20 days after this Order is released, submit a clarification to the presiding Administrative Law Judge.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

[1] The Commission is not in receipt of FAA's determination for the tower proposed by Josie Moore.

1. To determine whether there is a reasonable possibility that the tower height and location proposed by each of the applicants would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, That, in the event of a grant of Josie Moore's application, the construction permit shall contain the following condition:

"Prior to construction of the tower authorized herein, permittee shall notify AM Station KBBV, Big Bear Lake, California, so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington, D.C. to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by § 73.154(a) of the Commission's rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission."

9. It is further ordered, that Josie Moore shall submit an appropriate amendment as required by paragraph 5, *supra*, to the presiding Administrative Law Judge within 20 days of the release of this Order.

10. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

11. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commissions' Rules, in person or by attorney, within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

12. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-5724 Filed 3-8-85; 8:45 am]

BILLING CODE 6712-01-M

The Great American Broadcasting Corp. and Dorsey E. Newman; Hearing Designation Order

In re applications of The Great American Broadcasting Corp. MM Docket No. 85-47, File No. BP-830912AC, Has: 1360 kHz, 0.5 kW, DA-D Req: 730 kHz, 1 kW, D. Dorsey E. Newman, WHRT, Hartselle, Alabama File No. BP-831103AD, Has: 860 kHz, 0.25 kW, D Req: 730 kHz, 0.5 kW, D, For construction permit.

Adopted: February 15, 1985.
Released: March 7, 1985.

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications to modify existing AM broadcast stations.

2. The WHRT application indicates that the proposal would present no change in the existing antenna and ground system. However, WHRT's licensed authorization shows the height of the tower to be 250 feet, whereas, its proposal shows a tower height of 224 feet. The applicant must, therefore, file an amendment as indicated below, to show the correct tower height in order to be consistent with its previously licensed authorizations.

3. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify an issue to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which proposal would better provide a fair, efficient and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

4. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order upon the following issues:

1. To determine: (a) the areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

2. To determine, in the event it be concluded that a choice between the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would on a comparative basis better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

4. It is further ordered, that Dorsey E. Newman shall file the amendment described in paragraph 2 above within 30 days of the release of this Order.

5. It is further order, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

6. It is further ordered, that to avail themselves of the opportunity to be heard and pursuant to Section 1.221(c) of the Commission's Rules, the applicants shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission in triplicate written appearances stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

7. It is further ordered, That pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rule, and shall advise the Commission of the publication of the notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief Audio Services Division Mass Media Bureau.

[FR Doc. 85-5729 Filed 3-8-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Consolidated Reports of Income and Condition (Savings Banks) (OMB No. 3064–0054).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF–83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Judy McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389–4351.

SUMMARY: The FDIC is submitting for OMB approval major revisions to the Consolidated Reports of Income and Condition (Call Reports) filed by insured state-chartered savings banks. The revisions are based on those proposed for public comment in June 1984 (49 FR 25679, June 22, 1984). Most of the changes would be implemented beginning with the March 1986 call date. However, the new Schedule RC-J (Repricing Opportunities for Selected Balance Sheet Categories) would be implemented with the December 1985 call date. It is estimated that the average savings bank's reporting burden would be increased by 9.3 hours per calendar quarter as a result of the revisions. The revised reporting requirements will assist the FDIC in its efforts to more effectively and efficiently monitor the financial condition and performance of savings banks.

Dated: March 4, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–5732 Filed 3–8–85; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act of 1974; Proposed New Routine Uses to Existing Systems of Records

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed routine uses to existing systems of records.

SUMMARY: The purpose of this notice is to add new routine uses to existing systems of records entitled, "FEMA/NPP–1, National Defense Executive Reserve System," "FEMA/GC–1, Claims (litigation)," and "FEMA/GC–2, FEMA Enforcement (Compliance)."

The Federal Emergency Management Agency maintains a master list of all National Defense Executive Reservists assigned to the various Federal agencies throughout the government. One of the proposed routines uses to "FEMA/NPP–1, National Defense Executive Reserve System" would permit the Federal Emergency Management Agency to forward copies of the master list of reservists assigned to a particular department/agency to such department/agency for the purpose of updating the information and deleting individuals who are no longer involved in the program or adding individuals who have joined the program since the information was entered into the system. The other proposed routine use would permit the Federal Emergency Management Agency to provide the names and addresses of National Defense Executive Reserve reservists to the Association of the National Defense Executive Reserve and the National Defense Executive Reserve Conference Association to facilitate training and relevant information dissemination efforts for reservists included in the National Defense Executive Reserve program.

The routine use currently published for "FEMA/GC–1, Claims (litigation)" and "FEMA/GC–2, FEMA Enforcement (Compliance)" to permit disclosure of information to FEMA employees responsible for processing allegations, investigating the allegations, making recommendations concerning the validity of the allegation and making decisions as to what action, if any, should be taken against the individual is being deleted. Section (b)(1) under Conditions of Disclosure of the Privacy Act of 1974, as amended, provides disclosure to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties and the above-referenced routine use is not necessary and is being deleted. One new routine use is being proposed for both the FEMA/GC–1 and FEMA/GC–2 systems of records to permit disclosure of information to former FEMA employees, former servicing company employees, contractors, subcontractors, or any expert whose opinion is sought in connection with the processing, investigation, approval or denial of any claim(s) or in the prosecution or defense of litigation or preparation for litigation before a Court or a proceeding before an adjudicative body before which FEMA is authorized to appear. One routine use published on December 13, 1984, (49 FR 48612) is being revised to include disclosure to private attorney(s) handling or considering handling a ratified subrogation action and to include an adjudicative body in the event a proceeding before it involves: (a) The Federal Emergency Management Agency (FEMA), any components of FEMA, or any employee of FEMA in his or her official capacity; (b) any employee of FEMA in his or her individual capacity where the Department of Justice has agreed to represent such employee; (c) the United States where FEMA determines that the claim, if successful, is likely to affect it, its operations, or any of its components; or (d) an insured or former insured of FEMA or any of the programs which FEMA administers. FEMA may disclose such records as it deems relevant or necessary to the Department of Justice, private attorney(s) handling a subrogation action, and/or a Court or adjudicative body when it has been determined that any of the above-referenced has an interest in the litigation or the proceeding and such records are determined by FEMA to be arguably relevant thereto and such disclosure is compatible with the purpose for which the records were collected. The complete language of the current routine use may be reviewed in the December 13, 1984, Federal Register issue on pages 48612–48613. We are, however, publishing the entire routine use provisions of FEMA/GC–1 and FEMA/GC–2 which includes the proposed revised section relating to litigation before a Court or a proceeding before an adjudicative body.

EFFECTIVE DATE: The proposed routine uses and revised routine uses will

become effective, without further notice, on April 10, 1985, unless otherwise dictated otherwise.

FOR FURTHER INFORMATION CONTACT: Linda M. Kenner, FOIA/Privacy Specialist, (202) 287–0313.

SUPPLEMENTARY INFORMATION: Under the Privacy Act of 1974, as amended by the Congressional Reports Elimination Act of 1982 (Pub. L. 97–375), agencies are required to publish a notice of the systems of records they maintain that are subject to the Act only when the agency is establishing a new system or when it substantively alters an existing system. A substantive change to an existing system is one which would also require a "Report on New Systems" and is described in the Office of Management and Budget's Circular No. A–108, Transmittal Memorandum No. 1 and 3. Thus, a change to a system notice that does not require such a report need only be described in a **Federal Register** notice, without the necessity of publishing the complete text of the notice.

On November 26, 1982, (47 FR 53493), the Federal Emergency Management Agency published the complete text of the system of records entitled, "FEMA/NPP–1, National Defense Executive Reserve System." On October 7, 1981 (46 FR 49471), the Federal Emergency Management Agency published the complete text of the system of records entitled, "FEMA/GC–1, Claims (litigation)." Revisions to this system of records were published on October 25, 1983 (48 FR 49376) and December 13, 1984 (49 FR 48612). The complete text of the system of records entitled, "FEMA/GC–2, FEMA Enforcement (Compliance)" was published on October 7, 1981 (46 FR 49742), and revisions were published on October 25, 1983 (48 FR 49376), and December 13, 1984 (49 FR 48613).

Dated: March 4, 1985.

James L. Holton,

Director, Office of Public Affairs, Federal Emergency Management Agency.

FEMA/NPP–1

SYSTEM NAME:

National Defense Executive Reserve System.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A master list of National Defense Executive Reserve reservists assigned to a particular department/agency may be made available to such department/agency for the purpose of updating the information and deleting individuals who are no longer involved in the program or including individuals who have joined the program since the information was entered into the system; names and addresses may be made available to the Association of the National Defense Executive Reserve and the National Defense Executive Reserve Conference Association to facilitate training and relevant information dissemination efforts for reservists in the National Defense Executive Reserve program.

Routine uses may include Nos. 1, 2, 3, 5 and 8 of Appendix A.

* * * * *

FEMA/GC–1

SYSTEM NAME:

Claims (litigation).

* * * * *

Delete the current routine use section and revise to read:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To those former FEMA employees, former servicing company employees, contractors, subcontractors, or any expert whose opinion is sought in connecton with the processing, investigation, approval or denial of any claim(s) or in the prosecution or defense of litigation or preparation for litigation before a Court or a proceeding before an adjudicative body before which FEMA is authorized to appear; to other investigative or similar authorities responsible for investigating or making recommendations on complaints or claims, whether or not a part of FEMA or some other agency; to decisionmaking authorities outside of FEMA when required by law, regulation or order; to the Department of Justice, private attorney(s) handling or considering handling a ratified subrogation action, and/or a Court or adjudicative body in the event a proceeding before it involves: (a) The Federal Emergency Management Agency (FEMA), any component of FEMA, or any employee of FEMA in his or her official capacity; (b) any employee of FEMA in his or her individual capacity where the Department of Justice has agreed to represent such employee; (c) the United States where FEMA determines that the claim, if successful, is likely to affect it, its operations, or any of its components; or (d) an insured or former insured of FEMA or any of the programs which FEMA administers. FEMA may disclose such records as it deems relevant or necessary to the Department of Justice, private attorney(s) handling or considering handling a ratified subrogation action, and/or a Court or adjudicative body when it has determined that any of the above-referenced has an interest in the litigation or the proceeding and such records are determined by FEMA to be arguably relevant thereto and such disclosure is compatible with the purpose for which the records were collected.

Additional routine uses may include Nos. 2, 3, 5, 6 and 8 of Appendix A.

* * * * *

FEMA/GC–2

SYSTEM NAME:

FEMA Enforcement (Compliance).

* * * * *

Delete the current routine use section and revise to read:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To other agencies charged with investigative responsibilities and enforcement actions of any nature including prosecution for violations of criminal laws; to employers, whether Federal, State or local agencies, whose employee is involved; to State and local investigative authorities; to those former FEMA employees, former servicing company employees, contractors, subcontractors, or any expert whose opinion is sought in connection with the processing, investigation, approval or denial of any claim(s) or in the prosecution or defense of litigation or preparation for litigation before a Court or a proceeding before an adjudicative body before which FEMA is authorized to appear; to the Department of Justice, private attorney(s) handling or considering handling a ratified subrogation action, and/or a Court or adjudicative body in the event a proceeding before it involves: (a) The Federal Emergency Management Agency (FEMA), any component of FEMA, or any employee of FEMA in his or her official capacity; (b) any employee of FEMA in his or her individual capacity where the Department of Justice has agreed to represent such employee; (c) the United States where FEMA determines that the claim, if successful, is likely to affect it, its operations, or any of its components; or (d) an insured or former insured of FEMA or any of the programs which FEMA administers. FEMA may disclosure such records as it deems relevant or necessary to the Department of Justice, private attorney(s) handling or considering handling a ratified subrogation action, and/or a Court or

adjudicative body when it has determined that any of the above-referenced has an interest in the litigation or the proceeding and such records are determined by FEMA to be arguably relevant thereto and such disclosure is compatible with the purpose for which the records were collected.

Additional routine uses may include Nos. 1, 2, 3, 4, 5, 6 and 8 of the Appendix A.

* * * * *

[FR Doc. 85-5708 Filed 3-8-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

American Discount Bankholding Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, idenifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 1, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *American Discount Bankholding Corporation*, New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Israel Discount Bank of New York, New York, New York.

2. *Canandaigua National Corporation*, Canandaigua, New York, to become a bank holding company by acquiring 100 percent of the voting shares of The Canandaigua National Bank and Trust Company, Canandaigua, New York.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia Pennsylvania 19105:

1. *Community Independent Bank, Inc.*, Bernville, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Bernville Bank, N.A., Bernville, Pennsylvania

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Hartsville Bancshares, Inc.*, Hartsville, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Hartsville, Hartsville, South Carolina.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Santa Rosa Holding Corporation*, Milton, Florida; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of Santa Rosa, Milton, Florida.

E. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locus Street, St. Louis, Missouri 63166:

1. *Union Bancshares of Benton, Inc.*, Benton, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Union Bank of Benton, Benton, Arkansas.

F. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Cattail Bancshares, Inc.*, Atwater Minnesota; to become a bank holding company by acquiring 99 percent of the voting shares of Atwater State Bank, Atwater, Minnesota, and 97.87 percent of the voting shares of State Bank of Kimball, Kimball, Minnesota.

G. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Cross Plains Bankshares, Inc.*, Cross Plans, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank, Cross Plains, Texas.

Board of Governors of the Federal Reserve system, March 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5666, Filed 3-8-85; 8:45 a.m.]

BILLING CODE 6210-01-M

Marshall & Ilsley Corp.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)), to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application will, under established Board policy the record of the application not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The application is availabale for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any requests for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the office of the Board of Governors not later than April 1, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marshall & Ilsley Corporation,* Milwaukee, Wisconsin; to engage through a national bank subsidiary, Marshall & Ilsley Trust Company of Florida, N.A., Naples, Florida, in making of loans to individuals for personal family, household, or charitable purposes and to accept time deposits and demand deposits from the general public. These activities would be conducted in Collier County, Florida.

Board of Governors of the Federal Reserve System, March 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 855667 Filed 3-8-85; 8:45 am]

BILLING CODE 6210-01-M

Texas Commerce Bancshares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have failed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 29, 1985.

A. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas Commerce Bancshares, Inc.,* Houston, Texas; to engage *de novo* through its subsidiary, Texas Commerce Information Systems, Inc., Houston, Texas, in providing data processing and data transmission facilities to non-affiliated financial institutions.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *GCS Bancorp,* Scottsdale, Arizona; to engage *de novo* through its subsidiary, GCS Mortgage Corporation, Scottsdale, Arizona, in making, acquiring, and servicing loans or other extension of credit for its own account or for the accounts of others such as would be made by a mortgage company.

Board of Governors of the Federal Reserve System, March 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5668 Filed 3-8-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR G-166]

Government-Wide Motor Vehicle Rental Program

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: GSA Bulletin.

SUMMARY: This bulletin announces an enhanced Government-wide motor vehicle rental program.

EFFECTIVE DATE: March 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. John Whalen, Travel and Transportation Services Division (FTE), FTS 557-1264, (703) 557-1264.

Dated: February 28, 1985.

By delegation of the Assistant Administrator.

James J. Grady, Jr.

Director of Policy and Agency Assistance.

GSA Bulletin FPMR G-166—Transportation and Motor Vehicles

To: Heads of Federal agencies

Subject: Government-wide motor vehicle rental program

1. *Purpose.* This bulletin announces an enhanced Government-wide motor vehicle short-term rental program, in support of Government employees on official temporary duty (TDY) travel and for local agency use (non-TDY).

2. *Expiration date.* This bulletin contains material of a continuing nature and will remain in effect until superseded or canceled.

3. *Background.* The General Services Adminstration (GSA) will no longer contract for vehicle rental services when the current Federal Supply Schedule FSC 751, Motor Vehicle Rental Without Driver, expires February 28, 1985. Instead, Federal departments and agencies are advised that they should use a number of rental car companies that have agreed to make special flat daily rates with unlimited mileage (mileage rates may apply in some instances), as negotiated by the Military Traffic Management Command, available to all Government employees. GSA has taken this action because of frequent concerns raised by agencies relative to the level of services provided by GSA vehicle rental contractors. This enhanced program should be considered the first source of supply for rental vehicles. Utilization of this program will ensure an enhanced level of service at little or no increase in costs or perhaps even a decrease in costs, depending on employee driving needs and distance to be traveled.

4. *Program summary.*

a. *Vehicle rental rates.* The vehicle rental rates generally are flat daily rates with unlimited free mileage (mileage rates may apply in some cases) with the Government employee paying for the fuel used. The cost of fuel to the employee is reimbursable. For vehicle rentals of a week or more, special rates may be available from certain rental car companies.

b. *Eligibility for rates.* Government travel orders, Government identification (ID) cards or car rental company ID cards will be accepted as proof of eligibility for the Government vehicle rental rates.

c. *Reservations and payments.*

(1) *TDY use.* Employees should make reservations through GSA's travel management centers (TMC's) or directly with the car rental company. Payments may be made using cash, a personal credit card or the Government Diners Club charge card. If the traveler does not have a credit card or a Government Diners Club charge card, travel orders normally will be accepted instead of the cash deposit usually required by rental car companies. However, the traveler should confirm the cash deposit policy with the local car rental company at the time the reservation is made.

(2) *Local agency use (non-TDY).* Reservations, billing and payment will

be handled by the nearest GSA Fleet Management Center (see attachment A). In the case of local use (non-TDY), charges for damages to rental vehicles will be billed directly to the employee's agency (see paragraph e, below).

d. *Availability.* Generally, participating vehicle rental companies have facilities inside most major airports or at convenient downtown city locations. Employees should verify the availability of Government rates when making vehicle reservations as all locations of the vehicle rental companies are not participating in the rate agreement program. In locations where the participating rental car companies cannot satisfy local agency (non-TDY) vehicle requirements, the nearest GSA Interagency Fleet Management Center (see attachment A) may establish alternative sources of service.

e. *Insurance.* Vehicle rental rates generally do not include full collision damage coverage. If an employee is responsible for damage to a rental vehicle, the Federal Tort Claims Act may be used as authority for reimbursement of such charges when damage is incurred in the conduct of official business. Therefore, collision damage waiver charges, if accepted by the employee, will not be reimbursed.

f. *Sales tax.* Any sales tax added to the vehicle rental charges must be paid by the employee, unless arrangements have been made to bill the agency directly, or the GSA Interagency Fleet Management Center (in the case of non-TDY travel). The sales tax is reimbursable to the employee.

g. *Additional information and procedures.*

(1) Additional information and procedures including the names, rental rates and telephone numbers of the participating vehicle rental companies are published in the "Ground Transportation Information" section of the Federal Travel Directory (FTD). The names, locations, and telephone numbers of GSA's TMC's are also listed in the FTD. The FTD, which is issued monthly by GSA, may be obtained by Government employees through their appropriate agency headquarters administrative offices. Single copies may also be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Telephone Number (202) 783-3238. (GPO Stock Number 022-005-80002-9).

(2) Questions concerning this vehicle rental program should be directed to Mr. John Whalen, Travel and Transportation Services Division (FTE), Office of Transportation, FTS 557-1264/(703) 557-1264.

6. *Cancellation.* GSA Bulletin FPMR G-164 is canceled effective March 1, 1985.

Attachment A

GSA region and State jurisdiction	Fleet management center
1—Boston, MAL CT MA ME NH RI VT.	Waltham, MA, FTS 223-1134, (617) 223-1134.
2—New York, NY: NJ NY PR VI.	Brooklyn, NY, FTS 663-5114, (212) 965-5114.
	Albany, NY, FTS 562-4544, (518) 472-4544.
	Buffalo, NY, FTS 437-4596, (716) 846-4596.
	Bele Meade, NJ, FTS 342-5396, (201) 359-4043.
	Atlantic City, NJ, FTS 482-4432, (609) 484-4432.
	San Juan, PR, FTS (809) 753-4371, (809) 753-4371.
3—Phila., PA: DE MD (except near DC) PA VA WVA.	Pittsburgh, PA, FTS 722-2687 (412) 644-2687.
Philadelphia, PA, FTS 596-4380, (215) 596-4380.	
	Richmond, VA, FTS 925-2511, (804) 771-2511.
	Norfolk, VA, FTS 827-6356, (804) 441-6356.
	Huntington, WV, FTS 924-5584, (304) 529-5584.
4—Atlanta, GA: AL FL GA KY MS NC SC TN.	Atlanta, GA, FTS 242-3348 (404) 221-3348.
	Nashville, TN, FTS 852-5235, (615) 251-5235.
	Raleigh, NC, FTS 672-4176, (919) 755-4176.
	Mobile, AL, FTS 537-2068, (205) 690-2068.
	Bay St. Louis MS, FTS 494-2064, (601) 688-2064.
	Louisville, KY, FTS 352-5131, (502) 582-5131.
	Miami, FL, FTS 350-6884, (305) 350-6884.
	Kennedy Space Center, FL, FTS 823-4902, (305) 867-4902.
5—Chicago, IL: IL IN MI MN OH WI.	Chicago, IL, FTS 353-6158 (312) 353-6158.
	Detroit, MI, FTS 226-3193, (313) 226-3193.
	Dayton, OH, FTS 774-2993, (513) 225-2993.
	Minneapolis/St. Paul, MN, FTS 725-4425, (612) 725-4425.
6—Kansas City, MO: IA KN MO NE.	Kansas City, MO, FTS 926-7551 (816) 926-7551.
	St. Louis, MO, FTS 273-3023, (314) 273-3023.
	Omaha, NE, FTS 864-4755, (402) 221-4755.
7—Fort Worth, TX: AK LA NM OK TS.	Fort Worth, TX, FTS 334-3135 (817) 334-3135.
	Houston, TX, FTS 526-4892, (713) 229-2892.
	San Antonio, TX, FTS 730-5540, (512) 229-5540.
	El Paso TX, FTS 572-7542, (915) 543-7542.
	New Orleans, LA, FTS 682-6671, (504) 589-6671.
	Oklahoma City, OK, FTS 736-4436, (405) 231-4436.
	Little Rock, AK, FTS 740-5514, (501) 378-5514.
	Albuquerque, NM, FTS 474-2303, (505) 766-2303.
	Gallup, NM, FTS 571-9332, (505) 863-9571.
	Farmington, NM, FTS 572-6251, (505) 325-4574.
8—Denver, CO: CO MT ND SD UT WY.	Denver, CO, FTS 776-7963, (303) 236-7963.
	Salt Lake City, UT, FTS 588-5266, (801) 524-5266.
	Casper, WY FTS 328-5238, (307) 261-5238.
9—San Francisco, CA: AZ CA NV HI.	Billings, MT, FTS 585-6279, (406) 657-6279.
	Bismarck, ND, FTS 783-4318, (701) 255-4011, x4318.
	San Francisco, CA, FTS 556-1305 (415) 556-1035.
	Los Angeles, CA, FTS 985-6525, (213) 267-6525.
	San Diego, CA, FTS 895-5657, (619) 293-5657.
	Sacramento, CA, FTS 448-2421, (916) 440-2421.
	Santa Maria, CA, FTS 785-3183, (805) 865-3183.
	Las Vegas, NV, FTS 598-6368, (702) 385-6368.
	Phoenix, AZ, FTS 261-5110, (602) 241-5110.
	Holbrook, AZ, FTS (602) 524-3973.
	Honolulu, HI, FTS (808) 546-7193, (808) 546-7193.
10—Auburn, WA: AK ID OR WA.	Seattle, WA, FTS 399-3426 (206) 764-3426.
	Santa Maria, WA, FTS 422-7651, (206) 696-7651.
	Spokane, WA, FTS 439-2504, (509) 456-2504.
	Boise, ID, FTS 554-1264, (208) 334-1264.
	Medford, OR, FTS 424-4284, (503) 776-4284.
	Anchorage, AK, FTS (907) 271-4007, (907) 271-4007.
	Fairbanks, AK, FTS (907) 456-0221, (907) 456-0221.
National Capital Region: Wash, DC Nearby MD and VA.	Washington, DC FTS 472-2633 (202) 472-2633.

[FR Doc. 85-5764 Filed 3-8-85; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Twentieth National Immunization Conference; Meeting

A National Immunization Conference will be held May 6-9, 1985, at the Sheraton Park central, Dallas, Texas, telephone (214) 385-3000. The Conference is sponsored by the Centers for Disease Control (CDC).

Federal, State, and local public health officials, as well as representatives from the private sector who are involved in the organization and implementation of immunization activity will participate. The meeting is open to the public, limited only by the space available

Registration will begin at 8:00 a.m. on Monday, May 6, 1985, and the program is scheduled to begin at 8:30 a.m., Tuesday, May 7, at the Sheraton Park Central.

All inquiries should be sent to: Mr. Ronald D. Teske, Chief, Program Support Section, Division of immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, Telephones:

FTS: 236–1836, Commercial: (404) 329–1836.

Dated: March 5, 1985.

Elvin R. Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85–5661 Filed 3–8–85; 8:45 am]

BILLING CODE 4160–18–M

Future Research in Tuberculosis—Prospects and Priorities for Eradication of the Disease; Meeting

The following conference will be cosponsored by the Center for Disease Control, the National Institutes of Health, the American Thoracic Society, and the Pittsfield (Massachusetts) Antituberculosis Association and will be open to the public for observation and participation, limited only by the space available.

Future Research in Tuberculosis—Prospects and Priorities for Eradication of the Disease

Dates: June 5–7, 1985.

Time: Begins 8:30 a.m., June 5, Adjourns at 12:00 Noon, June 7.

Place: Hilton Inn, Berkshire Common, South Street, Pittsfield, Massachusetts 01201.

Purpose: To identify priority areas of research which might lead ot the accelerated eradication of tuberculosis. A written report will be prepared for the sponsoring agencies and for publication in scientific journals.

Additional information may be obtained from: Dixie E. Snider, Jr., M.D., Chief, Research and Development Branch, Division of Tubercolosis Control, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, Telephone: FTS: 236–2523, Commercial: (404) 329–3223.

Dated: March 5, 1985.

Elvin R. Hilyer,

Associate Director for Policy Coordination, Center for Disease Control.

[FR Doc. 85–5662 Filed 3–8–85; 8:45 am]

BILLING CODE 4160–18–M

Surveillance Systems, Diabetic Sentinel Health Events; Meetings

The Centers for Disease Control will convene the following meeting in Atlanta, Georgia, of a work group to discuss the establishment of surveillance systems for death among persons with diabetes under age 45 and preinatal death among offspring of women with diabetes. The meeting will be open to the public, limited only by space available.

Surveillance Systems—Diabetic Sentinel Health Events

Dates: March 14–15, 1985.

Time: 8:00 a.m.–4:30 p.m., Thursday, March 14, 8:00 a.m.–12:00 Noon, Friday, March 15.

Place: Rooms 314 and 316, 1600–B Tullie Circle, N.E., Atlanta, Georgia 30333.

Additional information may be obtained from: Diane Bild, M.D., M.P.H., Medical Epidemiologist, or Stephen Sepe, M.P.H., Epidemiologist, Division of Diabetes Control, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, Telephones: FTS: 236–1844, Commercial: (404) 329–1844.

Dated: March 5, 1985.

Elvin R. Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85–5663 Filed 3–8–85; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 85N–0018]

Studies on Comparative Drug Metabolism in Fish and Other Aquatic Animals Used for Food; Cooperative Agreements; Availability of Funds

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine, is announcing the availability of approximately $200,000 for fiscal year 1985 for cooperative agreements to support studies on the range and extent of drug metabolism in fish and other aquatic animals used for food. The purpose of these agreements is to provide financial assistance to support research on drug metabolism, metabolic profiles, and pharmacokinetics in aquatic animals used for food. FDA anticipates making three or four awards averaging $50,000 to $70,000 (direct costs and indirect costs) each per year. Support for this program may be for a period of up to 3 years.

DATES: Prospective applicants are requested to submit letters of intent by April 25, 1985. Applications must be received by 5 p.m. on June 10, 1985. The earliest date for award is September 25, 1985.

ADDRESSES: Letters of intent are to be submitted to David B. Batson (address below). Completed application should be submitted to, and applications kits are available from, Kathryn McKnight, Grants and Assistance Agreements Section (HFA–522), Food and Drug Administration, Rm. 15A–17, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6170.

FOR FURTHER INFORMATION CONTACT: David B. Batson, Center for Veterinary Medicine (HFV–500), Food and Drug Administration, Rm. 8–89, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6954.

SUPPLEMENTARY INFORMATION: FDA's authority to fund research projects is under section 301 of the Public Health Service Act (42 U.S.C. 241). Cooperative agreements are authorized under Public Law 95–224. FDA's research program is described in the Catalog of Federal Domestic Assistance No. 13.103.

I. Background

In the **Federal Register** of January 14, 1983 (48 FR 1922), FDA published regulations (21 CFR 514.1(d)) which codify agency policy on minor use animal drugs, which include drugs for fish and other aquatic animals used for food. The policy requires that a metabolic evaluation of minor use drugs be made before the approval of products for use in these species. Research studies on this subject would greatly diminish the work required for the approval of potential minor use products in fish and other edible aquatic species. In addition, the existence of a body of information on the disposition of drugs in representative aquatic species would greatly facilitate the evaluations needed for these products relative to bioaccumulation and the potential for these drugs to impact on the environment.

The agency is supporting research studies on comparative drug metabolism because there is a need for approved drugs in aquatic animal used for food. Furthermore, the current, relatively small aquaculture industry does not appear to provide sufficient markets for minor use drugs to justify the expenditure of research and development resources by drug sponsors. Although the agency's minor use policy has attempted to abbreviate the approval process of drugs for minor use, certain minimal information is needed. The basic information developed by research cooperative agreements should support approvals of minor use drugs in aquatic animals by providing a backgound of basic scientific information from which decisions of drug metabolism, drug disposition, and bioaccumulation of drug residues can be made.

II. Research Goals and Objectives

The specific goals for these cooperative agreements will be to provide financial assistance to investigators conducting research on the range and extent of drug metabolism in fish and other edible aquatic animal species raised for food.

FDA will consider research projects which will:

1. Investigate the absorption, disposition, and depletion of several classes of animal drugs which are, or probably could be, routinely used for the treatment of serious diseases in cold water fish (e.g., trout), warm water fish (e.g., catfish), and certain aquaculture or mariculture species (e.g., shrimp, lobster, and other shellfish).

2. Investigate the metabolic profiles of these drugs in muscle, liver or its equivalent, bile, urine, and feces. The metabolic profile in excreta is useful to assess the possibility of drug recycling and drug degradation in aquaculture settings.

3. Investigate the pharmacokinetic parameters of drugs in aquatic animals.

4. Compare the metabolic profiles observed in aquaculture species with those found in mammalian species.

The drugs to be studied must be justified in terms of their usefulness or potential usefulness to the aquatic food animal industry. The drugs must be approved or have a significant potential to be approved for the treatment of major disease problems in economically important edible aquatic animals. Drugs to be considered include, but are not limited to, oxytetracycline, sulfamerazine, sulfadimethoxine, ormetoprim, and erythromycin. Other drugs that have potential for approval will also be considered; however, the approval of a known or suspected carcinogen or a known mutagen will not likely occur due to the extensive toxicity, metabolism, and residue testing that such a compound would undergo. Drugs for use in minor species will most likely be confined to those that are already approved in a major food-producing species.

III. Reporting Requirements

Financial status reports will be required on an annual basis to be submitted within 90 days from the last day of the budget period. The progress reports required under a grant award (45 CFR Part 74) should be submitted by the principal investigator or project manager.

IV. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of cooperative agreements awards. These awards will be subject to all policies and requirements that govern the research grant programs of the Public Health Service, including the provisions of 42 CFR Part 52, 45 CFR Part 74, and cost-sharing requirements.

B. Eligibility

These cooperative agreements are available to any public or private nonprofit organization (including State and local units of government) and for profit organizations.

C. Length of Support

The length of support will depend on the nature of the study and may extend beyond 1 year but not exceed 3 years. For studies where the expected date of completion is more than 1 year, however, continuation of support beyond the first year will be based upon review of performance during the preceding year and the availability of funds.

D. Funding Plan

The number of studies funded will depend on the quality of the applications received and the availability of funds.

V. Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will have a substantive involvement in the programmatic activities of all the projects funded under this request for applications (RFA). Involvement may be modified to fit the unique characteristics of each application. Substantive involvement includes, but is not limited to, the following:

1. FDA will appoint project officers who will actively monitor the FDA supported program under each award. During monitoring, FDA may direct or redirect the selection of drugs to be studied.

2. FDA will establish a Comparative Drug Metabolism Advisory Group, which will provide guidance and direction to the programs, in particular, with regard to the drugs and animal species to be investigated. In some cases, FDA scientists will collaborate with grantees in determining the methodological approaches to be used.

3. FDA scientists will collaborate with the recipient and have final approval on the experimental protocol. This collaboration may include protocol design, data analysis, interpretation of findings, and coauthorship of publications.

VI. Review Procedures and Criteria

A. Review Methods

Applications will undergo initial review by experts in the field of aquatic animal drug metabolism. The committee will review and evaluate each application based on its scientific merit. The applications will be subject to a second-level review to evaluate them based on their relevance to FDA's mission in the regulation of animal drugs.

B. Review Criteria

Applications must be responsive to this RFA. Applications that are judged to be unresponsive will not be considered for funding under this RFA and will be returned to the applicant. Applications will be reviewed according to the following criteria:

1. Responsiveness to the RFA.

2. The appropriateness of the study design to answer the question posed.

3. The availability and adequacy of laboratory and aquatic animal facilities.

4. The adequacy and availability of support services, e.g., biostatistical, computer, etc.

5. The research experience, training, and competence of the principal investigator and support staff.

VII. Method of Application

A. Letter of Intent

Prospective applicants are requested to submit a brief one page letter of intent, which should include a short synopsis of the research plan. This letter should be received no later than April 25, 1985. The letter is to be submitted to David B. Batson (address above).

FDA requests letters of intent only to provide an indication of the number and scope of applications to be received. A letter of intent is not binding and it will not enter into the review of a proposal subsequently submitted. A letter of intent is not a necessary requirement for application.

B. Format for Applications

Applications must be submitted on Form PHS-398 (Application for Public Health Service Grant). The face page of the application must reflect the RFA number, RFA–FDA–CVM–85–1. To ensure confidentiality of individual

salary information, applicants may choose to include that information on the original application only. In that case, all copies of the application should reflect only a total amount for salaries and fringe benefits.

No action will be taken by the funding agency to delete confidential information. Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and the regulations of the Food and Drug Administration implementing that act (21 CFR 20.61).

The collection of information requested on Form PHS-398 and the instructions have been submitted by the Public Health Service to the Office of Management and Budget (OMB), and were approved and assigned OMB control number 0925-0001.

C. Legend

Unless disclosure is required by the Freedom of Information Act, as amended, as determined by the freedom of information officials of the Department of Health and Human Services, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

The original and six copies of the completed application should be delivered to, and application kits are available from Kathryn McKnight (address above).

Note.—Do not mail the application to the National Institutes of Health.

Prospective applicants should label the outside of the mailing package and the top of the application face page with "Response to RFA-FDA-CVM-85-1."

Applications must be received by 5 p.m. on June 10, 1985. A package carrying a legible proof-of-mailing date assigned by the carrier, and which is no later than 1 week prior to the receipt date, is also acceptable. The receipt date will be waived only in extenuating circumstances. To request such a waiver, include an explanatory letter with the signed completed application. No waiver will be granted prior to receipt of application. Unless a waiver is granted, applications received after the deadline date will be returned to the applicant.

Dated: February 26, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-5660 Filed 3-8-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial No. I-7322]

Idaho; Proposal withdrawal and Public Meetings

Correction

In FR Doc. 85-4327, appearing on page 7234, in the issue of Thursday, February 21, 1985, in the last paragraph of column one, the words, "surface entry and mining since October 2, 1968, under the", should be inserted immediately after the text of line four.

BILLING CODE 1505-01-M

[AA-6661-C]

Alaska Native Claims Selection; Eklutna Inc.

In accordance with Departmental regualtion 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611, will be issued to Eklutna, Inc. for approximately 105 acres. The land involved are in Sec. 19, T. 16 N., R. 1 E., Seward Meridian.

A notice of the decision will be published once a week for four (4) consecutive weeks, in The Anchorage Times. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until April 10, 1985, to file an appeal. However, parties receiving service by certified mail shall have thirty days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-5713 Filed 3-8-85; 8:45 am]

BILLING CODE 4310-JA-M

[AA-10538]

Alaska Native Claims Selection; Olsonville, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(h)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1603(d), 1613(h)(2), will be issued to Olsonville, Incorporated for approximately 6,803 acres. The lands involved are within the selection area for Olsonville.

Seward Meridian, Alaska (Unsurveyed)

T. 20 S., R. 57 W.,
Secs. 4 and 5 (fractional);
Sec. 6;
Secs. 7, 8, 18, and 19 (fractional).
Containing approximately 2,284 acres.
T. 20 S., R. 58 W.,
Sec. 13;
Sec. 23, excluding U.S. Survey No. 6321;
Secs. 24, 25, and 26 (fractional), excluding U.S. Survey No. 6321;
Secs. 31 to 35 (fractional), inclusive.
Containing approximately 4,259 acres.
T. 20 S., R. 59 W.,
Sec. 36, (fractional).
Containing approximately 250 acres.
T. 21 S., R. 59 W.,
Secs. 1 and 2 (fractional).
Containing approximately 10 acres.
Aggregating approximately 6,803 acres.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until April 10, 1985, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371,

February 21, 1984) shall be deemed to have waived their rights.

Barbara A. Lange,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-5712 Filed 3-8-85; 8:45 am]

BILLING CODE 4310-JA-M

[4-00164-ILM]

Availability of Report Concerning the Application of Coal Unsuitability Criteria

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of report concerning the application of coal unsuitability criteria.

SUMMARY: This report implements part of former Secretary Clark's July 9, 1984, response to Congress concerning a recommendation made by the Office of Technology Assessment (OTA) in its report entitled *Environmental Protection in the Federal Coal Leasing Program;* May 1984. Specifically, among other things, the OTA noted concern regarding amendments in the regulations of the Federal coal management program dealing with the application of an unsuitability screen. An interagency task force has evaluated the Bureau of Land Management's (BLM) experience with these changes and is reporting on its evaluation. This report contains findings and conclusions concerning the application of unsuitability criteria and the need to assess the adequacy of data used in this screening process.

Interested parties (Federal/State agencies and the general public) were encouraged to express their concerns with changes in the unsuitability criteria and to submit information on the effects of those changes at a series of public meetings conducted in each Federal coal region in November and December 1984. An interdisciplinary team consisting of professional staff and managers from the BLM, the Office of Surface Mining Reclamation and Enforcement (OSM), the Fish and Wildlife Service (FWS) and the Forest Service (FS) prepared the report analyzing the expressed concerns and suggested means to improve the application of the unsuitability criteria screen. This report will be available for comment during the remainder of the public comment period on the draft EIS supplement, which ends April 9, 1985. *The Final Programmatic Environmental Impact Supplement (FEIS)* for the Federal coal management program will contain an analysis of comments received on this report. Copies of this report have been mailed to all persons and organizations on the BLM's mailing list of those requesting to receive the draft EIS.

DATE: Comments should be received on or before April 9, 1985.

ADDRESS: Any comments or questions concerning this report should be addressed to: Director (640), Attention: Mike Giblin, Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Michael Giblin, (202) 343-4790, or Douglas Blankinship, (202) 343-2091.

Dated: March 7, 1985.

James M. Parker,

Acting Director, Bureau of Land Management.

[FR Doc. 85-5891 Filed 3-8-85; 8:45 am]

BILLING CODE 4310-84-M

[4-00164-ILM]

Availability of Coal Production Forecast Technical Report

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: This report supplements Chapter 3 of the February 1985 Draft Environmental Impact Statement (DEIS) supplement to the 1979 Final Environmental Statement for the Federal Coal Management Program (FES). Chapter 3 (Production Forecasts) of the 1985 DEIS describes western U.S. coal production forecasts and how they were derived, explains their significance, and compares these and other recent forecasts to those compiled for the 1979 FES. A technical report is now available (Coal Production Forecast Technical Report) which presents the forecasting methodology and results summarized in Chapter 3 in greater detail, describes the sensitivity analysis used as the basis for forecasting production levels, and provides more information on the derivation of regional coal production capacity estimates.

DATE: Comments should be received on or before April 9, 1985.

ADDRESS: Copies of this report may be obtained from the Director (500), Attn: John Broderick, Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240. Any comments or questions on this report should also be sent to the above address.

FOR FURTHER INFORMATION CONTACT: John Broderick, (202) 343-5517.

Dated: March 7, 1985.

James M. Parker,

Acting Director, Bureau of Land Management.

[FR Doc. 85-5892 Filed 3-8-85; 8:45 am]

BILLING CODE 4310-84-M

[N-41271]

Realty Action; Noncompetitive Sale of Public Land in Carson City, NV

March 1, 1985.

The following described land, comprising 2.5 acres, has been identified as suitable for sale under section 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750), 43 U.S.C. 1713:

Mount Diablo Meridian, Nevada

T. 16 N., R. 20 E.,
Sec. 31: SE¼SE¼NE¼SW¼.

The land will initially be offered at the appraised fair market value to Carson Masonic Lodge No. 1 which has held the property under a Recreation and Public Purposes Act lease since 1977. The Lodge's uncertain timetable for development makes continued leasing under the Recreation and Public Purposes Act inappropriate. The land is adjacent to property owned by Carson Masonic Lodge No. 1 and is an integral part of the project planned by the Lodge. The land has been identified for disposal in the Reno Management Framework Plan. It is not needed in support of any federal program. Sale of the land is consistent with local planning and zoning.

Failure to accept the offer to purchase the land within the time specified by the authorized officer shall constitute a waiver of the preference consideration. If the preference consideration is waived by the Carson Masonic Lodge #1, the land will be offered for sale through competitive procedures at a time and place to be announced.

Patent, if and when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States; Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

Since there is no known value for locatable minerals in the land and saleable mineral values are insignificant in comparison to development values of

the land, such interests can be coveyed simultaneously with the surface estate in accordance with section 209(b)(1)(1) of Pub. L. 94–579, upon the completion of an application to purchase the mineral interests and a $50 processing fee. The aforementioned mineral reservation will be modified if the patentee elects to purchase the locatable and saleable mineral interests of the United States. Leasable minerals will be reserved to the United States.

The patent will also be subject to:

1. A right-of-way not exceeding 30 feet in width, for roadway and public utility purposes, along the east boundary.

2. Those rights for highway purposes which have been granted to the Nevada Highway Department, its successors or assigns, by Permit No. CC–021553 under the Act of November 9, 1921, 42 Stat. 212.

Detailed information concerning the sale is available for review at the Carson City District Office.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from all forms of nondiscretionary appropriation under the public land laws, including the mining laws, except the mineral leasing laws. The segregative effect of this notice of realty action shall terminate upon issuance of patent or other document of conveyance to such land, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

The land will not be offered for sale sooner than 60 days after the date of this notice. For a period of 45 days after the date of this notice, interested parties may submit comments to the Bureau of Land Management, Carson City District Office, 1050 E. William Street, Suite 335, Carson City, Nevada 89701. Any adverse comments will be evaluated by the District Manager. The Nevada State Director, Bureau of Land Management, may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Norman L. Murray,

Acting District Manager, Carson City District.

[FR Doc. 85–5742 Filed 3–8–85; 8:45 am]

BILLING CODE 4310–HC–M

Elko District Advisory Council; Open Meeting

In accordance with Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that the BLM Elko District Advisory Council will meet at 9:00 A.M. on April 8, 1985, in the new Elko District Office Conference Room, 3900 East Idaho Street, Elko, Nevada.

Topics to be discussed are: (1) Duties and Functions of the Council and Overview of District Programs; (2) Organization of the Council; (3) BLM/Forest Service Land Interchange Program; (4) Status of District Land Use Planning; (5) District Private Land Exchange Program; and (6) New Building Complex.

The meeting is open to the public. Interested persons may make oral statements for the Council's consideration between 1:00 and 2:00 P.M. on the meeting date. Anyone wishing to make a statement must notify the District Manager, BLM, P.O. Box 831, Elko, Nevada 89801, or call 720–738–4071, no later than April 3, 1985.

Summary minutes of the meeting will be prepared and available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Merle Good,

Acting District Manager.

February 27, 1985.

[FR Doc. 85–5765 Filed 3–8–85; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0438, Block 175, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Amelia, Louisiana.

DATE: The subject DOCD was deemed submitted on February 28, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: 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 DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs 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 revised § 250.34 of Title 30 of the CFR.

Dated: February 28, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–5734 Filed 3–8–85; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 026, Block 30, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on February 28, 1985.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section;

Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: 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 DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs 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 revised § 250.34 of Title 30 of the CFR.

Dated: February 25, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-5733 Filed 3-8-85; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Desk Officer, Washington, D.C. 20503, telephone 202-395-7340.

Title: Restrictions of Financial Interests of State Employees, 30 CFR 705.

Abstract: Collect employment and financial interests information on State regulatory authority employees under Section 517(g), Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, as no employee performing any function or duty under the Act shall have a direct or indirect financial interest in any underground or surface coal mining operation.

Bureau Form Number: OSM-23.

Frequency: Annually.

Description of Respondents: Any State regulatory authority employee who performs any function or duty under the Act is required to file a statement of employment and financial interests.

Annual Responses: 1924.

Annual Burden Hours: 639.

Bureau Cleance Officer: Dalene Boyd, 202-343-5447.

Dated: February 26, 1985.

Carson W. Culp, Jr.,

Assistant Director, Budget and Administration.

[FR Doc. 85-5657 Filed 3-8-85; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-240 and 241 (Preliminary) and 731-TA-249 Through 251 (Preliminary)]

Oil Country Tubular Goods From Austria, Romania, and Venezuela; Import Investigations

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 701-TA-240 and 241 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)) and of preliminary antidumping investigations Nos. 731-TA-249, 250 and 251 under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Austria and Venezuela of oil country tubular goods,[1] provided for in items 610.32, 610.37, 610.39, 610.40, 610.42, 610.43, 610.49 and 610.52 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Governments of Austria and Venezuela, and of these goods from Austria, Romania, and Venezuela which are alleged to be sold in the United States at less than fair value. As provided in sections 703(a) and 733(a), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by April 15, 1985 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and B (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: February 28, 1985.

FOR FURTHER INFORMATION CONTACT: Judith Zeck (202-523-0300), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on February 28, 1985, by the U.S. Steel Corp. of Pittsburgh, Pa.

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR § 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c) as amended by 49 FR 32569, Aug. 15, 1984), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations

[1] For purposes of these investigations, "oil country tubular goods" includes drill pipe, casing and tubing for drilling oil or gas wells, of carbon or alloy steel, whether such articles are welded or seamless, whether finished or unfinished, and whether or not meeting American Petroleum Institute (API) specifications.

for 9:30 a.m. on March 25, 1985 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Judith Zeck (202–523–0300) not later than March 21, 1985 to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before March 27, 1985 a written statement of information pertinent to the subject of the investigations, as proivdes in § 207.15 of the Commisson's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8, as amended by 49 FR 32569, Aug. 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: March 5, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–5653 Filed 3–8–85; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30584]

Rail Carriers; Burlington Northern Railway Co.; Trackage Rights Exemption Soo Line Railroad Co. et al.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under: (1) 49 U.S.C. 11343, the acquisition by Burlington Northern Railway Company of trackage rights over lines of railroad owned by Soo Line Railroad Company; Duluth, Missabe & Iron Range Railway Company; Duluth, Winnipeg & Pacific Railway Company (DWP); and Minnesota, Dakota and Western Railway Company (MDW) from Superior, WI, to International Falls, MN, subject to labor protective conditions; and (2) 49 U.S.C. 10901, the construction of a necessary connector track between DWP and MDW at Ranier, MN.

DATES: The exemption is effective on April 10, 1985. Petitions for reconsideration must be filed by April 1, 1985. Petitions for stay must be filed by March 21, 1985.

ADDRESSES: Send petitions referring to Finance Docket No. 30584 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: March 1, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–5677 Filed 3–11–85; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30601]

Rail Carriers; Missouri Pacific Railroad Co.; Trackage Rights Exemption; Cook County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11343 *et seq.*, the acquisition by Missouri Pacific Railroad Company of trackage rights over approximately 7.8 miles of rail line owned by Chicago and Western Indiana Railroad Company in Cook County, IL.

DATES: This exemption will be effective on April 10, 1985. Petitions for reconsideration must be filed by April 1, 1985. Petitions for stay must be filed by March 21, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30601 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representatives: Mark A. Kalafut, 1416 Dodge Street, Omaha, NE 68179

(3) J.H. Park, 428 W. 47th Steet, Chicago, IL 60609

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: March 1, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–5678 Filed 3–8–85; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 388]

State Intrastate Rail Rate Authority (Pub. L. 96–448); Decision

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: *State Insurance Rail Rate Authority—Pub. L. 96–448, 365* I.C.C. 700 (1982) is corrected by directing parties seeking to continue litigation of rail rate cases pending before the State Commissions of California, Connecticut, Delaware, Nevada, and North Carolina, to advise Deputy Director Louis E. Gitomer, Rail Section, Office of Proceedings. Parties in any pending section 229 cases in these States should consult with Chief Administrative Law Judge David Allard. The California Public Service Commission must transfer the official records in two rate proceedings to this Commission for disposition.

DATE: Transfer of records by the California Public Service Commission must occur by April 10, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. Info Systems, Inc. Room 2227, Interstate Commerce Commission, Washington, D.C. 20423, or call 289–4357 (DC Metropolitan Area) or toll free (800) 424–5403.

Decided: February 28, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85–5679 Filed 3–8–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket Nos. AB–105 and AB–72 (Sub-4X)]

Rail Carriers; the Western Pacific Railroad Co. and Sacramento Northern Railway; Discontinuance and Abandonment of Service; Solano and Yolo Counties, CA; Exemption

The Western Pacific Railroad Company (WPR) and the Sacramento Northern Railway (SNR) filed a notice of exemption under 49 C.F.R. 1152 Subpart F—*Exempt Abandonments*. The line involved is known as the Holland Branch, extending from milepost 6.17 to milepost 15.78, a distance of 9.61 miles, in Solano and Yolo Counties, CA. WPR will discontinue service and SNR will abandon the line.

WPR and SNR have certified (1) that no local traffic has moved over the line for at least 2 years and that any overhead traffic on the line can be rerouted over other lines, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in California has been notified in writting at least 10 days prior to the filing of the notice. See *Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on April 11, 1985 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by March 21, 1985, and petition for reconsideration, including environmental, energy, and public use concerns, must be filed by March 30, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Any petitions filed regarding AB–72 (4X) should be marked "See AB–105(4X)". A copy of any petitions filed with the Commission must be sent to WPR and SNR's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: March 5, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–5680 Filed 3–8–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collection(s) Under OMB Review

March 6, 1985.

The Office of Management and Budget (OMB) has been sent 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. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available;

(2) The office of the agency issuing the form;

(3) The title of the form;

(4) The agency form number, if applicable;

(5) How often the form must be filled out;

(6) Who will be required or asked to report;

(7) An estimate of the number of responses;

(8) An estimate of the total number of hours needed to fill out the form;

(9) An indication of whether section 3504(h) of Public Law 96–511 applies; and,

(10) The name and telephone number of the person or office responsible for the OMB review.

Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the items contained in this list should be directed to the reviewer listed at the end of each entry and to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miesse, 202/633–4312.

• *Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection*

(1) Larry E. Miesse, 202/633–4312.

(2) Torts Branch, Civil Division, Department of Justice.

(3) Claim for Damage, Injury, or Death (SF–95) (CIV).

(4) SF–95.

(5) Occasion.

(6) Individuals or households. Persons with claims against the United States Government for property damage, personal injury, or wrongful death, use this form to present a claim under the Federal Tort Claims Act.

(7) 400,000 respondents.

(8) 100,000 burden hours.

(9) Not applicable under 3504(h).

(10) Robert Veeder—395–4814.

Larry E. Miesse,

Departmental Clearance Officer.

[FR Doc. 85–5672 Filed 3–8–85; 8:45 am]

BILLING CODE 4410–01–M

Office of Justice Programs

Programs and Activities Covered by Executive Order 12372

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of Change in Programs and Activities Covered By Executive Order 12372.

SUMMARY: The purpose of this Notice is to inform state and local governments and other interested persons of programs and activities included within the scope of Executive Order 12372, "Intergovernmental Review of Federal Programs." A full understanding of the requirements of the Order may be gained by referring to the final rules

published in 28 CFR Part 30 at 48 FR 29238, published June 24, 1983.

EFFECTIVE DATE: March 11, 1985.

FOR FURTHER INFORMATION CONTACT: Lynn C. Dixon, Planning and Management Staff, Office of Justice Programs, 633 Indiana Avenue, N.W., Washington, D.C. 20531 (Telephone 202-272-6838).

Statutory Authority:

Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. Sec. 3701, *et seq.*, as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, Pub. L. 94-503, Pub. L. 95-115, Pub. L. 96-157, and Pub. L. 98-473) (referred to as the Justice Assistance Act of 1984).

Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. Sec. 501, *et seq.*, as amended (Pub. L. 93-415, as amended by Pub. L. 94-503, Pub. L. 95-115, Pub. L. 96-509, and Pub. L. 98-473).

Victims of Crime Act of 1984, 42 U.S.C., 10601 note, Pub. L. 98-473.

SUPPLEMENTARY INFORMATION: This Notice lists those programs and activities of the Office of Justice Programs that are covered by Executive Order 12372 and incorporates new programs and activities authorized pursuant to the Justice Assistance Act of 1984; the Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984; and the Victims of Crime Act of 1984. The Justice Assistance Act creates an Office of Justice Programs (OJP) in the Department of Justice. It establishes within OJP a new Bureau of Justice Assistance to administer state and local assistance programs, and reauthorizes the Bureau of Justice Statistics and the National Institute of Justice. A separate Office for Victims of Crime in the Office of Justice Programs has been established by administrative action. The Office of Juvenile Justice and Delinquency Prevention is continued by the Juvenile Justice Act amendments.

In order to reflect these changes and to notify state and localities of the programs and activities of the Office of Justice Programs covered by Executive Order 12372, the Office is publishing the following list of "covered" programs and activities.

Program/Activity (Parenthetical Numbers are Catalog of Federal Domestic Assistance (CFDA) References)

Office of Juvenile Justice and Delinquency Prevention—Formula Grant Program (16.540).

Office of Juvenile Justice and Delinquency Prevention—Special Emphasis and Technical Assistance Grants, except grants to non-governmental entities (16.541).

Bureau of Justice Statistics—Criminal Justice Statistics Development Grants (16.550).

Bureau of Justice Assistance—Criminal Justice Block Grants (16.573).

Bureau of Justice Assistance—Criminal Justice Discretionary Grants, except grants to non-governmental entities for national scope purposes (16.574).

Bureau of Justice Assistance—Transfer of Surplus Real Property for Correctional Purposes (no CFDA Number).

Bureau of Justice Assistance—Regional Information Sharing Systems (no CFDA Number).

Rick Abell,

Deputy Assistance Attorney General.

[FR Doc. 85-5659 Filed 3-8-85; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Application No. D-5639 et al.]

Proposed Exemptions: People's Bank of Bridgeport, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referrred to the applications on file with the Department for a complete statement of the facts and representations.

People's Bank of Bridgeport Employee Group Life Insurance Plan (the Plan) Located in Bridgeport, Connecticut

[Application No. D-5639]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406 (a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by the Life Insurance Department of People's Bank (the Reinsurer) from the group life insurance contracts sold by the Metropolitan Life Insurance Company (Metropolitan) to provide benefits to the Plan, provided the following conditions are met:

(a) The Reinsurer—

(1) Is a party in interest with respect to the Plan by reason of section 3(14) (C) of the Act,

(2) Is licensed to sell insurance in at least one of the United States or the District of Columbia,

(3) Has obtained a Certificate of Authority from the Insurance Department of its domiciliary state, Connecticut, which has neither been revoked nor suspended, and

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary state, Connecticut) by the Insurance Department of the State of Connecticut within 5 years prior to the end of the year preceding the taxable year of the reinsurance transaction.

(b) The Plan pays no more than adequate consideration for the life insurance contracts;

(c) No commissions are paid with respect to the direct sale of the contracts, or the reinsurance thereof; and

(d) For each taxable year of the Reinsurer, the gross premiums and annuity considerations received in that taxable year by the Reinsurer for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which the Reinsurer is a party in interest by reason of section 3 (14) (C), (E), or (G) of the Act does not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by the Reinsurer. For purposes of this condition (d), the term "gross premiums and annuity considerations received" means the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale of other reinsurance of life insurance, health insurance or annuity contracts to such plans (and their employers) by the Reinsurer. This total is to be reduced (in both the numerator and denominator of the fraction) by experience refunds paid or credited in that taxable year by the Reinsurer.

Preamble

On August 7, 1979, the Department published a class exemption (Prohbited Transaction Exemption 79–41 (PTE 79–41), 44 FR 46365) which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales of life insurance, health insurance or annuity contracts which fund such plans, if certain conditions are satisfied.

In PTE 79–41, the Department stated its views that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding written or oral under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction.

The Department further stated that as of the date of publication of PTE 79–41, it had received several applications for exemption under which a plan or its employer would contract with an unrelated comany for insurance, and the unrelated company would, pursuant to an arrangement or undertanding, reinsure part or all of the risk with (and cede part of all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemption, but would instead consider such applications on the merits of each individual case.

Summary of Facts and Representations

1. People's Bank (the Bank) is a mutual savings bank with its home office in Bridgeport, Connecticut. The Reinsurer is the Bank itself, operating through its separate Insurance Department. The Reinsurer is maintained as a separate entity from the Savings Department of the Bank, and its assets are liable only for the applicable only to the payment and satisfaction of the liabilities, obligations and expenses of the Reinsurer. No transfer of assets is permitted between Departments. The Reinsurer actively solicits life insurance business in the State of Connecticut where it is licensed. At the end of 1983, it had a surplus of $1,483,900. During 1983, the Reinsurer collected $1,058,270 in total gross premiums.

2. The Plan, a welfare benefit plan, is a group life insurance plan covering employees of the Bank. The Plan is funded entirely through the purchase of group life insurance policies at competitive rates from Metropolitan. Metropolitan is not related to the Bank or the Reinsurer. The Plan covers approximately 1,757 participants.

3. Metropolitan, as direct insurer of the Plan, proposes to enter into a reinsurance contract with the Reinsurer with respect to certain risks it insures under the Plan. The reinsurance contract would cover only the first $100,000 of life insurance on each life. Of this covered amount, the reinsurance contract will provide that Metropolitan will pay the Reinsurer 50% of the group life premiums received from the Plan, in exchange for which the Reinsurer reinsures Metropolitan for 50% of the risk of such group life business. The reinsurance contract would in no way affect Metropolitan's liability for all of the benefits promised under its contracts with the Plan.

4. The Plan would have purchased the group life insurance policies directly from the Reinsurer, and therefore would have come within the scope of the statutory exemption contained in section 408(b)(5)(A) of the Act, except that pursuant to Connecticut law, the Reinsurer can only issue insurance in amounts not exceeding $50,000 per insured life, and this limit was too low to satisfy the requirements under the Plan. The applicant represents that the conditions of section 408(b)(5)(A) of the Act would have been satisfied in that (a) the Reinsurer is the employer maintaining the Plan; (b) the Reinsurer is licensed to do business in Connecticut; and (c) the Plan pays no more than adequate consideration for the contracts.

5. The applicant represents that the subject reinsurance transactions satisfy the conditions set forth in PTE 79–41 governing the direct sales of insurance (except that the Reinsurer is a party in interest by reason of being an employer whose employees are covered by the Plan) as follows:

(a) The Reinsurer is licensed to sell insurance in Connecticut;

(b) The Reinsurer was first authorized to do business in 1941. Such authorization is automatically renewed each year by the Insurance Department of Connecticut and continues to be effective unless rescinded. Reinsurer's certification has never been rescinded;

(c) The Reinsurer underwent a financial examination by the Insurance Department of Connecticut in 1981;

(d) The Reinsurer has undergone an examination by an independent certified public accountant for 1983, its last completed taxable year;

(e) The Plan pay no more than adequate consideration for the insurance contracts. Because Metropolitan is one of the largest group insurance underwriters in the country and enjoys substantial economies of

scale in overall policy administration, the premium charged to the Plan is highly competitive. The proposed reinsurance transactions are not a factor in the premium computation and thus will not in any way affect the cost of the Plan;

(f) No commissions will be paid with respect to either the insurance contracts with Metropolitan or the subject reinsurance transactions; and

(g) It is projected that the gross premiums and annuity considerations to be received by the Reinsurer for its reinsurance under the proposed contract will amount to only 14 percent of the Reinsurer's 1984 gross premiums and annuity considerations. The applicant represents that for the future the Reinsurer will not derive more than 50 percent of its gross premiums and annuity considerations received for all lines from transactions involving the subject reinsurance contract.

6. In summary, the applicant represents that the subject transactions meet the criteria of section 408(a) of the Act because: (a) participants and beneficiaries of the Plan are afforded insurance protection by Metropolitan, one of the largest and most experienced group insurers in the United States, at competitive rates arrived at through arm's-length negotiations; (b) the Reinsurer is a sound, viable insurance company which has been in business for many years, and which does a substantial amount of business outside the Bank; and (c) each of the protections provided to the Plan by PTE 79-41 will be met under the subject reinsurance transactions.

Notice of Interested Persons: Within 20 days of the publication of this proposed exemption in the **Federal Register**, notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department. Comments and requests for a hearing are due 50 days after the date of publication of this notice in the **Federal Register**.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Robert L. Andronici Self Employed Retirement Plan (the Plan) Located in Medford, New Jersey

[Application No. D-5729]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale of a parcel of real property by the Plan to Mr. Robert L. Andronici (Mr. Andronici), a disqualified person with respect to the Plan, for $23,000 in cash, and the assumption by Mr. Andronici of the remaining indebtedness of the Plan on the property, provided that the terms of sale for the property are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party.[1]

Summary of Facts and Representations

1. The Plan, a Keogh plan, was established on November 19, 1981, with Mr. Andronici being the sole participant. Contributions to the Plan for 1981 and 1982 totaled $16,650.

2. On November 26, 1981, the Plan purchased a parcel of unimproved real property (the Property) located in Punta Gorda Isles, Florida. The Plan paid $36,470 for the Property, with a down payment of $6,320 and a purchase money mortgage of $30,150 for the balance.

3. On October 1, 1982, Mr. Andronici discontinued operation of his business. He then accepted employment with an organization which included him in the company sponsored profit-sharing plan. Therefore, Mr. Andronici represents that since he is no longer self-employed, he is precluded from making any further contributions to the Plan. As a result, the Plan has been unable to make the required mortgage payments on the Property and the Property is presently threatened with foreclosure. The outstanding balance on the mortgage plus accrued interest is $27,662.82.

4. In order to get the Plan out of its present dilemma, Mr. Andronici proposes to purchase the Property from the Plan. The Property was appraised on October 12, 1984 by Mr. J. Steven Persons of the Charlotte Appraisal Company, Charlotte, Florida, to have a fair market value of $23,000. Mr. Andronici recognizes that by paying the current appraised value for the Property there would still be an outstanding mortgage balance on the Property of $4,662.82. Mr. Andronici therefore proposes to pay the Plan $23,000 in cash and assume the remaining indebtedness on the Property. He will also pay all costs relative to the transfer of the Property.

5. In summary, Mr. Andronici represents that the proposed transaction meets the statutory criteria of section 4975(c)(2) of the Code because:

(a) The sale is a one time transaction for cash;

(b) All expenses relative to the sale will be borne by Mr. Andronici; and

(c) The only person to be affected by the transaction is Mr. Andronici and he desires that the transaction be consummated.

Notice to Interested Persons: Since Mr. Andronici is the sole Plan participant, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and hearing requests are due 30 days after the date of publication in the **Federal Register**.

For Further Information Contact: Mr. Alan Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Heilig-Meyers Company Employees' Profit-Sharing Retirement Plan (the Plan) Located in Richmond, Virginia

[Application No. D-5808]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the past cash sale by the Plan of two promissory notes (collectively, the Notes) to the Heilig-Meyers Company (the Employer), provided that the terms and conditions of the sale were not less favorable to the Plan as those obtainable in a similar transaction between unrelated parties.

Effective Date: If granted, the exemption will be effective September 14, 1984.

Summary of Facts and Representations

1. The Plan is a defined contribution pension plan which had 859 participants and net assets of approximately $8,502,927 as of March 31, 1984. The Plan is administered by a committee of trustees (the Trustees) appointed by the Employer's board of directors. The Plan authorizes the Trustees to appoint investment managers and provides that

[1] Since Mr. Andronici was the sole owner of the Plan sponsor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(c)(1). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

investment managers so appointed shall be solely responsible for the management of assets under their control. One of the Plan's investment advisors was Capital Management Corporation (Capital). Capital was subsequently removed as an investment manager for the Plan.

2. On June 3, 1983, Capital invested $500,000 of the Plan's assets in an interest-bearing promissory note (the Crossroad Note) in the same face amount, due January 31, 1988 and made by Crossroads Center Associates (Crossroads), a North Carolina limited partnership. The Crossroads Note is secured by collateral which includes a lien against Crossroads Shopping Center (Crossroads Center), located in Asheboro, North Carolina. The Crossroads Note is subordinate and inferior to other mortgage indebtedness secured by Crossroads Center.

On September 8, 1983, Capital invested an additional $500,000 of the Plan's assets in an interest-bearing promissory note (the Heritage Note) in the same face amount, due December 31, 1988 and made by Heritage Square Associates (Heritage), also a North Carolina limited partnership. The Heritage Note is secured by collateral which includes a lien against Heritage Square Shopping Center (Heritage Square) located in Summerville, South Carolina and certain promissory notes of the partners of Heritage. The Heritage Note is subordinate and inferior to other mortgage indebtedness secured by Heritage Square. Both the Crossroads Note and the Heritage Note bear interest at 20% per annum, of which 15% is payable currently each quarter. The remaining 5% is due upon the maturity of the final principal payment of each of the Notes. Heritage, Crossroads and the general partner of both Heritage and Crossroads are unrelated to the Plan and to the Employer.

3. Shortly after July 1, 1984, the Trustees were informed that the Heritage Note and the Crossroads Note, as well as certain of the superior indebtedness, were in default. Thereafter, the holders of the superior indebtedness threatened to foreclose on Crossroads Center and Heritage Square. The general partner of Crossroads and Heritage, according to the best knowledge of the Trustees, is unable to meet the obligations of the partnerships. The limited partners of Heritage have refused to pay their notes. There may be prolonged litigation among the principals involved in the development of the Crossroads Center and the Heritage Center and their creditors. After considering the means of recovering the amounts due under the Notes and the methods of protecting their investment, the Trustees concluded that the Plan would suffer substantial expense, delay, and risk of loss without assurance that it might recover its losses.

4. On July 16, 1984, Wheat, First Securities, Inc. (Wheat), a regional investment banking firm, was engaged, at the Employer's expense, to analyze alternative methods of recovering the Plan's investments in the Notes and to appraise the Notes. Wheat is independent of all parties involved in the Notes and the sale, except for a minimal business relationship with the Employer.[2] Wheat manages assets of approximately $370 million and has extensive experience in investment analysis, securities brokerage and underwriting, and research services. In the course of its engagement, Wheat employed three real estate appraisers and a consulting engineer, and made diligent efforts to confirm data regarding the Notes and the security from several sources. The analysis, which individually evaluated four separate alternatives, concluded that the Plan would not recover any substantial part of its investments from the proceeds of a distressed sale.

Wheat also examined alternative methods of working out the situation with the principals and their creditors. Based on the data provided and its own analyses, wheat concluded that if a new general partner of Heritage Center Associates was appointed and limited partners paid in amounts owed by them when due, it appeared that the Plan could recover its initial investment in the Heritage Note plus the anticipated 20% return on investment; however, this approach would require modification and extension of the term of the note and the infusion of approximately $250,000 of additional short term capital by the new general partner, the limited partners or the Plan. With respect to the Crossroads Notes, Wheat concluded that the Crossroads property does not have the recovery potential of Heritage. Under similar substitution of general partners and recasting of the Plan's debt, the Plan could expect to recover its investment with little or no additional capital investment; however, it is not as likely that the Plan would receive the originally anticipated return on investment.

[2] Wheat has done some work for the Employer, participating in the underwriting of two public offerings of the Employer's common stock; however, its compensation for these services constituted less than 1% of its annual gross revenues.

5. On September 14, 1984, the Trustees, in an effort to minimize the Plan's risk of losses and heavy expenses and to protect the benefits of Plan participants, agreed to sell the Notes to the Employer. Under the agreement, the Trustees assigned to the Employer any and all causes of action that the Trustees may have had in connection with the Notes and the collateral securing the Notes under any theory of possible liability. The Employer agreed to hold the Trustees harmless against all losses, claims, liabilities, costs or expenses incurred in connection with any litigation or threatened litigation relating to rights and property transferred to the Employer. The Employer also agreed to pay over to the Trustees all amounts collected by the Employer in excess of the amount paid by the Employer for the Notes, less expenses incurred by the Employer in connection with collection of the Notes and recovery of losses.

6. In a letter of September 14, 1984, Wheat stated that the current fair market value of the Notes would not exceed the sum of their face value plus all accrued and unpaid interest. The Trustees and the Employer exchanged the Notes and cash consideration on September 17, 1984. The Employer paid the purchase price in cash, which was in an amount equal to the sum of the face amounts of the Notes, plus all accrued and unpaid interest (at the rate of 20% per annum plus late charges) through September 17, 1984. The applicant states that the purchase could not be delayed by processing an exemption application in advance because delays would have prejudiced the Employer's efforts to minimize its losses. No costs were paid by the Plan with respect to the sale.

7. Other than interests as fiduciaries of the Plan, neither the Trustees nor the Employer, nor any other party in interest to the knowledge and belief of the applicant, had at the time of the investments or now have (other than as purchaser of the Notes), any affiliation with or interest, economic, beneficial or otherwise, in Capital, Heritage, Crossroads, Heritage Square, Crossroads Center, or any secured creditor of any of the foregoing.

8. The Trustees represent that the sale of the Notes to the Employer was in the best interest and protective of the Plan's participants and beneficiaries because, after considering alternative means of recovering the amounts due under the Notes, they concluded that the Plan would suffer substantial expense, delay and risk of loss without assurance that it might recover its losses.

9. In summary, the applicant represents that the sale of the Notes by the Plan to the Employer satisfies the criteria of section 408(a) of the Act because: (a) the Trustees and Wheat, a qualified independent party, determined that the Plan would not recover any substantial part of its investments in the Notes from the proceeds of a distressed sale and any other alternatives would involve substantial expense, delay and risk; (b) the sale was a one-time transaction for cash; (c) the sale price was determined to be at least the fair market value of the Notes by Wheat; and (d) the Plan paid no costs with respect to the sale.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8882. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 6th day of March, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-5746 Filed 3-8-85; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 85-50; Exemption Application No. D-5409 et al.]

Grant of Individual Exemptions; Cumberland Farms, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Cumberland Farms Employees' Retirement Trust (the Trust) Located in Canton, Massachusetts

[Prohibited Transaction Exemption 85-50; Exemption Application No. D-5409]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the continuation beyond June 30, 1984 of: (1) twelve loans (the Loans) from the Trust to V.S.H. Realty, Inc. (V.S.H.) and/or Cumberland Farms, Inc. (Cumberland), the successor in interest to V.S.H.; (2) guarantees of the Loans by Delaware Food Store, Inc. (Delaware) until October 1, 1984; and (3) conditional assignments of rents from V.S.H. and/or Cumberland to the Trust, provided that the terms and conditions of the Loans as of July 1, 1984, are at fair market value.

Effective Date: The exemption is effective July 1, 1984.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the noitce of proposed exemption published on November 9, 1984 at 49 FR 44825.

Comments

The only comments received by the Department were submitted by counsel for the applicant and by the independent fiduciary (Fiduciary) which is representing the Trust in determining whether the transactions which are the subject of the exemption are in the best interests of the Trust. Counsel for the applicant informed the Department that, effective October 1, 1984, a corporate reorganization was accomplished under

which each of the wholly-owned subsidiaries of Delaware was merged into Delaware and, immediately thereafter, Delaware and V.S.H. were merged into Cumberland, a newly-formed corporation. Thus, Cumberland, as the sole surviving entity of the reorganization, has succeeded to all of the assets and liabilities of Delaware, V.S.H., and all the wholly-owned subsidiaries of Delaware. The Fiduciary has considered the impact of the reorganization on the Loans and determined that the reorganization will not have any meterial adverse impact on the Trust's interest in the Loans. Accordingly, the Fiduciary has determined that the continuation of the Loans remains in the best interest of the Trust, its participating plane, and their participants and beneficiaries. The Department has considered this information and has determined, on the basis considered this information and has determined, on the basis of the entire record in this case, that the exemption should be granted.

For Further Information Contact: Mrs. Mary Jo Fite of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Union No. 198 Education Trust Fund (the Fund) Located in Baton Rouge, Louisiana

[Prohibited Transaction Exemption 85-51; Exemption Application No. L-5431]

Exemption

The restriction of section 406(a), 406(b)(1) and 406(b)(2) of the Act shall not apply to the sale of a building (the Building) by the Fund to United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Local Union No. 198, an employee organization whose members are covered by the Fund, provided that the Fund received no less than the fair market value of the Building on the date of sale.

Effective Date: The exemption is effective August 12, 1982.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 14, 1984 at 49 FR 48821.

For Further Information Contact: Mrs. Mary Jo Fite of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

United Mine Workers of America 1950 Benefit Plan and Trust Located in Washington D.C.

[Prohibited Transaction Exemption 85-52; Exemption Application No. L-5777]

Exemption

The restrictions of section 406(a) and 406(b)(1) of the Act shall not apply, effective October 1, 1984, to the final and binding resolution by the trustees (the Trustees) of the United Mine Workers of America 1950 Benefit Plan and Trust (the 1950 Benefit Plan) of certain disputes (the Disputes) arising in connection with the provision of health and other benefits provided under certain individual employer maintained welfare plans established pursuant to collective bargaining under the National Bituminous Coal Wage Agreements (the Agreements), and to the receipt of monies from the 1950 Benefit Plan as payment for providing such services, provided that such Trustees maintain and make available to the Department and the parties to the Agreements, upon request, records adequate to ascertain both the cost of rendering such services and the portion of such costs which may be attributed to the resolution of each of the three types of Disputes which the Trustees may consider.

Effective Date: The exemption is effective October 1, 1984.

Written Comments

The Department received six comments in response to the notice of proposed exemption. Those comments did not address the questions of whether or not the Department should grant an exemption for the subject transaction. Accordingly, the Department has determined to grant the exemption as proposed.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 14, 1984 at 49 FR 48830.

For Further Information Contact: Mr Paul Antsen of the Department, telephone (202) 523-8753. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 6th day of March 1985.

Elliot I. Daniel,

Acting Assistant Administrotor for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-5745 Filed 3-8-85; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-16]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, and other documents

submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by March 21, 1985. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl F. Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546; Kenneth Allen, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl F. Steinmetz, NASA Agency Clearance Officer, (202) 453-2941.

Reports

Title: New Technology Transmittal.
OMB Number: 2700-0009.
Type of Request: Extension.
Frequency of Report: On occasion.
Type of Respondent: Businesses or other for-profit, federal agencies or employees, non-profit institutions, small businesses or organizations.
Annual Responses: 2,000.
Annual Reporting Hours: 500.
Number of Forms: One.

Abstract-Needs/Uses: The NASA Form 666 is used to transmit information from a NASA contractor who has developed technological innovation under the contract which might be useful to others to the cognizant NASA official. Such reporting is required under the contract.

L.W. Vogel,

Director, Logistics Management and Information Programs Division.

[FR Doc. 85-5654 Filed 3-8-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Arts the Theater Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Companies Section) to the National Council on the Arts will be held on March 26-30, 1985 from 9:00 am—9:00 pm in Room MO-9 of the Nancy Hanks Center 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to substances (c) (4), (6) and 9(d) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endownment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: March 4, 1985.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85-5658 Filed 3-8-85; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel (Challenge/Advancement Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Challenge/Advancement Section) to the National Council on the Arts will be held on March 28-29, 1985, from 9:00 a.m.-5:00 p.m. in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

Dated: March 5, 1985.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85-5735 Filed 3-8-85; 8:45 am]

BILLING CODE 7537-01-M

Literature Advisory Panel (Overview/Professional Development Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Overview/Professional Development Section) to the National Council on the Arts will be held on March 28-29, 1985, from 9:00 a.m.-5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public on March 29, from 9:00 a.m.-5:30 p.m. to discuss policy and guidelines.

The remaining sessions of this meeting on March 28, from 9:00 a.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

Dated: March 5, 1985.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85-5736 Filed 3-8-85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Withdrawal

Regulatory Guides 1.46, "Protection Against Pipe Whip Inside Containment,"

and 1.48, "Design Limits and Loading Combinations for Seismic Category I Fluid System Components," have been withdrawn.

Regulatory Guide 1.46 was issued in May 1973 to provide guidance for selecting the design locations and orientations of postulated breaks in fluid system piping. The July 1981 revision of Standard Review Plan 3.6.2, "Determination of Rupture Locations and Dynamic Effects Associated with the Postulated Rupture of Piping," provides more current information in this area.

Regulatory Guide 1.48 issued in May 1973 to delineate design limits and appropriate combinations of loadings for the design of Seismic Category I fluid system components. The July 1981 revision of Standard Review Plan 3.9.3, "ASME Code Class 1, 2, and 3 Components, Component Supports, and Core Support Structures," provides more current information in this area.

Therefore, Regulatory Guides 1.46 and 1.48 are being withdrawn. Withdrawal of these guides is in no way intended to alter any prior or existing licensing commitments based on their use.

Regulatory guides may be withdrawn when they are superseded by the Commission's regulations, when equivalent recommendations have been incorporated in applicable approved codes and standards, or when changes in methods and techniques or in the need for specific guidance have made them obsolete.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland, this 4th day of March 1985.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 85-5748 Filed 3-8-85; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

SUMMARY: 1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability.

3. The form number, if applicable: Not applicable.

4. How often the collection is required: One time only.

5. Who will be required to ask to report: Licensees of operating nuclear power plants.

6. An estimate of the number of responses: 80.

7. An estimate of the total number of hours needed to complete the requirement or request: 12,800 hours.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: The information is requestred to ensure that the reliability of diesel generators is maintained at an acceptable level at the operating nuclear power plants.

ADDRESS: Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340. NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 5th day of March 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85-5749 Filed 3-8-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-317 and 50-318]

Baltimore Gas and Electric Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-53 and DPR-69 issued to Baltimore Gas and Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Plant Unit Nos. 1 and 2 located to Calvert County, Maryland.

The amendments would revise provisions in the Technical Specifications (TS) to allow use of the 4-inch post-accident hydrogen purge line for containment purge during normal operation. The proposed TS revision is in accordance with the licensee's application for amendments dated December 22, 1983 and March 26, 1984.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 10, 1985, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall

be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to James R. Miller: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to D. A. Brune, Jr., General Counsel, G and E Building, Charles Center, Baltimore, Maryland 21203, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the applications for amendments dated December 22, 1983 and March 26, 1984, which are available for public inspection at the Commission's Public Document Room, 1717 H Street N.W., Washington, D.C., and at the Calvert County Library, Prince Frederick, Maryland.

Dated at Bethesda, Maryland, this 5th day of March 1985.

For the Nuclear Regulatory Commission,

James R. Miller,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 85-5755 Filed 3-8-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250-OLA, 50-251-OLA; ASLBP No. 84-496-03 LA (Vessel Flux Reduction)]

Florida Power and Light Co. (Turkey Point Nuclear Generating Plant, Units 3 & 4); Order Designating Hearing Room for Prehearing Conference

March 5, 1985.

Before Administrative Judges: Dr. Robert M. Lazo, Chairman, Dr. Richard F. Cole, Dr. Emmeth A. Luebke.

Please take notice that the prehearing conference in the above-identified proceeding scheduled for March 26, 1985, commencing at 9:30 a.m. local time,[1] will be held in: Moot Court Room 216, School of Law, Corner of Miller Drive (S.W. 52nd St.) and San Amaro Drive, University of Miami, Coral Gables, Florida 33124.

Dated at Bethesda, Maryland, this 5th day of March, 1985.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 85-5759 Filed 3-8-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250-OLA-2, 50-251-OLA-2; ASLBP No. 84-504-07 LA (Spent Fuel Pool Expansion)]

Florida Power and Light Co. (Turkey Point Nuclear Generating Plant, Units 3 & 4); Order Designating Hearing Room for Prehearing Conference

March 5, 1985.

Before Administrative Judges: Dr. Robert M. Lazo, Chairman, Dr. Richard F. Cole, Dr. Emmeth A. Luebke.

Please take notice that the prehearing conference in the above-identified proceeding scheduled for March 27, 1985, commencing at 9:30 a.m. local time,[1] will be held in: Moot Court Room 216, School of Law, Corner of Miller Drive (S.W. 52nd St.) and San Amaro Drive, University of Miami, Coral Gables, Florida 33124.

Dated at Bethesda, Maryland, this 5th day of March, 1985.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 85-5760 Filed 3-8-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250-OLA-3, 50-251-OLA-3; ASLBP No. 84-505-08 LA (Increased Fuel Enrichment)]

Florida Power and Light Co. (Turkey Point Nuclear Generating Plant, Units 3 & 4); Order Designating Hearing Room for Prehearing Conference

March 5, 1985.

Before Administrative Judges: Dr. Robert M. Lazo, Chairman, Dr. Richard F. Cole, Dr. Emmeth A. Luebke.

Please take notice that the prehearing conference in the above-identified proceeding scheduled for March 28, 1985, commencing at 9:30 a.m. local time,[1] will be held in: Moot Court Room 216, School of Law, Corner of Miller Drive (S.W. 52nd St.) and San Amaro Drive, University of Miami, Coral Gables, Florida 33124.

Dated at Bethesda, Maryland, this 5th day of March, 1985.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 85-5761 Filed 3-8-85; 8:45 am]

BILLING CODE 7590-01-M

Manhattan College; Finding of No Significant Environmental Impact Regarding Proposed Amendment to Facility Operating License No. R-94

[Docket No. 50-199]

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. R-94 for the Manhattan College research reactor located on the College campus in New York City, New York.

The amendment will renew the Operating License for twenty years from its date of issuance, in accordance with the licensee's application dated August 26, 1983, as supplemented. Opportunity for hearing was afforded by the Notice of Proposed Renewal of Facility License

[1] The date, time and purpose of the prehearing conference, but not the specific location, were announced in an order entered February 8, 1985 by the Licensing Board. 50 FR 6283-4 (February 14, 1985).

[1] The date, time and purpose of the prehearing conference, but not the specific location, were announced in an order entered February 7, 1985 by the Licensing Board. 50 FR 6085 (February 13, 1985).

[1] The date, time and purpose of the prehearing conference, but not the specific location, were announced in an order entered February 7, 1985 by the Licensing Board. 50 FR 6085 (February 13, 1985).

published in the **Federal Register** on September 30, 1983, at 48 FR 44952. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

Continued operation of the reactor will not require alteration of buildings or structures, will not lead to changes in effluents released from the facility to the environment, will not increase the probability or consequences of accidents, and will not involve any unresolved issues concerning alternative uses of available resources. Based on the foregoing and on the Environmental Assessment, the Commission concludes that renewal of the license will not result in any significant environmental impacts.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment of this action and has concluded that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined not to prepare an Environmental Impact Statement for the proposed action.

Summary of Environmental Impacts As Described in the Environmental Assessment

The proposed action would authorize the licensee to continue operating the reactor in the same manner that it has been operated since 1964. The environmental impacts associated with the continued operation of the facility are discussed in an Environmental Assessment dated February 6, 1985 associated with this action. The Assessment concluded that continued operation of the reactor for an additional twenty years will not result in any significant environmental impacts on air, water, land, or biota in the area, and that an Environmental Impact Statement need not be prepared. These conclusions were based on the following:

(a) The excess reactivity available under the technical specifications is insufficient to support a reactor transient generating enough energy to cause overheating of the fuel or loss of integrity of the cladding;

(b) The expected consequences of a broad spectrum of postulated credible accidents have been considered, emphasizing those likely to cause loss of integrity of fuel element cladding. The staff performed conservative analyses of the most serious credible accidents and determined that the calculated potential radiation doses in unrestricted areas are small fractions of 10 CFR Part 20 guidelines;

(c) The systems provided for control of radiological effluents can be operated to ensure that releases of radioactive wastes from the facility are within the guideline limits of 10 CFR Part 20 and are as low as is reasonably achievable (ALARA); and

(d) The licensee's technical specifications, which provide limiting conditions for the operation of the facility, are such that there is a high degree of assurance that the facility will be operated safely and reliably.

For further details with respect to this proposed action, see the application for license renewal dated August 26, 1983, as supplemented, the Environmental Assessment, and the Safety Evaluation Report (NUREG–1098) prepared by the staff.

These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Director, Division of Licensing.

Copies of NUREG–1098 may be purchased by calling (301) 492–9530 or by writing to the Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555; or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 6th day of March 1985.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Assistant Director for Safety Assessment, Division of Licensing.

[FR Doc. 85–5756 Filed 3–8–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–277 and 50–278]

Philadelphia Electric Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of Appendix R to 10 CFR Part 50 to the Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensees) for the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania.

Environmental Assessment

Identification of Proposed Acting: The exemption would relax certain requirements of Appendix R to 10 CFR Part 50 as follows:

(a) The provisions of section III.F requiring that automatic fire detection systems be installed in all areas of the plant that contain or present an exposure fire hazard to safe shutdown or safety-related systems or components would be relaxed to permit lack of early warning automatic fire detection in the main steam isolation valve (MSIV) rooms, chemical waste tank room, offgas line tunnel, and the diesel generator building supply enclosure. The fire load in these areas is low. If a fire were to occur in these areas, it would be detected by fire detection in adjoining locations or by plant operators who would summon the fire brigade. The safety-related and safe shutdown equipment in these areas would not be prone to fire damage.

(b) The requirements of subsection III.G.2 to provide a complete 3-hour rated fire barrier for the separation of redundant trains of equipment necessary for safe shutdown would be relaxed with respect to 1½-hour fire rated dampers in 3-hour barriers. In each area where the 1½-hour dampers are installed, early warning fire detection has been provided. The use of the existing 1½-hour fire rated dampers and early warning fire detection systems provide a level of safety equivalent to the technical requirements of section III.G.

(c) The requirements of subsection III.G.2 to provide installation of automatic suppression systems would be relaxed in Fire Areas 05 and 12, 06 and 13, 47 and 48 and 25. In these areas, the combustible load is low, and early warning fire detection and manual fire suppression are available. The existing fire detection features together with a low combustible loading provide a level of fire protection equivalent to the technical requirements of section III.G.

(d) The requirements of subsection III.G.3 to provide installation of a fixed suppression system would be relaxed in Fire Area 29 (the Control Room). The control room is required to be continuously manned by operations personnel. These personnel constitute, in essence, a continuous fire watch. The fuel load in the area is low and manual suppression, if a fire occurred, would be prompt and effective. The continuously manned status of the control room together with a low fire load and prompt manual suppression provide a level of fire protection equivalent to the

technical requirements of section III.G. The exemptions are responsive to the licensees' applications for exemptions dated May 27, 1983, September 16, 1983, and December 21, 1983.

The Need for the Proposed Action: The proposed exemption is needed because the existing design features relating to these fire protection items are the most practical methods for meeting the intent of Appendix R to 10 CFR Part 50 and literal compliance would not significantly enhance fire protection capability at the facility.

Environmental Impact of the Proposed Action: The proposed exemption will provide a degree of fire protection equivalent to that required by Appendix R to 10 CFR Part 50 such that there is no increase in the risk from fires at the facility. The probability of fires is not increased and post-fire radiological risk is not greater than determined previously and the proposed exemption does not otherwise affect plant radiological effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this exemption.

The proposed exemption involves design features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed exemption.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in the Final Environmental Statement (operating license) for the Peach Bottom Atomic Power Station, Units 2 and 3.

Agencies and Persons Consulted: The Commission's staff reviewed the licensees' request. The staff did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action.

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the applications for exemptions dated May 27, 1983, September 16, 1983, and December 2, 1983. These documents are available for inspection by the public at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Dated at Bethesda, Maryland, this 4th day of March 1985.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 85-5757 Filed 3-8-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-361]

Southern California Edison Co., et al.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensees for an amendment to Facility Operating License No. NPF-10, issued to the Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California for operation of the San Onofre Nuclear Generating Station, Unit 2 in San Diego County, California. The Notice of Consideration of Issuance of Amendments was published in the **Federal Register** on November 21, 1984 (49 FR 45964).

The amendment, as proposed by the licensees, would change the Unit 2 and 3 Technical Specifications to revise the minumum allowable value of the addressable constant TR (azimuthal tilt allowance) from 1.02 to 1.0 in Table 2.2-2, "Core Protection Calculator Addressable Constants". The purpose of the proposed Technical Specification change to lower the minimum allowable value of TR is to reflect the reduced COLSS tilt estimate in the situation where there is no appreciable azimuthal power tilt in the core. However, since the minimum value of azimuthal tilt is 1.0 use of 1.0 for the TR in the CPC would result in frequent occurrences of the azimuthal tilt exceeding the TR, and therefore violating Technical Specification 3.4.2.3. This would increase the burden of the plant operators for compliance with the Action requirements specified in the Technical Specification. Therefore, the proposed Technical Specification change to reduce the minimum allowable value of the TR from 1.02 to 1.0 is not acceptable for the SONGS Units 2 and 3 Cycle 2 operation.

By April 10, 1985 the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date.

A copy of any petitions should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attention: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111, attorney for the licensees.

For further details with respect to this action, see (1) the application for amendment dated October 1 1984, and (2) the Commission's Safety Evaluation issued with Amendments 32 and 21 to NPF-10 and NPF-15 dated March 1, 1985, which are available for public inspection at the Commission 's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the San Clemente Library, 242 Avenida Del Mar, San Clemente, California. A copy of Item (2) 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 1st day of March, 1985.

For the Nuclear Regulatory Commission.

George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 85-5758 Filed 3-8-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14401 (File No. 812-5728)]

Rochester Tax Managed Fund, Inc., et al.; Filing of Application

March 5, 1985.

Notice is hereby given that Rochester Tax Managed Fund, Inc. ("RTMF"), and Rochester Growth Fund, Inc. ("RGF"), open-end management investment companies registered under the Investment Company Act of 1940 ("Act"); Fielding Management Company, Inc. ("FMC"), investment adviser to RTMF and RGF and a registered investment adviser under the Investment Advisers Act of 1940; and

Rochester Fund Distributors, Inc. ("RFD"), principal underwriter to RTMF and RGF and a registered broker-dealer under the Securities Exchange Act of 1934 (collectively referred to as "Applicants"), all of which are incorporated in the State of New York, and located at 183 East Main Street, Rochester, New York 14604, filed an application on December 19, 1983, and amendments thereto on July 5, 1984, January 7, 1985, and February 19, 1985, for an order of the Commission pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder, or, in the alternative, pursuant to Section 6(c) of the Act, permitting Applicants to allocate a monetary award settlement resulting from litigation commenced by Applicants. All interested persons are referred to the application on file with the Commission for a statement of the representatives made therein, which are summarized below, and to the Act and the rules thereunder for further information as to the provisions which are relevant to a consideration of the application.

Applicants state that, in the conduct of their respective businesses, they are concurrently using a distinctive trademark ("the Trademark"), as permitted by a tacit licensing arrangement among them. It is represented that Rochester Shares Management Company ("RSM"), RTMF's original investment adviser, and RTMF, apparently concurrently in 1967 and 1968, commenced use of the Trademark. Applicants believe that RSM probably used the Trademark during 1967 and early 1968 in connection with its business activities which were concerned primarily in causing the registration statement of RTMF to become effective on May 31, 1968, and that RTMF's use of the Trademark probably commenced upon the effectiveness of its registration statement in connection with the sale of its common shares to the general public. The application represents that the Trademark was used concurrently by RTMF and RSM until December 15, 1980, at which time RTMF and RSM commenced use of a different logo. RSM no longer conducts business activities. On April 30, 1982, FMC was approved by shareholders to act as RTMF's investment adviser.

According to the application, RTMF resumed the use of the Trademark subsequent to the 1982 shareholders meeting after changing investment advisers from RSM to FMC. On January 31, 1983, RTMF filed an application for registration of the Trademark under the General Business Law of the State of New York and under the Lanham Act, the Federal Trademark Statute. On June 30, 1983, the New York State trademark registration became effective; the Federal trademark registration has not yet been granted. Applicants further state that, even though New York State requested that the New York State application be made only in the name of one entity, Applicants consider the Trademark to be the property of all the Applicants.

According to the application, in January, 1983, it came to the attention of Applicants that another organization ("Defendants") was using a trademark substantially similar to the Trademark. Applicants represent that they demanded that Defendants cease using the Trademark and, in February, 1983, when Defendants failed to comply, Applicants commenced litigation against Defendants alleging trademark infringements. Applicants further represent that negotiations between the parties began and resulted in (1) settlement of the dispute between the parties, (2) license of the Trademark for a one year period from Applicants to Defendants, (3) payment by Defendants of a license fee, and (4) discontinuance of the litigation. According to the application, at a meeting of Applicants' combined Boards of Directors ("Boards") (including a majority of the disinterested members of the Boards of Directors of RGF and RTMF) on July 19, 1983, the Boards adopted a proposed Plan of Allocation ("Plan") authorizing a distribution of the monetary settlement resulting from the litigation whereby the settlement award less attorney's fees and disbursements ("Net Settlement Amount") (approximately $79,600) would be divided between FMC and RFD. FMC would receive two-thirds, or approximately $53,100, and RFD would receive one-third, or approximately $26,500. In lieu of receiving any direct portion of the Net Settlement Amount, under the Plan, RTMF would receive a reduction from FMC of its management fee for the 1983 calendar year in an amount of at least $53,100 together with a commitment from FMC that the total expense ratio of RTMF would not exceed 2% of RTMF's assets retroactive to the beginning of the 1983 calendar year. The portion of the Net Settlement Amount payable under the Plan to RFD, approximately $27,000, would be kept in a segregated account to be distributed by RTMF's directors who are not "interested persons" for the purpose of implementing RTMF's Rule 12b–1 Distribution Plan. Finally, in lieu of receiving any direct portion of the Net Settlement Amount, under the Plan, RGF would receive from FMC a complete waiver of its management fee for the 1983 calendar year estimated at approximately $4,000.

According to the application, the Applicants' Boards of Directors each recognize the requirement under Rule 17d–1 that an application be filed with the Commission and that an order be granted by the Commission prior to the consummation of the proposed transaction under Section 17(d) of the Act and Rule 17d–1 thereunder. It is represented, however, that RTMF received from FMC a reduction of its management fees due FMC for the 1983 calendar year in an amount of $52,850, together with the commitment from FMC that if the ratio of RTMF's expenses exclusive of interest, taxes, brokerage commissions and extraordinary expenses, to net assets exceeded 2%, FMC would reimburse RTMF for the excess expenses. Accordingly, RTMF has executed a Promissory Note dated January 2, 1985, by which it has obligated itself to pay to FMC the sum of $52,850 with interest at the rate of 11% per annum, under the terms of which Promissory Note RTMF's obligations are expressly conditioned upon the issuance by the Commission of an order denying the application. If the exemption requested by the application is granted, then the Promissory Note will be cancelled.

In addition, RGF received from FMC a complete waiver of its management fee due FMC for the 1983 calendar year in an amount of $5,593. Accordingly, RGF has executed a Promissory Note dated January 2, 1985, obligating itself to pay to FMC the sum of $5,593, together with interest at the rate of 11% per annum, under the terms of which Promissory Note the obligations of RGF are expressly conditioned upon the issuance by the Commission of an order denying the application. If the exemption requested by the application is granted, then the Promissory Note will be cancelled.

Finally, the application states that RFD received a portion of the Net Settlement Amount ($27,000) to be distributed only upon the approval of RTMF's Section 12b–1 directors for the specific purpose of implementing the Rule 12b–1 Distribution Plan which received shareholder approval at the Annual Meeting of Shareholders of RTMF held on April 19, 1983. Accordingly, RFD has executed a Promissory Note dated January 2, 1985, obligating itself to pay to an escrow agent designated by the Applicants, or if none is so designated, to Mousaw, Vigdor, Reeves, Heilbronner & Kroll as

attorneys for RTMF, RGF, RFD, and FMC, the sum of $27,000 together with interest at the rate of 11% per annum, under the terms of which Promissory Note the obligations of RFD are expressly conditioned upon the issuance by the Commission of an order denying the application. If the exemption requested is granted, then the Promissory Note will be cancelled.

Applicants assert that the Plan is consistent with the provisions, policies, and purposes of the Act and that the participation in the transaction by RTMF and RGF is no less advantageous than that of other participants. It is also submitted that the circumstances described in the application justify exercise by the Commission of the exceptional power granted in Section 6(c) of the Act and that the requested exemption would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

According to the application, in adopting the Plan, the Boards considered the issue of whether one or more parties could be determined to be the sole owner of the Trademark. It is represented that the Boards were unable to conclude that any one Applicant was the sole owner of the Trademark. Further, the Boards concluded that the time, energy and expense required to reach a final determination of the issue (if in fact any such determination was possible), was not in the best interest of the shareholders of any of the Applicants. The Boards are said to have also considered the effect upon the capital accounts which would occur by allocating the entire Net Settlement Amount to one or more of the Applicants. With regard to RTMF and RFG, any increase in net asset value per share was considered to be *de minimus* when compared to the benefits to RTMF and RFG to be derived from the proposed Plan of Allocation. The application states that the Boards of Directors of RTMF and RGF believe that the Plan presents the best use of the Net Settlement Amount to reduce expenses for the benefit of the shareholders of both entities.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 29, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5580 Filed 3-8-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21810; File No. SR-MSE-85-1]

Self-Regulatory Organizations; Proposed Rule Change; Midwest Stock Exchange, Inc.; MAX Execution Policy

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 30, 1985, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The statement of purpose in Item II(A) below contains a description and summary of the terms of substance of the proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Section IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its Notice to Floor Members dated July 23, 1981 (SR-MSE-82-5), the Exchange instituted new limit order execution criteria for use in its order handling and execution system (MAX). The limit order criteria requires a specialist to manually executive 300 shares for every 500 shares that trade at the limit price in the primary market. When a limit order is received over the MAX system and prints out, the specialist holds the order and determines when each limit order received should be executed based on his observation of the volume traded in the primary market.

Some confusion has arisen as to the procedures to be followed in executing a MAX limit order under the 3 for 5 criteria when a specialist already has possession of a manually entered limit order at the same price. Prior to the 1981 Notice establishing the 3 for 5 criteria, the specialist, under existing priority rules, would hold the MAX order until the resting order was completely filled. The implementation of the 3 for 5 criteria in 1981, however, was designed to recognize the differences between the expectations of member firms utilizing an automated execution system and those transmitting orders through their representatives on the trading floor. Thus, criteria was established which would be equitable to both.

The proposed rule change clarifies how specialists should be handling existing orders in the book when executing a MAX limit order using the 3 for 5 criteria. Upon the printing of 500 shares in the primary market the specialist should execute both the MAX order under the 3 for 5 criteria and 300 shares of the resting order. [For purposes of this clarification only, multiple resting orders at the same price will be considered as one order.] The printing on the NYSE of any trade in excess of 500 shares will result in multiple MAX limit orders (up to 300 shares each) being executed on a 3 for 5 basis proportionately.[1]

The proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 in that it facilitates transactions in securities and removes impediments to and

---

[1] For example, if 1000 shares print on the NYSE, 2 MAX orders of 300 shares each will be executed, together with 600 shares of the resting orders. See letter from J. Craig Long, Vice President, MSE, to Judith Levy, Staff Attorney, SEC, dated February 14, 1985.

perfects the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed in competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor recieved.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C., 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street NW., Washington, D.C. Copies of such filing will also be available for inspection and coying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 1, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 4, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-5671 Filed 3-8-85; 8:45 pm]

BILLING CODE 8010-01-M

[Release No. 34-21811; SR-MSE-84-14]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc; Order Granting Accelerated Approval of Proposed Rule Change

March 5, 1985.

The Midwest Stock Exchange, Inc. ("MSE") submitted on December 27, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to modify MSE Article XX, Rule 8, Interpretations and Policies 0.2 (Recognized Quotations), to prohibit specialists utilizing the AutoQuote mode from disseminating a bid and/or offer that is more than ⅛ point away from the best Intermarket Trading System market.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days from the date of publication of the submission in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Reference should be made to File No. SR-MSE-84-14.[1]

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the principal office of the MSE.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that MSE is ready to implement this rule proposal, and the effect of the proposed rule change will be to narrow the spread between the bid and asked prices disseminated by MSE specialists utilizing AutoQuote. Such change will require MSE specialists to disseminate quotations a closely related to quotations prevailing among other ITS participants, thereby fostering the maintenance of fair and orderly markets.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5670 Filed 3-8-85; 8:45 am]

BILLING CODE 8010-01-M

[1] The Commission issued a notice of filing of the proposed rule change in Securities Exchange Act Release No. 21678, January 23, 1985; 32 *SEC Docket* 513, February 5, 1985.

[Release No. 34-21804; SR-PSE-85-4]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc., Notice of Filing of Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 12, 1985, the Pacific Stock Exchange, Inc. ("PSE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested person.

The proposed rule changes would modify Articles II (Government), III (Elections, Meetings, Terms of Office, Proxies), and VIII (Member Firm Requirements) of the PSE Constitution, and Rule 1 (Dealings upon the Exchange) of the PSE Rules to provide that: (1) "Regular" meetings of PSE's Board of Governors ("Board") could be held without notice and that "special" meetings of the Board could be held on four days' written notice unless a Board member waives such notice; (2) a PSE Board member elected as a representative of the public would be exempted from PSE's existing restriction that no Board member may serve for more than two consecutive three-year terms; (3) the period within which PSE's

Nominating Committee must meet would be changed from "not less than thirty-five days" to "not less than sixty-five days" before an election; (4) the period within which members may nominate by petition would be changed from "at least twenty days" to "at least forty-five days" before an election; and (5) the term "floor representative" as defined in PSE Rule 1, Section 4(a) would be replaced by the term "floor member."

PSE states that the proposed rule changes will facilitate exchange administration involving meetings and elections and that in the past notice and meeting requirements have proved overly restrictive and have allowed inadequate time within which to mail proxy materials and receive enough proxies to establish quorums for annual meetings. PSE further states that the proposed rule changes are consistent with Section 6(b) of the Act and, in particular, Section 6(b)(3) of the Act.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Reference should be made to File No. SR–PSE–85–4.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relalting to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be availble for inspection and copying at the Commission's Public Reference Room, 450 5th Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

March 4, 1985.

[FR Doc. 85–5669 Filed 3–8–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 933]

Gifts to Federal Employees From Foreign Governments Reported to Employing Agencies in Calendar Year 1984

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 1984 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute.

Publication of this listing in the **Federal Register** is required by Section 7342(f) of Title 5, United States Code, as added by Section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Pub. L. 95–105, August 17, 1977, 91 Stat. 865).

Dated: March 1, 1985.

Ronald I. Spiers,

Under Secretary for Management.

REPORT OF TANGIBLE GIFTS

[January 1 through December 31, 1984]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency—Executive Office of the President, All Gifts Received From Foreign Officials Over Minimum Dollars			
President and First Lady	Household: Clock, empire portal style, brown wood housing, ormolu figures on top and in center and an ormolu eagle finial; four alabaster columns and a tri-sided mirrored background; a mythical figure decorates the dropped pendulum; 30-hour key-wound mechanism with 15-minute strike; made in 1820. Vienna; provided by Karl Hofer and son; 24" high x 13½" wide x 6½" deep. ($3400); residence; for official use/display.	His Excellency Dr. Rudolf Kirchschlaeger, President of the Republic of Austria, Austria.	Non-acceptance would have caused donor embarrassment.
Do	Photograph: Color photograph of President and Mrs. Kirchschlaeger, inscribed; in red polished, simulated leather frame with Austrian crest at top; 15⅛" x 12". ($185). West wing; for official use/display. Recd: Feb. 28, 1984. Est. value: $3,585.	...do	Do.
Do	Flowers: Roses, four dozen, long-stemmed red-orange. Residence; for official use/display. Recd: Dec. 24, 1984. Est. Value: $160.	His Excellency GHazi Muhammand Al-Gosaibi, Ambassador of the State of Bahrain, Bahrain.	Do.
Do	Assortment: Two procelain plates etched with the President and Mrs. Reagan's portraits, 16" in diameter with easels; a book, "Chinese Silk"; and two bolts of silk fabric, one solid red and one red with blue and white floral design, 6 yards of each. Archives, foreign. Recd: Apr. 26, 1984. Est. value: $297.	His Excellency Xiannian Li, President of the People's Republic of China, People's Republic of China.	Do.
Do	Artwork: Needlepoint portrait of President and Mrs. Reagan with Premier Zhao; in elaborate gold-painted wood frame; 47" x 34" overall; image: 37" x 24". ($650); Archives, Foreign.	His Excellency Ziyang Zhao, Premier of the State Council of the People's Republic of China, People's Republic of China.	Do.
	Novelty: "Health Balls," two pairs of silver-colored metal balls. ($44). Archives, Foreign. Recd: Apr. 26, 1984. Est. value: $694.		
Do	Artwork: Painting, "La Piramide de la Paz" (The Pyramid of Peace), by Fernando Llort, 1984, signed; mixed media on styrene, in brown wood frame with presentation plaque; inscribed on reverse; 30" x 36" overall; included are four small prints of the artist's work, inscribed for the President and Mrs. Reagan, unframed. Archives, Foreign. Recd. Oct. 31, 1984. Est. value: $1000.	Colonel Adolfo O. Blandon, Chief of Staff, Armed Forces of El Salvador, El Salvador.	Do.

REPORT OF TANGIBLE GIFTS—Continued

[January 1 through December 31, 1984]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Household: Cigarette box, sterling silver, with gold-washed interior; engraved on lid (in Commemoration of the President and First Lady's Anniversary); 6½" x 4" x 2". Residence; for official use display. Recd: Mar. 4, 1983. Est. value: $650.	Her Majesty Elizabeth II Queen of England, England.	Do.
Do	Household: Two bowls, one is a large "Tanoa," made from sacred vesi wood used for religious vessels; attached with coconut fibre rope and adorned with white egg cowrie shells; metal plaque engraved "From the Government and People of Fiji," five-footed, 23¼" in diameter; and a dark wood double bowl, designed as a turtle, and carved from a single block of nawanawa wood, used for serving fruit, 20" x 12", Archives. Foreign. Recd: Nov. 27, 1984. Est. value: $220.	The Right Honorable Ratu Sir Kamisese Mara, Prime Minister of Fiji, Fiji.	Do.
Do	Photograph: Color photograph of Prime Minister and Mrs. Fitzgerald, inscribed: matted under glass in brown and gold frame; 15" x 16½". West Wing; for official use display. Recd: June 4, 1984. Est. value: $75.	His Excellency Dr. Garret Fitzgerald, Prime Minister of Ireland, Ireland.	Do.
Do	Award: 2 awards. "Order of the Golden Lion of Nassau" gold cross enamelled in white with four golden "N's," and bearing heraldic lion of House of Nassau, suspended from an orange ribbon; included is an 8-pointed silver star with lion in center; and, "Order of Adolphus of Nassau" gold cross enamelled in white with 8 points and bearing the letter "A" with imperial crown, suspended from a blue ribbon; included is an 8-pointed star with letter "A" with two certificates. ($1570); Archives, Foreign.	His Royal Highnes Jean Grand Duke of Luxembourg, Luxembourg.	Do.
	Household: Porcelain clock, round brass 8-day key-wound clock displayed in a white porcelain triangular holder with separate porcelain stand; clock by Imhof, porcelain by Villeroy & Boch; overall 15" high x 7" wide 4½" deep; and a pair of white porcelain candlesticks, also by Villeroy & Boch, 10" high. ($850); Residence; for official use/display.		
	Artwork: Watercolor entitled "Summer Flowers" by Marie Paule Fixmer, signed; in gold leaf frame; overall 29" x 35". ($550); Archives, Foreign.		
	Photograph: Color photograph of the Grand Duke and Duchess, inscribed; in sterling silver frame with crown; 11¼" x 7¼". ($150). West Wing; for official use/display. Recd: Nov. 13, 1984. Est. value: $3,120.		
Do	Household: Virgin wool carpet (new), star and bird motifs, plain background edged with white fringe, handmade, "Tapetes Mexicanostemoayo," 47" x 35 "; WATERCOLOR OF A CATHEDRAL/MARKET SCENE, EDGARDO COGHLAN, SIGNED, IN POLISHED DARK WOOD FRAME, 36" x 34" overall; book, 1975, "Dibujos Acuarelas Oleos," Edgardo Coghlan, numbered and signed by the author, leather-bound; and a color photograph of the President and Mrs. de la Madrid, inscribed, navy blue leather frame, 11" x 14". Archives, Foreign. Recd: May 14, 1984. Est. Value: $2,920.	His Excellency Miguel de la Madrid Hurtado, President of the United Mexican States, Mexico.	Do.
Do	Household: Desk set, burgundy moroccan leather, consisting of a pencil cup, hinged blotter pad, letter holder, stationery holder, and an all-purpose box; all with gold-stamped borders ($600); Archives, Foreign.	His Excellency Maati Jorio Ambassador of Morocco, Morocco.	Do.
	Consumables; Wine, 6 bottles, "Toulal," and 45 "Clementine" seedless tangerines, 9 pounds. ($35). Perishable. Recd: Dec. 18, 1984. Est. value: $635.		
Do	Photograph: Black and white photograph of their majesties the King and Queen of Nepal, inscribed, 1983; in sterling silver frame with gold crest and leather easel; 10" x 14". West Wing; for official use/display. Recd: Dec. 7, 1983. Est. value: $175.	His Majesty Bir Bikram Shah Dev Birendra, King of Nepal, Nepal.	Do.
Do	Artwork: Silver knight on camel, 16" x 12" x 4", displayed in leather-covered chest and a black and white photograph of President Kountche, inscribed, in a silver and vermeil octagonal frame, 9" x 11½". ($4750); West Wing; for official use/display.	His Excellency General Seyni Kountche, President of the Supreme Military Council of the Republic of Nigar, Niger.	Do.
	Medallions: A display of twenty-one silver medallions, each 1" x 2," in a leather-covered case, 15" x 14" ($1000). Archives, Foreign. Recd: Dec. 11, 1984. Est value: $5,750.		
Do	Flowers: A large arrangement of French tulips and red winterberries. Residence; for official use/display. Recd: Dec. 20, 1984. Est. value: $500.	His Excellency and Mrs. A.B. Al-Ameri, Ambassador of the State of Qatar, Qatar.	Do.
Do	Household: Tea service, 4-piece (teapot, creamer, sugar pot, tray); silver; all except the tray have rows of semi-precious stones at top and bottom; tray: 14" diameter; teapot: 8½" high; creamer and sugar pot: 6" high each ($3150); Archives, Foreign.	His Excellency J.R. Jayewardene, President of the Democratic Socialist Republic of Sri Lanka, Sri Lanka.	Do.
	Photograph: Color photograph of President and Mrs. Jayewardene; displayed in silver frame with floral motif; 11" x 13" overall ($600). Archives, Foreign. Recd: June 18, 1984. Est. value: $3,750.		
Do	Artwork; Wooden fish, "The Carp Jumps the Dragon Gate" (a traditional Chinese saying): handcarved of a blond-colored wood, metal presentation plaque detached: 20½" high x 13½" wide x 6" deep. Archives, Foreign. Recd: June 13, 1983. Est. value: $250.	The Honorable Su Nan-Cheng, Mayor of Tainan City, Taiwan.	Do.
Do	Assortment: Book, "Vasily Surikov," by V. Kemenov; tablecloth, black background with multi-colored floral design and 6" black fringe; and a lacquered box, 5½" x 3½" x2" deep, scene of the Russian countryside on top with black sides and base, red interior. Archives, foreign. Recd: Sep. 29, 1984. Est. value: $325.	His, Excellency and Mrs. Andrei Gromyko, Minister of Foreign Affairs of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Do.
Do	Assortment: Set of 17 bronze-plated medallions (including a rectangular plaque) commemorating the bicentennial of the birth of Simon Bolivar by, Monnaie de Paris; No. 50 of 50 sets, in a leather-covered box bearing, Bolivar's facsimile signature; eleven books, English and Spanish texts; three enamelized copper bowls (diameters of 8, 5, and 4 inches; 9" deep) by Lamis Feldman; and a framed color photograph of President Lusinchi, inscribed. Archives, foreign. Recd: Dec. 04, 1964. Est. Value: $3955.	His Excellency Dr. Jaime Lusinchi, President of the Republic of Venezuela, Venezuela.	Do.
President	Coins: Five sterlings silver United Nations commemorative coins; dated 1977, 1980, 1982, and 1983; displayed in a polished wood box with an Engraved presentation plaque inside the lid; each coin is 1½" in diameter; box is 12" x 8½" x 1½". Archives, foreign. Recd: Sep. 22, 1984. Est. value: $275.	His Excellency Dr. Javier Perez de Cuellar Secretary-General of the United Nations.	Do.
Do	Artwork: Thirty miniature soldiers displayed in a glass cese; case measures 17" x 9" x 6½" high. West wing: for official use/display. Recd: Jul. 23, 1984. Est. value: indeterminable.	The Honorable Guy Lutgen Senator in the Belgian Parliament from the Province of Luxembourg and Mayor of the city of Bastogne, Belgium.	Do.

REPORT OF TANGIBLE GIFTS—Continued

[January 1 through December 31, 1984]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Artwork: Collage portrait of President Reagan composed of butterfly wings, created by artist Alphonse Ngousdeke of the Taxidermie de Bangui; under glass in wood frame embellished with cola nuts; 24" x 30". Archives, foreign. Recd: May 22, 1984. Est. value: $500.	His Excellency General Andre-Dieudonne Kolingba, Pres. of the Military Committee for National Recovery & Chief of State, Central African Republic.	Do.
Do	Artwork: Sculpture, Qin Terra Cotta Museum Replica of one of the soldier Figures unearthed in xi" an in 1975; 17" high; contained in polished wood box with presentation plaque in Chinese; box is 19½" x 8" x 7" West wing; for official use/display. Recd: May 01, 1984. Est. value: $225.	The Honorable Qingwei Li Governor of Shaanxi Province, People's Republic of China.	Do.
Do	Artwork: Snuff bottle, glass/crystal, handpainted with a portrait of President Reagan inside; 2" high. Archives, foreign. Recd; Apr. 26, 1984. Est. Value: $300.	Snuff-bottle study group China Institute of Arts and Handicrafts, People's Republic of China.	Do.
Do	Artwork: Figure (reproduction) of a Tang tri-colored pottery horse; glazed earthenware; displayed on wood base with engraved brass plaque; 35½" high x 40" Long x 11" wide; enclosed in a brocade-covered box; included is a color photograph of the premier, inscribed, in folder, 10" x 12". Residence: for official use/display. Recd: Jan. 12, 1984. Est value: $1200.	His Excellency, Ziyang Zhao, Premier of the State Council of the People's Repulbic of China, People's Republic of China.	Do.
Do	Artwork: Watercolor of an eagle, with Chinese character legend commemorating President Reagan's visit, by Liang Huangzhou; on paper with fabric border in plain wood frame; 81½" x 50". Overall; Image: 33" x 56". Archives, foreign. Recd: Apr. 26, 1984. Est. value: $1200.	His Excellency Ziyang Zhao, Premier of the State Council of the People's Republic of China, People's Republic of China.	Do.
Do	Historic artifacts: Silver coins, encrusted in coral, discovered in 1978 off the coast of the Dominican Republic originally part of the cargo of the Spanish galleon, "Nuiestra Senora de la Pura y Limpia Concepcion," sailing in 1641; displayed in a mahogany chest with carved seal of the Dominican Republic on lid, key included; 14" x 9" x 4". Archives, foreign. Recd: Apr. 03, 1984. Est. value: $1835.	His Excellency Salvador Jorge Blanco, President of the Dominican Republic; Dominican Republic.	Do.
Do	Household: A polished wood humidor with seal of the Dominican Republic on the lid, 17" x 12" x 5", key included; containing 84 "La Habanera Fabricados" cigars, wrappers personalized with the President's name. Archives, foreign. Recd: Jul. 19, 1984. Est. value: $250.	His Excellency Salvador Jorge Blanco, President of the Dominican Republic; Dominican Republic.	Do.
Do	Artwork: Color print enlargement of the stamp depicting Lancaster House, produced to mark the London economic summit, by Paul Hogarth; No. 2 of 8 limited edition prints, produced from the artist's original work; signed; under glass in aluminum frame; 18" x 21½"; included is a Lucite paperweight depicting the stamp; personalized; 3¼" x 3¼". Archives, foreign. Recd: Jun. 06, 1984. Est. value: $185.	Ron Dearing Esquire, Chairman, the Post Office; England.	Do.
Do	Household: Two vases, hexagonal, depicting the "Old Imari" pattern (red, blue, and gold); by Royal Crown Derby; 4½"high. Archives, foreign. Recd: Jun. 08, 1984. Est. value: $250.	The Honorable Greg Knight, M.P., House of Commons, England.	Do.
Do	Artwork: Color lithographic print of the Tower of London and the Mint by Thomas Shotter Boys; matted under glass in goldleaf frame; title card on reverse; 15½" x 24" overall; image: 10" x 18"; Included is a gold-plated medallion in plastic, lettered "Lancaster House, 7-9 June 1984" and "The 1984 London Economic Summit" on reverse; 1½" diameter. Archives, foreign. Recd: Jun. 04, 1984. Est. value: $530.	The Right Honorable Margaret Thatcher M.P.; Prime Minister; England.	Do.
Do	Athletic equipment; Cross-country saddle of medium brown smooth leather with machine stitching, steel and brass hardware; attached plaque lettered "Fernand Meffre, artisan, 13200 NAS-Thibiirt"; included is a bridle of the same leather with steel hardware and a checkered wool and leather saddle blanket. Archives, foreign. Recd: Mar. 22, 1984. Est. value: $1500.	His Excellency Francois Mitterrand; President of the French Republic; France.	Do.
Do	Consumables: 12 bottles of German wine (3 bottles Riesling Trockenbeeren Auslese 1959; 2 bottles Riesling Beerenauslese, 1976; 3 bottles Erzeuger-Abfullung, 1973; 2 bottles Erbacher Macrobrunn, 1973; and 2 bottles Forster Pechstein Riesling Auslese, 1976). For use at official functions. Recd: Dec. 04, 1984. Est. value: $505.	His Excellency Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany; Federal Republic of Germany.	Do.
Do	Artwork: Plaque, "Coat of Arms Tipperary South Riding"; hand-hammered copper in wood frame with presentation plaque; 25½" square. ($200); Archives, foreign. Artwork: Plaque, walnut, depicting a Reagan coat of arms; 12" x 14". ($45). residence; for official use/display. Recd: Jun. 03, 1984. Est. value: $245.	Mr. Edmond Brennan; Chairman, Tipperary County Council; Ireland.	Do.
Do	Household: Vase, crystal, compote style, by Galway; 8¼" high x 7½" in diameter; (filled with shamrocks). Archives, foreign. Recd: Mar. 13, 1984. Est. value: $190.	His Excellency Dr. Garret Fitzgerald; Prime Minister of Ireland, Ireland.	Do.
Do	Clothing and accessories; Sweater, handknit Aran fisherman's pullover style, off-white wool. Archives, foreign. Recd: Jun. 04, 1984. Est. value: $250.	....do	Do.
Do	Assortment: Two octagonal crystal ashtrays depicting Ireland and lettered "June 1984 Ireland," by Clarenbridge, 4¼" diameter; ring, 18 kt. gold, engraved inside; leather and parchment scroll, marking quincentennial of Galway, 24" x 10"; and decanter, round crystal with stopper, Waterford, 10" high; containing "Irish Mist" whiskey. ($628); Archives, foreign. Household; Crystal punch bowl etched with seal of U.S. congress. "G" (Galway) motif, and presentation Msg. 7½" high x 9" diameter; and a bone china bowl, "Royal Tara quincentennial Rose Bowl," No. 1 of a limited edition of 500, 7¼" diameter, 3" high. ($448). West wing; for official use/display. Reck; Jun. 01, 1984. est. value: $1078.	The Honorable Michael Leahy, Mayor of Galway, Ireland.	Do.
Do	Artwork: Watercolor of "Cliffs of Moher," by M. Ricks. 1984; matted under glass in brown wood frame with gold liner; 31" x 39" overall; image 22" x 29" Archives. foreign. Recd: Jun. 01, 1984. Est. Value: $175.	Mr. Johnny Moloney chairman, Clare County Council, Ireland.	Do.
Do	Household: Waterford crystal pedestal boat-bowl, 9" high x 13" long x 6" deep. West wing; for official use/display. Recd: Aug. 02, 1984. Est. value: $590.	Alderman, Stephen Rogers, Acting Mayor of Waterford City, Ireland.	Do.
Do	Book: Nine volume encyclopedia on Japan; first edition 1983. Archives, foreign. Recd: Jul. 03, 1984. Est. value: $550.	His Excellency Yasuhiro Nakasone, Prime Minister of Japan, Japan.	Do.
Do	Photograph: Two albums, both containing color photographs of the President and Mrs. Reagan, et al., during their visit to Japan: one covered in navy blue cloth with gold Japanese seal, the other is covered in a gold fabric with cloud designs; 15" x 17" and 13" x 15" respectively. Archives, foreign: Recd; Jan 25, 1984. Est. value: $1088.	His Excellency Yoshio Okawara, Ambassador of Japan, Japan.	Do.

REPORT OF TANGIBLE GIFTS—Continued

[January 1 through December 31, 1984]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Photograph: Black and white photograph of Prime Minister Mahathir, inscribed; in silver repousse frame; 11½" x 9¼"; in navy blue vinyl-covered case. ($450); West wing; for official use/display. Dagger: Traditional Malaysian dagger called a "Kris" with a wavy steel blade and carved ivory and gold handle in an ivory and gold sheath; 17" long; displayed on a carved wood base with engraved plaque and a plexiglass cover; case is 18½" long x 10" high x 7½" wide. ($240). West wing for official use/display. Recd: Jan. 18, 1984. Est. value: $690.	His Excellency Dr. Mahathir Bin Mohamed, Prime Minister of Malaysia, Malaysia.	Do.
Do	Household: Sterling silver tray, engraved to the President and depicting a circular geometrical motif in center in repousse; 11" diameter. Archives, foreign. Recd: May 17, 1984. Est. value: $300.	The Honorable Miguel Gonzalez Avelar, President of the Senate's Grand Commission, Camara de Senadores, Mexico.	Do.
Do	Household: Container, sterling siver, designed as a stooped figure of a man; 5" high x 6" diameter; displayed in a leather box. West wing; for official use/display. Recd: Jan. 11, 1984. Est. value $1472.	His Excellency Miguel de la Madrid Hurtado, President of the United Mexican States, Mexico.	Do.
Do	Artwork: 22 glazed earthenware tiles, blue design on white background, encoded on reverse to create a seascape panel when mounted; 5¼" square each. Archives, foreign. Recd: Jun. 12. 1984. Est. value: $485.	His excellency General Antonio Dos Santos Ramalho Eanes, President of the Republic of Portugal, Portugal.	Do.
Do	Household: Silver pear-shaped dish with travertine center; 10" x 6½" Archives, foreign. Recd Mar. 14, 1984 Est. value: $170.	His Excellency Mario Soares, Prime Minister of Portugal, Portugal.	Do.
Do	Award: Trophy depicting the Saudi Arabia Olympic logo and the U.S. Olympic logo with the Saudi Arabian crossed sabers and palm tree crest, all within circular surrounds, mounted on gold-plated brass shafts and malachite, inscribed base: 18" high x 9" wide x 4½" deep; displayed in a suede, custom-made case; included is a white olympic team T-shirt depicting a "RSAF" jet and lettered "The Kingdom Strikes Back" with Saudi Crest. Archives, foreign. Recd: Aug. 13, 1984. Est. value: $700.	His Royal Highness Prince Faisal Fahd Abdul Aziz Al Saud President of the Arabian Olympic Committee, Saudi Arabia.	Do.
Do	Elephant: "Jaysthu," 18 months old, 3 feet high, 280 lbs (indeterminable value); National Zoological Park for official use/display. Book: Assortment—"Island-Ceylon" by Roloff Beny; "The President" (Felicitation volume); "Mediaeval Sinhalese Art", by Ananda K. Coomaraswamy, published by Pantheon Books: and, 2 paperbacks, "Golden Threads" and "Selected Speeches and Writings" by J.R. Jayewardene. ($118). Archives, foreign. Recd: Jun. 18, 1984. Est. value: Indeterminable.	His Excellency J.R. Jayewardene, President of the Democratic Socialist Republic of Sri Lanka, Sri Lanka.	Do.
Do	Household: Desk clock, "Naviquartz III," model No. 1215 ht; a quartz clock with second hand, houses in a polished mahogany case with brass fittings and an engraved presentation plaque inside hinged lid; by Patek Philippe, Switzerland: 6½" x 5" x 3¼". Archives, foreign. Recd: Feb. 03. 1984. Est. value: $3150.	His Excellency Kurt Furgler Vice President of the Swiss Confederation, Switzerland.	Do.
Do	Household: Green leatherette, gold-stamped chest, containing six interior pull-out drawers filled with Tunisian dates on vine, sweet cakes, etc.; chest is 22" x 14" x 16½". Archives, foreign. Recd: Dec. 20 1984. Est. value: Indeterminable.	His Excellency Habib Bourguiba, President of the Republic of Tunisia, Tunisia.	Do.
Do	Artwork: Etching, copper, of an original watercolor of a town in Yugoslavia, original dated 1849, reproduced in 1967, signed Giuseppe Nittia; under glass plate: 15½" x 22½". ($100): Archives, foreign. Photograph: Color photograph of President Spiljak, inscribed; in silver (800) frame; 8½" x 11". ($85). West wing; for official use/display. Recd: Feb. 01, 1984. Est. value: $185.	His Excellency Milka Spiljak President of the Presidency, Socialist Federal Republic of Yugoslavia, Yugoslavia.	Do.
First Lady	Jewelry: Pin, opaque glass flowers set with three pearls and nine diamonds; 2½" in diameter. Archives, foreign. Recd. Feb. 28, 1984. Est. value: $1400.	His Excellency Dr. Rudolf Kirchschlaeger, President of the Republic of Austria, Austria.	Do.
Do	Photograph: Cloth-covered album of twenty-four color photographs of the first lady's visit to China; measures 12" x 15" overall. Archives, foreign. Recd. Jun. 25, 1984. Est. value: $212.	Ministry of Foreign Affairs, People's Republic of China.	Do.
Do	Artwork, Embroidery, double-faced, of "White Cat Playing With Mantis," a new piece crafted by the Suzhou Embroidery Research Institute; under glass in black wood frame; displayed in black scroll stand; 27" high x 16" wide; enclosed in brocade-covered case. Residence; for official use/display. Recd: Jan. 12, 1984. Est. value; $500.	His Excellency Ziyang Zhao, Premier of the State Council of the People's Republic of China, People's Republic of China.	Do.
Do	Jewelry: 14 kt gold charm of an ancient Central American God; 2" diameter. Archives, foreign. Recd: Apr. 24, 1984. Est. value: $450.	Dr. Manuel Emilio Mantero, Executive President, Costa Rican Institute of Tourism, Costa Rica.	Do.
Do	Jewelry: Necklace, amber (Dominican), four twisted strands with 14 kt. gold clasp: and, a pair of matching earrings (one piece of amber each) also set with 14 kt. gold clasps; displayed in a mahogany box with lid inlaid with multi-colored woods and a piece of amber containing one specimen (bug, 50 million years old) and lettered "NDR;" 8" x 6½" x 1½" box archives, foreign. Recd: Apr. 10, 1984. Est. value: $450.	Mrs. Asela Mera De Jorge Blanco, wife of the President of the Dominican Republic Dominican Republic.	Do.
Do	Household: Porcelain dinnerware: 12 Dinner plates (10" diameter); 12 salad plates (9" diameter); 12 bread and butter plates (6½" diameter); 12 bowls (shallow plates, 8" diameter); and, 1 platter (11½" diameter); all with gold cloud design, by Sevres; signed "Jame-Guite 70". Archives, foreign Recd: Mar. 22, 1984. Est. Value: $5000.	His Excellency Francois Mitterrand, President of the French Republic France.	Do.
Do	Household: Fabric heavy cotton, multi-colored (predominantly blues): 10 feet long x 3 feet, 3½" wide. ($90): Archives, foreign.. Jewelry: Earrings, clip and drop style and a pin square filigree design; both sterling silver and enclosed in separate miniature baskets. ($160). Archives, foreign. Recd: April, 30, 1984. Est. value: $250.	His Excellency Rodolfo Perdomo Minister of Agriculture of Guatemala, Guatemala.	Do.
Do	Clothing and accessories; dress, "Hashmi," dark green guaze type fabric with gold sequined and handsewn floral designs; floor-length caftan style; by Iraqi Fashion House, Bagdad. Archives, Foreign. Recd: Dec. 18, 1984. Est. value: $500.	Mrs. Sahar Hamdoon, wife of the charge d'affaires of the Republic of Iraq embassy of Iraq, Iraq.	Do.
Do	Jewelry: Necklace of pearls, coral, amethysts turquois, jade, onyx, garnet, etc., 16" single strand. Archives, foreign. Recd: Aug. 20, 1984. Est. value: $900.	The Honorable Akiko Santo, Congresswoman House of Councillors, Japan.	Do.
Do	Household: Hexagonal jewelry box, silver with overall filigree design; removable lid; velvet linad; 5½" diameter, 2" higher. Archive, foreign. Recd: Jan. 18, 1984. Est. value: $170.	His Excellency Dr. Mahathir Bin Mohamed, Prime Minister of Malaysia, Malaysia.	Do.
Do	Flowers: Large arrangement of peonies, tulips, roses, pussy willow, etc., in a woven basket. Residence: for official use display, Recd: May 14, 1984. Est. value: $200.	His Excellency Miguel de la Madrid Hutado, President of the United Mexican States, Mexico.	Do.

REPORT OF TANGIBLE GIFTS—Continued

[January 1 through December 31, 1984]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Flowers: Large arrangement of spring flowers, consisting of rubrum lilies, white lilacs, tulips, gerber daisies, etc. Residence; for official use/display. Recd: Feb. 18, 1984. Est. value: $300.	Her Excellency Madame Imelda R. Marcos, First Lady of the Philippines, Philippines	Do.
Do	Household: Bed Linens—66 white satin pillows, monogrammed "NRD," 14" square; 22 heart-shaped pillows, 11" x 13"; 16 white stain sheets, 120" x 114"; 9 bedspreads, 113" x 118"; 2 beige bed covers, 109" x 104"; 18 pillow cases, 20" x 30"; 2 off-white silk covers; 1 white silk sheet; 2 large bed pillows with slips; 6 beige cotton pillow slips; a red chest with 12 mother-of-pearl plates with knife and work, 2 salt and pepper sets with trays, 12 Ecru linen napkins, 14" square. Archives, foreign. Recd: Apr. 2, 1984. Est. value: $5170.	do	Do.
Do	Jewelry: Charm, gold heart with enamelled floral designs, 1" diameter. Archives, foreign. Recd: Mar. 14, 1984. Est. value: $170.	His Excellency Mario Soares, Prime Minister of Portugal, Portugal	Do.
Do	Artwork: Two watercolors, one is a scene of an oriental house and the other depicts branches of bamboo; both in circular black plastic frames depicted through rectangular openings; 18" in diameter. Archives, foreign. Recd: Jun. 13, 1984. Est. value: $100.	The Honorable Su Nan-Cheng, Mayor of Tainan City, Taiwan	Do.
Frederick L. Ahearn, Advance Representative.	Household: 1 Waterford crystal ashtray, 7" in diameter ($118); GSA	His Excellency Dr. Garret Fitzgerald, Prime Minister of Ireland, Ireland	Do.
	Household: 1 100% wool blanket by Avoca of Ireland, plaid, 54" x 60" ($65); GSA. Recd: Jun. 26, 1984. Est. value: $183.		
James A. Baker III, Chief of Staff and Assistant to the President	Household: A porcelain lamp vase of white open fretwork with three dimensional applied flowers on front; jade green color banding at top and bottom with gold line and banding accents; 16" tall, 6" diameter; black wood base also included. GSA. Recd: Feb. 13, 1984. Est. value: $185.	His Excellency Ziyang Zhao, Premier of the State Council of the People's Republic of China, People's Republic of China	Do.
Richard G. Darman, Assistant to the President and Deputy to the Chief of Staff.	Jewelry: A pair of jade and gold cuff links. GSA. Recd: Nov. 30, 1983. Est. value: $375.	His Excellency Chun Doo Hwan, President of the Republic of Korea, Republic of Korea	Do.
Michael K. Deaver, Deputy Chief of Staff and Assistant to the President.	Household: A brown leather briefcase. Presidential staff; for official use/display. Recd: Feb. 15, 1984. Est. value: $225.	Mr. Ted Johnson, Executive Assistant to the Prime Minister, Canada	Do.
Do	Household: A porcelain lamp vase of white open fretwork with three dimensional applied flowers on front; jade green color banding at top and bottom with gold line and banding accents; 16" tall, 6" diameter; black wood base also included. GSA. Recd: Feb. 13, 1984. Est. value: $185.	His Excellency Ziyang Zhao, Premier of the State Council of the People's Republic of China, People's Republic of China	Do.
Do	Jewelry: Gold cuff links with "ER" monogram ($150); GSA	Her Majesty Elizabeth II, Queen of England, England	Do.
	Household: A small silver box with "ER" on the lid (intended for spouse ($150). Presidential staff; for official use/display. Recd: Mar. 7, 1983. Est. value: $300.		
Do	Household: 1 Waterford crystal ashtray, 7" in diameter ($118); Presidential Staff; for official use/display.	His Excellency Dr. Garret Fitzgerald, Prime Minister of Ireland, Ireland	Do.
Do	Household: One 100% wool blanket by Avoca of Ireland, plaid, 54" x 60" ($65) GSA. Recd: Jun. 26, 1984. Est. value: $183.		
Do	Household: A waterford crystal vase: 10" tall, 7¼" top diameter, 4" base diameter presidential staff: for official use/display. Recd: Mar. 26, 1984. Est. value: $200.	Officials at Shannon Airport Ireland	Do.
Do	Book: "Traditional Islamic Craft in Moroccan Architecture" by Andre Paccard (two volume set). Presidential staff; For official use/display. Recd: May 23, 1984. Est. value: $495.	His Excellency Ali Bengelloun, Ambassador of Morocco, Morocco	Do.
David R. Gergen, Assistant to the President for Communications.	Jewelry: A pair of jade and gold cuff links. GSA. Recd: Nov. 30, 1983. Est value: $375.	His Excellency Chun Doo Hwan President of the Republic of Korea Republic of Korea.	Do.
William Henkel, Deputy Assistant to the President for Presidential Advance.	Household: One waterford crystal ashtray, 7" in diameter ($118); GSA	His excellency Dr. Garret Fitzgerald, Prime Minister of Ireland, Ireland	Do.
	Household: One 100% wool blanket by Avoca of Ireland, plaid, 54" x 60" ($65). GSA, Recd: Jun. 26, 1984. Est. Value: $183.		
Edward V. Hickey, Jr., Assistant to the President and Director of Special Support Services.	Jewelry: A pair of jade and gold cuff links. GSA. Recd: Nov. 30, 1983. Est value: $375.	His Excellency Chun Doo Hwan, President of the Republic of Korea, Republica of Korea	Do.
Robert C. McFarlane, Assistant to the President for National Security Affairs.	Household: A porcelain lamp base of white open fretwork with three-dimensional applied flowers on front; jade green color banding at top and bottom with gold line and banding accents; 14" tall; black wood base also included. Presidential staff; for official use/display. Recd: Jan. 30, 1984. Est. value: $175.	His excellency Ziyang Zhao, Premier of the State Council of the People's Republic of China, People's Republic of China	Do.
Michael A. McManus, Jr., Deputy Assistant to the President and Deputy to Deputy Chief of Staff.	Jewelry: A pair of jade and gold cuff links, GSA. Recd: Nov. 30, 1983. Est. value: $375.	His excellency Chun Doo Hwan, President of the Repbulic of Korea, Republic of Korea	Do.
Edwin M. Meese III, Counsellor to the President.	Household: A cloisonne vase depicting flowers and birds, multi-colored; 10" tall, 6" diameter; wooden base also included GSA. Rec'd: Feb. 2, 1984. Est. value: $175.	His excellency Ziyang Zhao, Premier of the State Council of the People's Republic of China, People's Republic of China	
Do	Jewelry: A pair of jade and gold cuff links, GSA. Recd: Nov. 30, 1983. Est value: $375.	His excellency Chun Doo Hwan, President of the Republic of Korea, Republic of Korea.	Do.
Do	Artwork: "Puzzle Ball," ivory figurine of three elephants on a pedestal stand, holding hands and supporting with their trunks a carved sphere with holes that reveal other "holey" spheres within the outer one; carved out of a single piece of ivory. GSA. Recd: Nov. 15, 1984. Est. value: $400.	Lu Kuo-Hua, General Secretary, Chinese Federation of Labor, Taiwan	Do.
Gaston J. Sigur, Jr. Special Assistant to the President for National Security Affairs.	Jewelry: A pair of jade and gold cuff links. GSA. Recd: Nov. 30, 1983. Est Value: $375.	His Excellency Chun Doo Hwan, President of the Republic of Korea, Republic of Korea.	Do.
William F. Sittman, Special Assistant to the President and to the Deputy Chief of Staff.	Household: Silver cigarette box with granulated or rough surface; on cover is monogram of "E II R" with a crown above it in gold; interior of the box is smooth and Gold-toned; measures 5" x 3¾". Presidential staff; for official use/display. Recd: Mar. 07, 1983. Est. Value: $500.	Her Majesty Elizabeth II Queen of England, England.	Do.
Larry M. Speakes, Deputy Assistant to the President and Deputy Press Secretary.	Jewelry: a pair of jade and gold cuff links. GSA. Recd: Nov. 30 1983. Est. Value: $375.	His Excellency Chun Doo Hwan President of the Republic of Korea. Republic of Korea.	Do.

REPORT OF TANGIBLE GIFTS—Continued

[January 1 through December 31, 1984]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Charles P. Tyson, Deputy Assistant to the President for National Security Affairs	Household: Sugar and Creamer, silver cloisonne, with two spoons and a tray. Recd: Apr. 06, 1984. Est. Value: $875.	Fnu Wu, Republic of Korea	Do.
Agency—Office of the Vice President			
George Bush	Miniature lacquer folding screen: Recd February 1984. Est. value $265. Stored in OVP safe.	Christian delegation of Taiwan, Religious group, Taiwan.	Non-acceptance would have caused embarrassment to the donor.
Do	20" handpainted ceramic bowl: Recd February 1984. Est. value $550. On display at Vice President's residence.	Sukru Elekdag, Ambassador, Turkey	Do.
Do	Three silver coins (½ oz.), Three gold coins (¼ oz.): Recd January 1984. Est. value $650. On display in Vice President's White House office.	Grand Duke, Jean, Luxembourg	Do.
Do	Brass statuette of dancer: Recd June 1984. Est. value $250. Stored in OVP safe.	Bir Bikram Shah Gyanendra, Prince, Nepal.	Do.
Do	Three silver coins: Recd April 1984. Est. value $225. On display in Vice President's White House office.	Salvador Jorge Blanco, President, Dominican Republic.	Do.
Do	Floral bone china lamp: Recd February 1984. Est. value $220. In use at the Vice President's residence.	Rudolf Kirchschlaeger, President, Austria	Do.
Do	Cloisonne plate with Japanese cherry blossoms: Recd July 1984. Est. value $200. On display in Vice President's residence.	Toshio Kohmoto, Director of Economic Planning, Japan.	Do.
Do	Lead crystal floral vase: Recd March 1984. Est. value $395. On display at Vice President's residence.	Francois Mitterrand, President, France	Do.
Barbara Bush	Pearl bracelet: Recd November 1984. Est value $200. Stored in OVP safe	Kozaburo Nozawa, Citizen, Japan	Do.
Do	Silver flowered bolt of silk: Recd May 1984. Est. value $200. Stored in OVP safe.	Shuja-ur Rehman, Mayor of Lehore, Pakistan.	Do.
George Bush	Black material with gold threading: Recd May 1984. Est. value $250. Stored in OVP safe.	Shuja-ur Rehman, Mayor of Lehore, Pakistan.	Do.
Do	Red silk tablecloth with gold threading: Recd May 1984. Est. value $250. Stored in OVP safe.	Azmat Riaz, Commandant, Khyber Pass, Pakistan.	Do.
Do	Gold plated sword and sheath: Recd May 1984. Est. value $1,200. On display in Vice President's OEOB office.	Salim Al Sabah, Minister of Defense, Kuwait.	Do.
Do	Gold sword with semi-precious stones and ivory hilt. Recd May 1984. Est. value $2,000. Stored in OVP safe.	Soeharto, President, Indonesia	Do.
Barbara Bush	Silver serving set: Recd May 1984. Est. value $3,000. Stored in OVP safe	Mrs. Soeharto, Wife of President, Indonesia.	Do.
Do	Gold Peace Dove pin: Recd January 1984. Est. value $250. Stored in OVP safe.	Mrs. John Swan, Wife of Premier, Bermuda.	Do.
George Bush	Royal Crown Derby bone china bowl: Recd February 1984. Est. value $250. On display at Vice President's residence.	Margaret Thatcher, Prime Minister, Great Britain.	Do.
Barbara Bush	Red silk with gold threading: Recd June 1984. Est. Value $300. Stored in OVP safe.	Mrs. Wirahadikusumah Umar, Wife of Vice President, Indonesia.	Do.
George Bush	White china bowl with gold piping: Recd February 1984. Est. value $210. On display at Vice President's residence.	Pierre Werner, Prime Minister, Luxemburg	Do.
Barbara Bush	Turquoise silk tablecloth: Recd February 1984. Est. value—$200. In use at Vice President's residence.	Zhao Ziyang, Premier, China	Do.
George Bush	Blue and white porcelain vase on wooden stand: Recd February 1984. Est. value $250. On display at Vice President's residence.	do	Do.
Do	Wool handwoven rug: Recd May 1984. Est. value $800. In use at the Vice President's residence.	Begum M. Zia-ul Haw, President, Pakistan.	Do.
Do	Wooden inlaid writing desk: Recd May 1984. Est. value—$500. On display in Vice President's OEOB office.	do	Do.
Agency—U.S. Senate			
Dennis DeConcini, U.S. Senator	Rug with browns & maroons: Recd April 1984. Est. value—$350. Held in Senator's Office for display penaing approval by Ethics Committee.	President Zia, Pakistan	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Do	Maroon sari with gold threads: Recd April 1984. Est. value $350. Held in Senator's office for display pending approval by Ethics Committee.	do	Refusal would likely cause offense or embarrassment.
Robert W. Kasten, Jr., U.S. Senator.	Moroccan rug, 9×12 feet with red-blue-yellow pattern: Recd December 1984. Est. value $550. Requested approval from the Select Committee on Ethics on January 31, 1984 for official use of item during tenure in Senate.	Col.-Major Kabbj, Morocco	Do.
Edward M. Kennedy, U.S. Senator.	Silver Tray: Recd. December 27, 1984. Est. value $200. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	President Gaafar H. Nimeiri, Republic of Sudan.	Do.
Mack Mattingly, U.S. Senator	Large book of landscapes, orchid, bamboo and flower paintings by Madame Chiang Kai-shek: Recd December 6, 1984. Est. value $165. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	Dr. Chin Hsiao-yi, Director, National Palace Museum, Republic of China.	Do.
Sam Nunn, U.S. Senator	Persian Rug: Kashan design; 49" x 72" wool, center medallion, leaf motif border, mauve and dark blue. Recd December 1984. Est. value $650. Requested approval from the Select Committee on Ethics on February 4, 1984 for official use of item during tenure in Senate.	Pakistani Government	Do.

REPORT OF TRAVEL OF EXPENSES OF TRAVEL

Name and title of recipient	Brief description of Travel or travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: U.S. Senate			
Lawrence C. Horowitz, Administrative Assistant to Senator Kennedy.	January 16-19, 1984; Recd lodging and food at Hotel Sovietski in Moscow	U.S.S.R.	Refusal would likely cause offense or embarrassment.
Do	May 7-10, 1984; Recd lodging and food at Hotel Sovietski in Moscow	Do	Do.

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: Committee on Standards of Official Conduct, U.S. House of Representatives			
Ken Kramer, Member of Congress.	Watch (Value: $200). Cufflinks (Value: $600). Received 7/18/84. Deposited with Office of the Clerk for transmittal to GSA for disposition.	Republic of China	Non-acceptance would have caused embarrassment to donor and U.S. Government
Stephen J. Solarz, Member of Congress.	100 Kuwaiti dinar gold coin (Value: $340). Received 8/15/84. Deposited with Office of the Clerk for transmittal to GSA for disposition.	Undersecretary of the Ministry of Information Kuwait.	Do.
Howard Wolpe, Member of Congress.	Pair of elephant tusks (Est. Value: $3,000). Received Nov. 1983/Approved, for official display Jan. 1984.	President Gnassingbe Eyadema, Togo	Do.

REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of recipient	Brief description of travel of travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: Committee on Standards of Official Conduct, U.S. House of Representatives			
Steven Gunderson, Member of Congress.	Transportation, logging and meals in Canada	Canada	Fact-finding trip.
Barbara Kennelly, Member of Congress.	Lodging and meals in Cyprus (April 1983 and not previously reported)	Cyprus House of Representative	Do.
Bill McCollum, Member of Congress.	Lodging in Bangkok, Thailand, for 3 nights	Thailand Foreign Ministry	Refusal would cause offense or embarrassment.
Andrea T. Simmons, Office Hon. Julian C. Dixon.	Transportation to military base at Kinmen, Republic of China	Republic of China	Only means of transportation to fact-finding trip.

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: Forest Service—Department of Agriculture			
John D. Berry, District Ranger, Siskiyou National Forest.	Recd 9/22/84, a 8 oz Silver Medallion, limited edition. Est. Value $165.00 +. Framed photograph of Mr. Bolivar.—$145.00 value. Both items were accepted for the Forest Service and placed in the historical collection at Powers Range District.	Oscar Hernandez, Venezuela Consul	Dedication to Mr. Bolivar at the Ranger District.

REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of recipient	Brief description of travel or travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: Foreign Service—Department of Agriculture			
Gary Leatham, Research Chemist, Forest Products Lab.	Recd April 17, per diem and local transportation in Manchester, England. Est Value $603.50.	British Mycological Society Manchester, United Kingdom.	Agreement executed specifying reimbursement to FPL. The Mycological Society insisted on reimbursing Leatham. Rather than create problems, Leatham accepted.

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: Department of the Air Force			
Dept. of the Air Force, Air Force Office of Special Investigation (AFOSI), Dist 4, Andrews AFB MD.	Cash. Recd May 8, 1984. Est. Value—$8,200.00 US Treasury Check #07,094,538 deposited at the Randolph AFB Accounting and Finance Office.	Sheik Salin Al-Sabah Al-Sabah, Kuwait Minister of Defense Delegation.	Nonacceptance would have caused embarrassment to donor and US Government.
Dept. of the Air Force, AFOSI, Det. 1401, Dist. 14, Peterson AFB CO.	Cash. Recd April 13, 1984. Est. Value—$2,000.00. US Treasury Check #03,684,999 deposited at the Randolph AFB Accounting and Finance Office.	....do	Do.
Dept. of the Air Force, AFOSI, Dist. 18, Norton AFB CA.	Cash. Recd April 20, 1984. Est. Value—$2,400.00. US Treasury Check #01,369,341 deposited at the Randolph AFB Accounting and Finance Office.	....do	Do.
Brig. Gen. Richard S. Beyea, Jr., AFOSI Commander.	Silver Pocket Watch (#994 in front case & #171994 in back). Recd April 11, 1984. Est. Value—$275.00. Approved for official use in the HQ AFOSI Protocol/Waiting Room.	Mr. Sukru Balci, Chief of Police and Governor, Istanbul, Turkey.	Do.
Gen. Charles A. Gabriel, Chief of Staff, USAF.	Black Power [sic] Pistol (barrel length—8¼". Recd April 11, 1984. Est Value—$200.00. Approved for official use in the Office of the AF Chief of Staff.	Gen Jose Peralba, Chief of Staff, Spanish Air Force.	Do.
Gen. Charles A. Gabriel, Chief of Staff, USAF.	Oriental Rug (8'x12', red with multicolor trim). Recd July 3, 1984. Est. Value—$800.00. Approved for official use in the office of the AF Chief of Staff.	Colonel Major Mohamed Kabbaj, Inspector (Chief of Staff), Moroccan Air Force.	Do.
Mrs. Barbara Mullins, wife Gen. James P. Mullins, Commander Air Force Logistics Command.	Omega Gold Watch (Serial #1375). Recd February 26, 1984. Est. Value—$450.00. Stored in HQ AFMPC/MPCASA.	Lt. Gen. Mohammed Sabri, Chief of Staff, Royal Saudi Air Force.	Do.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Gen. Jerome F. O'Malley, Commander in Chief, Pacific Air Forces (PACAF).	Korean Silk Tiger Painting (33"x61"). Recd March 22, 1984. Est. Value—$2,500.00. Approved for official use at HQ PACAF.	Gen. Kim Sang Tae, Chief of Staff Republic of Korea Air Force.	Do.
Dr. Thomas E. Cooper, Assistant Secretary (Research, Development and Logistics).	STRYR 9mm Pistol. Ser #P11856. Recd May 29, 1984. Est. Value—$300.00. Approved for display in Office of the Secretary.	Minister Frischenschlager, MOD Austria	Do.
	Agency: Department of the Army		
Lieutenant General John N. Brandenburg, Commander, I Corps, Fort Lewis, WA.	Sword, scabbard and box container. Recd April 1984. Est. Value—$500. Post Museum, Fort Lewis, WA.	Minister of Defense, Kuwait	To preclude potential embarrassment to US Government and donor.
Colonel Eugene D. George, Chief, Neurosurgery Service, Walter Reed Army Medical Center.	Rolex watch. Recd May 1984. Est. Value—$1,995. Federal Bureau of Investigation, Washington, DC.	Unknown patient	To preclude embarrassment with the patient.
Brigadier General John R. Greenway, Deputy Chief of Staff for Doctrine, Fort Monroe, VA.	Taurus 9MM. Handgun, serial number B310093. Recd March 1984. Est. Value—$184. US Army Military Personnel Center, Alexandria, VA.	Deputy Chief of Staff (Doctrine), Brazilian Army.	To preclude potential embarrassment to US Government and donor.
Lieutenant General Lewis C. Menetry, Commander, Combined Field Army, Korea.	Sam Jung Do. Saber, scabbard and box container. Recd October 1983. Est. Value—$1,000. Headquarters, Combined Field Army, Korea.	President, Republic of Korea	Do.
General Robert W. Sennewald, Commander in Chief, US Forces, Korea.	3 Mother of Pearl inlaid tables. Recd May 1984. Est. Value—$2,075. Headquarters, US Army Forces Command, Fort McPherson, GA.	Chairman, Joint Chiefs of Staff, Republic of Korea.	Do.
Do	Sam Jung Do. Saber, scabbard and box container. Recd October 1983. Est. Value—$1,000. Headquarters, US Army Forces Command, Fort McPherson, GA.	President, Republic of Korea	Do.
General John A. Wickham, Jr., Army, Chief of Staff.	2 Silver candelabras. Recd March 1984. Est. Value—$700. Headquarters, Department of the Army, Pentagon, Official Use.	Chief of Staff, Royal Thai Army	Do.
	Agency: Central Intelligence Agency		
William J. Casey, Director, CIA	Indo-Keshan rug. 5.5 x 3.1. Ivory ground with trellising vine field centering a pulled marquise medallion, gray spandrels, palmette and trellising vine guard border on brick red ground. Recd October 1984. Est. Value—$350. Retained for official display.	Public Law 95-105 A(F)(4)	Non-acceptance would have caused embarrassment to donor.
Do	Indo-Tabriz Garden rug. 6.4 x 4.9. Gold ground with flowering branch and exotic bird field centering a pulled marquise medallion on burgundy ground, palmette and trellising vine guard border on burgundy ground. Recd January 27, 1984. Est. Value—$850. Retained for official display.	do	Do.
Do	(a) Pakistan 940-silver repousse four-piece tea set. Consisting of footed teapot, covered sugar, creamer and rectangular tray. L: of tray 18; Wt. 85 oz. To be reported to GSA for disposition (tea set). (b) Pakistan Bokhara rug. 6.7 x 4.1. Shaded beige ground with diagonal rows of rosettes, rosette guard border on beige ground. Recd October 1984. Est. Value—$800. Retained for official display.	do	Do.
Do	(a) Ladies Rolex Oyster Perpetual date watch. Yellow gold filled and stainless steel case and attachment. Number 6917. (b) Middle East repousse yellow gold bangle bracelet. Recd February 1984. Est. Value—$275. To be reported to GSA for disposition.	do	Do.
Do	Pakistan brass inlaid rosewood buffet. Rectangular molded edge top above three aligned drawers and three drawers flanked by two double door compartments, raised on cabriole legs, with serpentine backsplash. L: 74. Recd February 1984. Est. Value—$1,200. To be reported to GSA for disposition.	do	Do.
Do	Pair Indo-Keshan rugs. 7.3×4.6. Ivory ground with pulled marquise medallion on brick red ground, lavender spandrels, trellising floral spray guard border on dark blue ground. Recd March 30, 1983. Est. Value—$2,400. Retained for official display.	do	Do.
Do	(a) Indo-Keshan rug. 7.2×4.8. Ivory ground with trellising vine and palmette field centering a pulled lobed medallion, wine red-beige-blue spandrels, palmette and trellising vine guard border on beige ground. Retained for official display. (b) Indo-Tabriz rug. 6.1×4.1. Red ground with bird and trellising vine field, honey-comb spandrels, palmette and trellising vine guard border on navy blue ground. Retained for official display. (c) Emerald and pearl ensemble, consisting of a necklace, pair pendant earrings and a finger-ring. Yellow gold mount set with round faceted emeralds, seed and fresh water pearls. Recd February 1984. Est. Value—$2,900. To be reported to GSA for disposition (Emerald and pearl ensemble).	do	Do.
John N. McMahon, Deputy Director, CIA.	Sako three-in-one automatic pistol. 22/32-caliber. The automatic pistol with three interchangeable barrels: 22LR, 22 short and 32-caliber. Together with carrying case. Recd September 5, 1984. Est. Value—$175. Retained for official display.	do	Do.
Do	(a) Pakistan brass inlaid rosewood beau brummel. The rectangular molded edge hinged top above four drawers, raised on cabriole legs ending in pad feet. W: approximately 25. (b) Pakistan brass inlaid wood octagonal top side table. Having an eight-section folding base. Top square 22. (c) Octagonal side table en suite with preceding. (d) Pakistan brass inlaid wood two-handle service tray. L: approximately 21. (e) Pakistan brass inlaid rosewood two-deck tea cart with spoked wheels. (f) Pakistan brass inlaid wood octagonal top cocktail table. With eight-sectoin folding base. L: 48. Recd February 1984. Est. Value—$985. To be reported to GSA for disposition.	do	Do.
Agency employee	Indo-Isphahan rug. 6.3×3.9. Navy blue ground with flowering vine field centering a pulled star medallion, ivory-gray spandrels, palmette and trellising vine guard border on ivory ground. Recd 1984. Est. Value—$550. Retained for official display.	do	Do.
Do	Chinese sculptured oval picture rug. 4×3. Mountainous river landscape with figures in boat. Recd 1984. Est. Value—$175. Retained for official display.	do	Do.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Persian silver footed two-handle service tray. Allover repousse chased decoration centering a marquise medallion, raised on four cabriole legs with shell capitals. L: 37; H: approximately 13; Wt. of tray 175 oz. Recd 1984. Est. Value—$950. To be reported to GSA for disposition.	do	Do.
Do	Pakistan Bokhara rug. 5.1 ×3.3. Wine red ground with two rows of twelve botehs, rosette guard border on wine red ground. Recd October 2, 1984. Est. Value—$300. Retained for official display.	do	Do.
Do	(a) Diamond "R" tie tac. Unmarked yellow gold mount set with fifteen round diamonds weighing approximately .25 carats. (b) Ruby, emerald, sapphire and diamond floral spray brooch. Unmarked yellow gold mount set with six round faceted rubies, six round faceted blue sapphires, three round diamonds and four fancy canary marquise diamonds. Total wt. of diamonds approximately .35 carats. Recd June 24, 1984. Est. Value—$575. To be reported to GSA for disposition.	do	Do.
Do	Sapphire and diamond ring. Unmarked white metal mount set with six oval faceted blue sapphires and five round diamonds. Total wt. of diamonds approximately .05 carats. Recd 1983. Est. Value—$350. To be reported to GSA for disposition.	do	Do.
Do	(a) Pair Chinese cloisonne vases, contemporary. Blue ground with allover floral design, baluster-form; on carved wood bases. H: of vases 12. (b) Silver plated champagne cooler, maker Galleon. Campana-form. H. 10. (c) Three porcelain miniature covered soup tureens with attached undertrays, floral transfer decorations. Recd unknown. Est. Value—$302.50. To be reported to GSA for disposition.	do	Do.
Do	(a) Italian silk man's neck tie. Brown with spread winged eagle design. (b) Selanger pewter vase. Bulbous body with long flaring neck. H: 11. (c) Pearl and ruby ensemble, consisting of a pair pierced-clip type earrings, pendant, and a finger ring. Each 14 karat yellow gold mount set with gray Mabe half-pearls and round faceted rubies. Recd March 28, 1984. Est. Value—$370. To be reported to GSA for disposition.	do	Do.
Do	Zebra skin trophy. L: approximately 68, Recd May 1983. Est. Value—$300. To be reported to GSA for disposition.	do	Do.
Do	Ladies Longines quartz watch. 18 karat (750) mesh gold attachment and case; case number 020150607. Recd unknown. Est. Value—$400. To be reported to GSA for disposition.	do	Do.
Do	Man's Rolex Oyster Perpetual Date-just wrist watch. Yellow gold filled and stainless steel case and bracelet attachment; movement number 16013. Recd 1984. Est. Value—$250. To be reported to GSA for disposition.	do	Do.
Do	(a) Man's Rolex Oyster Perpetual Dae-just watch. Yellow gold filled and stainless steel case and attachment; movement number 16013. (b) Egyptian vermeil bright cut engraved silver dagger and sheath, bearing the Seal of Egypt Recd unknown. Est Value—$325. To be reported to GSA for disposition..	do	Do.
Do	Persian repousse silver six-piece coffee-tea service. Consisting of a coffee pot, teapot, two sugars and two creamers (one pot, one sugar and one creamer stamped on bottom "German Silver"). Total wt. 72 oz. Recd unknown, Est. Value—$250. To be reported to GSA for disposition.	do	Do.
Do	Man's Cartier 18 karat (750) yellow gold wrist watch. Octagonal-form with black Roman numeral dial, brown reptile band; number 170011714. Recd May 1984. Est. Value—$400. Retained for official display.	do	Do.
Do	(a) Pakistan brass inlaid rosewood beau brummel. The rectangular molded edge hinged top above four drawers, raised on cabriole legs ending in pad feet (b) Pakistan brass inlaid rosewood canterbury (magazine rack). Rectangular molded edge top above four horizontal shelves. (c) Pakistan brass inlaid wood octagonal top side table. Having an eight-section folding base. Top square 22. (d) Octagonal side table ensuite with preceding. (e) Pakistan brass inlaid rosewood two-deck tea cart with spoked wheels. (f) Pakistan brass inlaid wood octagonal top cocktail table, with eight-section folding base. L: 48. Recd July 1984. Est Value—$1,015. To be reported to GSA for disposition.	do	Do.
Agency: Commodity Futures Trading Commission			
Marshall Hanbury, Counsel/Executive Assistant to the Chairman.	Singapore medallion coin. Rec'd January 27, 1984. Est. Value—$184. Retained by CFTC for official display.	Ng Kok Song, Singapore	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Susan M. Phillips, Chairman	do	do	Do.
Agency: Department of the Defense			
Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs).	Jeweled sword in box Recd April 10, 1984. Est. Value—$750. Approved for official display in office of Donee.	Sheikh Salem Sabah al-Salam Al-Sabah, Minister of Defense, Kuwait.	Non-acceptance would have caused embarrassment to donor.
Maj. Gen. Kenneth D. Burns, USAF, Deputy Assistant Secretary of Defense (Near Eastern and South Asian Affairs).	Algerian-made rug (81" ×130"), brown and tan with diamond pattern in center. Recd September 1984. Est. Value—$400. Stored in Space Management and Services pending disposition.	Colonel Abdelli, Director, Algerian AF	Do.
Do	Algerian-made rug (74" ×116"), light tan and pink with red flowers with crisscross pattern. Recd September 1984. Est. Value—$225. Stored in Space Management and Services pending disposition.	do	Do.
Lt. Gen. Philip C. Gast, USAF, Director, Defense Security Assistance Agency.	Haddad cutlery set (40-piece, stainless steel, flatware service), in large black silverware chest with drawer. Recd January 19, 1984. Est. Value—$250.	Gen. Ibrahim Tannous, Commanding General, Lebanese Armed Forces.	Do.
Col. Ronald A. Hofman, USA, Office of Deputy Assistant Secretary of Defense (Near Eastern and South Asian Affairs).	Algerian-made rug (78" ×112"), tan with diamond pattern surrounded by brown. Recd September 1984. Est. Value—$175. Stored in Space Management and Services pending disposition.	Colonel Abdelli, Director, Algerian AF	Do.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Talbot S. Lindstrom, Deputy Under Secretary of Defense (International Programs and Technology).	9×19mm PARA handgun, made in Austria by Glock. Recd May 29, 1984. Est. Value—$500. Delivered to GSA.	Austan MOD, Frischenschlager	Do.
Do	Silver Tuttle Boat in glass case. Recd December 5, 1984. Est. Value—$262. Approved for official display in office of Donee.	Samsung Precision Instruments Company, Changwon Industrial Complex, Republic of Korea.	Do.
James P. Wade, Jr., Principal Deputy Under Secretary of Defens for Research and Engineering.	9×19mm PARA handgun, made in Austria by Glock. Recd May 1984. Est. Value—$500. Delivered to GSA.	Austrian MOD, Frischenschlager	Do.
Caspar W. Weinberger, Secretary of Defenee.	Model sailing ship in large case. Recd April 10, 1984. Est. Value—$50. Approved for official display in office of Donee.	Sheikh Salim, Minister of Defens of Kuwait.	Do.
Do	Large sword encased in gold-finished sheath, decorated with red stones, in large box with mother-of-pearl and wood inlaid design, Recd April 10, 1984. Est. Value—$750. Approved for official display in office of Donee.	...do	Do.
Do	Oil painting of boat scene on canvas in gilded frame, 3'×3' Recd April 10, 1984. Est. Value—$75. Delivered to GSA.	...do	Do.
Mrs. Caspar W. Weinberger, Wife of Secretary of Defense.	Pearl necklace set of rubies, seed pearls and 18K gold, with matching ring, bracelet and drop earrings, in large blue, plush-covered box. Recd April 11, 1984. Est. Value—$9,000. Delivered to GSA.	Sheikh Salim, Minister of Defense of Kuwait.	Do.
Caspar W. Weinberger, Secretary of Defense.	Small black lacquer table. Recd May 10, 1984. Est. Value—$75. Approved for official display in office of Donee.	Korea	Do.
Do	Small black lacquer chest, with mother-of-pearl design on top and side. Recd May 10, 1984. Est. Value—$200. Approved for official display in office of Donee.	...do	Do.
Do	Crystal bowl with figures and name plate. Recd August 8, 1984. Est. Value—$250. Approved for official display in office of Donee.	Minister of Defense, Freddy Vreven of Belgium.	Do.
Do	Sterling silver plate, embossed design 11½" in diameter. Recd October 14, 1984. Est. Value—$500. Approved for official display in office of Donee.	Lt. Gen. Mohamed Helmi, Commander of Egyptian Air Forces.	Do.
Do	Large round, mosaic wall hanging. Recd October 14, 1984. Est. Value—$500. Reported to GSA and stored in Space Management and Services pending disposition by GSA.	MOD Sladhhine Baly of Tunisia	Do.
Do	3500-year old sword in wooden box. Recd October 15, 1984. Est. Value—$600. Approved for official display in office of Donee.	MOD Itzhk Rabin of Israel	Do.
Do	Long gold sword in fancy case and blue box. Recd December 6, 1984. Est. Value—$1,000. Approved for official display in office of Donee.	King Fahd of Saudi Arabia	Do.
	Agency: Environmental Protection Agency		
Kenneth E. Biglane, Director, Hazardous Response Support Division (HRSD), Office of Emergency and Remedial Response (OERR), EPA.	Man's Rolex Swiss Watch, Oyster Perpetual Datejust Stainless Steel case and band, yellow gold face. Est. Value—$1,200.	H.E. Hamand Abdul Rahman al-Medfa, Minister of Health, United Arab Emirates.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
J. Stephen Dorrler, Chief, Environmental Response Team, Hazardous Response Support Division, Office of Emergency and Remedial Response EPA/OSWER.	Man's Rolex Swiss Watch, Oyster Perpetual Datejust Stainless steel case and band, blue face with Roman numerals. Est. Value—$1,200.	...do	Do.

REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of recipient	Brief description of travel or travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
	Agency: Federal Communications Commission		
Mimi Weyforth Dawson, Commissioner.	During February 1984, Commissioner Dawson traveled from Washington, D.C. to Brussels to attend a meeting in connection with her duties as Secretary-General of the Atlantic Association of Young Political Leaders, (AAYPL). The AAYPL paid for her miscellaneous travel expenses, while in Brussels. Estimated Value: $142.	Atlantic Association of Young Political Leaders, a multinational organization is funded by NATO.	These were routine and ordinary expenses associated with her position as Secretary-General of the AAYPL.
Margaret Reitzel, Confidential Assistant to Commissioner.	During October 1984, Ms. Reitzel traveled from Washington, D.C. to Toronto, Canada to attend a study tour and the Atlantic Treaty Association Annual Assembly. Reitzel, as part of the American Delegation, accompanied Commissioner Dawson, who participated in her capacity as Secretary-General of the AAYPL. The Canadian Association of Yound Political Leaders (AAYPL) paid for Reitzel's lodging and meal expenses in Toronto. (Dawson's expenses were borne by the American Council of YPL). Estimated Value: $600.	The Canadian Association of Young Political Leaders is member of the AAYPL. The AAYPL, a multinational organization is funded by NATO.	To provide assistance to the Secretary-General of the AAYPL, and perform necessary related duties.

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, Date of acceptance, Estimated, value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Agency: Board of Governors of the Federal Reserve System		
Paul Volcker, Chairman	Set of 4 coins. Recd. June 1984. Est Val. $175. Retained for Board use	Djordje Peklic, Governor, National Bank of Bosnia and Herzegovia.	Non-acceptance would have caused embarrassment.
Do	Set of Italian Books. Recd. July 1984. Est. Val. $300. Retained for Board use	Dr. Mario Rivosecchi, Managing Director, Credito Italiano.	Do.
Preston Martin, Vice Chairman	...do	...do	Do.

REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of recipient	Brief description of travel or travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: Foreign Claims Settlement Commission—U.S. Department of Justice			
Joseph W. Brown, Part-time Commissioner.	Airfare—$1,500.Hotel—$700	Taiwan	Member of delegation of Prominent Nevada residents on good will "Sister State" trip.
Mrs. Joseph W. Brown (spouse)	Airfare—$1,500. Hotel—$700. 7 days—April 1984	do	Do.
Agency: Department of Health and Human Services			
Margaret M. Heckler, Secretary of Health and Human Services.	August 30, 1984. Helicopter travel to and from Beitesiolen Health Sports Center for the Disabled.	Government of Norway	Official fact-finding trip.
David E. Hobman, Director, Office of International Affairs.	do	do	Do.
Patti Birge Tyson, Executive Assistant to the Secretary.	do	do Do.	

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, data of Acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: National Aeronautics and Space Administration			
Concetta P. Thibideau (spouse of P. Thibideau, Manager of International Scientific and Technical Information Activities, Scientific and Technical Information Branch, NASA Headquarters); Mrs. Thibideau is an Italian citizen.	Educational Scholarship. Est. Value—$1865.00. Scholarship began December 1, 1982 and extended to Fall 1984.	Italian Ministry of Foreign Affairs University of Rome.	Acceptance of scholarship is in accordance with NASA regulations.

REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of recipient	Brief description of travel or travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: National Aeronautics and Space Administration			
Helen S. Kupperman, Asst. General Counsel for General Law.	Food, lodging and local transportation in Moscow and Leningrad, USSR. Recd. April 2-8, 1984. NASA est. value—$910.00.	USSR Academy of Sciences, Government of USSR.	Accompanying husband while on annual leave, approved by NASA Associate Deputy Administrator, in accordance with NASA regulations.
Dr. Robert H. Kupperman, Executive Director of Science and Technology, Georgetown University Center for Strategic and International Studies.	Food, lodging and local transportation in Moscow and Leningrad, USSR	do	At the invitation of USSR Academy of Sciences to attend series of discussions on crises management and arms control. Activity was coordinated with U.S. National Security Advisor.

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: National Security Agency (NSA)			
Senior NSA Official	Engraved Silver Tray. Recd 18 January 1984. Est. Value—$350.00. Tray was presented to the National Cryptologic School for retention.	Senior Official of a Foreign Government—Public Law 95-105A(F)(4).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency: Department of the Navy			
Commodore Richard F. Donnelly, USN, Program Manager, Saudi, Naval Expansion Program, Naval Material Command.	Rolex oyster wrist watch (man's). Precision—Serial 6426. Recd July 25, 1984. Est. Value—$2,000. Presently located in Chief of Naval Operations (OP-09B33) awaiting instructions from GSA.	Commodore Talal Salem Al-Mofadi, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Do	Rolex oyster wrist watch (woman's). Perpetual Date—Serial 69160 Recd July 25, 1984. Est. Value—$2,000. Presently located in Chief of Naval Operations (OP-09B33) awaiting instructions from GSA.	do	Do
Vice Admiral Crawford A. Easterling, USN, Commander Naval Air Force, U.S. Pacific Fleet.	Gold plated engraved sword wooden in-layed presentation case. Recd April 16, 1984. Est. Value—$880. Presently located in chief of Naval Operations (OP-09B33), awaiting instructions from GSA.	Sheikh Salim Al-Sabah, Minister of Defense, Kuwait.	Do
Do	Wooden model of fishing boat in, blue velveteen presentation case. Recd April 16, 1984. Est. Value—$500. Presently located in chief of Naval Operations (OP-09B33), awaiting instructions from GSA.	do	Do
Rear Admiral Frederick W. Kelley, USN, Commander U.S. Naval Forces Korea.	Sam Jung Do Ceremonial Saber in presentation case. Recd October 1, 1983. Reported August 22, 1984. Est. Value—$1,000. Presently located in Chief of Naval Operations (OP-09B33) awaiting instructions from GSA.	The Honorable Chun, Doo Hwan, Republic of Korea.	Do

REPORT OF TANGIBLE GIFTS—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Rear Admiral Dickinson M. Smith, USN, Commander U.S. Naval Forces Philippines.	Set of stacking tables. Recd December 1983. Reported January 19, 1984. Est. Value—$179. Approved for official Display in U.S. Naval Forces, Philippines Headquarters.	Mrs. Amelia J. Gordon, Former Mayor of Olongapo City.	Do.
Admiral James D. Watkins, USN, Chief of Naval Operations.	Footed 900 silver mate vessel with embossed design. Recd September 1984. Est. Value—$225. Approved for official display in Tingey House.	Vice Admiral Patrico Carvajal, Minister of Defense, Chile.	Do.
Do	900 silver cigarette box with enamel signature, flag and engraved legend. Recd September 1984. Est. Value—$200. Approved for official display in Tingey House.	do	Do.
Admiral James D. Watkins, USN Chief of Naval Operations.	10½" silver filigree sailing vessel on brown marble base with silver presentation plaque, box. Recd September 1984. Est. Value—$750. Approved for official display in Tingey House.	Vice Admiral Jorge Du Bois Gervasi, Minister of the Peruvian Navy.	Do.
Do	10½" round sterling presentation tray with gadroon border, seal in the center. Recd September 1984. Est. Value—$400. Approved for official display in Tingey House.	D. Raul Antonia Borres, Minister of Defense, Argentina.	Do.
Agency: Office of Personnel Management			
Donald J. Devine, Director	24 karat gold crown with pieces of jade; presented April 9, 1984; a similar gift was valued by GSA at $3,000.00 in 1977; the gift is on official display at the office of the Donee.	Mr. Ahn Kong-Hyuk, Inspector General of the Ministry of Finance of the Republic of Korea.	The gift is a highly valued symbol of Korean national pride. Non acceptance would have caused embarrassment to the Donor.
Agency: Smithsonian Institution			
Robert McC. Adams, Secretary	Mandala thanka—silk scroll depicting symobolic representation of Nepal. Recd September 28, 1984. Est. Value—$900. Transferred to the Anthropology, collections of the National, Museum of Natural History.	Lain S. Bangdel, Chancellor, Royal Nepal Academy, Nepal.	Non-acceptance may have been perceived as a discourtesy.
Agency: Department of State			
Jeffrey R. Cunningham, Petroleum Officer, U.S. embassy, Jakarta, Indonesia.	Man's Cartier wristwatch, silvertone with gold tone trim, maroon face, in red simulated leather case with gold embossing. Recd July 28, 1984. Est. Value—$400. Delivered to GSA for disposition November 14, 1984.	Hasmoro, Director of General Affairs, Pertamina, State Oil Co., Indonesia.	Non-acceptance would have caused embarrasment to donor and U.S. Government.
Mrs. Walter Cutler, Wife of the U.S. Ambassador to Saudi Arabia.	Lady's Roberge wristwatch, 18K gold and two diamond chips in body of watch, 2-color link watchband. Serial No. 2616-387. Recd April 8, 1984. Est. Value—$2,000. Delivered to GSA for disposition, November 14, 1984.	Spouse of senior member of the Royal Family of Saudi Arabia.	Do.
Do	Seed pearl necklace with ornate gold centerpiece containing rubies and pearls; matching earrings and ring. Recd December 1984. Est. value—$2,500. Being held in the Office of Protocol pending transfer to GSA.	Member of the Royal Family of Saudi Arabia.	Do.
Kenneth W. Dam, Deputy Secretary of State.	Waterford crystal captain or ship's decanter, approx. 11" high. Recd April 16, 1983. Est. Value—$145. Delivered to GSA for disposition November 14, 1984.	Dan Browne, Lord Mayor of Dublin, Ireland.	Decanter was thought to be worth less than $100 and non-acceptance would have caused embarrassment to donor and U.S. Government.
Do	Set of books: "The Arts of Korea," six volumes, published by Dong Hwa Publishing Co. Publishing Co. Recd May 5, 1983. Est. value—$175 approx. Delivered to GSA for disposition November 14, 1984.	HE Bum Suk Lee, Minister of Foreign Affairs of Korea.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Barrington King, Wife of U.S. Ambassador to Brunei.	18k gold pen and pencil set with royal seal of Brunei on clip of each, diamond and ruby chips encircling ends of both, in blue simulated leather case. Recd November 15, 1984. Est. Value—$800. Being held in the Office of Protocol pending transfer to GSA.	Wife of the Sultan of Brunei	Gift wrapped as souvenir at conclusion of tea. Non-acceptance would have caused embarrassment to donor and U.S. Government.
Jeane J. Kirkpatrick, U.S. Permanent Representative to the United Nations.	Mahogany chest, inlaid with mother-in-pearl, 34" × 17½" × 16". Recd May 30, 1984. Est. Value—$200 approx. Delivered to GSA for disposition November 14, 1984.	HE Ferdinand Marcos, President of the Philippines.	Non-acceptance would have caused embarrassment to donor and the U.S. Government.
Richard Krieger, Associate Coordinator, for Refugee Affairs.	Cheetah skin, 3', brown with black stripes. Recd July 11, 1984. Est. Value—$165. Delivered to GSA for disposition November 14, 1984.	Amb. El Ahmadi, Commissioner for Refugees, Sudan.	Do.
J. William Middendorf, II, U.S. Representative to the Organization of American States.	Mahogany sculpture of Suriname woman approx. 50" high, on wooden base, with plaque inscribed to donee from PM of Suriname. Recd April 23, 1984. Est. Value—$1,200. Approved for official display in office of donee.	The Prime Minister of Suriname	Do.
Richard W. Murphy, Assistant Secretary of State.	Silver tray in shape of island of Sri Lanka, 6" × 8", and six silver demitasse spoons with semi-precious stones. Recd June 21, 1984. Est. Value—$200. Delivered to GSA for disposition on November 14, 1984.	The President of Sri Lanka and Mrs. Jayewardene.	Do.
Do	(a) Portable liquor cabinet, 19½" × 19½" × 16", with inlaid shell design on cover, containing 4 decanters, 5 glasses, ice bucket, 2 gold plated bottle openers, 1 ice tong. (b) A sterling silver tray approx. 12" diameter engraved to donor from donee. Recd January 24, 1984. Est. Value—$1,500 combined. (a) Liquor cabinet approved for official use in the Office of the Secretary of State. (b) Tray delivered to GSA for disposition on November 14, 1984.	Prince Turki bin Abd al-Aziz, Ambassador at Large, Saudi Arabia.	Do.
Do	Oriental rug, 3' × 5', maroons and blues, with fringe. Recd October 25, 1984. Est. Value—$400. Approved for official display in office of donee.	Gen. Muhammad Zia-ul-Haq, President, Islamic Republic of Pakistan.	Do.
Richard W. Murphy (while U.S. Ambassador to Saudi Arabia).	Caran d'Ache Clock and Pen Desk Set, gold and black, made in Geneva. Recd August 1983. Est. Value—$402. Approved for official use at U.S. Embassy in Saudi Arabia.	Abdullah Bakr, Consultant to Saudi Foreign Ministry.	Do.
Gregory J. Newell, Assistant Secretary of State.	Leather portfolio, 10" × 15", dark maroon with gold tone reinforcements at corners. Recd July 2, 1984. Est. Value—$75. Delivered to GSA for disposition. November 14, 1984.	Ahmed Fizazi, Grand Wali of Casablanca, Morocco.	Do.
Robert Pelletreau, Deputy Assistant Secretary of State.	Set of silver filigree jewelry consisting of necklace, ring and earrings in locust motif, manufactured in Egypt. Recd May 31, 1984. Est. Value—$170. Delivered to GSA for disposition November 14, 1984.	MG Nammer, Director of Military Intelligence, Egypt.	Do.
A.C.E. Quainton, U.S. Ambassador to Kuwait.	(a) Two Waterman wristwatches, one round and one square with black alligator straps. (b) One silver cigarette lighter. Recd December 1984. Est. Value—$800 combined. Being held in Office of Protocol pending transfer to GSA.	Director General of Civil Aviation, Kuwait	Do.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Norman Shaft, Economic Officer, U.S. Embassy, Kuwait.	S.C. Dupont man's wristwatch, oblong shapted, quartz, two-toned gray striped face with gold-tone trim, black alligator watchband #73CAJ68, made in Paris. Recd December 1984. Est. Value—$600. Being held in Office of Protocol pending transfer to GSA.	Managing Director, Kuwait Oil Tanker Corp.	Do.
George P. Shultz, Secretary of State (all gifts for Secretary Shultz, except where noted for Mrs. Shultz).	(a) Framed lithograph, approx. 19¼" x 23", No. 10, "Grenadier Kaserne". (b) Augarten porcelain figurine of a lady cellist. (Secretary and Mrs. Shultz.) Recd February 24, 1984. Est. Value—$400 combined. Delivered to GSA for disposition November 14, 1984.	HR Dr. Rudolph Kirchschlaeger, President of Austria.	Do.
Do	(a) Five meters silk, herringbone pattern, aqua and white. (b) Five meters silk, yellow, purple pink and aqua dots. (c) lacquered jewelry box, 5½" x 10", mother-of-pearl design on top, duck and pogoda design on cover. (Secretary and Mrs. Shultz.) Recd May 1, 1984. Est. Value—$250 combined. Delivered to GSA for disposition November 14, 1984.	HE Won-Kyung Lee, Minister of Foreign Affairs of Korea, and Mrs. Lee.	Do.
Do	Six silver demitasse spoons and Six silver forks, each approx. 5¼" long, embossed with a gold colored flower on the handle. (Mrs. Shultz.) Recd May 2, 1984. Est. Value—$180. Delivered to GSA for disposition Noveimber 14, 1984.	Mrs. Chun Doo Hwan Wife of the President of the Republic of Korea.	Do.
Do	Reproduction of Pre-Colombian art piece; mythological bird done in 24K gold, 2" x 2½" on a round plastic base. Recd May 31, 1984. Est. Value—$500. Delivered to GSA for disposition November 14, 1984.	HE Rodrigo Lloreda Caicedo, Minister of Foreign Relations of Colombia.	Do.
Do	(a) One elephant statute, 6½' high, ebony body, silver saddle and decorations on ears, head, feet and trunk. Carousel-like object on its ack, a silver wisk attached to each earpiece. Semi-precious stones inlaid in silver work. (b) Six silver iced tea spoons, 7½' long, with scroll work on front with a semi-precious stone on each spoon. (c) Five books: "Selected Speeches and Writings" by J.R. Jayewardene, "Golden Threads" by J.R. Jayewardene, "The President," Felicitation Volume, Mediaeval Sinhalese Art" by Ananda K. Coomaraswamy, "Island Ceylon" by Roloff Beny and John Lindsay Opie. (Secretary and Mrs. Shultz.) Recd June 18, 1984. Est. Value—$250 combined. Delivered to GSA for disposition November 14, 1984.	HE J. R. Jayewardene, President of Sri Lanka, and Mrs. Jayewardene.	Do.
Do	Replica of Silla Dynasty Crown, approx. 12' high, gold plated with pieces of jade, in wood box. Recd June 22, 1984. Est. Value—$250. Delivered to GSA for disposition November 14, 1984.	International Cultural Association of Korea.	Received by U.S. Embassy in Seoul and forwarded to the Secretary.
Vernon A. Walters, Ambassador at Large.	(a) Jade vase, approx. 7' high, 3' diameter, gold braid around middle of vase. (b) Two jade goblets, approx. 3' high, 4' diameter, gold braid around bottom of pedestal. Recd March 29, 1984. Est. Value—$4,000 combined. Delivered to GSA for disposition November 14, 1984.	HM King Hassan II of Morocco	Presented during office visit by Col. Kostali, Moroccan Defense Attached, as a gift from the King. Non-acceptance would have caused embarrassment to donor and U.S. Government.
Do	Leopard skin (or cheetah) rug. Recd March 6, 1984. Est. Value—$200. Delivered to GSA for disposition November 14, 1984.	Omer Mohamed El Tayeb, First Vice President and Chief of State Security, Democratic Republic o Sudan.	Non-acceptance would have caused embarrassment to donor and U.S. Govt.
Paul D. Wolfowitz, Assistant Secretary, of State.	Pair of jade and gold cufflinks with phoenix design in gold. Recd November 13, 1983. Est. Value—$375. Delivered to GSA for disposition November 14, 1984.	HE Chun Doo-Hwan, President of the Republic of Korea.	Do.
Donald H. Rumsfeld, Special Middle East Envoy.	Antique map of Israel showing Holy Land withe the division of the tribes. Map is copper engraving, published ca. 1770 by R. Ware, London, 24' x 20' framed. Recd October 19, 1984. Est. Value—$600. Being held in Office of Protocol pending transfer to GSA.	Major General Uri Simchoni of Israel	Received through United Parcel Service.
Bonnie Pounds, Director US-Saudi Joint Commissions.	Jewelry, 8' chain necklace, 18 carat gold chain, w/small broach and stones. Recd February 1984. Est. Value—$150. Reported and delivered to GSA.	Muhammad Abalkhail, Finance Minister, Saudi-Arabia.	Non-acceptance would have caused embarrassment to donor.

REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of recipient	Brief description of travel or travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
AGENCY: Veterans' Administration			
Peter Ivanovich, M.D., Staff Physician, VA Medical Center (Lakeside), Chicago, IL.	Air Fare to Saudi Arabia. Value—$2,213. Recd. February 1984.	Saudi Arabia.	Acted as a Consultant to the Ministry of Health of Saudi Arabia on Renal/Cadaveric Transplantation, on annual leave during time of consultation.
Hidejiro Yokoo, M.D., Staff Physician, VA Medical Center (Lakeside), Chicago, IL.	Air Fare to and expenses while visiting Japan. Value—$2300 per month in Japanese currency. Recd. October 1983 to September 1984.	Radiation Effects Research Foundation of Hiroshima and Nagasaki, Japan.	To consult with the Japanese Ministry of Health and Welfare on a cooperative Japanese-U.S. research study on the pathological aspects of late radiation effects on the Atomic Bomb survivors; on annual leave and leave without pay during the time of consultation.

[FR Doc. 85-5499 Filed 3-8-85; 8:45 am]

BILLING CODE 4710-20-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice 85-5]

Commercial Space Transportation Advisory Committee; Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92-463, 5 U.S.C., App. I), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee. The meeting will take place on Monday, March 25, 1985, from 9:00 a.m. to 5:00 p.m. e.t., and Tuesday, March 26, 1985 from 8:30 a.m. to 12:00 noon e.t., in Room 2230 of the Department of Transportation Headquarters Building, 400 Seventh Street SW., Washington, D.C. This will be the second meeting of the Committee, which will address the proposed policy statement on the licensing process for commercial space launch activities, as well as economic and policy issues related to the commercial development of expendable launch vehicles. The members of the committee are:

Lionel Alford, Vice President for Aerospace, Boeing;
Joel Alper, President, Comsat World Systems Division, Communications Satellite Corporation;
Norman Augustine, Vice President, Martin-Marietta;
Jonathan Conrad, Sconset Group;
Leonard Cormier, President, Third Millennium (MMI);
Gregg Fawkes, National Chamber Foundation;
Dr. Jerry Grey, Editor, American Institute of Aeronautics and Astronautics, and consultant to the space industry;
David Grimes, Chairman and Chief Technical Officer, Transpace Carriers;
Kip Hawley, White House liaison to State and local governments;
T. Allan McArtor, Vice President, Satellite Systems Division, Federal Express Corporation;
Adolph Medica, Executive Vice President, Chemical Systems, United Technology/Aerojet;
Gerald Mossinghoff, Pharmaceutical Manufacturers Association;
William Rector, Vice President, General Dynamics;
George Robinson, Smithsonian Institution;
Robert Roney, Vice President, Space and Communications, Hughes;
Daniel A. Ruskin, Vice President, Government Requirements, Lockheed Missiles;
Bernard Schriever, General, United States Air Force (Retired), consultant to the aerospace industry;
Jerry Simonoff, Vice President, Citicorp Industrial Credit, Inc.;
Alton Slay, President, Slay Enterprises, Inc.
Donald (Deke) Slayton, President, Space Services, Inc., and former astronaut; and
Ronald F. Stowe, Vice President, Government and Commercial Affairs, Satellite Business Systems.

This meeting is open to the interested public, but may be limited to the space available. Additional information may be obtained from the DOT Office of Commercial Space Transportation, Room 10401, 400 Seventh Street SW. 20590, Contact: Leah G. Levy, Telephone 202/426-6170.

Please Note: New security procedures restrict admittance to the Department of Transportation Building. Your admittance will be facilitated if you call the telephone number above before arrival.

Issued in Washington, DC, on March 6, 1985.

Jennifer L. Dorn,

Director, Office of Commercial Space Transportation.

[FR Doc. 85-5747 Filed 3-8-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Railroad Administration

[FRA General Docket No. H-83-2]

Petitions for Waiver of Compliance

The Federal Railroad Administration's Freight Car Safety Standards (49 CFR Part 215) prohibit a railroad from keeping a freight car in service if it has a defective wheel. Since a wheel that has been thermally abused presents a significant risk of sudden failure and consequent derailment, § 215.103(h) defines such wheels as defective.

FRA recently initiated a rulemaking proceeding to improve the clarity of this provision. In response to the notice of proposed rulemaking issued on June 22, 1984, one commenter suggested that FRA's regulatory approach to thermally abused wheels was intrinsically flawed because it relies on a scientifically unjustified detection methodology. This commenter, the Association of American Railroads (AAR), suggested that FRA consider initiating a test program to obtain data about the thermal abuse of freight car wheels. The test program contemplated by the AAR would involve a waiver of compliance with FRA's regulation to permit one type of freight car wheel, generally described as a "curved plate," "S plate," or "low stress" wheel, to remain in service until that wheel displays clear evidence of thermal abuse such as thermal cracking. The service record of these wheels would then be compared to that of wheels removed from service under FRA's rule so as to validate or invalidate the current industry detection approach, which is premised on visual observation of discoloration criteria.

Six railroads, Norfolk Southern Corporation (NS), Consolidated Rail Corporation (Conrail), Union Pacific (UP), Atchison, Topeka and Santa Fe (ATSF), Missouri Pacific (MoPac), and Illinois Central Gulf (IOG) have now filed specific proposals with FRA concerning a suggested test program. The NS and Conrail proposals were described by FRA in notices that appeared in the March 1, 1985 issue of the **Federal Register** (50 FR 8432) and the UP and ATSF proposals appeared in the March 6, 1985 issue (50 FR 9146). In the recently filed MoPac and IOG proposals, FRA has been offered additional equipment to be used in any test program that FRA deems appropriate. MoPac volunteered the use of a fleet of approximately 21,000 freight cars that includes box, flat, hopper and gondola cars and notes that these cars are in dedicated service. These cars accumulate between 50 and 95 percent of their annual mileage on MoPac's own trackage. The commodities normally hauled in these cars include grain, automobile parts, scrap metal, pulpwood, aggregate and coal.

In addition, ICG has offerd the use of a fleet of approximately 2,800 freight cars of gondola and hopper cars. None of these cars are used to haul commodities that are classified as hazardous materials and they accumulate nearly all of their mileage while operating on ICG's own lines.

FRA invites interested parties to participate in this proceeding by submitting written comments, data or views on the appropriateness of initiating any test program concerning this topic; the nature and scope of the test program being requested by NS, Conrail, ATSF, UP, MoPac, and ICG, if a test program is deemed appropriate; and the safeguards or conditions needed to assure the safety of operations during any recommended test program. Interested parties also may desire to attend the public hearing scheduled for March 12, 1985. This hearing was announced in the **Federal Register** on December 17, 1984 (49 FR 48952) in connection with FRA's pending proposal to clarify its existing regulatory provision on this issue. FRA anticipates

that persons testifying at this hearing will address the topic of initiating the type of test program sought by ATSF, UP, NS, MoPac, ICG, and Conrail as a means of validating or invalidating FRA's regulatory provision. This hearing is scheduled to begin at 1:00 pm on March 12, 1985, in Room 8334 of the Nassif Building located at 400 Seventh Street SW., Washington, D.C.

All communications concerning this proceeding should identify the appropriate docket number (FRA General Docket No. H–83–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590. Communications received before April 15, 1985 will be considered by FRA before taking any further action. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201 of the Nassif Building at the above address.

Issued in Washington, D.C., on March 6, 1985.

Joseph W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85–5763 Filed 3–8–85; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel; Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meetings of Art Advisory Panel.

SUMMARY: Closed meetings of the Art Advisory Panel will be held in Washington, D.C.

DATE: The meetings will be held April 10 and 19, 1985.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:C:E:V, 1111 Constitution Avenue, NW., Room 2575, Washington, D.C., 20224, Telephone No. (202) 566–9259, (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1976), that closed meeting of the Art Advisory Panel will be held on April 10 and 19, 1985 beginning at 9:30 a.m. in Room 3411, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that these meetings are concerned with matters listed in section 552b(c)(3), (4), (6), and (7) of Title 5 of the United States Code, and that the meetings will not be open to the public.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978. (43 FR 52122.)

[FR Doc. 85–5753 Filed 3–8–85; 8:45 am]

Roscoe L. Egger, Jr.,

Commissioner.

BILLING CODE 4830–01–M

[Delegation Order No. 154]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: In order to expedite refunds to taxpayers and to expedite the processing of Joint Committee reports, the authority to sign Joint Committee reports may be redelegated to the Chiefs of Appeals Officers.

The text of the delegation order appears below

1. Pursuant to the authority vested in the Commissioner of Internal Revenue by section 3777(a) of the Internal Revenue Code of 1939, Treasury Department Order No. 150–2, Sections 6405 and 7851(b)(3) of the Internal Revenue Code of 1954, and Treasury Department Order No. 150–36, authority is hereby delegated to:

a. Regional Commissioners and Regional Counsel to make the decision and report to the Joint Committee on Taxation as required by section 6405 of the Internal Revenue Code of 1954 on cases within their regional jurisdiction.

b. Assistant Commissioner (Examination), the Chief Counsel, and the Director, Appeals Division, to take final action for the Commissioner on issues or matters formally presented by the Joint Committee on Taxation relating to reports submitted under section 6405 of the Internal Revenue Code of 1954. The Director, Appeals Division, is responsible for bringing any important matters to the attention of the Chief Counsel.

2. The authority delegated herein may not be redelegated except that the authority delegated to Regional commissioners and Regional Counsel in 1.a. above may be redelegated by:

a. Regional Commissioners to Assistant Regional Commissioners (Examination) or to District Directors of the Joint Committee Program Key districts.

b. Regional Counsel to Deputy Regional Counsel (Tax Litigation) and Chiefs, Appeals Offices.

3. Delegation Order No. 154 (Rev. 3) issued September 24, 1982, is hereby superseded.

EFFECTIVE DATE: February 22, 1985.

FOR FURTHER INFORMATION CONTACT: Robert L. Kukler, CC:AP:PT, 1111 Constitution Ave., NW., Room 2018, Washington, D.C. 20224 (202) 566–4458.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the **Federal Register** for Wednesday, November 8, 1978.

Howard T. Martin,

Director, Appeals Division.

Order No. 154 (Rev. 4)

Effective date: 2–22–85

Decision on Reports of Refunds and Credits to the Joint Committee on Taxation

1. Pursuant to the authority vested in the Commissioner of Internal Revenue by Section 3777(a) of the Internal Revenue Code of 1939, Treasury Department Order No. 150–2, Sections 6405 and 7851(b)(3) of the Internal Revenue Code of 1954, and Treasury Department Order No. 150–36, authority is hereby delegated to:

a. Regional Commissioners and Regional Counsel to make the decision and report to the Joint Committee on Taxation as required by Section 6405 of the Internal Revenue Code of 1954 on cases within their regional jurisdiction.

b. Assistant Commissioner (Examination), the Chief Counsel, and the Director, Appeals Division to take final action for the Commissioner on issues or matters formally presented by the Joint Committee on Taxation relating to reports submitted under Section 6405 of the Internal Revenue Code of 1954. The Director, Appeals Division is responsible for bringing any important matters to the attention of the Chief Counsel.

2. The authority delegated herein may not be redelegated except that the

authority delegated to Regional Commissioners and Regional Counsel in 1.a. above may be redelegated by:

a. Regional Commissioners to Assistant Regional Commissioners (Examination) or to District Directors of the Joint Committee Program key districts.

b. Regional Counsel to Deputy Regional Counsel (Tax Litigation) and Chiefs, Appeals Offices.

3. Delegation Order No. 154 (Rev. 3), issued September 24, 1982, is hereby superseded.

Dated: February 22, 1985.

Approved:

James I. Owens,

Deputy Commissioner.

[FR Doc. 85-5754 Filed 3-8-85; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 47
Monday, March 11, 1985

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).

CONTENTS

	Items
Equal Employment Opportunity Commission	1, 2
Federal Energy Regulatory Commission	3

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, March 18, 1985, 2:00 PM (Eastern Time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Closed to the public.

MATTER TO BE CONSIDERED:

Closed

Litigation Authorization; GC Recommendations
Proposed Commissioner Decisions and Settlements.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued March 6, 1985.

[FR Doc. 85–5782 Filed 3–7–85; 11:30 am]

BILLING CODE 6750–06–M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, March 19, 1985, 9:30 AM (Eastern Time).

PLACE: Clarence M.- Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: PART WILL BE OPEN TO THE PUBLIC AND PART WILL BE CLOSED TO THE PUBLIC.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations: A Briefing on the Sunshine Act
3. Proposed Compliance Section 84, Referral of Cases to Department of Justice
4. Proposed Contract for Expert Service in Connection with a Court Case

Closed

Litigation Authorization; General Counsel Recommendations
Proposed Commission Decisions and Settlements

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews Executive Office, Executive Secretariat, at (202) 634–6748.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This notice Issued March 6, 1985.

[FR Doc. 85–5781 Filed 3–7–85; 11:30 am]

BILLING CODE 6750–06–M

3

FEDERAL ENERGY REGULATORY COMMISSION

March 6, 1985.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409, 5 U.S.C. 552b:

TIME AND DATE: March 13, 1985, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note—Items listed on the agenda may be deleted without further notice

CONTACT PERSON FOR: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the division of public information.

Consent Power Agenda, 609th Meeting—March 13, 1985, Regular Meeting (10:00 a.m.)

CAP–1.
Project No. 5896–001 city of Rome, New York
CAP–2.
Project No. 6590–002, Hy-Tech Company
CAP–3.
Project No. 7120–003, Stewart Ranches, Inc.
CAP–4.
Project No. 8438–001, Schaffner Power Company
CAP–5.
Project Nos. 8156–002 and 003, James W. Caples
Project Nos. 8157–003 and 004, Warren Osborne
Project Nos. 8194–003 and 005, James W. Caples
Project Nos. 8229–004 and 005, Cook Electric Incorporated
CAP–6.
Project No. 2142–002, Central Maine Power Company
CAP–7.
Project No. 2725–013, Georgia Power Company
CAP–8.
Project No. 2969–001, Borough of Weatherly
CAP–9.
Project No. 3939–001, city of Denton, Texas
CAP–10.
Project No. 2149–017, Public Utility District No. 1 of Douglas Couty, Washington
CAP–11.
Docket No. EL85–13–000, Georgia Power Company
CAP–12.
Docket Nos. ER85–130–001 and 002, Illinois Power Company
CAP–13.
Docket No. ER 84–576–006, Wisconsin Power & Light Company
CAP–14.
Docket No. ER 84–574–003, Holyoke Water Company and Holyoke Power and Electric Company
CAP–15.
Docket No. EL83–24–006, Seminole Electric Cooperative, Inc.
Docket No. ER84–379–004, Florida Power and Light Company
CAP–16.
Docket Nos. ER83–628–006 and ER83–131–004, Kansas Gas and Electric Company

Consent Miscellaneous Agenda

CAM–1.
Omitted
CAM–2.
Docket No. GP83–57–000, State of Oklahoma, Section 108 NGPA determination, Tenneco Oil Exploration and Production Company, Hattie Harrell No. 4 well, FERC JD No. 80–24335
Docket No. GP83–58–000, Bureau of Land Management Albuquerque, N.M., Tenneco Oil Exploration and Production Company, Warren No. 1 well, FERC JD No. 81–40571, State Docket No. NM0981–81, Lodewick No. 3 well, FERC JD No. 82–40257, State Docket No. NM09861–81 JC

Gordon Federal No. 1, State Docket No. MN1295-80, FERC JD No. 81-05664
Docket No. GP83-60-000, State of Oklahoma, Section 108 NGPA determination, Tenneco Oil Exploration and Production Company, Hattie Harrell No. 5 well, FERC JD No. 80-24336

Consent Gas Agenda

CAG-1.
Docket Nos. TA85-2-51-000, 001 and 0002 (PGA85-2a), Great Lakes Gas Transmission Company
CAG-2.
Omitted
CAG-3.
Docket No. RP85-58-002, El Paso Natural Gas Company
CAG-4.
Docket Nos. RP85-47-000 and 003, East Tennessee Natural Gas Company
CAG-5.
Docket No. TA85-1-59-002, Northern Natural Gas Company
CAG-6.
Docket Nos. RP85-19-001 and 002, Trunkline Gas Company
Docket Nos. RP85-20-001 and 002, Panhandle Eastern Pipeline Company
CAG-7.
Docket No. RP85-37-001, High Island Offshore System
CAG-8.
Omitted
CAG-9.
Omitted
CAG-10.
Docket Nos. RP85-68-000, TA85-1-15-000 and 001, Mid-Louisiana Gas Company
CAG-11.
Docket Nos. TA85-1-32-000, TA84-1-32-000, 002 and TA83-1-32-002, Colorado Interstate Gas Company
CAG-12.
Docket No. TA85-1-18-000, Texas Gas Transmission Corporation
CAG-13.
Docket Nos. TA83-1-53-000, TA84-1-53-000 and TA85-1-53-000, KN Energy, Inc.
CAG-14.
Docket No. RP83-30-020, Transcontinental Gas Pipe Line Corporation
CAG-15.
Docket No. TA85-1-42-001, Transwestern Pipeline Company
CAG-16.
Docket Nos. TA84-2-37-000, 001, TA85-1-37-000, 001, TA85-2-37-000, 001 and RP85-1-000, Northwest Pipeline Corporation
CAG-17.
Docket Nos. ST81-181-001, 002, ST81-201-001, 002, ST84-671-000, ST82-323-001, ST80-260-002 and ST80-186-002, Transok, Inc.
CAG-18.
Docket Nos. ST85-97-000, Phenix Transmission Company
CAG-19.
Docket Nos. ST82-383-001, 002, ST83-75-001, 002, ST81-43-002 and 003, Rocky Mountain Natural Gas Company
CAG-20.
Docket Nos. CI84-510-001 and 002, Sun Exploration and Production Company
CAG-21.
Docket No. CI80-264-001, Southern Union Gathering Company
CAG-22.
Docket No. CI73-402-001, et. al., Mobil Oil Exploration and Producing Southeast, Inc. (Successor to Mobil Oil Corporation), et al.
CAG-23.
Docket No. CI85-173-000, Marathon Oil Company
CAG-24.
Docket No. CI85-176-000, Kerr-McGee Corporation
CAG-25.
Docket No. CI84-29-000, Jakes Branch Gas Company
Docket No. CP-75-288-001, Kentucky West Virginia Gas Company
CAG-26.
Docket Nos. CP83-14-070, and 074, Northern Natural Gas Company, Division of Internorth, Inc.
CAG-27.
Docket Nos. CP85-13-001 and TC85-4-001, Montana-Dakota Utilities Company
CAG-28.
Docket No. CP82-355-006, Natural Gas Pipeline Company of America
CAG-29.
Docket No. CP85-105-001, United Gas Pipe Line Company
CAG-30.
Docket Nos. CP84-539-001 and 002, El Paso Natural Gas Company and Producer-Suppliers of El Paso Natural Gas Company
CAG-31.
Docket No. CP85-60-000, KN Energy, Inc.
CAG-32.
Docket Nos. CP75-23-022 and CP75-120-015, Tennessee Gas Pipeline Company, A Division of Tenneco Inc.
Docket No. CP84-307-000, Southern Natural Gas Company
CAG-33.
Docket Nos. CP75-57-010 and CP75-57-011, KN Energy, Inc.
Docket No. CP75-154-009, Montana-Dakota Utilities Company
CAG-34.
Docket No. CP83-348-003, Algonquin Gas Transmission Company

I. Licensed Project Matters

P-1.
Omitted

II. Electric Rate Matters

ER-1.
Docket Nos. ER85-251-000 and ER85-81-000, West Texas Utilities Company
ER-2.
Docket No. QF85-113-000, William G. Brown
ER-3.
Docket No. QF83-175-003, James A. Drake and Miller's Plant Farm—Foliage and Chrysanthemum Division of Dustin, Oklahoma, Inc.
ER-4.
Docket No. EL84-25-000, Snow Mountain Pine Company v. CP National Corporation and Idaho Power Company
ER-5.
Docket No. ER82-703-000, New England Power Company

Miscellaneous Agenda

M-1.
Reserved
M-2.
Reserved
M-3.
Docket Nos. RM83-72-001 through 009, first sales of pipeline production under Section 2(21) of the Natural Gas Policy Act of 1978
Docket Nos. RM82-16-001 through 009, first sales by affilates
M-4.
Docket No. GP84-23-000, Stowers Oil & Gas Company, et al.
M-5.
Docket No. GP82-26-000, Union Carbide Corporation and Tonkawa Gas Processing Company

I. Pipeline Rate Matters

RP-1.
Reserved

II. producer Matters

CI-1.
Docket No. RI84-9-000, Grace Petroleum Corporation
CI-2.
Docket Nos. CI83-269-000, CI83-269-024 through 034, 036 and 037, Tenneco Oil Company, Houston Oil & Minerals Corporation, Tenneco Exploration, Ltd., Tenneco Exploration II, Ltd., Tinco, Ltd. and Tenneco West, Inc.
Docket Nos. RP83-11-027 through 035 and RP83-30-023 through 031, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP83-279-013, 014 and CP83-340-016, through 025, producer-suppliers of Transcontinental Gas Pipe Line Corporation
Docket Nos. CP83-340-014, 015 and CP83-340-017 through 025, producer-suppliers of Transco Gas Supply Company
Docket Nos. CP83-428-022, 023 and CP83-428-025 through 033, producer-suppliers of Transco Supply Company and Transcontinental Gas Pipe Line Corporation
Docket Nos. CP83-452-000 and, CP83-452-017 through 027, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company
Docket Nos. CP83-502-015 through 021, Tennessee Gas Pipe Line Company, A Division of Tenneco Inc.
Docket Nos. CP83-333-019 through 028, Panmark Gas Company
Docket Nos. CP83-342-002 and 003, Trunkline Gas Company
Docket Nos. CP83-343-003 and 004, Panhandle Eastern Pipe Line Company
Docket No. CP83-354-021, Trunkline Gas Company and Panmark Gas Company
Docket No. CP83-355-002, Panhandle Eastern Pipe Line Corporation and Panmark Gas Company
Docket Nos. CP84-244-002 through 008, Texas Eastern Transmission Corporation and producer-suppliers of Texas Eastern Transmission Corporation
Docket Nos. CI84332-004 through 012, Cities Service Oil and Gas Corporation,

Cities Offshore Production Company and Oxy Petroleum, Inc.
Docket Nos. CI84-374-003 through 012, TXP Operating Company
Docket Nos. CI84-485-003 through 013, Amoco Production Company
Docket Nos. CP84-539-002 through 003, El Paso Natural Gas Company

III. Pipeline Certificate Matters

CP-1.
Docket No. CP82-342-001, Consolidated Gas Company of Florida, Inc. v. Florida Gas Transmission Company

CP-2.
Docket Nos. CP81-107-016 through 023, Boundary Gas, Inc., et al.

CP-3.
Docket No. CP84-533-000, Columbia Gas Transmission Corporation v. Transcontinental Gas Pipe Line Corporation

CP-4.
Omitted

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5790 Filed 3-7-85; 11:48 am]

BILLING CODE 6717-01-M

federal register

Monday,
March 11, 1985

Part II

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, HHS.

ACTION: Notice of Actions Under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets for actions taken by the Director, National Institutes of Health (NIH), under the November 1984 NIH Guidelines for Research Involving Recombinant DNA Molecules (49 FR 46266, November 23, 1984.

EFFECTIVE DATE: March 11, 1985.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. William J. Gartland, Office of Recombinant DNA Activities (ORDA), National Institutes of Health, Bethesda, Maryland 20205, (301) 496-6051.

SUPPLEMENTARY INFORMATION: One change in the NIH Guidelines for Research Involving Recombinant DNA Molecules is being promulgated today. This proposed change was published for comment in the **Federal Register** of September 20, 1984 (49 FR 37016), and reviewed and recommended for approval by the Recombinant DNA Advisory Committee (RAC) at its meeting on October 29, 1984. In accordance with section IV-C-1-b of the NIH Guidelines, this action has been found to comply with the NIH Guidelines and to present no significant risk to health or the environment.

The decision on a second proposal published for comment in the **Federal Register** of September 20, 1984 (49 FR 37016), and reviewed and recommended for disapproval by the RAC at its meeting on October 29, 1984, is also described in this announcement.

Part I of this announcement provides background information on the proposals. Part II gives the change in the NIH Guidelines effective today.

I-A. Proposed Amendment of Section III-D of the NIH Guidelines

In a letter dated August 21, 1984, Mr. C. Searle Wadley and Dr. John H. Keene of Abbott Laboratories, North Chicago, Illinois, proposed that the following sentence be added to Section III-D of the NIH Guidelines:

Although these experiments are exempt, it is recommended that they be performed at the appropriate biosafety level for the host or recombinant organism (for biosafety levels see "Biosafety in Microbiological and Biomedical Laboratories").

In support of their proposal, Mr. Wadley and Dr. Keene stated it would be advisable to recommend appropriate biosafety levels be considered for those recombinant experiments that are exempt from the NIH Guidelines.

This proposed amendment was published for public comment in the September 20, 1984, **Federal Register** (49 FR 37016). No comments were received on this proposal. The RAC discussed this proposed modification of the NIH Guidelines at its October 29, 1984, meeting.

Several RAC members endorsed the addition of the proposed language to the NIH Guidelines. However, RAC recommended the proposed language be added to the introductory language of Appendix A, *Exemptions Under Section III-D-4*, rather than Section III-D. In addition, RAC suggested the reference to the booklet "Biosafety in Microbiological and Biomedical Laboratories" be added to the proposed language. A motion to this effect was accepted by the RAC by a vote of twenty-two in favor, none opposed, and no abstentions.

I accept this recommendation, and Appendix A of the NIH Guidelines will be so modified.

I-B. Proposed Addition of Prohibited Experiments to the NIH Guidelines.

Mr. Jeremy Rifkin of the Foundation on Economic Trends, Washington, D.C., proposed that the NIH Guidelines for Research Involving Recombinant DNA Molecules be amended to prohibit any experimentation involving the transfer of a genetic trait from one mammalian species into the germline of another unrelated mammalian species.

The description of the review of Mr. Rifkin's proposal is organized as follows:

I-B-1. Description of the Proposal
I-B-2. Comments on the Proposal in Response to the September 20, 1984, **Federal Register** Notice
I-B-3. The Draft Minutes of the Relevant Part of the October 29, 1984, RAC Meeting
I-B-4. Decision

I-B-1. Description of the Proposal

Mr. Rifkin submitted the following letter dated August 21, 1984, to the NIH:

I am formally requesting that the following item be placed on the agenda for the October 29, 1984 meeting of the Recombinant DNA Advisory Committee of the National Institutes of Health.

It has come to our attention that the National Institutes of Health and the National Science Foundation are helping to fund specific experiments by Dr. Ralph Brinster of the University of Pennsylvania in which human genes regulating growth hormone is being injected into sheep and pig embryos with the express purpose of incorporating these human genes permanently into the germ line fo these other mammalian species. These experiments are currently being conducted, in part, with the assistance and cooperation of the USDA at its agricultural experimental station at Beltsville, Maryland.

If successful, these experiments would represent the second time in history that a segment of the genetic make-up of homo-sapiens has been permanently transferrred into the genetic make-up of another species. The Brinster team has already successfully transferred the human growth hormone gene into the germ line of mice. Thus, a dramatic new technological threshold has been crossed, making it imperative that the Federal Government act immediately and expeditiously to establish a policy in regard to such experimentation.

Therefore, I am proposing the following amendment to the NIH guidelines for recombinant DNA experimentaion:

The NIH prohibits any experimentation involving the transfer of a genetic trait from one mammalian species into the germ line of another unrelated mammalian species. 'Unrelated' shall be defined as any two species that cannot mate and produce one generation of offspring either in the wild or under pre-existing domestic breeding programs.

This NIH guideline shall encompass all mammalian species, including homo-sapiens. Upon adoption of this guideline by the NIH, said agency shall immediately discontinue funding any current experimental research involving the transfer of genetic traits from one mammalian species into the germ line of another unrelated mammalian species and shall instruct all institutions receiving NIH grants that any such experimentation using private funds shall be grounds for the immediate suspension of all NIH research grants to the institution. This amendment shall also cover all private companies who are signatories of license agreements with NIH funded institutions where said agreements contain clauses requiring the licensee to adhere to the NIH guidelines involving recombinant DNA experimentation.

The intent of this amendment to the NIH guideline is to protect the biological integrity of every mammalian species. Existing Federal policy, as reflected in many Federal statutes, protects the integrity and well being of species. The crossing of species borders and the incorporation of genetic traits from one species directly into the germ line of another species represents a fundamental assault on the principle of species integrity and violates the right of every species to exist as a separate, identifiable creature.

Certainly most human beings would condemn any attempt to introduce animal genes permanently into the germ line of homo-sapiens. We would abhor any such experiment as a gross and unconscionable violation of our telos as a species. In like manner this amendment establishes the principle that similar experiments between all other mammalian species be condemned

and outlawed on the same grounds, i.e. that such an intrusion violates the telos of each species and is to be condemned as morally reprehensible.

As to non-mammalian species, the same principle of species integrity ought to apply. Therefore, I am proposing that in addition to the adoption of the above amendment to the NIH guidelines, the RAC immediately establish a working sub-group whose purpose will be to propose any additional protocols or guidelines that might be necessary to ensure compliance with the spirit of the above amendment in regard to the protection of the germ line of all species.

On August 23, 1984, Mr. Rifkin submitted an additional letter to NIH:

I am submitting an additional item for placement on the agenda for the October 29, 1984 meeting of the Recombinant DNA Advisory Committee of the National Institutes of Health. The following amendment to the NIH guidelines should be raised for discussion and debate along with the proposed amendment which I forwarded to you in my letter dated August 21, 1984. I would like this enclosed amendment to be considered first on the agenda and the amendment in my August 21 letter to be considered second.

The amendment shall read as follows:

The National Institutes of Health prohibits any experimentation involving the transfer of a genetic trait from a human being into the germ line of another mammalian species. The National Institutes of Health also prohibits any experimentation involving the transfer of a genetic trait from any mammalian species into the germ line of a human being. Furthermore, the National Institutes of Health considers any such experimentation involving the transfer of genetic traits between animal and human germ lines to be morally and ethically unacceptable.

Thank you for your time and consideration on this matter.

I-B-2. Comments on the Proposal in Response to the September 20, 1984, Federal Register Notice

These proposed actions were published in the September 20, 1984 (49 FR 37016), **Federal Register** for public comment.

Prior to the October 29, 1984, RAC meeting, 360 letters containing 434 signatures were received by the NIH. Three hundred and fifty-nine letters with 433 signatures opposed Mr. Rifkin's proposed actions. One letter with one signature supported the proposal.

A total of 297 letters containing 313 signatures opposing Mr. Rifkin's proposal were received from the general public. These letters can be divided by geographical area as follows: 129 letters with 133 signatures from Elizabethtown, Kentucky; 47 letters with 52 signatures from Athens, Ohio; 24 letters with 24 signatures from Louisville, Kentucky; 26 letters with 29 signatures from Nelsonville, Ohio; 15 letters with 16 signatures from Zanesville, Ohio; 14 letters with 14 signatures from New Marshfield, Ohio; 10 letters with 10 signatures from Rockbridge, Ohio; 5 letters with 5 signatures from Akron, Onio; 3 letters with 4 signatures from Albany, Ohio; 4 letters with 4 signatures from West Point, Kentucky, 2 letters with 3 signatures from The Plains, Ohio; 2 letters with 2 signatures from Logan, Ohio; 2 letters with 2 signatures from Rineysville, Kentucky; 2 letters with 2 signatures from Seminole, Florida; 2 letters with 2 signatures from Anchorage, Kentucky; 1 letter with 2 signatures from Lancaster, Kentucky; and 1 letter with 1 signature each from: Radcliff, Kentucky; Jefferson, Kentucky; Hodgenville, Kentucky; Nashport, Ohio; Greysville, Ohio; Mount Perry, Ohio; Durham, North Carolina; Salem, Indiana; and St. Petersburg, Florida.

Comments typical of the letters received from this segment of the population can be seen in the letters from Ms. Charlene Thompson of Elizabeth, Kentucky, Mr. James E. Bee of Zanesville, Ohio, Ms. Barbara Walence of New Marshfield, Ohio, Mr. H. Erick Layton of Durham, North Carolina, Ms. Jeannie Clark of Elizabethtown, Kentucky, and Mrs. Bonnie C. Vail of Athens, Ohio.

Ms. Charlene Thompson wrote:

I am strongly urging the committee to overrule the proposed amendment. * * *

Mr. James E. Bee wrote:

I am very concerned that Mr. Rifkin's proposal does not take into consideration the discontinuance of important medical research relative to genetic disorders, cancer and other diseases.

Ms. Barbara Walence wrote:

If this procedure is prohibited, you are limiting the search for a cure for this genetic problem.

Mr. H. Erick Layton wrote:

Please act to establish a wise and humane policy. * * *

Ms. Jeannie Clark wrote:

I feel we, as caring people, need to help those less blessed than we that are born with good health. One way to help I feel is through research so I come before you and ask you to overrule the proposed amendment. * * *

Mrs. Bonnie C. Vail wrote:

I am saddened to think that all medical research would be delayed or prohibited.

Thirty-three letters with 80 signatures were received from scientists and researchers opposed to Mr. Rifkin's proposal. The following types of arguments were offered by this group.

Dr. Finnie A. Murray of Ohio University wrote:

It is apparent that Mr. Rifkin believes that introduction of a gene derived from one species into the genome of another species violates some essential essence of the species, what he calls the species 'border'. It is a misconception that one or a few genes are sufficient to violate the integrity of a species. Individuals within species possess only a portion of the gene pool of the species, and the gene pool is dynamically evolving, with loss and gain of genetic variation. Introduction of 'new' genetic material into a species can be argued to be beneficial to the ability of the species to compete and survive, because it is the limit in genetic variation within a species that determines its long-term survivability. An individual within a species is not the definition of that species, it is only a representative of that species.

Dr. Roy D. Schmickel of the University of Pennsylvania wrote:

The use of interspecies constructs has proven to be extremely useful and permits a careful analysis of small differences between species. The work by Ralph Brinster here at the University of Pennsylvania has been extraordinary in its productivity and represents one of the most fruitful avenues of investigation of hormone action. Only when a gene is injected into germ cells can the effect of the gene be seen in an entire organism, and only when a human gene has been injected into another mammal can we ethically study the embyrological action of a human gene. When we consider the enormous number of diseases that are caused by hormonal deficiencies or abnormalities, it is imperative that we continue this type of study of hormonal genes. It is not difficult to look ahead slightly to see the enormous impact that such experiments will have in helping us understand ways to prevent developmental birth defects.

Dr. Ira Herskowitz of the University of California, San Francisco, wrote:

DNA transfer from humans or other mammals into non-human mammals makes it possible to address fundamental questions in developmental biology concerned with gene expression. In addition such transfer experiments make it possible to address fundamental questions concerned with carcinogenesis. Information gleaned from these experiments is certain to provide important new insights into disease processes both in humans and in other mammals. The end result will be a literal strengthening of species, a deeper understanding that will improve the ability of these species to combat disease.

Dr. Oliver Smithies of the University of Wisconsin-Madison wrote:

In all my studies I am constantly made aware of the great commonality of genetic material. Mammalian species that have no possible means of breeding at the present time have features in their genomes of remarkable similarity. Nowhere do I find evidence supporting any inviolate principle of species integrity. Indeed, there is increasing evidence that genetic material can be transferred from one species to another by viral and other microbial agents. Such transfers, although infrequent, appear to be

natural steps in evolution. Mr. Rifkin is surely not well-informed when he tries to protect a non-existent principle of species integrity.

* * * Mr. Rifkin is asking for a blanket prohibition *on moral grounds*. In doing this he shows that his view of morality is sorely limited, for he does not consider the moral harm of allowing human genetic abnormalities, some of which cause great misery, to go uninvestigated when we have available tools for their study and possible treatment. The door would be closed on important avenues to the alleviation of human suffering if Mr. Rifkin's amendments were to be passed.

Dr. David Baltimore, Director of the Whitehead Institute, wrote:

I oppose this proposal * * * it would seriously hamper experimental research. The transfer of genes from one species into another is often a necessary part of protocols designed to understand how inserted genes behave in host organisms. If the gene is not foreign to the host species, its activity is often impossible to distinguish from that of endogenous genes.

Regarding Mr. Rifkin's contention concerning the "telos" of species, Dr. Baltimore wrote:

Genes of human and dogs are not imprinted with human or canine qualities; they are parts of systems and often they are virtually identical.

Dr. B. L. Horecker of the Roche Institute of Molecular Biology wrote:

I would oppose any such blanket restriction on research and the quest for new scientific information as a dangerous precedent that is incompatible with scientific freedom. How the results of such research are implemented becomes a matter for regulation, but not the conduct of the research *per se*.

Dr. Robert M. Bock of the University of Wisconsin-Madison wrote:

Rifkin's edict could sentence humans to continued suffering from autoimmune and genetic diseases even after future understanding shows safe ways to prevent such sufferings and loss of life.

Fourteen letters containing fifteen signatures opposed to Mr. Rifkin's proposal were received from various societies. These letters were from Dr. K. W. Allard, President, Genetics Society of America; Dr. Robert H. Foote, President, Society for the Study of Reproduction; Dr. Andrzj Bartke, Executive Vice President for the Society for the Study of Reproduction and Immediate Past President of the American Society of Andrology; Dr. Charles F. Whitten for the Board of Directors of the National Association for Sickle Cell Disease; Dr. Warren H. Pearse, Executive Director of the American College of Obstetricians and Gynecologists; Mr. George Zeidenstein of the Population Council; Mr. C. William Swank, Executive Vice President of the Ohio Farm Bureau Federation, Inc.; Dr. Elizabeth M. Short, Director, Division of Biomedical Research and Faculty Development of the Association of American Medical Colleges; Dr. Harlyn O. Halvorson, Chairman, Public and Scientific Affairs Board and Dr. Monica Riley, Chairman, Committee on Genetic and Molecular Microbiology, American Society for Microbiology; Dr. Sheldon J. Segal of the Rockefeller Foundation; Dr. Preston V. Dilts, President, Association of Professors of Gynecology and Obstetrics; Dr. David E. Rogers of the Robert Wood Johnson Foundation; Mr. Harvey S. Price, Executive Director, Industrial Biotechnology Association; and Dr. Charles Yanofsky, President, American Society of Biological Chemists.

Nine letters with twelve signatures opposed to Mr. Rifkin's proposal were received from physicians.

Dr. Henry A. Peters of the University Hospital and Clinics of the University of Wisconsin-Madison wrote:

As a member of the Medical Advisory Board of the Muscular Dystrophy Association, I would like to express my objections to this unscientific proposal, which, because of its probable effect on research and hopefully treatment, poses a very amoral act.

Five letters with twelve signatures opposed to Mr. Rifkin's proposal were received from individuals involved in animal care and animal husbandry.

Among this group, Dr. Neal L. First of the University of Wisconsin-Madison, wrote:

. . . the added gene to the genome of a cow, sheep, or pig may add to the diversity of that species in a way which enhances its survival or well-being as countless mutations have done through the generations.

A letter commenting on Mr. Rifkin's proposal was also received from Mr. Alexander Morgan Capron, Professor of Law, Ethics and Public Policy of the Georgetown University Law Center. In stating his opposition to Mr. Rifkin's proposal, Mr. Capron wrote:

. . . scientific knowledge and discovery . . . are high values in our society and attempts to control experimentation that stand in the way of advances in knowledge or discovery of medically useful procedures require substantial justification.

It seems to me that this justification is absent in the case of Mr. Rifkin's proposal. . . .

Through December 31, 1984, 26 additional letters with 28 signatures were received after the October 29, 1984, RAC meeting. Twenty-five of these letters with 27 signatures were opposed to Mr. Rifkin's proposal. Of these letters, twenty-two letters with 24 signatures were received from the general public. These letters originated from: Boston, Massachusetts; Salem, Massachusetts; Winthrop, Massachusetts; Logan, Ohio; Athens, Ohio; Louisville, Kentucky; McArthur, Ohio; New Straitsville, Ohio; Albany, Ohio; and Elizabethtown, Kentucky. Three letters with three signatures were sent by scientists. One letter containing one signature supported Mr. Rifkin's proposal.

I–B–3. The Draft Minutes of the Relevant Part of the October 29, 1984, RAC Meeting

Mr. Mitchell asked Mr. Jeremy Rifkin of the Foundation on Economic Trends to present his proposal (tabs 1182, 1183, 1184, 1186/II, 1187, 1194, 1195).

Mr. Rifkin said while closely related species may be bred by traditional practices, nature rather narrowly proscribes what can be accomplished. "Species walls, mating boundaries establish some limits as to the kind of recombinations that may occur through natural methods." Mr. Rifkin contended the experiments of Dr. Brinster of the University of Pennsylvania in which genes from one mammalian species are introduced into another species are qualitatively different from preexisting breeding programs.

Mr. Rifkin said to date the biological unit of manipulation has been the organism; now the unit of manipulation has become the gene. The unit of importance ceases to be the species itself, but rather the composition of genetic materials. Mr. Rifkin contended society is beginning a very long, protracted journey which will reshape our concept of life so that we will increasingly see the importance of life at the genetic level and not at the species level.

Mr. Rifkin said some researchers argue the human growth hormone gene transferred into mice by Dr. Brinster is not unique, that it's only a chemical. Mr. Rifkin said this argument is a form of scientific reductionism; if this gene is simply a chemical, then certainly every other gene that makes up the human species is simply a chemical. If there is nothing unique about transferring this gene and if the transfer of this gene poses no ethical, moral, or public policy questions, "at what level would there be questions posed?" Would the animal have to take on human characteristics before a problem would be identified?

Mr. Rifkin asked RAC to develop detailed criteria. "What genes are permissible in the human gene pool to transfer other species? What genes in

the human gene pool are impermissible to transfer to other species? If the committee decides such criteria cannot be developed, then all human genes could potentially be transferred to other species for some short-term medical or economic benefit. Mr. Rifkin said this possibility poses a major ethical and policy question.

Mr. Rifkin said every major scientist, institution, and association in the United States has responded to the **Federal Register** announcement of his proposals and almost all have stated that they find absolutely no ethical problems in transferring genes between species. Mr. Rifkin noted, however, that several commentators including Dr. David Baltimore, Director of the Whitehead Institute, wrote that some ethical questions might arise if genes from other species are transferred into the human germline. Mr. Rifkin said he could not understand why introducing a gene from another species into the human germline might pose an ethical problem while transferring a human gene into the germline of other species would not pose a problem. He contended the NIH should have considered the ethical issues of transferring genes between species before funding Dr. Brinster's grant.

Mr. Rifkin in concluding his remarks said:

> Finally, this committee could decide today on a quick vote, which it has done many times in the past—and we've been together many times—that there are no problems here, a quick vote up or down, no ethical concerns on transferring genes between species; but I would like to say that even if that vote comes today the concerns of this committee might not be the concerns of the rest of the American public. Now, I know that many scientists think the American public are not educated, they can't possibly understand all the complex questions raised by this technology, that unfounded fears are often raised in dealing with this. I suggest that that's not a correct analysis. Genetic engineering gives us the most potentially powerful instrument to change the biology of this planet that we have ever had at our disposal. Certainly the American public has every right to believe there are some ethical and social questions at each stage, and I would say that this stage is a fundamental precedent stage today. This committee, by its vote, will say to the Director of the NIH that it is your opinion that there is no ethical problem as we proceed with this technology in transferring genetic traits between species; and therefore, it should be the accepted policy of the United States government to proceed.

Mr. Rifkin said Dr. Michael Fox, Scientific Director of the Humane Society of the United States and co-plaintiff with the Foundation on Economic Trends in a lawsuit against the NIH, also wished to comment on the proposal.

Dr. Fox said he represents some quarter of a million members of the Humane Society and is "speaking for the animal kingdom." Dr. Fox said interferring with animal genomes raises ethical issues. Nature, in her wisdom, may well have set up species barriers for a particular purpose, i.e., for managing natural ecosystems and their coevolution.

Dr. Fox said just as there are multiple genetic defects in purebred dogs and cats as a consequence of selective breeding, use of recombinant DNA techniques may also jeopardize animal welfare. He said traditional breeding programs have produced animals with multiple inbred genetic defects, not for utilitarian purposes but for sheer esthetic reasons.

Dr. Fox said selective breeding of high yield strains of farm animals results in a variety of so-called "production diseases:" Lameness, osteoporosis, growth abnormalities, metabolic disorders affecting magnesium and calcium levels, and many other health problems.

Dr. Fox said Dr. Brinster's idea is to create a pig or sheep that will grow twice as big, twice as fast. Dr. Fox asked what is saved if they will grow twice as big, twice as fast. He replied, "Time not food, because one never gets something for nothing." He contended Dr. Brinster's research has demonstrated that supplementation of dietary zinc is needed for the modified mice to grow normally. Dr. Fox said that before the need for zinc supplementation was discovered there was considerable animal suffering.

Dr. Fox said we are on the point of turning animals into biological machines. He said Dr. Brinster stated that genes for valuable proteins could be introduced into animals, and the protein products harvested from the blood or milk of these animals. Dr. Fox asked if modifying animals for this purpose is ethically and morally acceptable. He said the animal's soma will be modified if animals are made into biological machines; but "the psyche of the animal, its telos, its intrinsinc nature" will not be affected. In such a situation, the mind of the animal may be trapped in a totally alien body. He asked RAC to address this issue.

Dr. Fox said an environmental impact assessment should be done if introduction of genetically modified microorganisms into the intestines of animals is proposed. He also said that perhaps a person with veterinary or animal science expertise should be appointed to RAC.

In regard to what mankind is going to do to the animal kingdom, Dr. Fox urged the committee to consider the word "dominion" which he said is not derived from the Latin word "domino," to rule over, but from the Hebrew word "rache," to steward with compassion and understanding.

Dr. Clowes said RAC has received an impressive body of letters almost all opposing Mr. Rifkin's proposal. He asked the assembly's indulgence as he quoted from several letters.

Dr. Clowes said one philosophical argument advanced by a number of geneticists and stated by Dr. Maxine Singer of the National Institutes of Health is that:

> The notion that a species has a telos (a purpose) contravenes everything we know about biology. A species can have, and may in the past have had a telos (an end) namely extinction. That is the only telos known to exist. No species we know of has a fixed genome. Quite the contrary. Genetic studies throughout this century have again and again confirmed that the genetic makeup of organisms within a species is continually changing through recombination, mutation, deletion, duplication, rearrangement and the insertion of DNA sequences. Recent experiments have, in anything, shown us that this remarkable plasticity is more extensive than we imagined and is a fundamental property of living matter.

Dr. Clowes said a number of letters emphasized the potential practical aspects of gene transfer experimentation. Dr. Donald Brown, Director, Carnegie Institution of Washington, states:

> The introduction of foreign genes into the germlike of mammals other than humans has many potential benefits for mankind. Genetic changes by modern methods can be done rapidly and with much greater precision than conventional breeding and selection programs.

Dr. Clowes then quoted from a letter from Dr. David Kunkle, Assistant Professor at the University of Texas Medical Branch at Galveston who wrote he opposed Mr. Rifkin's proposal because:

> If adopted * * * [the proposal] would have a most far-reaching adverse impact on a promising future approach to the treatment of human genetic diseases. Some of these diseases cause by enzyme deficiencies in a well-defined target area may soon prove amenable to treatment by somatic gene therapy in which the wild type gene would be introduced in somatic cells of the affected organs. . . . Obviously, detailed animal experiments would have to precede any possible human trials of such a scheme. Since animal models of only a few genetic diseases are available, most of such experiments would attempt to detect expression of exogenous genes against a wild type

background. To establish definitively the nature of any increased expression, heterologous genes would have to be used. But it is precisely those experiments which Mr. Rifkin now seeks to ban. Thus, his proposal would forever seal off this promising area of research.

Dr. Clowes said the American public had expressed its point of view on this topic and called attention to the several hundred letters from individuals opposed to the proposed prohibition. Dr. Clowes quoted from a letter from Ms. Kristie Baird of Elizabethtown, Kentucky, who wrote, "I believe that anytime it is possible to save people's lives, it should be done."

Dr. Friedman first addressed Mr. Rifkin's statement that the American public is not educated. Dr. Friedman said in fact the American public is educated and has made a basic decision that research on animals to ameliorate human disease is not only acceptable but should be done.

Dr. Friedman said one person's ethics may differ from another's. In his mind, treating human diseases and alleviating human suffering is a primary moral imperative. Dr. Friedman said Mr. Rifkin's proposal would eliminate one method of researching certain diseases and making broad gains in the therapy of these diseases.

Dr. Friedman said the language of Mr. Rifkin's proposal is very vague. For example, the term "genetic trait" is used but not defined. One could argue that a whole gene could be transferred without affecting a genetic trait; e.g., eye color may depend on a number of genes, and transferring one of these genes may not change eye color.

Dr. Friedman said it is difficult to define a unique gene because in some cases the gene of one species differs from the gene of another species by a single base pair. The differences within members of the species may be more broad than the differences between the species. In addition, gene exchange between species probably occurs in nature; viruses pick up genetic material and probably carry such material across species lines.

Dr. Gottesman reviewed the current status of gene transfer experiments under the NIH Guidelines for Research Involving Recombinant DNA Molecules: (1) Any experiment which involves the introduction of recombinant DNA into humans must be reviewed by RAC and approved by NIH; this would include both proposed introduction into somatic or germline cells although no germline experiments are anticipated in the near future; and (2) experiments in which recombinant DNA is introduced into animals are covered by Section III–B of the Guidelines and are subject to review and approval by the local Institutional Biosafety Committee (IBC).

Dr. Gottesman said gene transfer experiments are an important tool through which questions about gene regulation and the development of complex systems such as animals or humans can be addressed. She pointed out that at this time no other method exists for approaching these types of studies. Dr. Gottesman said these studies will result in advances in treating human diseases, in treating animal diseases, and in using animals more efficiently as food sources. She said Mr. Rifkin's proposal would prohibit these types of experiments and would stop extremely important research.

Dr. Gottesman said she is aware of the controversy surrounding the ethics of using animals in research; however, the viewpoint that animals should not be used in research is one which she did not share. She did not think the majority of people in this country shared this viewpoint. She thought most people would come down very strongly in favor of using animal models to test disease therapies.

Dr. Gottesman said she was overwhelmed by the number of letters received in response to the **Federal Register** announcement of the proposed prohibition. Anyone who has attempted to obtain public reponse to any type of announcement knows how hard it is to obtain comments. Yet in addition to the approximately fifty letters from scientists who considered it important to write both for their own research and for society's ability to treat human disease or deal with hunger, over 250 letters have been received from the general public. Dr. Gottesman said clearly a number of people in this country consider this type of research extremely important.

Dr. Gottesman recommended that RAC not only not pass the proposed amendment to the Guidelines, but she urged RAC to approve a motion indicating that RAC considers gene transfers experiments to be very important research which should be fostered.

Dr. Landy said the American people are entitled to an intelligent and national discussion of the ethical issues raised by technological advances. Dr. Landy felt, however, Mr. Rifkin had behaved irresponsibily in ignoring all that is known about genetics and evolution and had obfuscated the issues.

Dr. Landy said increasing the human lifespan has increased the world population. Technology for producing more food, more efficiently is necessary. Dr. Landy quoted from a letter from Dr. Charles Yanofsky of Stanford University:

> Modern medicine has already done much to keep individuals with genetic defects alive to the child-bearing age and beyond. Since society and the medical profession welcome these efforts, we must not prohibit exploration of any possibility of correcting a serious genetic defect.

Dr. Landy said many of the undesired consequences of animal breeding alluded to by Dr. Fox are a result of limitations in animal husbandry. Recombinant DNA technology may allow introduction of a particular desirable gene into an animal without introducing undesirable traits, and this is an argument in favor of continuing research in this area.

Dr. Landy said he was impressed by the number and breadth of the letters the NIH received concerning Mr. Rifkin's proposal. There are letters from high officers of academic and research institutions, not only in the sciences but also in the humanities and law; letters from individual scientists engaged in research and education, including many of recognized international stature; letters from private foundations dedicated to improvement of human welfare; letters from organizations and individuals concerned with animal husbandry and efficiency of food production; letters from medical practitioners and educators in heath care delivery; and rather touching letters from individual citizens concerned about the future prospects for solutions to now intractable health problems.

Dr. Wensink said the issues are clear cut and well-described. He thought clearly defined potential benefits have been enumerated and are opposed by unsupported, mythical fears of risks.

Dr. Bowman said gene transfer may be the only feasible way of curing a disease such as cystic fibrosis. She said to even consider stopping the gene transfer research needed to address this disease is out of the question.

Dr. McKinney said he wished to point out that in addition to proposing modifications to the NIH Guidelines, Mr. Rifkin has chosen to interpret how the NIH should apply the proposed modifications; Mr. Rifkin contends the NIH should extend its purview to commercial companies engaged in recombinant DNA research under a licensing agreement with an NIH funded institution which cited the NIH Guidelines in the licensing agreement. Dr. McKinney said Mr. Rifkin was attempting to involve the NIH, which is not a regulatory agency, in an area where it has no authority. Dr. McKinney

urged the RAC to reject Mr. Rifkin's proposal.

Dr. McGarrity said Mr. Rifkin's statement that RAC ignores the public is false. Public members have long been part of RAC's composition, and RAC has actively sought to include the public in its deliberations. Dr. McGarrity said Mr. Rifkin underestimates the intelligence and knowledge of the public. Dr. McGarrity stated that Mr. Rifkin's contention RAC would be saying there are no ethical problems if Mr. Rifkin's proposals are not approved is utter nonsense. Dr. McGarrity said major points of concern exist, but the scientific approach examines the data and bases a decision on a case-by-case review.

Dr. Walters responded to Mr. Rifkin's implication that RAC has always given permission to proceed. Dr. Walters noted that until recently NIH procedures permitted the local IBCs and Institutional Review Boards (IRBs) to approve human gene therapy protocols without RAC review and NIH approval. The NIH Guidelines were revised to require the much more rigorous process of national review.

Dr. Walters said transfer of genes into the human germline would involve the use of *in vitro* fertilization (IVF). NIH funded IVF research is currently under a *de facto* moratorium; national review by an Ethics Advisory Board is required, and at present, such a board does not exist.

Dr. Walters said animal welfare, either in the laboratory or in animal husbandry, is a real issue. RAC, however, is not the appropriate group to address this issue. Some states have animal welfare rules and the NIH Office for Protection from Research Risks is participating in the process of revising existing Public Health Service animal welfare guidelines. Dr. Walters felt local review committees charged with animal welfare are the appropriate bodies to deal with this issue. Dr. Walters suggested RAC reject Mr. Rifkin's proposal in light of the potential benefits gene transfer research might provide.

Dr. Fox though public support of gene transfer research is based on fear of death and suffering. He said Aristotle's original meaning of "telos" was not a final endpoint but the organism's intrinsic nature expressed in the here and now. Society's responsibility is to the present not to the future. He said we are not progressing anywhere.

Dr. Fox contended that what is often regarded as progress is simply dealing with residual problems passed from one generation to the next. He said humans have a tremendous responsibility to the animal kingdom, and he is concerned with RAC's human-centered rhetoric and rationalizations. He said he had to leave to wash his hands.

Dr. Miller of the Food and Drug Administration said he wished "to address some glaring factual errors in Dr. Fox's remarks in what I thought was otherwise a rather absurd presentation." Dr. Miller said early field trials of bovine growth hormone in dairy cows suggest the cows utilize food stocks more efficiently with as much as a 15 percent improvement in milk output without a concomitant increase in food consumption, in effect, "getting something for nothing" through improved nitrogen utilization.

Dr. Miller said Dr. Fox had not understood the function of zinc supplementation in the diet of Dr. Brinster's genetically engineered mice. Dr. Miller explained that the recombinant vector was constructed so that the human growth hormone gene is under the control of a zinc-sensitive promotor. Dietary zinc supplementation increases the activity of the human growth hormone gene, and the mice grow larger than normal. However, in the absence of zinc supplementation, they are of normal size and do not suffer.

Dr. Miller said adopting Mr. Rifkin's proposal would inflict incalculable harm on several very important areas of scientific inquiry; e.g., the study of genetic susceptibility to diseases such as breast cancer. Harm would also be inflicted on research aimed at developing therapies for human genetic diseases since animal studies which are necesssary prior to human clinical trials could not be carried out.

Dr. Miller said Mr. Rifkin's proposal is:

> * * * yet another highly contrived issue that is another manifestation of what 'Nature' * * * alluded to in characterizing Mr. Rifkin as someone whose nuisance to substance ratio is high.

Dr. Joklik said he questioned what he was hearing when the proposition is made that progress is not only elusory but possibly even undesirable, or when the implication is made that the health of this nation is no better today than it was 100 years ago, or when the discussion centers on what was in Aristotle's mind when he used certain phrases.

Dr. Joklik said the practical benefits of this type of research for humankind is unquestionable; the evidence supporting this position is irrefutable. He called absurd the proposition that the prospect of benefit to untold humans through generations to come should be outweighed by putative discomfort to a small number of laboratory animals.

Dr. Joklik said a concept of "species" was being invoked in support of Mr. Rifkin's proposals. Dr. Joklik said he is a member of the International Committee for the Taxonomy of Viruses which has been trying to develop a definition of species with regard to viruses. Dr. Joklik said it has been utterly impossible for this committee to arrive at a definition of a species. Species are constantly evolving, and the transfer of genes from one "species" to another has occurred throughout evolution.

Dr. Joklik supported Dr. Gottesman's recommendation that RAC forcefully state research on gene transfer be fostered and not hindered.

Dr. Rapp supported Dr. Joklik's comments. He pointed out that medical research has tremendously benefited a variety of animal species. The development of a rabies vaccine is one example.

Dr. Rapp said Dr. Fox does not like the fact that humans are human-centered, but species tend to be self-centered. Dr. Rapp stated that stewarding and handling animals in a humane manner is important, but to think about preventing certain lines of research in any species is a very dangerous idea. If this concept were to be seriously supported, society should consider the "telos" of bacteria and viruses.

Dr. Rapp said he supported Dr. Gottesman's proposal that RAC issue a statement in support of this type of research. He agreed ethical issues might exist, but the consequences of forfeiting all benefits of gene transfer research for what at the moment appear to extremely minor risks are so great that RAC should not support Mr. Rifkin's proposals.

Dr. Saginor said that:

> * * * although some of Mr. Rifkin's original purposes may have been sincerely based, it appears that various catch phases are uttered and written to engender pubic fear and potential press coverage with almost McCarthy-type tactics. I want to address a statement such as "a quick vote" * * * by our committee. I resent the overt implications, and I resent this playing to potential inflammatory press quotes, and I particularly resent you implying that our committee and subcommittees do not care * * * and do not carefully consider various ramifications of our decisions before a vote is taken.

Dr. Saginor said it is important to address the issues and not strike fear into the American public. He said he strongly supports Dr. Gottesman's suggestion.

Dr. Gottesman moved that:

> The RAC reject the amendments proposed by Mr. Rifkin and published in the **Federal Register** of September 20, 1984, Section II.

Both its importance in current scientific research and the long-term possibilities for treatment of human disease and the development of more efficient food sources make it a moral imperative that we strongly oppose the blanket prohibition of this class of experiments.

Dr. McKinney seconded the motion.

Mr. Rifkin said he believed RAC members were well-intentioned; they would not be part of the medical research community if they did not think they were trying to improve the lot and welfare of humanity. Mr. Rifkin said it is very difficult for any profession to critique itself. He asked the members of the committee to look at their world view before they made any "hasty" decision.

Mr. Rifkin suggested RAC members were affected by the views they held about modern science; he asked the members of RAC to look a those assumptions and consider that there are other people who do not share that world view.

Mr. Rifkin said the history of every technological revolution shows that every great technology brings both benefits and costs. The more powerful and impressive the technology, the better able to expropriate, secure, and use natural resources for human needs, the greater the potential costs that will be heaped on the ecosystem and paid by future generations. Mr. Rifkin thought it either naive or disingenuous to believe that there are no risks, no costs associated with the biotechnology revolution.

Mr. Rifkin reiterated his position that technologies mortgage the future to provide security for the present. He said:

> I think there are certain technologies that are so powerful inherent to the technological categories themselves that we have to ask the question, is it appropriate to use them.

Mr. Rifkin said Dr. Brinster's experiments are an attempt to develop superanimals, animals that would grow bigger and faster and provide commercial advantage in the market place. Mr. Rifkin contended that if this procedure becomes commercially feasible, livestock will be dramatically affected. The long-term implications are "model culturing" and the loss of gene diversity. "Model culturing" of animals will affect the well-being of society because society becomes more vulnerable to losses of these animals because the animals lack genetic diversity.

Mr. Rifkin said:

> There are specific parts of this genetic therapy that are more problematic than others but to suggest that at every juncture if we don't give the scientific community full license to pursue any kind of research in any area that we will be in some way condemning all present and future human beings on this planet to suffering, disease, death, that to me suggests a syndrome of fear and it needs to be addressed. . . .

Mr. Rifkin asked how RAC so "prematurely" reached the conclusion that the benefits in the long-run outweigh the risks; only a few experiments of this type have been done. How can RAC be so convinced the long-term benefits outweigh the cost?

He suggested that:

> . . . it would be very very foolhardy in a one hour discussion on crossing genetic lines for you to pass a resolution saying that you would encourage this from here henceforward. I think it's more responsible to put a moratorium on this research until such time as these questions are being properly addressed by the American public.

Mr. Rifkin thought the letters that had been received on this topic did not represent an accurate cross-section of the American public.

Dr. McKinney felt Mr. Rifkin had either misunderstood or misconstrued the comments of RAC members. Dr. McKinney did not think any member of RAC had suggested there are not problems associated with any area of research. However, the history of RAC has been an orderly process of consistently exercising care and prudence in approaching the utiliztion of recombinant DNA technology. Dr. McKinney thought Gottesman's motion was to continue this orderly process so the potential benefits of this technology might be assessed.

Mr. Mitchell pointed out that Mr. Rifkin proposal would prohibit certain experimentation involving the transfer of genes; thus, the question before the RAC is whether this area of scientific research should be prohibited.

Dr. Rapp stressed that at least he and probably most RAC members had not spent "one hour" considering this issue. Most members have been thinking about these issues for a number of years. RAC members recognize there are risks associated with any new technology; however, a total prohibition will prevent society from ever learning whether these potential risks are real or mythical.

Dr. Rapp said in our lifetime smallpox virus has been wiped out; he did not think the world was poorer for this action. He thought the Brinster experiments had to be considered in the context of the overall pattern and overall benefits of genetic engineering. Dr. Rapp said some studies of gene regulation, translation, and expression have to be done in foreign hosts. Studies such as these are leading, hopefully, to solution of problems such as cancer. Prohibiting these type of experiments would destroy efforts to study very major human disease syndromes. Dr. Clowes said there are a number of scientific developments in which the benefits enormously outweigh the costs.

Dr. Rapp said a total prohibition would stop a whole field of science in its tracks. Such attempts at prohibition have not worked at any time in history. RCA should continue to evaluate proposals; otherwise, researches would perform these experiments in other part of the world. Should this occur, the U.S. government would lose whatever control it now has over these types of experiments. Dr. Rapp said he favored Dr. Gottesman's motion.

Dr. Holmes said Mr. Rifkin and the RAC do have differences in perspective; however, it's not that RAC only sees the benefits where Mr. Rifkin only sees the risks. The difference in world view is that seeing both the risks and benefits, Mr. Rifkin would prohibit seeking the benefits whereas the RAC would prefer to press on to try and maximize the benefits while minimizing the risks.

Dr. Joklik said many RAC members have thought about these types of problems for many years; the aim of biomedical research has been to make our children and our children's children healthier.

Dr. Joklik said a difficulty in communicating with Mr. Rifkin is that as soon as one of Mr. Rifkin's concerns is allayed, another concern surfaces. Dr. Joklik said Mr. Rifkin now asks how scientists can be sure this new technology will provide benefits for mankind. Recombinant DNA is the means for answering many questions. Ten years after the inception of this new technique, so much more about the working of the human cell and the human organism is known, including a more detailed knowledge of the nature of human genetic material. In addition, we now have the ability to manipulate the genetic material. One simply has to ask oneself how much more will we know in another ten years, a very short time in the experience of mankind.

Dr. Joklik said Mr. Rifkin was attempting to arrest a process which has been spectacularly successful.

Dr. Walters asked Dr. Gottesman if she would accept a friendly amendment to her motion; he proposed to add to the motion the notion of protecting animal welfare as well as human welfare through a better understanding of animal diseases. Dr. Gottesman agreed to add such language to her motion. Dr. McKinney, the seconder of the motion, also agreed.

Dr. Landy said RAC is saying it is unconscionable to prohibit exploring this avenue of research. He asked Mr. Rifkin if there are any examples in history where a social problem has been successfully solved before the technology was developed to address the problem.

Mr. Rifkin said the Iroquois nation of North America had a civilized and advanced culture. These people followed a specific procedure whenever they considered some environmental, social, or cultural change. They asked in the deliberation process what effect the proposed change would have seven generations in the future. In some cases, the Iroquois decided the particular change would have more costs than benefits and decided not to implement it.

Mr. Rifkin said genetic engineering is one approach to the future; it is not the only approach. He emphasized that there are other approaches to solving problems. He offered as an example attempts to deal with heart and lung diseases and cancer. He said these diseases have an environmental component as well as a genetic component. Mr. Rifkin said he would be thrilled if NIH money were spent studying how the environment triggers genetic diseases rather than on research on gene transfers.

Mr. Mitchell asked Dr. Bowman whether environmental factors are a cause of cystic fibrosis. Dr. Bowman said environmental factors are not a cause; cystic fibrosis is a genetic illness

Dr. Gottesman said Mr. Rifkin's characterization of RAC's activities as always giving the go-ahead is untrue as RAC has often turned down requests to proceed. Dr. Gottesman asked Mr. Rifkin to be honest and accurate in his portrayal of RAC and RAC's activities, and of the question currently before RAC. In this instance, a single gene will be moved from one organism to another; all sheep are not about to be turned into giant sheep nor are people with bat wings going to be created.

Mr. Richard Pollack identified himself as having been associated for a two year period with Sandia Laboratories as a consultant to the Nuclear Regulatory Commission (NRC), as having served with the NRC on the Three Mile Island investigation, and as being "close" to Mr. Rifkin.

Mr. Pollack said Mr. Rifkin was asking:

> . . . if the basic question of the environmental impact . . . has been ignored by this committee . . . What kind of road are we moving down? . . . with such a powerful tool with such great consequences, not to have that kind of basic methodology to assure the public is very disconcerting, whether on a concrete issue or on a less abstract issue. . . .

Dr. Fox asked why others seem to think there is an ethical issue to be discussed. He said, "Surely there is not some dialectical tension here that cannot be reconciled, that somewhere between us is meaning and substance to the reality around us."

Dr. McKinney reminded the proponents of what their proposal entailed; a complete prohibition of certain types of research. He then called the question.

By a vote of nineteen in favor, two opposed, and one abstention, the RAC agreed to close debate.

Dr. Gottesman then repeated the language of her modified motion:

> That RAC reject the amendments proposed by Mr. Rifkin and published in the **Federal Register** of September 20, 1984, Section II. Both the importance of this class of experiments in current scientific research and the long-term possibilities for treatment of human and animal disease and the development of more efficient food sources make it a moral imperative that we strongly oppose the blanket prohibition of this class of experiments.

By a vote of twenty-two in favor, none opposed, and no abstentions, the RAC approved Dr. Gottesman's motion.

Mr. Mitchell suggested that a document be prepared to set forth the statements and concerns of the RAC and others. Dr. Gottesman said the minutes of the RAC meeting could form the basis of that document.

I–B–4. Decision

On the basis of the RAC recommendation and the large public response opposing Mr. Rifkin's proposal, I reject the proposed amendments to the NIH Guidelines and endorse RAC's statement affirming the importance of this class of experiments in current scientific research and the long-term possibilities for treatment of human and animal disease and the development of more efficient food sources.

II. Change in the NIH Guidelines

A new third paragraph is added to Appendix A, *Exemptions under section III–D–4*, to immediately precede "Sublist A," to read as follows:

> Although these experiments are exempt, it is recommended that they be performed at the appropriate biosafety level for the host or recombinant organism (for biosafety levels see *Biosafety in Microbiological and Biomedical Laboratories*, 1st Edition (March 1984), U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333, and National Institutes of Health, Bethesda, Maryland, 20205).

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: March 1, 1985.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 5582 Filed 3–8–85; 8:45 am]

BILLING CODE 4140–01–M

federal register

Monday
March 11, 1985

Part III

Department of Health and Human Services

Social Security Administration

Disability Programs; Determination of Disability in Cases of Mental Impairment; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Disability Programs; Determination of Disability in Cases of Mental Impairment; Request for Comments on Proposed Use of Work Evaluation Facilities

The Social Security Administration (SSA) as part of the Secretary of Health and Human Services initiative to conduct a review of the Social Security disability program, has developed proposed policy guides for consideration which are intended to help determine whether a person with a mental impairment meets the definition of disability under titles II and XVI of the Social Security Act.

The purpose of this notice is to obtain public comment on the proposed policy guides, which pertain to *work* evaluation in the case of mental impairments. Because policy guides in this area are interrelated with the proposed regulations revising the *medical* evaluation criteria for mental disorders (50 FR 4948; February 4, 1985), publication of this notice in the **Federal Register** during the same time period that the revised medical criteria are published is important. It is not intended, however, that publication of this notice be considered as a precedent for consideration by SSA in future policy issuances. These proposed policy guides were developed in response to suggestions that SSA should make greater use of work evaluation facilities as sources of information regarding an individual's ability to carry out the mental requirements of work on a sustained basis. SSA already has general policy guides dealing with the use of work evaluation facilities as sources of information in disability claims. The following more detailed guides are proposed for use in evaluating the initial eligibility of individuals filing for and the continuing eligibility of individuals receiving Social Security Disability Insurance Benefits and Supplemental Security Income Benefits based on disability involving mental impairments.

Following receipt and evaluation of public comments and suggestions the proposed policy guides will form the basis for SSA action in this area.

DATES: Your comments will be considered if we receive them no later than April 25, 1985.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1583, Baltimore, Maryland 21203. They may also be delivered to the Office of Regulations, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Room 3–B–4, Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7459.

Dated: March 5, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

A. Sequential Evaluation of Mental Impairment Claims

The five steps of the sequential evaluation process that are described in the Social Security disability regulations apply to Social Security disability claims regardless of the specific kind of impairment. The last two steps of the process require answers to the questions: "Does the individual have any impairment which prevents past relevant work?" and, if yes, "Does the individual's impairment prevent other work?". To answer these questions, it is necessary to determine the nature and extent of the physical and mental abilities that the person retains (residual functional capacity (RFC)).

The Social Security disability regulations provide some examples of the mental functions to be evaluated in determining the RFC of a person with a mental impairment. The regulations say that in assessing an impairment because of mental disorders, factors such as the ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers, and customary work pressures in a work setting must be considered. These basic job requirements are understood to be common to all or most occupations. Other kinds of basic functions may be identified as an issue in a particular claim, depending on the nature of the mental impairment or the specific mental demands of a past job.

Assessment of RFC represents the measurement of the individual's capacity for work-related functions, such as the factors cited above, on a sustained work day basis. This also may be referred to as functional assessment.

The RFC assessment must be sufficiently detailed to permit comparison to the requirements of past jobs and other jobs in the national economy. For example, if the person is limited in the extent to which he or she can interact with other people, it is important for functional assessment to establish whether the person can receive instructions and correction from a supervisor. The functional assessment also may raise a question whether the person would be distracting to or distracted by persons working nearby. Other functional issues may arise from the clinical and supporting evidence. If the necessary information to resolve those issues can be derived from the clinical evidence and supporting evidence, the last two steps of the sequential evaluation can be completed. These two steps are referred to here as work evaluation. The person's RFC is compared to the requirements of his or her past relevant work. If past relevant work would be precluded, RFC is compared to the requirements of other work in the economy that would be appropriate for the individual. The last two steps of sequential evaluation, then, require both a functional assessment and an evaluation of the mental demands of work in order to complete the sequential evaluation process.

An essential component of work evaluation is vocational assessment, by which the description of RFC is compared to the functional requirements of past jobs and other jobs in the economy. There are circumstances, described below, when work evaluation requires referral to a work evaluation facility because the information the facility can provide is necessary to complete the functional and vocational assessment. Therefore, work evaluation consists of the following two alternatives, which depend on the specificity of the assessment of RFC:

1. When the extent of the mentally impaired person's ability or inability to function on a sustained basis in a competitive work environment can be fully assessed from the clinical and supporting evidence, the work evaluation can be completed by comparing occupational descriptions in vocational reference sources to the assessment of RFC. When such an evaluation cannot be made by a disability adjudicator in the State Disability Determination Services (DDS), referral of the case may be made to a vocational specialist, who is skilled in using the *Dictionary of Occupational Titles* (DOT) and other sources. In some cases it may be appropriate to consult a private vocational expert to make specific findings of jobs and fields of work, if any, in which the claimant/beneficiary can engage if vocational reference sources do not provide sufficient documentation to establish the

existence of work in which the person can engage.

2. When, despite complete and comprehensive clinical examination and description of activities of daily living, the functional assessment of a mental impairment does not fully resolve the person's ability or inability to function in a competitive work environment on a sustained basis, a work evaluation facility may be able to provide additional information—which, when considered in conjunction with all of the other evidence on file, is persuasive to make a full assessment of competitive work capability and make findings as to jobs or kinds of work in which the person can engage.

After evidence from a work evaluation facility is obtained, the assessment of RFC will be completed by determining whether the work evaluation facility evidence, together with the clinical and supporting evidence, establish that there is a substantial limitation in one or more work-related functions, or that the person is able to function in a competitive work environment.

The DDS's, which are empowered by law and regulations to make disability determinations for SSA and who ordinarily make arrangements for referral to work evaluation facilities, must augment their knowledge of the expertise of such facilities through visits by staff members, discussions with the facility staff, and, if possible, a review of sample evaluation reports. (See action C, below, for liaison activities.) This preparation will ensure the referral of only those claimants/beneficiaries for whom work evaluation is necessary for a disability decision.

B. Selection of Cases for Referral to a Work Evaluation Facility

Any claimant/beneficiary with a severe mental impairment which does not meet or equal the severity of the disabling impairments listed in Social Security Regulations, and whose ability or inability to function in a competitive work environment on a sustained basis has not been established by clinical and supporting evidence, should be considered for referral to a work evaluation facility unless there is no appropriate facility available or there are specific reasons why the person cannot attend. (See section C, below, for alternatives in these circumstances.) The general guide in A.2, above, should be followed to select cases for referral to a work evaluation facility. These guidelines apply to all disability cases involving mental impairments. (It is important to make sure that the guide is or has been appropriately applied when adjudicating an appeal of denial or cessation, and when a treating or consultative examiner has recommended work evaluation.) The facility should be requested to conduct an evaluation of the person and to furnish detailed report of the evaluation for purposes of a Social Security disability determination. Some examples of the application of the guide are:

1. Persons with IQ's of 60–69 who either have no gainful work history or have had episodes of unsuccessful work *and* whose activities and interests are significantly limited: These circumstances often raise a question of the person's ability to understand, carry out, and remember instructions in a competitive work setting.

Example: A 25-year-old mentally handicapped person who had worked only 3 months in an unskilled job scored a full-scale IQ of 63 on a psychological examination. The report said that she had poor orientation, and would probably require close supervision and direction in a work context. She lived in her parents' home and her activities were limited to helping her mother with housekeeping chores, such as washing dishes. She did not have any activities outside the home. Based on the medical and nonmedical evidence, her capability for competitive work could not be adequately determined.

The work evaluation facility report showed that her ability to comprehend, recall, and follow up on instructions is quite adequate. She comprehended verbal instructions without having them repeated and was very thorough in her work. She was able to follow up on instructions without close supervision, and had the initiative to perform tasks without being told to do so. She interacted well with the facility staff and maintained a good pace throughout the work samples. Even though her production speed was not up to the norm for unimpaired workers, she improved with practice. The work evaluation facility report concluded that she had the capability to function in a competitive work environment.

The person's behavior described in the work evaluation facility report showed that she was able to perform well in the period covered by the evaluation without an unusual amount of supervision. Combined with the clinical evidence, the work evaluation facility report established that she should be able to do a wide range of competitive unskilled work.

2. Persons who are diagnosed as having chronic schizophrenic disorder or residuals of brain trauma: These circumstances often raise a question of ability to respond appropriately to supervision, coworkers, and customary work pressures in a work setting.

Example: A 33-year-old person had hemiparesis due to brain injury 5 years earlier. Psychological examination noted some emotional lability, blunt responses, and lack of sensitivity and social awareness. Daily activities were confined to the home and immediate family. However, her attitude and behavior were cooperative, and she showed no significant fluctuations in mod or affect. Since the clinical evidence and description of daily living activities presented an uncertain picture of the claimant's ability to function under competitive work pressure, a referral was made to a work evaluation facility to resolve this issue.

Throughout the evaluation, the person was never observed initiating or carrying on conversations with either the supervisory staff or her coworkers. She spoke only when directly addressed and her answers were usually only one-word responses. Her reaction to various work tasks, especially when encountering work-related problems, consisted of indications of anger, low self-esteem, and much frustration. Even though it appeared that she was sincerely attempting to do her best, her attention and retention spans became shorter. She became increasingly confused on repetitive work samples. When retested on the same work sample, her performance deteriorated rather than improved.

The work evaluation facility report provided evidence that the person has a substantial limitation in her ability to sustain work under reasonable production norm standards. Based on her irritabilty and dependence in a situation in which she has to follow instructions, she would be unable to interact and respond appropriately to coworkers and supervisors. Her decreased speed of work with extend periods of working indicated that she would not be able to sustain work in a way that would be required in a routine pressure work setting.

This information in conjunction with the medical findings provided a sound basis for concluding that she has substantial functional limitations which prevent her from performing her past work as a production checker and would also severely limit her ability to do unskilled work in a competitive environment.

Normally, a 5-day evaluation is sufficient to determine a person's ability to sustain competitive employment; however, some referrals may result in shorter or longer periods of evaluation.

For example, an individual who is found upon entering an evaluation program to be obviously unable to function within a work setting, need not, if determined by the evaluator, continue beyond this point in the evaluation process. On the other hand, if the facility is unable to answer the evaluation questions within a week's period, it may request and been granted additional time in which to test and observe the person.

C. Arranging for Evaluation by a Work Evaluation Facility

Each DDS should designate at least one individual, preferably a vocational specialist, to serve as liaison with all work evaluation facilities in the State and carry out any educational activities that are needed to establish a useful relationship with them. Such facilities may be known by diverse names, such as rehabilitation center, sheltered workshop, work activity center, etc. They have in common the ability to perform the evaluation services described in the following section. The State Vocational Rehabilitation Agency may be able to provide a list of approved work evaluation facilities. This should not be considered a complete listing, however, and other facilities may be able to provide adequate services that are not on the State's list. A determination should than be made by the DDS as to which facilities are able to provide the quality and type of services needed. The DDS liaison should carefuly review the credentials of the facility and find out what agencies, organizations, and geographic areas it serves. A facility that is accredited by a professional accreditation organization or is recognized for State rehabilitation or workers' compensation; purposes is likely to comply with safety codes and to have experienced and trained staff and management.

In advance of referral of the claimant/beneficiary, the DDS should provide the work evaluation facility with the available medical and vocational information, and a detailed explanation of the questions the evaluation is expected to resolve. If medication has been prescribed for the person's condition, this information should be included in the medical evidence.

The DDS should find out whether the person can go to a work evaluation facility. This will include an explanation of the evaluation and a general description of what the person may expect. The explanation should be given by the most effective means available to the DDS—personal contact, telephone or mail, directly to the claimant/beneficiary or through an intermediary. If the person is unable to attend because of the need to care for children, or because it would impose unreasonable travel requirements, information from other sources should be solicited, if possible, to obtain more information about the person's functional ability. The person should be interviewed in his or her home or at a local facility, preferably one with which the person is familiar. (A public or private facility may charge a fee for this.) The interviewer should be a qualified rehabilitation counselor who is trained in job development, work adjustment counseling, and job placement. The interviewer should obtain a detailed description of the person's activities of daily living and make observations which will help resolve the person's ability to function in a competitive work environment on a sustained basis. (This should *not* be an opinion of whether the person is or is not disabled.) Such an interview also may be used as prescreening of persons who can go to the work evaluation facility but for whom there is some doubt whether the evaluation will be effective, e.g., the person seems especially resistant to referral.

The work evaluation facility should be as close to the person's home as possible. However, when there is none available in the desired locality, the DDS must make safe and feasible arrangements for the person to travel to the closest suitable facility, including a facility in another State, if necessary. Arrangements and payment for food and lodging also must be made when the person must stay away from home. Inquiry should be made as to whether the facility has a boarding arrangement, as this costs less than motel accommodations and the boarding facility may have experience dealing with impaired persons.

D. The Function of a Work Evaluation Facility

A work evaluation facility uses a number of techniques to obtain information about an individual's vocational assets, limitations, and behaviors in the context of a work environment in which the individual might function. Vocational evaluation in the work evaluation facility is a comprehensive process that systematically uses work, real or simulated, as a focal point for assessment. The full program includes a detailed interview that is usually held on the first day. It incorporates medical, psychological, social and vocational data to determine an individual's current level of functioning and potential for employment.

Work evaluation facilities use situational assessments, job tryouts, work samples, psychometric tests, and combinations of these techniques as part of the assessment process. The work sample results can indicate which job tryouts and situational tasks would be most appropriate and meaningful for a more specific evaluation. Although definitions may vary according to source, some generally accepted definitions of the principal components of vocational evaluation are:

The Situational Assessment—This is a technique used to make behavioral observations. A client is placed in a work situation and assigned tasks to perform over a period of days. This type of evaluation is oftentimes used as a method of observing general work behaviors, attitudes, and skills and can be quite valuable in mental impairment cases in determining ability to do unskilled work and to function appropriately in a competitive work environment.

Job Tryout.—This assessment tool is used to assess the total capacity of a client by placing him or her in a real work situation for a limited period of time, usually more than 5 days. The tryout supplements the information already obtained on client performance.

Work Samples—A work sample is used to determine an individual's work aptitude to perform a specific task or set of tasks within a given occupational area. A group of integrated samples may comprise a system, usually with graduated levels of complexity, to find the person's optimal level of vocational capability. Samples can be completed in most cases in less than a week. Retesting on a particular sample is a useful technique in some circumstances (see example 2, section B above).

Some work samples are derived from worker trait analysis, using such headings as handling, sorting, filing, and inspecting. Other samples are based on job analysis, under such headings as small tools, clerical comprehension and aptitude, and simulated assembly. Work samples are scored for production and accuracy, and the raw scores are converted to percentiles based on norm groups that were used to validate the samples. Some work sample performance may be rated in simple binary terms, e.g., successful—unsuccessful, acceptable—unacceptable. (Section F, below, contains a caution on the use of work sample ratings in evaluating the work evaluation facility report for disability purposes.)

Psychometric Testing—Psychometric testing may be conducted prior to the

evaluation or during the initial or latter stages.

Testing can include a battery of tests to measure intelligence, aptitude, achievement, interest, personality, dexterity and level of adjustment. Other tests used in vocational evaluation include clerical aptitude, spatial aptitude, numerical ability, and verbal skills. Standardized tests to measure reading and mathematics are also administered. These tests are used by the facility to identify problem areas and plan the scope of the evaluation.

The results of work sampling, job tryout and/or situational assessment are accompanied by a report of observation of the person's behavior, not only while working at the task, but throughout his or her attendance at the work evaluation facility. The evaluator is skilled in observing and recording the important aspects of traits and abilities exhibited in the work environment such as appearance and general demeanor, self-expression and interpersonal relations, attitude and effort, attention span, memory, perseverance, and ability to work independently of close supervision.

E. Information Provided in Work Evaluation Facility Reports

The work evaluation facility must provide a narrative report that helps to answer the questions discussed in section A above.

Accordingly, the report should describe the person's performance on each sample or task that he or she performs. The report must discuss the quality and quantity of work performed, the person's level of understanding, motivation, effort expended in accomplishing assigned tasks, and his or her personal integration within the work or testing environment. A work evaluation report must do more than provide conclusions: it must provide observational detail to corroborate them. The following guide may help to develop the evaluation questions posed to the facility and to evaluate the thoroughness of the report:

1. The person's ability to understand, remember, and carry out job instructions.

a. *Direction*—The ability to follow simple directions or procedures in order to perform a task.

b. *Memory.*—The ability to remember locations and workday procedures during the period of evaluation.

c. *Work Independence*—The ability to proceed from one step in a sequence to another without prompting or constant supervision.

D. *Accuracy*—The ability to discriminate within a basic level of tolerance, as in sorting perceptibly different items.

e. *Choice*—The ability to select among simple alternatives to accomplish a task or complete a step in a sequence.

f. *Caution—The ability to be aware of normal hazards and take necessary precautions.*

g. *Timing*—The ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances.

2. The person's ability to interact with supervisors and coworkers.

a. *Self-expression*—The ability to communicate, to ask simple questions or request assistance.

b. *Sociability*—the ability to accept instructions and criticism from supervisors and get along with coworkers without extremes of shyness or aggressiveness.

c. *Appearance*—The ability to adhere to basic standards of cleanliness, neatness, appropriateness.

d. *Teamwork*—The ability to work in coordination or proximity to other workers without being distracted or distracting others.

3. The person's ability to remain at, and to maintain concentration and attention in, a competitive work environment.

a. *Pace*—The ability to perform at a consistent pace for acceptable periods of work without an unreasonable number and length of rest periods.

b. *Repetitiveness*—The ability to perform repeated sequences of action to complete a task or achieve a given objective.

c. *Perseverance*—The ability to maintain relatively continuous performance as long as there is work to be done or a task objective to be completed.

d. *Physical Stamina.*—The ability to maintain a consistent work pace without extreme fatigue or psychological stress for a normal workday in the absence of any physical impairment.

The DDS should inform the facility before the evaluation of the specific information that it needs to more accurately determine the mentally impaired person's RFC. The above outline may be used as a guide for the DDS to tell the facility what information it needs, and to review the adequacy of the report. It may be modified as needed.

F. Use of Work Evaluation Facility Report in Deciding Disability

The work evaluation facility report will contain a narrative description of how the person behaved in the facility and how he or she performed each task. The report should conclude with an assessment of the person's work abilities and their applicability to competitive work that exists in the national economy.

A report from a work evaluation facility should not be confined to a statement of quantitative finding such as those that are derived from work samples and psychometric tests, nor should conclusions as to function be based solely on such findings. For example, the percentiles and ratings for work samples are meaningless unless the norm group is identified. If the report omits this information, it should be available upon request. However, even when norm groups are identified, the interpreter should not base a disability decision solely on the percentiles and ratings. A norm group comprised of an institutionalized population or candidates for rehabilitation does not provide a correct comparison to determine ability to engage in any competitive employment. Even when the norm group consists of employed workers, the base may be too narrow to determine ability to perform work that exists in the national economy. Regard situational assessment, job tryouts, and work samples as vehicles for the exhibition of basic work abilities, not as exact instruments for disability adjudication purposes.

The work evaluation facility report should be reviewed to determine whether the evidence describes a functional limitation that would substantially limit the range of work in which the person may be able to engage. However, a conclusion given in the report that the person cannot engage in competitive work is not substantial evidence unless it is supported by the facts upon which the conclusion is based. If such information is not in the original report, a supplemental report should be requested, but good liason with the facility before referral should ensure satisfactory reporting.

Isolated or independent deficiencies in performance such as a high rate of error or below-standard production do not, in themselves, establish a significant functional limitation. They must be related to descriptions of behavior which explain how the deficiencies are attriutable to functional limitations. All performance deficiencies should be explained in the workshop evaluation report.

Significant functional limitations exhibited in a work evaluation facility must, in turn, be attributable to a diagnosed impairment that is documented by the clinical evidence. Thus, such characteristics as excessive dependence on supervision, inability to

remember simple instructions, or socially inappropriate behavior must be related to signs, symptoms, and laboratory findings, even though the latter may not establish the extent of limitation.

A *substantial* functional limitation, as established by the clinical evidence and a fully documented work evaluation facility report, will result in the vocational conclusion that the person cannot engage in a full range of unskilled work regardless of age or physical capability. For example, the ability to work only in very limited circumstances or only with rehabilitation services does not represent an ability to engage in "competitive unskilled work which exists to a significant extent in the national economy" unless the person has actually engaged in substantial gainful activity under those conditions.

[FR Doc. 85-5716 Filed 3-8-85; 8:45 am]

BILLING CODE 4190-11-M

federal register

Monday
March 11, 1985

Part IV

Environmental Protection Agency

40 CFR Part 110

Water Programs; Discharge of Oil; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 110

[FRL 2742-7]

Water Programs; Discharge of Oil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is today proposing amendments to the discharge of oil regulation (40 CFR Part 110), which implements section 311 of the Clean Water Act (CWA).

The original regulation established a trigger for notifying the federal government of oil discharges that are harmful to public health or welfare. The regulation defined a harmful quantity as the amount of oil that violates applicable water quality standards or causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. It has come to be known as the "sheen regulation."

Today's proposed regulation incorporates the 1977, 1978, and 1980 amendments to section 311 of the CWA and implements section 18(m)(3) of the Deepwater Port Act of 1974. The Agency invites comment on the incorporation of the CWA amendments and implementation of section 18(m)(3) of the Deepwater Port Act of 1974. The Agency is also soliciting comments on two suggestions by industry for modifications to the requirements of 40 CFR Part 110.

DATE: Comments must be received on or before May 10, 1985.

ADDRESS: Comments should be submitted in triplicate to: Emergency Response Division, Docket Clerk, Attention: Docket Number 311 CWA-OSA, U.S. Environmental Protection Agency, 401 M Street SW., WH-548/B, Washington, D.C. 20460.

Docket: Copies of materials relevant to this rulemaking are contained in Room S325 at the U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The docket is available for review between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Dr. K. Jack Kooyoomjian, Response Standards and Criteria Branch, Emergency Response Division (WH-548/B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C., or the RCRA/Superfund Hotline, (800) 424-9346, in Washington, D.C., 382-3000.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
II. Background
III. Statutory Changes Affecting the Oil Discharge Regulation
  A. 1977, 1978, and 1980 Statutory Amendments; Deepwater Port Act of 1974
IV. Requests for Changes in the Oil Discharge Regulation
  A. Volumetric Alternatives to Sheen Test
  B. Special Use Applications of Oil
V. Summary of Supporting Analyses
  A. Classification and Regulatory Impact Analysis
  B. Certification Why a Regulatory Flexibility Analysis Is Not Necessary
  C. Paperwork Reduction Act
VI. List of Subjects in 40 CFR Part 110

I. Introduction

The discharge of oil regulation (40 CFR Part 110), also known as the "sheen regulation," has been codified since September 1970. Over the years since its original promulgation, it has been extremely effective in requiring timely notice of oil spills. Prior to this regulation, there was no requirement to report oil spills promptly. This regulation and the level of consciousness it has raised among responsible parties and governmental officials have made the United States a leader in response to oil spills.

The sheen regulation is simple in concept. The regulation implements the CWA's prohibition against discharges of "harmful quantities" of oil and requires the responsible party to report to the National Response Center (NRC) or an appropriate EPA Regional Office or United States Coast Guard (USCG) District Office as soon as that party has knowledge of such a release of oil. This regulation is easy to understand, implement, and enforce. Detecting a sheen does not require sophisticated instrumentation since a sheen is easily perceived by visual inspection. The sheen test has been proposed, commented upon, and implemented successfully. It has also withstood legal challenges.

In today's preamble, we discuss the proposed changes in the regulation that implement congressionally mandated changes. They include the following:

1. The extension of geographical scope from the contiguous zone seaward to 200 miles.

2. Modification of the harmful quantity definition from discharges of such quantities of oil "determined" to be harmful to the public health or welfare of the United States to such quantities "as may be harmful" to the public health or welfare of the United States.

3. The exemption of oil discharges controlled under CWA Section 402's National Pollutant Discharge Elimination System (NPDES) from coverage under Section 311 provisions.

4. The incorporation in the regulation of the provisions under the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78), Annex I.

5. The extension and application of the CWA definition of harmful quantities of oil for purposes of Section 18(m)(3) of the Deepwater Port Act (DWPA).

The preamble also solicits comment on the following suggested changes to 40 CFR Part 110 that have been requested by the regulated community:

1. Chevron has asked the Agency to consider a volumetric trigger for notification to replace the sheen.

2. Esgard has requested that EPA exempt its vegetable-oil-based product, a corrosion inhibitor in ballast tanks, from notification requirements.

II. Background

On September 11, 1970, regulations were promulgated setting forth a determination of "those quantities of oil the discharge of which * * * will be harmful to the public health or welfare of the United States" (35 FR 14306-14307, September 11, 1970; 18 CFR Part 610) pursuant to Section 311(b)(3) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 466; now 33 U.S.C. 1251 *et seq.*), commonly referred to as the Clean Water Act (CWA). In 1971 and 1976, the regulations were modified in a minor way to reflect, first, a new codifiction that was established for EPA to conform to the provisions of a reorganization plan (18 CFR Part 610 became 40 CFR Part 110) and, second, statutory amendments to the CWA adopted by Congress in 1972 (41 FR 49810-49811, November 11, 1976).

The 1977, 1978, and 1980 amendments that are incorporated into the regulation by this proposal are discussed below.

III. Statutory Changes Affecting the Oil Discharge Regulation

A. 1977, 1978, and 1980 Statutory Amendments; Deepwater Port Act of 1974

1. *Extension of Geographical Scope.* In the 1977 amendments to the CWA (Pub. L. 95-217), Congress expanded the geographical scope of Section 311

beyond the contiguous zone, which extends seaward to 12 miles, to include the fishery conservation zone, which extends out to 200 miles. Specifically, sections 311 (b) and (c) of the Act were amended to apply not only to discharges into navigable waters and the contiguous zone of oil or hazardous substances in harmful quantities, but also to such discharges

> * * * in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976) * * * (33 U.S.C. 1321 (b) and (c)).

The Agency proposes to amend the jurisdictional provisions of 40 CFR Part 110 to reflect the expanded scope of section 311 as provided by Congress in 1977.

2. *Modification of Harmful Quantity.* In 1978 Congress modified the harmful quantity criteria of section 311 by changing the quantities of oil discharged that trigger the notification and other provisions of this section from those quantities that "will be harmful" to quantities that "may be harmful." More specifically, Congress modified the scope of prohibited discharges under section 311(b)(4) from quantities the "discharge of which, at such times, locations, circumstances, and conditions, *will be harmful*" (emphasis added) to such quantities the "discharge of which *may be harmful*" (emphasis added) (Pub. L. 95–576). Section 311(b)(3) was also amended to reflect this change.

The existing oil sheen test was promulgated pursuant to the pre-1978 standard of " will be harmful." The agency views the revised statutory standard ("may be harmful") as being, at a minimum, at least as stringent and environmentally protective as the prior "will be harmful" standard. In view of the successful and effective implementation of the existing oil sheen test over the past 14 years and the Agency's continued confidence in that procedure, and because the Agency at the moment has insufficient information upon which to establish an alternative test that would meet the statutorily based criteria of environmental protection and assure reliability and ease and consistency in implementation and enforcement, the Agency proposes to incorporate the new "may be harmful" language in 40 CFR Part 110, but is not proposing to change the existing oil sheen test itself.

As discussed in Section IV. A of the preamble, the Agency has received a suggestion to change the present trigger for notification from the oil sheen test to a volumetric determination. The Agency is requesting comment on that suggestion and welcomes any information or analysis that those who comment believe might be of assistance in considering this suggested approach. However, as noted above and discussed further in Section IV. A, the Agency is not proposing to modify the present oil sheen test at this time.

3. *Exemption of Discharges Permitted under Section 402 of the CWA.* In addition to changing the harmful quantity language in the 1978 amendments to the CWA, Congress also modified the definition of "discharge" in section 311(a)(1) to exclude from Section 311 coverage three types of discharges that are subject to the Section 402 National Pollutant Discharge Elimination System (NPDES) and Section 309 enforcement provisions. Specifically, Congress provided that the following discharges be excluded from section 311 coverage:

> (A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant operating or treatment systems.

The basis for this specific exclusion stems from the uncertainty under the old statute as to whether and to what extent discharges from facilities with NPDES permits were subject to the provisions of section 311. Senator Stafford, a principal sponsor of the amendment to section 311, explained the gereral nature of the changes:

> * * * we are attempting to draw a line between the provisions of the act under sections 301, 304, 402 regulating chronic discharges and 311 dealing with spills. At the extremes it is relatively easy to focus on the difference but it can become complicated. The concept can be summarized by stating that those discharges of pollutants that a reasonable man would conclude are associated with permits, permit conditions, the operation of treatment technology and permit violations would result in 402/309 sanctions; those discharges of pollutants that a reasonable man would conclude are episodic or classical spills not intended or capable of being processed through the permitted treatment system and outfall would result in the application of section 311 (124 *Congressional Record* 37683 (1978)).

More specifically, Senator Stafford related that "the changes make it clear that discharges, from a point source permitted under section 402 which are associated with manufacturing and treatment, are to be regulated under sections 402 and 309. 'Spill' situations will be subject to section 311, however, regardless of whether they occur at a facility with a 402 permit" (124 *Congressional Record* 37683 (1978)).

In the modified definition of discharge, the first exclusion applies to discharges of oil in compliance with a 402 permit limitation specifically applicable to the oil. Such limitations include those that are designated by the permitting authority as an indicator of that substance and those that are application-based. The second exclusion applies to discharges from a point source: *Provided*, that the type of oil, amount, source, and treatment system are identified in the public record, and the oil to be discharged is subject to a permit condition requiring treatment of the discharge. The third exclusion applies to chronic and anticipated intermittent discharges from a point source identified in a permit or permit application. The third exclusion will remain applicable after permit reissuance or revision.

Discharges that are not subject to a limitation or that are not covered by the second or third exclusion will be subject to the notification, civil penalty, and removal cost provisions of section 311. Each of the exclusions is explained in greater detail below.

Exclusion 1. In some cases, permit effluent limitations representing an appropriate waste treatment technology level exceed the section 311 reportable quantity for oil. Thus, a permittee may be in compliance with his permit while discharging oil in amounts greater than the reportable quantity. Under these regulations, if a discharge is in compliance with a permit issued under Section 402, such discharge is excluded from section 311. This exclusion applies when the permit contains a limitation specifically applicable to oil. In cases where specific technology-based effluent limits are not applicable, permits may contain effluent limitations based on discharge amounts (or some multiple of these amounts) reported in permit applications. Such limits (known as application-based limits) would also be considered permit limitations for purposes of these regulations, and discharges from point sources complying with such limits would be excluded from section 311.

Exclusion 2. Some discharges of oil from permitted point sources may result from circumstances that were identified and considered in the issuance of a permit, but are not subject to any specific effluent limitations. The second

exclusion addresses these situations and applies where the source, nature, and amount of potential discharge were identified and made a part of the public record, and a treatment system demonstrated as capable of preventing that potential discharge was made a permit requirement.

The "public record" has been defined to include the permit application and any supplemental documents contained in the "record for final permit" as defined in 40 CFR 124.122. The public record must identify the type of oil to be excluded, as well as the amount and origin or source of the oil.

The second exclusion exempts discharges "resulting from circumstances identified, reviewed and made a part of the public record [of a permit] * * * and subject to condition in [a] permit." On its face, this exclusion applies to a broad range of discharges, including those resulting from onsite spills to the treatment system as well as to chronic process discharges originating in the operating or treatment systems, provided they are subject to a specific permit condition. Owing to overlap between the second and third exclusions, however, certain continuous and anticipated intermittent discharges are exempted by the third exclusion, regardless of the existence of an applicable permit condition. Thus, the second exclusion will, as a practical matter, cover principally those discharges resulting from onsite spills to the permitted treatment system.

The legislative history makes it clear that Congress intended discharges caused by onsite spills to be excluded from Section 311 (and subject to Section 402) only where it could be demonstrated that such onsite spills had been contemplated and had been processed through a treatment system that should have been capable of preventing a reportable discharge (see *Congressional Record* of October 14, 1978 (S19259)). Thus, the "condition" contemplated in 311(a)(2)(B) will be placed in permits to exclude discharges caused by spills only where the permittee demonstrates that the treatment system is in fact sufficient to treat the potential spill identified. For example, if a discharger has a drainage system that will route spilled material from a broken hose connection to a holding tank or basin for subsequent treatment and discharge at a specified rate, documentation must be submitted with the application. The proposed permit condition must be sufficient to treat the maximum potential spill from the identified source. This exclusion will not exempt a discharge that results from an onsite spill larger than the spill contemplated in the public record.

Exclusion 3. The third exclusion applies to all continuous or anticipated intermittent discharges originating in the manufacturing or treatment systems, including chronic discharges and those caused by upsets and treatment system failures. The exclusion is not dependent on the scope of the permit, so long as a permit application has been submitted, or a permit exists, covering the point source in question. Discharges caused by spills or episodic events that release oil within the manufacturing system or to the treatment system are not covered by this exclusion.

4. *Exemption of Discharges Permitted under MARPOL 73/78.* Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78), entered into force on October 2, 1983 (see 48 FR 45704–45727, October 6, 1983). The purpose of MARPOL 73/78, which supersedes the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, is to eliminate marine pollution from ships.

Many of the requirements of MARPOL 73/78 were implemented by the Port and Tanker Safety Act of 1978 (Pub. L. 95–474). The Act to Prevent Pollution from Ships, 1980 (Pub. L. 96–478; 33 U.S.C. 1901–1911), implemented the remainder of the provisions of MARPOL 73/78. Pub. L. 96–478 also amended the CWA to reflect the supersession of the 1954 Convention by MARPOL 73/78.

Section 13(b) of Pub. L. 96–478 amended section 311(b)(3)(A) of the CWA to exempt certain discharges into waters seaward of the territorial sea permitted under MARPOL 73/78. Such discharges include the operational discharge of limited quantities of oil-water mixtures from ships. Thus, discharges into those waters from ships made in compliance with the requirements of Regulation 9 of MARPOL 73/78, Annex I (as implemented through 33 CFR Parts 151 and 157), are not subject to notification and liability provisions under the CWA even if they would otherwise be of "a quantity that may be harmful" under the CWA. The MARPOL exemption does not apply, however, to discharges into the internal waters and the territorial seas of the United States. Such discharges must satisfy the CWA "quantity that may be harmful" discharge standard even if the MARPOL 73/78 discharge standards are met.

Regulation 9 of MARPOL 73/78 applies to all "ships" operating in the marine environment. Such "ships" include all vessels and both fixed and floating platforms. As provided under 33 CFR Part 151, however, compliance with an NPDES permit by a fixed or floating drilling rig or other platform satisfies the requirements of MARPOL 73/78. With certain specific exemptions, Regulation 9 of MARPOL 73/78, Annex I, like Section 311 of the CWA, prohibits the discharge of oil. One exception to the general prohibition allows operational discharges from the machinery space bilges and fuel oil tanks of ships, but requires that the oil content of the effluents be fewer than 15 parts per million (ppm) when within 12 nautical miles of land and fewer than 100 ppm when more than 12 miles from land. Another exception applies to operational cargo-related discharges from oil tankers; it requires that discharges be made only beyond 50 nautical miles from land and at a rate not to exceed 60 liters of oil per nautical mile. Finally, the total quantity of oil allowed to be discharged is limited to 1/30,000 and 1/15,000 of the total quantity of the particular cargo carried onboard for "new" and "existing" tankers, respectively. As stated above, these MARPOL 73/78 discharge limitations are contained in 33 CFR Parts 151 and 157.

In addition to the operational limitations noted above, Regulations 9 and 11 ("Exceptions") prohibit, for purposes of section 311(b)(3) of the CWA, oil discharges resulting from damage to a ship or its equipment when (1) measures are not taken to prevent or minimize a discharge, or (2) the master intended to cause damage or was reckless and knew damage would result. The only exceptions to the general discharge prohibition of Regulation 9 are: (1) intentional discharges necessary for the safety of the ship and to save life at sea; (2) any discharges resulting from damage to a ship or its equipment (except as prohibited above); and (3) the use of approved substances to combat specific pollution incidents. Discharges allowed by these emergency exceptions are not "permitted" discharges. This provision simply recognizes for purposes of MARPOL 73/78 that, under certain circumstances, a discharge cannot be avoided. All discharges not complying with MARPOL 73/78 discharge limitations, including "emergency discharges," are prohibited by section 311(b)(3) of the CWA and must be reported. It should also be noted that all discharges, including permitted ones, must be recorded in the ship's Oil Record Book as required by 33 CFR 151.25.

Because discharges subject to and complying with Regulation 9 are permitted by the CWA, they do not have to be reported under Section 311(b)(5) even if they would otherwise constitute a quantity that may be harmful.

5. *Discharges at Deepwater Ports.* In addition to implementing the 1977, 1978, and 1980 amendments to the CWA, this proposed rulemaking defines harmful quantities of oil for purposes of the Deepwater Port Act (DWPA) of 1974 (33 U.S.C. 1501–1524). The DWPA applies to the construction and operation of deepwater ports off the U.S. coast. It contains provisions that prohibit the discharge of oil into the marine environment from deepwater ports and from vessels within the "safety zones" around such ports. The DWPA also establishes deepwater port licensee and vessel owner or operator liability for cleanup costs and damages that result from a discharge of oil. Other features of the DWPA include discharge notification requirements, penalty provisions, and the establishment of the Deepwater Port Liability Fund. The fund is liable, without regard to fault, for all cleanup costs and damages in excess of those actually compensated by a liable deepwater port licensee or vessel owner or operator.

Action under each of the key pollution provisions of the DWPA is triggered by a discharge of oil in harmful quantities. Although the USCG has overall responsibility for administering the Deepwater Port Liability Fund and related statutory provisions of the DWPA (see 33 CFR Part 137), the DWPA directs EPA to define the term "discharge." Section 18(m)(3) of the DWPA defines "discharge" in terms of those "quantities of oil determined to be harmful pursuant to regulations issued by the Administrator of the Environmental Protection Agency" (33 U.S.C. 1517(m)(3)).

The legislative history of section 18 of the DWPA shows that Congress expected the Administrator "to define harmful quantities of oil as defined in regulations issued under section 311 of the Federal Water Pollution Control Act" (Sen. Rep. No. 93–1217, 93d Cong., 2d Sess. (1974)). Consequently, EPA proposes that the definition of harmful quantities of oil in 40 CFR Part 110 (as revised by this rulemaking) be used for purposes of the DWPA, including the Section 402 CWA permit-related exclusions. (Although the Agency is proposing to use the sheen test, subject to the noted exclusions, as the reporting trigger for deepwater ports, we would like to receive comments on the alternative volumetric approach as discussed under Section IV. A. of the preamble.)

It was though during the energy crises of the 1970's that there would be constructed a number of deepwater ports to accommodate supertankers. There is, however, currently only one operational U.S. deepwater port; the Louisiana Offshore Oil Port, Inc. (LOOP), which is located in the Gulf of Mexico, approximately 19 miles south of Grand Isle, Louisiana. Only that port and the vessels calling there will be immediately subject to the definition of a "discharge" proposed by this rulemaking.

Because of the statutory changes discussed above, it has become necessary to redesignate §§ 110.6 (Exception for vessel engines), 110.7 (Dispersants), 110.8 (Demonstration projects), and 110.9 (Notice) as §§ 110.8, 110.9, 110.10, and 110.11, respetively.

IV. Requests for Changes in the Oil Discharge Regulation

The Agency plans to promulgate promptly the statutorily mandated changes discussed above and today solicits comments on them. In addition, EPA requests comment and information on other issues pertaining to 40 CFR Part 110, described below.

A. Volumetric Alternatives to Sheen Test

Chevron U.S.A. Inc., of San Francisco, California, has commented to EPA that the sheen test is too stringent and that alternative, volumetric limits would provide sufficient water quality protection at a lesser cost to the company. Chevron has suggested that the reportable quantity threshold be changed to 1 barrel (42 gallons), except where water quality standards are more stringent. The company maintains that spills of less than 1 barrel "rarely, if ever, cause environmental damage." Chevron claims, in material submitted to EPA, that approximately 75 percent of the spills it reports are of under 1 barrel and estimates that the cost to the company is $500 to $6,000 per spill report.

EPA is interested in receiving comments on the appropriateness of a volumetric reporting test of 1 barrel, 50 barrels, or any other appropriate level. As discussed above, the statutory requirement under the CWA is that the reporting threshold is to be a "quantity as may be harmful." Any alternative reporting threshold must be consistent with this statutory requirement.

As noted above, EPA views the revised "may be harmful" criteria of Section 311 as being at least as stringent and environmentally protective as the prior "will be harmful" standard. Compared to the present oil sheen test, the alternative volumetric suggestion by Chevron would allow greater quantities of oil to be discharged without being subject to the notification requirements or liability provisions of section 311. The information submitted by Chevron, however, does not provide an adequate basis for concluding that such a volumetric alternative is, in fact, at least as environmentally protective as the present oil sheen test. Moreover, initial comment from the USCG and from EPA field personnel indicates that a change to a volumetric limit of, for example, 1 barrel, would be less environmentally protective and less enforceable than the sheen test since it is difficult to determine the precise volume of oil once it is discharged into the water. Finally, those who implement the current regulation seem to agree that it has been successful in creating an effective early-warning system, in improving oil-handling techniques, and in reducing spillage.

EPA, therefore, is not proposing a change to the present oil sheen test. The Agency does, however, request data on industry's suggestion.

EPA would like to receive comments on the environmental impacts reporting costs, administrative impacts, and enforceability of volumetric reporting test. The Agency is especially interested in a comparison of the environmental effectiveness of the volumetric approach and the present sheen test. Those who comment should, insofar as possible, provide supporting documentation and analysis in addition to their opinions on this issue.

Other information that EPA is interested in receiving includes:

1. Environmental impacts of various sizes of spills (for example, under 1 barrel, 50 barrels, 100 barrels);

2. Circumstance affecting harm (type of receiving water—fresh, brackish, salt—type of oil, and so forth);

3. Cumulative environmental impacts of small release, need for cleanup actions for accumulations of small releases, and property damage resulting from such accumulations;

4. Effectiveness of the sheen and the volumetric alternative as an early warning system to prevent larger spills;

5. Frequency with which corrective action is necessary or required for small releases;

6. Effectiveness of the sheen reporting threshold in inducing effective spill prevention practices on the part of oil handlers;

7. Number of spills reported each year; number under 1 barrel;

8. Estimated number of small sills not reported;

9. Discharges' reporting costs for reporting small spills: direct, admnistrative/recordkeeping, down time, other (provide documentation);

10. Extent to which reporting costs are (a) required by law or regulation; (b) a responsible practice, but not directly required; or (c) other;

11. Extent to which reporting costs vary as a function of spill size, type, or location;

12. Frequency with which the On-Scene-Coordinator responds in person to reports of spills of 1 barrel or less;

13. Estimated administrative cost of responding to small spills;

14. Difficulty and range of uncertainty in determining volume of oil once it is spilled (for example, would it be clearly apparent that a 10-barrel spill was greater than a 1-barrel spill?); compliance/enforcement impact of uncertainty in juding size of a spill after the fact;

15. Extent to which a sheen is or is not caused by different fractions and types of oil;

16. Extent to which a volumetric limit would be inconsistent with related programs (such as MARPOL limits, water quality standards);

17. Extent to which discharges smaller than a volumetric quantity would be reportable any way under MARPOL provisions;

18. Extent to which the reporting and/or sanctions mechanisms under MARPOL might be less effective than those under the CWA;

19. Problems that might result if onshore facilities (covered under the CWA only) have a different reportable quantity than ships and offshore facitites (which must report under MARPOL); and

20. Problems that might result if the liability provisions under Section 311(f) are triggered at some volumetric release level, resulting in an inability to recover removal costs for individual and/or cumulative effects of the release less than the volumetric reportable quantity (even though smaller releases must be *reported* under MARPOL).

EPA also welcomes any additional information or comments bearing on these issues.

B. Special use Applications of Oil

EPA has authority under the CWA, section 311 (b)(3(B), and Executive Order 11735 (38 FR 21243) to permit the discharge of oil "in quantities and at times and locations or under such circumstances or conditions" as the Agency determines not to be harmful. Thus, EPA may grant exemptions to section 311 (b) and the sheen regulation under appropriate circumstances. As this section of the preamble explains, the Agency has received the following request for an exemption for vegetable oil products on which it would like to receive public comments.

The ballast tanks of ships and semisubmersible oil rigs are subject to significant corrosion from sea water. This corrosion threatens the structural integrity of the tanks. The tanks can, however, be protected by floating oil on the surface of the ballast water; when the tanks are flushed or emptied, some of the floating oil coats the tank walls and makes them less susceptible to corrosion. Petroleum oil is sometimes used for this purpose. Upon discharge of the ballast water into a harbor or bay, however, the coating oil is sometimes released, thus creating an oil sheen. This sheen is, of course, subject to the notification requirements of the oil discharge regulation. MARPOL 73/78 does not apply to vegetable (or animal) oils and thus does not pertain to this issues.

EPA has received a request to exempt from the sheen regulation a vegetable oil product manufactured by Esgard, Inc.., of Lafayette, Louisiana, that is used to prevent salt water corrosion in the ballast tanks and void spaces of ships and semisubersible oil rigs. This product, which is composed primarily of a food-grade vegetable oil and calcium soaps of fatty triglycerides, floats on the surface of the ballast water to coat and protect the steel surfaces. When discharged, the product produces a sheen on the water's surface.

The Agency is considering a number of regulatory options on such products. They include the following:

1. Exempting discharges of vegetable-based products used for tank coating from reporting requirements under 40 CFR Part 110 (this option would require the development of criteria for selecting the products to be exempted);

2. Exempting discharges of such products on case-by-case basis;

3. Requiring the discharge to be reported to the appropriate authorities in all cases.

The Agency requests comments on these regulatory options.

The Agency also requests specific technical and scientific data on the following items:

1. Evironmental impacts of the use of vegetable and other nonmineral oils, particularly fish oils;

2. Biodegradability of such oils;

3. Conditions under which discharges of such oils may be harmful;

4. Benefits of the use of such oils, including data on the various uses;

5. Volume and frequency of discharges of such oils from the ballast tanks and void tanks of ships and semisubmersible oil rigs;

6. Biological oxygen demand/chemical oxygen demand requirements for degradation;

7. Volume of material used per square foot;

8. Volume discharges per day;

9. Length of time of discharge;

10. Other methods of tank coating for corrosion protection in lieu of an oil "float coat"; and

11. Any other relevant information.

V. Summary of Supporting analyses

A. Classification and Regulatory Impact Analysis

Proposed regulations must be classified as major or nonmajor to satisfy the rulemaking protocol established by Executive Order 12291. E.O. 22291 established the following criteria for a regulation to qualify as a major rule:

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.The proposed oil discharge regulation is a nonmajor rule because the Agency has concluded that it meets none of the above criteria. Data supporting this conclusion can be found in the rulemaking docket.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and maked available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have a significant economic impact on small entities. There may be some incremental costs of compliance owning to the extension of jurisdiction beyond the contiguous zone to 200 miles. These costs will, however, be borne by owners

of vessels larger than those defined as small entites. Accordingly, I herby certify that this proposed regulation would not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require regulatory flexibility analysis.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Submit comments on these requirements to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, N.W., Washington, D.C. 20503, market "Attention: Desk Officer for EPA." The final rule will respond to any OMB or pubic comments on the information collection requirements.

VI. List of Subjects in 40 CFR Part 110

Administrative practice and procedure, Coastal zone, Continental shelf, Environmental protection, Fisheries, Hazardous substances, Intergovernmental relations, Liabilities, Marine resources, Natural resources, Oil pollution, Penalties, Petroleum, Public health, Reporting and recordkeeping requirements, Rivers, Treaties, Vessels, Water pollution control, Water resources, Waterways.

Dated: March 1, 1985.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 110 is proposed to be revised as follows.

PART 110—DISCHARGE OF OIL

Sec.

110.1 Definitions.
110.2 Applicability.
110.3 Discharge into navigable waters of such quantities as may be harmful.
110.4 Discharge into contiguous zone of such quantities as may be harmful.
110.5 Discharge beyond contiguous zone of such quantities as may be harmful.
110.6 Discharge at deepwater ports.
110.7 Discharge prohibited.
110.8 Exception for vessel engines.
110.9 Dispersants.
110.10 Demonstration projects.
110.11 Notice.

Authority: Secs. 311 and 501(a), Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.* as amended); Section 18(m)(3) of the Deepwater Port Act of 1974 (33 U.S.C. 1517(m)(3)); sec. 12(b) of the Act to Prevent Pollution from Ships (33 U.S.C. 1901 *et seq.*).

§ 110.1 Definitions.

As used in this part, the following terms shall have the meaning indicated below:

"Act" means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.*, also known as the Clean Water Act;

"Administrator" means the Administrator of the Environmental Protection Agency (EPA);

"Applicable water quality standards" means State water quality standards adopted by the State and approved by EPA pursuant to Section 303 of the Act or promulgated by EPA pursuant to that section;

"Contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

"Deepwater port" means an offshore facility as defined in Section (3)(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502(10));

"Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping, but excludes (A) discharges in compliance with a permit under section 402 of the Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under Section 402 of the Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, that are caused by events occurring within the scope of relevant operating or treatment systems;

A discharge "in connnection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act)," means: (1) A discharge into any waters beyond the contiguous zone from any vessel or onshore or offshore facility, which vessel or facility is subject to or is engaged in activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, and (2) any discharge into any waters beyond the contiguous zone that contain, cover, or support any natural resource belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act);

"MARPOL 73/78" means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, Annex I, which regulates pollution from oil and which entered into force on October 2, 1983;

"Navigable waters" means the waters of the United States, including the territorial seas. The term includes:

(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(b) Interstate waters, including interstate wetlands;

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(3) That are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as navigable waters under this section;

(e) Tributaries of waters identified in paragraphs (a)—(d) of this section, including adjacent wetlands; and

(f) Wetlands adjacent to waters identified in paragraphs (a)—(e) of this section: *Provided,* That waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States;

"NPDES" means National Pollutant Discharge Elimination System;

"Offshore facility" means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind that is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

"Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

"Onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States, other than submerged land;

"Person" includes an individual, firm, corporation, association, and a partnership;

"Public vessel" means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

"Sheen" means and iridescent appearance on the surface of water;

"Sludge" means an aggregate of oil or oil and other matter of any kind in any form other than dredged spoil having a combined specific gravity equivalent to or greater than water;

"United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

"Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel; and

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs, and similar areas such as sloughs, prairie pōtholes, wet meadows, prairie river overflows, mudflats, and natural ponds.

§ 110.2 Applicability.

The regulations of this part apply to the discharge of oil into or upon the waters of the United States or adjoining shorelines or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act of the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act), prohibited by section 311(b)(3) of the Act.

§ 110.3 Discharge into navigable waters of such quantities as may be harmful.

For purposes of section 311(b) of the Act, discharges of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that it has been determined may be harmful to the public health or welfare of the United States, except as provided in § 110.8 of this part, include discharges of oil that:

(a) Violate applicable water quality standards, or

(b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

§ 110.4 Discharge into contiguous zone of such quantities as may be harmful.

For purposes of section 311(b) of the Act, discharges of oil into or upon the waters of the contiguous zone in such quantities that it has been determined may be harmful to the public health or welfare of the United States, except as provided in § 110.8, include discharges of oil that:

(a) Violate applicable water quality standards, or

(b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

§ 110.5 Discharge beyond contiguous zone of such quantities as may be harmful.

For purposes of section 311(b) of the Act, discharges of oil in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act) in such quantities that it has been determined may be harmful to the public health or welfare of the United States, except as provided in § 110.8, include discharges of oil that:

(a) Violate applicable water quality standards, or

(b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

§ 110.6 Discharge at deepwater ports.

(a) For purposes of section 18(m)(3) of the Deepwater Port Act of 1974, the term "discharge" shall includ, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into the marine environment of quantities of oil that:

(1) Violate applicable water quality standards, or

(2) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

(b) The term "discharge" excludes: (1) Discharges in compliance with a permit under Section 402 of the Act, (2) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Act, and subject to a condition in such permit, and (3) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under seciton 402 of this Act, that are caused by events occurring within the scope of relevant operating or treatment systems.

§ 110.7 Discharge prohibited.

As provided in Section 311(b)(3) of the Act, no person shall discharge or cause or permit to be discharged into or upon the navigable waters of the United States or adjoining shorelines or into or upon the waters of the contiguous zone or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act) any oil in such quantities as may be harmful as determined in §§ 110.3, 110.4, and 110.5, and discharges under 110.6 except as the same may be permitted in the contiguous zone and seaward under MARPOL 73/78, Annex I, as provided in 33 CFR Part 151.09.

§ 110.8 Exception for vessel engines.

For purposes of section 311(b) of the Act, discharges of oil from a porpoerly functioning vessel engine are not deemed to be harmful, but discharges of such oil accumulated in a vessel's bilges shall not be so exempt.

§ 110.9 Dispersants.

Addition of dispersants or emulsifiers to oil to be discharged that would circumvent the provisions of this part is prohibited.

§ 110.10 Demonstration projects.

Notwithstanding any other provisions of this part, the Administrator may permit the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines or into or upon the waters of the contiguous zone or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwaterport Act of 1974, or that may affect natural resources belonging to, appertaining to, or under

the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act), inconnection with research, demonstration projects, or studies relating to the prevention, control, or abatement of oil pollution.

§ 110.11 Notice.

Any person in charge of any vessel or onshore or offshore facility shall, as soon as he has knowledge of any discharge of oil from such vessel or facility in violation of § 110.7, immediately notify the National Response Center (800–424–8802; in the Washington, D.C., metropolitan area, (202) 426–2675), or if not practicable, the appropriate predesignated On-Scene-Coordinator in the EPA Regional Office or U.S. Coast Guard District Office of such discharge in accordance with such procedures as the Secretary of Transportation may prescribe. The procedures for such notice are set forth in U.S. Coast Guard regulations, 33 CFR Part 153, Subpart B.

[FR Doc. 85–5700 Filed 3–8–85; 8:45 am]

BILLING CODE 6560–50–M

Reader Aids

Federal Register

Vol. 50, No. 47

Monday, March 11, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual	523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

8317-8572	1
8573-8702	4
8703-8988	5
8989-9260	6
9261-9420	7
9421-9608	8
9609-9784	11

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:

12193 (See EO 12506)	8991
12295 (See EO 12506)	8991
12351 (See EO 12506)	8991
12409 (See EO 12506)	8991
12463 (See EO 12506)	8991
12506	8991

Administrative Orders:

Memorandums:

September 6, 1973 (Superseded by Memorandum of February 27, 1985)	8953
February 27, 1985	8953

Proclamations:

5306	8989

5 CFR

Ch. XIV	8993
293	8993
294	8993

7 CFR

226	8573
301	9261
318	8317
319	8703, 8704
409	9609
440	9609
448	9263
910	8317, 9610
1062	8318
1807	8581
1822	8581
1902	8581
1930	8581
1944	8581
1951	8581
1955	8581
1965	8581

Proposed Rules:

911	9452
989	9037
1002	9637
1004	9637
1007	9038
1011	9038
1046	9038
1093	9038
1094	9654
1097	9038
1098	9038
1102	9038
1108	9038
1126	9661

8 CFR

103	8319

10 CFR

1	8605
53	8605

11 CFR

9007	9421
9038	9421

12 CFR

202	8707
205	8707
213	8708
226	8708
407	8606
701	8708
741	8708

Proposed Rules:

226	8737

14 CFR

39	8319-8321
71	9250, 9252
91	9252
103	9252
105	9252

Proposed Rules:

23	8948
39	8337-8339
71	8340, 8738, 8739, 9039, 9040, 9452, 9453
75	9453
303	8341

17 CFR

239	9267

Proposed Rules:

1	8639
230	9281
275	8740

18 CFR

Proposed Rules:

154	8639
155	8639
156	8639
157	8639
284	8639
410	9284

19 CFR

6	8710
12	8710
18	8710
19	8710
141	8710, 9610
143	8710, 9610
144	8710
145	9610

146 ... 8710
147 ... 9610
172 ... 9610
177 ... 9610

Proposed Rules:
101 ... 9455

20 CFR

404 ... 8726
416 ... 8726
630 ... 8323
631 ... 8323
652 ... 8323

Proposed Rules:
200 ... 8341, 9285

21 CFR

5 ... 9423, 9424
10 ... 8993
12 ... 8993
13 ... 8993
14 ... 8993
20 ... 8993
25 ... 8993
58 ... 8993
73 ... 9424
184 ... 8997
201 ... 8993
207 ... 8993
211 ... 8993
225 ... 8993
291 ... 8993
310 ... 8993
312 ... 8993
320 ... 8993
330 ... 8993
361 ... 8993
429 ... 8993
430 ... 8993
431 ... 8993
436 ... 9267
561 ... 8999
573 ... 8606
600 ... 9000
606 ... 9000
610 ... 9000
620 ... 9000
630 ... 9000
640 ... 9000
660 ... 9000
864 ... 8729

Proposed Rules:
310 ... 9678
334 ... 9678
341 ... 9040
357 ... 9040
600 ... 8743
660 ... 8743

23 CFR

Proposed Rules:
658 ... 8342

24 CFR

1 ... 9268
17 ... 9268
35 ... 9268
42 ... 9268
50 ... 9268
51 ... 9268
108 ... 9268
200 ... 9268
201 ... 9268
390 ... 9268
600 ... 9268
880 ... 9268
882 ... 9268
883 ... 9268
885 ... 9268
886 ... 9268
888 ... 9268
905 ... 9268
960 ... 9269
1710 ... 9268
2700 ... 9268
3280 ... 9268
3500 ... 9268

Proposed Rules:
1800 ... 9040

26 CFR

1 ... 9269, 9613, 9614
31 ... 9614
54 ... 9614
301 ... 9614

Proposed Rules:
1 ... 8749
301 ... 9678

27 CFR

3 ... 8456
5 ... 8456
13 ... 8456
19 ... 8456, 9152
20 ... 9152
21 ... 9152
22 ... 9152
30 ... 8456
170 ... 8456, 9152
194 ... 8456
195 ... 8456
196 ... 8456
197 ... 8456
200 ... 8456, 9152
211 ... 8456, 9152
213 ... 8456, 9152
231 ... 8456
240 ... 8456
245 ... 8456
250 ... 8456, 9152
251 ... 8456, 9152
252 ... 8456, 9152

28 CFR

0 ... 8606, 8607
42 ... 8608

Proposed Rules:
31 ... 9679

29 CFR

20 ... 8608
1691 ... 8608

30 CFR

913 ... 9620
917 ... 8608

Proposed Rules:
904 ... 9286
920 ... 9679
943 ... 9287
950 ... 9680

31 CFR

51 ... 8610, 8612

32 CFR

199 ... 8729
721 ... 9000

33 CFR

126 ... 8612, 9426
160 ... 8612, 9426
165 ... 9426

Proposed Rules:
100 ... 9681
110 ... 8640
117 ... 9288, 9289
140 ... 9290
141 ... 9290
142 ... 9290
143 ... 9290
144 ... 9290
145 ... 9290
146 ... 9290
166 ... 9682

36 CFR

Proposed Rules:
223 ... 8344, 9302
1154 ... 9686

37 CFR

1 ... 9368
201 ... 9270

38 CFR

21 ... 9621

39 CFR

111 ... 9622
601 ... 9015

Proposed Rules:
111 ... 8345, 9051

40 CFR

52 ... 8614, 8616
60 ... 8323, 8324, 8620, 9578
61 ... 8620
62 ... 9627
80 ... 9386
228 ... 9273
271 ... 9427
775 ... 8621

Proposed Rules:
51 ... 9456, 9694
52 ... 8346, 8749, 8751, 9052, 9694
58 ... 9538
60 ... 9055, 9057
80 ... 9400
81 ... 8751, 9694
86 ... 9204
110 ... 9776
122 ... 9362
305 ... 9586
306 ... 9593

41 CFR

Ch. 101 ... 8622

Proposed Rules:
105-64 ... 8641

43 CFR

4 ... 8325
3400 ... 8626
3410 ... 8626
3420 ... 8626
3430 ... 8626
3450 ... 8626
3460 ... 8626
3470 ... 8626

Public Land Orders:
6459 Corrected by PLO 6589 ... 9428
6588 ... 9279
6589 ... 9428

Proposed Rules:
4100 ... 9698

44 CFR

205 ... 9628

46 CFR

50 ... 9428
52 ... 9428
53 ... 9428
54 ... 9428
58 ... 9428
63 ... 9428
153 ... 8730
154 ... 8730
162 ... 9426
298 ... 9437

Proposed Rules:
298 ... 9456

47 CFR

Ch. I ... 8627, 9016
0 ... 9632
64 ... 9033
69 ... 9633
73 ... 8325-8335, 8628, 8634, 9033-9035
74 ... 9035

Proposed Rules:
Ch. I ... 9462
2 ... 9059, 9060, 9292
15 ... 9059
22 ... 9059
25 ... 9059
64 ... 9060
73 ... 8347, 9060-9074
76 ... 9076
90 ... 9059, 9060, 9293
97 ... 8348

48 CFR

Ch. 29 ... 8914

Proposed Rules:
Ch. 5 ... 9293
31 ... 8752

49 CFR

1 ... 9036
25 ... 8955
173 ... 8635
1152 ... 8566

Proposed Rules:
25 ... 8987
215 ... 9293
571 ... 9294
1171 ... 9296

50 CFR

21 ... 8636
91 ... 9279
611 ... 8335
651 ... 8735

Proposed Rules:
17 ... 9083-9095, 9300
26 ... 9300
33 ... 8752
671 ... 8348
677 ... 8348

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List February 14, 1985

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $550 domestic, $137.50 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$6.00	Jan. 1, 1984
3 (1983 Compilation and Parts 100 and 101)	7.00	Jan. 1, 1984
4	12.00	Jan. 1, 1985
5 Parts:		
1-1199	13.00	Jan. 1, 1984
1-1199 (Special Supplement)	None	Jan. 1, 1984
1200-End, 6 (6 Reserved)	7.50	Jan. 1, 1985
7 Parts:		
0-45	13.00	Jan. 1, 1984
46-51	13.00	Jan. 1, 1985
52	14.00	Jan. 1, 1984
53-209	13.00	Jan. 1, 1984
210-299	13.00	Jan. 1, 1984
300-399	7.50	Jan. 1, 1984
400-699	13.00	Jan. 1, 1984
700-899	13.00	Jan. 1, 1984
900-999	14.00	Jan. 1, 1984
1000-1059	12.00	Jan. 1, 1984
1060-1119	9.50	Jan. 1, 1985
1120-1199	8.00	Jan. 1, 1985
*1200-1499	13.00	Jan. 1, 1985
*1500-1899	7.50	Jan. 1, 1985
1900-1944	14.00	Jan. 1, 1984
1945-End	13.00	Jan. 1, 1984
8	7.50	Jan. 1, 1985
9 Parts:		
1-199	13.00	Jan. 1, 1984
200-End	9.50	Jan. 1, 1984
10 Parts:		
0-199	14.00	Jan. 1, 1984
200-399	9.50	Jan. 1, 1985
400-499	12.00	Jan. 1, 1984
500-End	13.00	Jan. 1, 1984
11	7.50	Jan. 1, 1985
12 Parts:		
1-199	9.00	Jan. 1, 1984
200-299	14.00	Jan. 1, 1984
300-499	9.50	Jan. 1, 1984
500-End	14.00	Jan. 1, 1984
13	13.00	Jan. 1, 1984
14 Parts:		
1-59	13.00	Jan. 1, 1984
60-139	13.00	Jan. 1, 1984
140-199	7.50	Jan. 1, 1985
200-1199	13.00	Jan. 1, 1984
1200-End	8.00	Jan. 1, 1985
15 Parts:		
*0-299	6.50	Jan. 1, 1985
300-399	13.00	Jan. 1, 1984
*400-End	12.00	Jan. 1, 1985
16 Parts:		
0-149	9.00	Jan. 1, 1985
*150-999	10.00	Jan. 1, 1985
1000-End	13.00	Jan. 1, 1984
17 Parts:		
1-239	14.00	Apr. 1, 1984
240-End	13.00	Apr. 1, 1984
18 Parts:		
1-149	12.00	Apr. 1, 1984
150-399	15.00	Apr. 1, 1984
400-End	6.50	Apr. 1, 1984
19	17.00	Apr. 1, 1984
20 Parts:		
1-399	7.50	Apr. 1, 1984
400-499	13.00	Apr. 1, 1984
500-End	14.00	Apr. 1, 1984
21 Parts:		
1-99	9.00	Apr. 1, 1984
100-169	12.00	Apr. 1, 1984
170-199	12.00	Apr. 1, 1984
200-299	4.25	Apr. 1, 1984
300-499	14.00	Apr. 1, 1984
500-599	13.00	Apr. 1, 1984
600-799	6.00	Apr. 1, 1984
800-1299	9.50	Apr. 1, 1984
1300-End	6.00	Apr. 1, 1984
22	17.00	Apr. 1, 1984
23	13.00	Apr. 1, 1984
24 Parts:		
0-199	8.00	Apr. 1, 1984
200-499	14.00	Apr. 1, 1984
500-699	6.00	Apr. 1, 1984
700-1699	12.00	Apr. 1, 1984
1700-End	9.50	Apr. 1, 1984
25	14.00	Apr. 1, 1984
26 Parts:		
§§ 1.0-1.169	14.50	Apr. 1, 1984
§§ 1.170-1.300	10.00	Apr. 1, 1984
§§ 1.301-1.400	7.50	Apr. 1, 1984
§§ 1.401-1.500	13.00	Apr. 1, 1984
§§ 1.501-1.640	12.00	Apr. 1, 1984
§§ 1.641-1.850	12.00	Apr. 1, 1984
§§ 1.851-1.1200	14.00	Apr. 1, 1984
§§ 1.1201-End	17.00	Apr. 1, 1984
2-29	13.00	Apr. 1, 1984
30-39	9.00	Apr. 1, 1984
40-299	14.00	Apr. 1, 1984
300-499	9.50	Apr. 1, 1984
500-599	8.00	[1] Apr. 1, 1980
600-End	5.50	Apr. 1, 1984
27 Parts:		
1-199	13.00	Apr. 1, 1984
200-End	12.00	Apr. 1, 1984
28	13.00	July 1, 1984
29 Parts:		
0-99	14.00	July 1, 1984
100-499	6.50	July 1, 1984
500-899	14.00	July 1, 1984
900-1899	7.50	July 1, 1984
1900-1910	15.00	July 1, 1984
1911-1919	5.50	July 1, 1984
1920-End	14.00	July 1, 1984
30 Parts:		
0-199	13.00	July 1, 1984
200-699	5.50	July 1, 1984
700-End	13.00	July 1, 1984
31 Parts:		
0-199	8.00	July 1, 1984
200-End	9.50	July 1, 1984

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	15.00	July 1, 1984
1–39, Vol. II	19.00	July 1, 1984
1–39, Vol. III	18.00	July 1, 1984
40–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–629	13.00	July 1, 1984
630–699	12.00	July 1, 1984
700–799	13.00	July 1, 1984
800–999	9.50	July 1, 1984
1000–End	6.00	July 1, 1984
33 Parts:		
1–199	14.00	July 1, 1984
200–End	13.00	July 1, 1984
34 Parts:		
1–299	14.00	July 1, 1984
300–399	8.50	July 1, 1984
400–End	14.00	July 1, 1984
35	7.50	July 1, 1984
36 Parts:		
1–199	9.00	July 1, 1984
200–End	12.00	July 1, 1984
37	8.00	July 1, 1984
38 Parts:		
0–17	14.00	July 1, 1984
18–End	9.50	July 1, 1984
39	8.00	July 1, 1984
40 Parts:		
1–51	13.00	July 1, 1984
52	14.00	July 1, 1984
53–80	18.00	July 1, 1984
81–99	14.00	July 1, 1984
100–149	9.50	July 1, 1984
150–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–424	13.00	July 1, 1984
425–End	14.00	July 1, 1984
41 Chapters:		
1, 1–1 to 1–10	13.00	July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	July 1, 1984
3–6	14.00	July 1, 1984
7	6.00	July 1, 1984
8	4.50	July 1, 1984
9	13.00	July 1, 1984
10–17	9.50	July 1, 1984
18, Vol. I, Parts 1–5	13.00	July 1, 1984
18, Vol. II, Parts 6–19	13.00	July 1, 1984
18, Vol. III, Parts 20–52	13.00	July 1, 1984
19–100	13.00	July 1, 1984
101	15.00	July 1, 1984
102–End	9.50	July 1, 1984
42 Parts:		
1–60	12.00	Oct. 1, 1984
61–399	8.00	Oct. 1, 1984
400–End	18.00	Oct. 1, 1984

Title	Price	Revision Date
43 Parts:		
1–999	9.50	Oct. 1, 1984
1000–3999	14.00	Oct. 1, 1984
4000–End	8.00	Oct. 1, 1984
44	13.00	Oct. 1, 1984
45 Parts:		
1–199	9.50	Oct. 1, 1984
200–499	6.50	Oct. 1, 1984
500–1199	13.00	Oct. 1, 1984
1200–End	9.50	Oct. 1, 1984
46 Parts:		
1–40	9.50	Oct. 1, 1984
41–69	9.50	Oct. 1, 1984
70–89	6.00	Oct. 1, 1984
90–139	9.00	Oct. 1, 1984
140–155	9.50	Oct. 1, 1984
156–165	10.00	Oct. 1, 1984
166–199	9.00	Oct. 1, 1984
200–499	13.00	Oct. 1, 1984
400–End	7.00	Oct. 1, 1983
47 Parts:		
0–19	13.00	Oct. 1, 1984
20–69	14.00	Oct. 1, 1984
70–79	13.00	Oct. 1, 1984
80–End	14.00	Oct. 1, 1984
48 Chapters:		
1 (Parts 1–51)	13.00	Oct. 1, 1984
1 (Parts 52–99)	13.00	Oct. 1, 1984
2	13.00	Oct. 1, 1984
3–6	12.00	Oct. 1, 1984
7–14	14.00	Oct. 1, 1984
15–End	12.00	Oct. 1, 1984
49 Parts:		
1–99	7.50	Oct. 1, 1984
*100–177	14.00	Nov. 1, 1984
178–199	13.00	Nov. 1, 1984
200–399	13.00	Oct. 1, 1984
400–999	13.00	Oct. 1, 1984
1000–1199	13.00	Oct. 1, 1984
1200–1299	13.00	Oct. 1, 1984
1300–End	3.75	Oct. 1, 1984
50 Parts:		
1–199	9.50	Oct. 1, 1984
200–End	14.00	Oct. 1, 1984
CFR Index and Findings Aids	17.00	Jan. 1, 1984
Complete 1985 CFR set	550.00	1985
Microfiche CFR Edition:		
Complete set (one-time mailing)	155.00	1983
Subscription (mailed as issued)	200.00	1984
Individual copies	2.25	1984
Subscription (mailed as issued)	185.00	1985
Individual copies	3.75	1985

[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1984. The CFR volume issued as of Apr. 1, 1980, should be retained.

Just Released

Code of Federal Regulations

Revised as of January 1, 1985

Quantity	Volume	Price	Amount
	Title 7—Agriculture		
_____	Parts 1060–1119 (Stock No. 822–004–00016–4)	$9.50	$_____
_____	Parts 1120–1199 (Stock No. 822–004–00017–2)	8.00	_____
_____	Parts 1200–1499 (Stock No. 822–004–00018–1)	13.00	_____
_____	Parts 1500–1899 (Stock No. 822–004–00019–9)	7.50	_____
_____	Title 15—Commerce and Foreign Trade (Part (400-End) (Stock No. 822–004–00042–3)	12.00	_____
		Total Order	$_____

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

Please do not detach

Order Form

Mail to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

Charge to my Deposit Account No.

☐☐☐☐☐☐–☐

Order No._____

VISA* MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the **Code of Federal Regulations** publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only.

	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		