

Tuesday  
February 11, 1986

# Federal Register

**Briefings on How To Use the Federal Register—**

For information on briefings in St. Louis, MO, and Denver, CO, see announcement on the inside cover of this issue.

## Selected Subjects

**Administrative Practice and Procedure**

International Trade Commission

**Air Pollution Control**

Environmental Protection Agency

**Conflict of Interests**

Postal Rate Commission

**Foreign Trade**

Trade Representative, Office of United States

**Foreign Trade Zones**

Customs Service

**Hazardous Waste**

Environmental Protection Agency

**Investigations**

International Trade Commission

**Marketing Agreements**

Agricultural Marketing Service

**Milk Marketing Orders**

Agricultural Marketing Service





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

**How To Cite This Publication:** Use the volume number and the page number. Example: 51 FR 12345.

#### THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

#### ST. LOUIS, MO

**WHEN:** March 11; at 9 am.

**WHERE:** Room 1612,  
Federal Building,  
1520 Market Street, St. Louis, MO.

**RESERVATIONS:** Delores O'Guin,  
St. Louis Federal Information Center.  
314-425-4109

#### DENVER, CO

**WHEN:** March 24; at 9 am.

**WHERE:** Room 239,  
Federal Building,  
1961 Stout Street, Denver, CO.

**RESERVATIONS:** Elizabeth Stout  
Denver Federal Information Center.  
303-236-7181



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# Presidential Documents

Title 3—

The President

Executive Order 12547 of February 6, 1986

## Establishing Procedures for Facilitating Presidential Review of International Aviation Decisions Submitted by the Department of Transportation

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 801 of the Federal Aviation Act, as amended (49 U.S.C. 1461), and in order to provide Presidential guidance to department and agency heads and facilitate Presidential review of decisions submitted to the President for his review by the Department of Transportation pursuant to the Federal Aviation Act, it is hereby ordered as follows:

**Section 1.** (a) Except as otherwise provided in this section, decisions of the Department of Transportation (hereinafter referred to as the "DOT") transmitted to the President pursuant to Section 801 of the Federal Aviation Act, as amended, may be made available by the DOT for public inspection and copying following submission to the President.

(b) In the interests of national security, and in order to allow for consideration of appropriate action under Executive Order No. 12356, decisions of the DOT transmitted to the President under Section 801 shall be withheld from public disclosure for a period not to exceed five days after submission to the President.

(c) At the same time that decisions of the DOT are submitted to the President pursuant to Section 801, the DOT shall transmit copies thereof to the Secretary of State, the Secretary of Defense, the Secretary of the Treasury, the Attorney General, the Assistant to the President for National Security Affairs, the Director of the Office of Management and Budget and any other Executive department or agency that the DOT deems appropriate.

(d) The Secretary of State and the Secretary of Defense, or their designees, shall review the decisions of the DOT transmitted pursuant to subsection (c) above, and shall promptly advise the Assistant to the President for National Security Affairs or his designee, whether action pursuant to Executive Order No. 12356 is deemed appropriate. If, after considering these recommendations, the Assistant to the President for National Security Affairs determines that classification under Executive Order No. 12356 is appropriate, he shall take such action and immediately so inform the DOT. Action pursuant to this subsection shall be completed by the persons designated herein within five days of receipt of the decision by the President.

(e) On and after the sixth day following receipt by the President of a DOT decision submitted pursuant to Section 801, or upon earlier notification by the Assistant to the President for National Security Affairs or his designee, the DOT is authorized to disclose all unclassified portions of the text of such decision. Nothing in this section is intended to affect the ability to withhold material under any Executive Order or statute other than Section 801.

**Sec. 2.** (a) Departments and agencies outside of the Executive Office of the President shall raise only matters of national defense or foreign relations in the course of the Presidential review established by this Order. All other matters, including those related to regulatory policy, shall be presented to the DOT in accordance with the procedures of the DOT.

(b) Departments and agencies outside of the Executive Office of the President that identify matters of national defense or foreign relations while a decision



is pending before the DOT shall, except as confidentiality is required for reasons of defense or foreign policy, make those matters known to the DOT in the course of its proceedings.

**Sec. 3.** (a) After transmitting a decision under Section 801 to the President for review, the DOT shall obtain the recommendations, addressed to the President, of the departments and agencies referred to in section 1(c) of this Order.

(b) Departments or agencies outside of the Executive Office of the President making recommendations on matters of national defense or foreign relations with respect to any decision submitted by the DOT to the President under Section 801 shall submit their recommendations in writing to the DOT: (1) within four days of the DOT's issuance of a decision subject to a 10-day statutory review period under Section 801(b); and (2) within twenty-one days of the DOT's issuance of a decision subject to a 60-day statutory review period under Section 801(a), or in exceptional cases, within the period specified by the DOT in its letter of transmittal.

(c) The DOT shall, as soon as practical after the deadlines specified in section 3(b) of this Order: (1) if no recommendations are received from the departments and agencies specified in section 1(c) of this Order, transmit to the President, through the Assistant to the President for National Security Affairs, a memorandum stating that no department or agency advises disapproval of the decision; or (2) if recommendations are received, transmit them to the Assistant to the President for National Security Affairs, who upon review, shall transmit a memorandum to the President with a recommendation as to whether or not the President should disapprove the proposed decision.

**Sec. 4.** (a) In advising the President with respect to his review of a decision submitted to him pursuant to Section 801, departments and agencies outside of the Executive Office of the President shall identify with particularity the defense or foreign policy implications of the DOT decision which are deemed appropriate for the President's consideration.

(b) If any department or agency which made recommendations to the President pursuant to Section 801 believes that, if the President decides not to disapprove a decision, the letter so advising the DOT should include a statement that the decision not to disapprove was based on national defense or foreign relations reasons, it should so indicate separately and explain why.

**Sec. 5.** Individuals within the Executive Office of the President shall follow a policy of: (a) refusing to discuss matters relating to the disposition of a case subject to the review of the President under Section 801 with any interested private party, or an attorney or agent for any such party, prior to the President's decision; and (b) referring any written communication from an interested private party, or an attorney or agent for any such party, to the appropriate department or agency outside of the Executive Office of the President. Exceptions to this policy may be made only when the head of an appropriate department or agency outside of the Executive Office of the President personally finds, on a nondelegable basis, that direct written or oral communication between a private party and a person within the Executive Office of the President is needed for reasons of defense or foreign policy.

**Sec. 6.** Departments and agencies outside of the Executive Office of the President which regularly make recommendations to the President in connection with the Presidential review pursuant to Section 801 shall, consistent with application law, including the provisions of Chapter 5 of Title 5 of the United States Code:

(a) establish public dockets for all written communications (other than those requiring confidential treatment for defense or foreign policy reasons) between their officers and employees and private parties in connection with the preparation of such recommendations; and

(b) prescribe such other procedures governing oral and written communications as they deem appropriate.

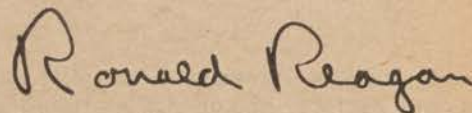


**Sec. 7.** This Order is intended solely for the internal guidance of the departments and agencies in order to facilitate the Presidential review process. This Order does not confer rights on any private parties.

**Sec. 8.** (a) None of the time deadlines specified in this Order shall be construed as a limitation on expedited Presidential review of any decision submitted under Section 801.

(b) Executive Order No. 11920 of June 10, 1976, is revoked.

(c) The provisions of this Order shall become effective 30 days after its publication in the **Federal Register**.

A handwritten signature in dark ink, reading "Ronald Reagan". The signature is written in a cursive, flowing style with a large, prominent "R" at the beginning.

THE WHITE HOUSE,  
February 6, 1986.

[FR Doc. 86-3104

Filed 2-7-86; 4:38 pm]

Billing code 3195-01-M



James G. Thompson



## Presidential Documents

Proclamation 5439 of February 7, 1986

### Small Business Week, 1986

By the President of the United States of America

#### A Proclamation

The business of America begins with small business—millions of men and women, bold and imaginative self-starters, seizing opportunities and providing the jobs that help to ensure that our Nation will remain economically strong and free.

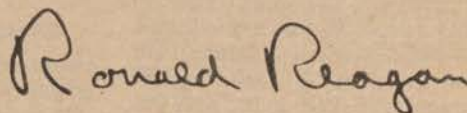
The flexibility of small business people is exemplified by their willingness to adapt to change, their determination to test untapped markets for new products and services, and their ability to contribute to the competitive marketplace in such a way as to improve efficiency, thus benefitting the consumer and spurring economic growth. Nothing characterizes the American economy better than our 14 million small businesses. They should be a source of pride for all Americans.

It is especially gratifying that in recent years greater numbers of young Americans are preparing for careers in independent business. Their innovative entrepreneurial spirit has brought a new excitement to the campus and to the marketplace. All Americans can take hope from their optimism, their creativity, and their impressive achievements.

This year, thousands of business owners will express their views at State preparatory sessions for the National White House Conference on Small Business—an example of free enterprise at its best. The recommendations prepared by the delegates to the National White House Conference in August will help us in formulating a small business agenda designed to make sure that our economy continues to grow and to prosper. All Americans benefit when small business is the force behind a vigorous and expanding economy.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of May 18 through May 24, 1986, as Small Business Week and ask that all Americans join with me in saluting our small business men and women by observing that week with appropriate activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of February, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.





Franklin D. Roosevelt

Franklin D. Roosevelt

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# Rules and Regulations

Federal Register

Vol. 51, No. 28

Tuesday, February 11, 1986

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

### Agricultural Marketing Service

#### 7 CFR Part 907

[Navel Orange Reg. 625]

#### Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 625 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period February 7 through February 13, 1986. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

**DATE:** Regulation 625 (§ 907.925) is effective for the period February 7-13, 1986.

#### FOR FURTHER INFORMATION CONTACT:

George J. Kelhart, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202-475-3919.

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

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the

recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1985-86 adopted by the Navel Orange Administrative Committee. The committee met publicly on February 4, 1986, at Visalia, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for fresh navel oranges continues weak. The regulation is needed to continue providing stability in the market and promote orderly marketing.

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 policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

#### List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

1. The authority citation for Part 907 continues to read:

**Authority:** Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.925 Navel Orange Regulation 625 is hereby added to read:

#### PART 907—[AMENDED]

##### § 907.925 Navel Orange Regulation 625.

The quantities of navel oranges grown in California and Arizona which may be handled during the period February 7, 1986, through February 13, 1986, are established as follows:

- (a) District 1: 1,400,000 cartons;
- (b) District 2: Unlimited cartons;
- (c) District 3: Unlimited cartons;
- (d) District 4: Unlimited cartons.

Dated: February 5, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-2929 Filed 2-10-86; 8:45 am]

BILLING CODE 3410-02-M

## UNITED STATES TRADE REPRESENTATIVE

### 15 CFR Part 2007

#### Revision of Regulations Relating to the Generalized System of Preferences (GSP)

**AGENCY:** United States Trade Representative.

**ACTION:** Final regulations.

**SUMMARY:** The United States Generalized System of Preferences Program was extended for a period of eight and one-half years pursuant to section 505(a) of Title V of the Trade and Tariff Act of 1984 (Pub. L. No. 98-573, October 30, 1984). In order to ensure that the administration of the GSP program conforms to the amendments included in Title V of the Trade and Tariff Act of 1984 and responds to concerns raised by members of Congress and constituent groups during the consideration of the renewal legislation, we revised the administrative regulations governing the operation of the GSP program. In order to allow members of the public adequate opportunity to comment, revised regulations were issued as interim regulations on May 10, 1985. Having taken into account comments received on the interim regulations, we are now issuing final regulations.

**EFFECTIVE DATE:** The final regulations shall become effective on February 11, 1986.

#### FOR FURTHER INFORMATION CONTACT:

Operations Aspects: David Shark, GSP Program Office (202-395-6971); Legal Aspects: Richard W. Parker, Office of the General Counsel (202-395-6800); Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, D.C. 20506.

#### SUPPLEMENTARY INFORMATION:

##### Discussion of Comments

Two comments were received concerning procedural follow-through in respect of requests for action relating to



country practices pursuant to sections 502 (b) and 502(c) of Title V of the Trade Act of 1974 (the Act), as amended, and the definition of "interested party" as described in § 2007.0(d). The commentors expressed concern that the regulations did not clearly specify the procedures that would be followed after receipt of a request for action relating to GSP beneficiary treatment of intellectual property rights and internationally recognized worker rights. With respect to the term "interested party", the commentors expressed a desire to have the definition broadened. Specifically, they requested that its definition be expanded to provide standing to parties with interests in intellectual property rights and internationally recognized worker rights concerns for the purpose of initiating product related reviews under the procedures explained in § 2007.2.

In response to these comments, the Office of the United States Trade Representative (USTR) revised the regulations to establish specific procedural steps to be taken following the receipt of a request for action relating to country practices. These revisions, in short, provide for consideration of such request as an integral part of the annual review. The term "annual product review" was changed to "annual review" to reflect this modification. These changes will ensure that those parties not provided "interested party" status have the opportunity, equivalent to those with interested party status, to express their concerns during annual reviews with respect to the country eligibility criteria in sections 502 (b) and (c) of the Act. The specific modifications can be found in §§ 2007.0(b), 2007.2, 2007.4 and 2007.5.

Regarding the definition of "interested party", USTR noted that sections 502(b) and 502(c) of the Act, and its legislative history, make clear that intellectual property rights and internationally recognized worker rights concerns will receive full consideration in all product specific actions under the program, including review of petitions to add, remove or graduate products. Parties with concerns relating to these issues will be welcome to testify and submit information relating to such petitions during each annual review. In view of this fact, and the modifications in procedures outlined above, USTR did not deem it appropriate to broaden the definition of "interested party."

One comment recommended that § 2007.0(f) be modified to state that the TPSC may at any time, on its own motion, initiate a review based on the country eligibility criteria in sections 502

(b) and (c) of the Act. USTR clarified § 2007.0 (f) as recommended.

A related change was made in response to a comment concerning § 2007.6. The first sentence in this section was altered to make clear that any "person", as opposed to any "interested person", may, upon request, inspect at USTR's GSP Information Center the material described in § 2007.6.

One comment was received concerning §§ 2007.0 and 2007.3 and the procedures and timeframe for the acceptance and rejection of petitions requesting modifications in the list of articles eligible for GSP benefits. The group commenting wanted the regulations altered to make clear that requests for additions to the product eligibility list which had been previously rejected after a formal review in the prior year be summarily rejected before the July 15 deadline. The concern of the group commenting was that the relevant domestic industry is burdened with a sense of unnecessary uncertainty during the June 1-July 15 time period while waiting for the decision as announced by USTR.

When respect to the comment concerning §§ 2007.0 and 2007.3, as discussed above, USTR concluded that it was inappropriate to alter the regulations. The regulation clearly states that a petition to add a product will be rejected if it has been the subject of a review within the three preceding calendar years. Therefore, there is no reason for uncertainty on the part of the domestic industry.

Two comments were received requesting the development of a standard petition for those interested in requesting modifications to the list of eligible articles. The commentors' interest was to ensure compliance with requirements that sufficient information be included in petitions.

USTR noted that the interim regulations have, to a large degree, met these concerns by specifying in greater detail the information which must be included for a petition to be accepted. However, USTR agreed that it would facilitate the understanding of, and compliance with, these requirements to develop additional written guidance to assist interested parties in preparing petitions. Such written guidance has been developed and will be incorporated in the "Guide to the U.S. Generalized System of Preferences", which is distributed to all U.S. Embassies, and is available at the GSP Information Center.

Two comments were received requesting additional information be

added to the informational requirements listed in § 2007.1. In response to these requests, USTR altered § 2007.1 in two respects. An additional informational requirement was added to the list for petitioners requesting the designation of additional articles to the list of eligible items. An analysis of costs, including materials, labor and overhead is now required. USTR also altered § 2007.1(a)(2) to include language that requires the petitioner to clarify their request involving the list of eligible articles when it involves a basket category of the TSUS by providing a "detailed description of the product or products of interest." USTR did not revise the regulations to incorporate some suggested points because it felt that these points were already sufficiently covered in the regulations or were inappropriate.

One comment was received concerning § 2007.8 and whether USTR concludes that this provision is adequately clear in providing for the consideration of tariff and non-tariff barriers in beneficiary developing countries (BDCs) in considering petitions. USTR concludes that § 2007.8 is adequately clear.

One comment was received concerning the difficulty beneficiary country exporters will have in complying with informational requirements when requesting that products be added to the list of eligible articles. USTR concluded that the informational requirements are reasonable and that the regulations are adequately clear for those interested in requesting modifications to the list of eligible articles to understand them and comply.

#### **Inapplicability of Notice and Delayed Effective Date Provisions**

These regulations are not subject to the public notice and comment requirements of 5 U.S.C. 553 because they are procedural in nature and because they are specifically exempted pursuant to subsection (a)(1) of section 553 as within the foreign affairs function of the United States.

Additionally, as the amendments contained in this document are necessary to conform the regulations to amendments made to Title V of the Trade Act of 1974 by Title V of the Trade and Tariff Act of 1984, it is believed that good cause exists under the provisions of 4 U.S.C. 553 (d)(1) and (d)(3) for dispensing with the normal 30 day delayed effective date requirement.



**Effective Order 12291**

This regulation is not a "major rule" as defined by section 1(b) of Executive Order 12291. Accordingly, a regulatory impact and analysis is not required under Executive Order 12291.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this regulation because the rulemaking is not one for which published general notice is required and because the regulation will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603. Any economic impact flows directly from the GSP program as authorized by Title V of the Trade Act of 1974, as amended, and not from the implementing regulations.

**Paperwork Reduction Act**

The regulations are not subject to the Paperwork Reduction Act of 1980, (44 U.S.C. 3500 et seq.) because the regulations do not involve the collection of information within the meaning of the term as defined in the Act at 44 U.S.C. 3502(4) and subsection (c) of § 1320.7 of the regulations implementing the Act (5 CFR 1320.7(c)).

**List of Subjects in 15 CFR Part 2007**

Administrative practice and procedure, Foreign trade.

**Amendments to Regulations**

15 CFR Part 2007, Office of the U.S. Trade Representative Regulations, is revised to read as set forth below:

**PART 2007—REGULATIONS OF THE U.S. TRADE REPRESENTATIVE PERTAINING TO ELIGIBILITY OF ARTICLES AND COUNTRIES FOR THE GENERALIZED SYSTEM OF PREFERENCE PROGRAM (GSP (15 CFR PART 2007))**

Sec.

2007.0 Requests for reviews.

2007.1 Information required of interested parties in submitting requests for modifications in the list of eligible articles.

2007.2 Action following receipt of requests for modifications in the list of eligible articles and for reviews of the GSP status of eligible beneficiary countries with respect to designation criteria.

2007.3 Timetable for reviews.

2007.4 Publication regarding requests.

2007.5 Written briefs and oral testimony.

2007.6 Information open to public inspection.

2007.7 Information exempt from public inspection.

2007.8 Other reviews of article eligibilities.

Authority: 19 U.S.C. 2461-65, 88 Stat. 2066-2071, as amended by Title V of the Trade and Tariff Act of 1984, Pub. L. No. 98-573, 98 Stat.

3018-3024; EO 11846 of March 27, 1975 (40 FR 14291), EO 12188 of January 2, 1980 (45 FR 989).

**§ 2007.0 Requests for reviews.**

(a) An interested party may submit a request (1) That additional articles be designated as eligible for GSP duty-free treatment, provided that the article has not been accepted for review within the three preceding calendar years; or (2) that the duty-free treatment accorded to eligible articles under the GSP be withdrawn, suspended or limited; or (3) for a determination of whether a like or directly competitive product was produced in the United States on January 3, 1985 for the purposes of section 504(d)(1) (19 U.S.C. 2464(d)(1)); or (4) that the President exercise his waiver authority with respect to a specific article or articles pursuant to section 504(c)(3) (19 U.S.C. 2464(c)(3)); or (5) that product coverage be otherwise modified.

(b) During the annual reviews and general reviews conducted pursuant to the schedule set out in § 2007.3 any person may file a request to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in subsections 502(b) or 502(c) (19 U.S.C. 2642 (b) and (c)). Such requests must (1) specify the name of the person or the group requesting the review; (2) identify the beneficiary country that would be subject to the review; (3) indicate the specific section 502(b) or 502(c) criteria which the requestor believes warrants review; (4) provide a statement of reasons why the beneficiary country's status should be reviewed along with all available supporting information; (5) supply any other relevant information as requested by the GSP Subcommittee. If the subject matter of the request has been reviewed pursuant to a previous request, the request must include substantial new information warranting further consideration of the issue.

(c) An interested party or any other person may make submissions supporting, opposing or otherwise commenting on a request submitted pursuant to either paragraph (a) or (b) of this section.

(d) For the purposes of the regulations set out under § 2007.0 et seq., an interested party is defined as a party who has significant economic interest in the subject matter of the request, or any other party representing a significant economic interest that would be materially affected by the action requested, such as a domestic producer of a like or directly competitive article, a commercial importer or retailer of an article which is eligible for the GSP or

for which such eligibility is requested, or a foreign government.

(e) All requests and other submissions should be submitted in 20 copies, and should be addressed to the Chairman, GSP Subcommittee, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street, NW., Washington, D.C. 20506. Requests by foreign governments may be made in the form of diplomatic correspondence provided that such requests comply with the requirements of 2007.1.

(f) The Trade Policy Staff Committee (TPSC) may at any time, on its own motion, initiate any of the actions described in paragraphs (a) or (b) of this section.

**§ 2007.1 Information required of interested parties in submitting requests for modifications in the list of eligible articles.**

(a) *General Information Required.* A request submitted pursuant to this Part, hereinafter also referred to as a petition, except requests submitted pursuant to § 2007.0(b), shall state clearly on the first page that it is a request for action with respect to the provision of duty-free treatment for an article or articles under the GSP, and must contain all information listed in this paragraph and in paragraphs (b) and (c). Petitions which do not contain the information required by this paragraph shall not be accepted for review except upon a showing that the petitioner made a good faith effort to obtain the information required. Petitions shall contain, in addition to any other information specifically requested, the following information:

(1) The name of the petitioner, the person, firm or association represented by the petitioner, and a brief description of the interest of the petitioner claiming to be affected by the operation of the GSP;

(2) An identification of the product or products of interest to the petitioner, including a detailed description of products and their uses and the identification of the pertinent item number of the Tariff Schedules of the United States (TSUS). Where the product or products of interest are included with other products in a basket category of the TSUS, provide a detailed description of the product or products of interest;

(3) A description of the action requested, together with a statement of the reasons therefor and any supporting information;

(4) A statement of whether to the best of the Petitioner's knowledge, the reasoning and information has been



presented to the TPSC previously either by the petitioner or another party. If the Petitioner has knowledge the request has been made previously, it must include either new information which indicates changed circumstances or a rebuttal of the factors supporting the denial of the previous request. If it is a request for a product addition, the previous request must not have been formally accepted for review within the preceding three calendar year period; and

(5) A statement of the benefits anticipated by the petitioner if the request is granted, along with supporting facts or arguments.

(b) *Requests to withdraw, limit or suspend eligibility with respect to designated articles.* Petitions requesting withdrawal or limitation of duty-free treatment accorded under GSP to an eligible article or articles must include the following information with respect to the relevant United States industry for the most recent three year period:

(1) The names, number and locations of the firms producing a like or directly competitive product;

(2) Actual production figures;

(3) Production capacity and capacity utilization;

(4) Employment figures, including number, type, wage rate, location, and changes in any of these elements;

(5) Sales figures in terms of quantity, value and price;

(6) Quantity and value of exports, as well as principal export markets;

(7) Profitability of firm on firms producing the like product, if possible show profit data by product line;

(8) Analysis of cost including materials, labor and overhead;

(9) A discussion of the competitive situation of the domestic industry;

(10) Identification of competitors; analysis of the effect imports receiving duty-free treatment under the GSP have on competition and the business of the interest on whose behalf the request is made;

(11) Any relevant information relating to the factors listed in section 501 and 502(c) of Title V of the Trade Act of 1974, as amended (19 U.S.C. 2501, 502(c)) such as identification of tariff and non-tariff barriers to sales in foreign markets;

(12) Any other relevant information including any additional information that may be requested by the GSP Subcommittee.

This information should be submitted with the request for each article that is the subject of the request, both for the party making the request, and to the extent possible, for the industry to which the request pertains.

(c) *Requests to designate new articles.* Information to be provided in petitions requesting the designation of new articles submitted by interested parties must include for the most recent three year period the following information for the beneficiary country on whose behalf the request is being made and, to the extent possible, other principal beneficiary country suppliers:

(1) Identification of the principal beneficiary country suppliers expected to benefit from proposed modification;

(2) Name and location of firms;

(3) Actual production figures (and estimated increase in GSP status is granted);

(4) Actual production and capacity utilization (and estimated increase if GSP status is granted);

(5) Employment figures, including numbers, type, wage rate, location and changes in any of these elements if GSP treatment is granted;

(6) Sales figures in terms of quantity, value and prices;

(7) Information on total exports including principal markets, the distribution of products, existing tariff preferences in such markets, total quantity, value and trends in exports;

(8) Information on exports to the United States in terms of quantity, value and price, as well as considerations which affect the competitiveness of these exports relative to exports to the United States by other beneficiary countries of a like or directly competitive product. Where possible, petitioners should provide information on the development of the industry in beneficiary countries and trends in their production and promotional activities;

(9) Analysis of cost including materials, labor and overhead;

(10) Profitability of firms producing the product;

(11) Information on unit prices and a statement of other considerations such as variations in quality or use that affect price competition;

(12) If the petition is submitted by a foreign government or a government controlled entity, it should include a statement of the manner in which the requested action would further the economic development of the country submitting the petition;

(13) If appropriate, an assessment of how the article would qualify under the GSP's 35 percent value-added requirements; and

(14) Any other relevant information, including any information that may be requested by the GSP Subcommittee.

Submissions made by persons in support of or opposition to a request made under this Part should conform to the requirements for requests contained

in § 2007.1(a) (3) and (4), and should supply such other relevant information as is available.

**§ 2007.2 Action following receipt of requests for modifications in the list of eligible articles and for reviews of the GSP status of eligible beneficiary countries with respect to designation criteria.**

(a)(1) If a request submitted pursuant to § 2007.0(a) does not conform to the requirements set forth above, or if it is clear from available information that the request does not warrant further consideration, the request shall not be accepted for review. Upon written request, requests which are not accepted for review will be returned together with a written statement of the reasons why the request was not accepted.

(2) If a request submitted pursuant to § 2007.0(b) does not conform to the requirements set forth above, or if the request does not provide sufficient information relevant to subsections 502(b) or 502(c) (19 U.S.C. 2642 (b) and (c)) to warrant review, or if it is clear from available information that the request does not fall within the criteria of subsections 502(b) or 502(c), the request shall not be accepted for review. Upon written request, requests which are not accepted for review will be returned together with a written statement of the reasons why the request was not accepted.

(b) Requests which conform to the requirements set forth above or for which petitioners have demonstrated a good faith effort to obtain information in order to meet the requirements set forth above, and for which further consideration is deemed warranted, shall be accepted for review.

(c) The TPSC shall announce in the Federal Register those requests which will be considered for full examination in the annual review and the deadlines for submissions made pursuant to the review, including the deadlines for submission of comments on the U.S. International Trade Commission (USITC) report in instances in which USITC advice is requested.

(d) In conducting annual reviews, the TPSC shall hold public hearings in order to provide the opportunity for public testimony on petitions and requests filed pursuant to paragraphs (a) and (b) of § 2007.0.

(e) As appropriate, the USTR on behalf of the President will request advice from the USITC.

(f) The GSP Subcommittee of the TPSC shall conduct the first level of interagency consideration under this Part, and shall submit the results of its review to the TPSC.



(g) The TPSC shall review the work of the GSP Subcommittee and shall conduct, as necessary, further reviews of requests submitted and accepted under this Part. Unless subject to additional review, the TPSC shall prepare recommendations for the President on any modifications to the GSP under this Part. The Chairman of the TPSC shall report the results of the TPSC's review to the U.S. Trade Representative who may convene the Trade Policy Review Group (TPRG) or the Trade Policy Committee (TPC) for further review of recommendations and other decisions as necessary. The U.S. Trade Representative, after receiving the advice of the TPSC, TPRG or TPC, shall make recommendations to the President on any modifications to the GSP under this part, including recommendations that no modifications be made.

(h) In considering whether to recommend: (1) That additional articles be designated as eligible for the GSP; (2) that the duty-free treatment accorded to eligible articles under the GSP be withdrawn, suspended or limited; (3) that product coverage be otherwise modified; or (4) that changes be made with respect to the GSP status of eligible beneficiary countries, the GSP Subcommittee on behalf of the TPSC, TPRG, or TPC shall review the relevant information submitted in connection with or concerning a request under this part together with any other information which may be available relevant to the statutory prerequisites for Presidential action contained in Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461-2465).

#### § 2007.3 Timetable for reviews.

(a) *Annual review.* Beginning in calendar year 1986, reviews of pending requests shall be conducted at least once each year, according to the following schedule, unless otherwise specified by Federal Register notice:

(1) June 1, deadline for acceptance of petitions for review;

(2) July 15, Federal Register announcement of petitions accepted for review;

(3) September/October—public hearings and submission of written briefs and rebuttal materials;

(4) December/January—opportunity for public comment on USITC public reports;

(5) Results announced on April 1 will be implemented on July 1, the statutory effective date of modifications to the program. If the date specified is on or immediately follows a weekend or holiday, the effective date will be on the

second working day following such weekend or holiday.

(b) Requests filed pursuant to paragraphs (a) or (b) of § 2007.0 which indicate the existence of unusual circumstances warranting an immediate review may be considered separately. Requests for such urgent consideration should contain a statement of reasons indicating why an expedited review is warranted.

(c) *General Review.* Section 504(c)(2) of Title V of the Trade Act of 1974 (19 U.S.C. 2464(c)(2)) requires that, not later than January 4, 1987 and periodically thereafter, the President conduct a general review of eligible articles based on the considerations in sections 501 and 502(c) of Title V. The initiation and scheduling of such reviews as well as the timetable for submission of comments and statements will be announced in the Federal Register. The first general review was initiated on February 14, 1985 and will be completed by January 3, 1987.

The initiation of the review and deadlines for submission of comments and statements were announced in the Federal Register on February 14, 1985 (50 FR 6294).

#### § 2007.4 Publication regarding requests.

(a) Whenever a request is received which conforms to these regulations or which is accepted pursuant to § 2007.2 a statement of the fact that the request has been received, the subject matter of the request (including if appropriate, the TSUS item number or numbers and description of the article or articles covered by the request), and a request for public comment on the petitions received shall be published in the Federal Register.

(b) Upon the completion of a review and publication of any Presidential action modifying the GSP, a summary of the decisions made will be published in the Federal Register including:

(1) A list of actions taken in response to requests; and

(2) A list of requests which are pending.

(c) Whenever, following a review, there is to be no change in the status of an article with respect to the GSP in response to a request filed under § 2007.0(a), the party submitting a request with respect to such articles may request an explanation of factors considered.

(d) Whenever, following a review, there is to be no change in the status of a beneficiary country with respect to the GSP in response to a request filed under § 2007.0(b), the GSP Subcommittee will notify the party submitting the request

in writing of the reasons why the requested action was not taken.

#### § 2007.5 Written briefs and oral testimony.

Sections 2003.2 and 2003.4 of this chapter shall be applicable to the submission of any written briefs or requests to present oral testimony in connection with a review under this part. For the purposes of this section, the term "interested party" as used in §§ 2003.2 and 2003.4 shall be interpreted as including parties submitting petitions and requests pursuant to § 2007.0(a) or (b) as well as any other person wishing to file written briefs or present oral testimony.

#### § 2007.6 Information open to public inspection.

With exception of information subject to § 2007.7 any person may, upon request inspect at the Office of the United States Trade Representative:

(a) Any written request, brief, or similar submission of information made pursuant to this part; and

(b) Any stenographic record of any public hearings which may be held pursuant to this part.

#### § 2007.7 Information exempt from public inspection.

(a) Information submitted in confidence shall be exempt from public inspection if it is determined that the disclosure of such information is not required by law.

(b) A party requesting an exemption from public inspection for information submitted in writing shall clearly mark each page "Submitted in Confidence" at the top, and shall submit a nonconfidential summary of the confidential information. Such person shall also provide a written explanation of why the material should be so protected.

(c) A request for exemption of any particular information may be denied if it is determined that such information is not entitled to exemption under law. In the event of such a denial, the information will be returned to the person who submitted it, with a statement of the reasons for the denial.

#### § 2007.8 Other reviews of article eligibilities.

(a) As soon after the beginning of each calendar year as relevant trade data for the preceding year are available, modifications of the GSP in accordance with section 504(c) of the Trade Act of 1974 as amended (19 U.S.C. 2464) will be considered.

(b) *General Review.* Section 504(c)(2) of Title V of the Trade Act of 1974 as amended (19 U.S.C. 2464(c)(2)) requires



that not later than January 4, 1987 and periodically thereafter, the President conduct a general review of eligible articles based on the considerations in sections 501 and 502 of Title V. The purpose of these reviews is to determine which articles from which beneficiary countries are "sufficiently competitive" to warrant a reduced competitive need limit. Those articles determined to be "sufficiently competitive" will be subject to a new lower competitive need limit set at: (1) 25 percent of the value of total U.S imports of the article; or (2) \$25 million (this figure will be adjusted annually in accordance with nominal changes in U.S. gross national product (GNP), using 1984 as the base year). All other articles will continue to be subject to the original competitive need limits of 50 percent or \$25 million (this figure is adjusted annually using 1974 as the base year).

(1) *Scope of General Reviews.* In addition to an examination the competitiveness of specific articles from particular beneficiary countries, the general review will also include consideration of requests for competitive need limit waivers pursuant to section 504(c)(3)(A) of Title V of the Trade Act of 1974 as amended (19 U.S.C. 2464(c)) and requests for a determination of no domestic production under section 504(d)(1) of Title V of the Trade Act of 1974 as amended (19 U.S.C. 2464(d)(1)).

(2) *Factors To Be Considered.* In determining whether a beneficiary country should be subjected to the lower competitive need limits with respect to a particular article, the President shall consider the following factors contained in sections 501 and 502(c) of Title V:

(i) The effect such action will have on furthering the economic development of developing countries through expansion of their exports;

(ii) The extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

(iii) The anticipated impact of such action on the United States producers of like or directly competitive products;

(iv) The extent of the beneficiary developing country's competitiveness with respect to eligible articles;

(v) The level of economic development of such country, including its per capita GNP, the living standard of its inhabitants and any other economic factors the President deems appropriate;

(vi) Whether or not the other major developed countries are extending generalized preferential tariff treatment to such country;

(vii) The extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(viii) The extent to which such country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise and to enforce exclusive rights in intellectual property, including patents, trademarks and copyrights;

(ix) The extent to which such country has taken action to—

(A) Reduce trade distorting investment practices and policies (including export performance requirements); and

(B) Reduce or eliminate barriers to trade in services; and

(x) Whether or not such country has taken or is taking steps to afford workers in that country (including any designated zone in that country) internationally recognized worker rights.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 86-2635 Filed 2-10-86; 8:45 am]

BILLING CODE 3190-01-M

## DEPARTMENT OF THE TREASURY

### Customs Service

19 CFR Parts 18, 24, 112, 113, 141, 144, 146, 178 and 191

[T.D. 86-16]

### Foreign Trade Zones; Specialized and General Provisions

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

**SUMMARY:** This document revises Customs Regulations relating to foreign trade zones to provide a new audit-inspection method of zone supervision by Customs. A foreign trade zone is a defined area, considered to be outside the customs territory of the U.S., where certain lawful activities can be conducted with a minimum of formalities. A zone provides a site at or adjacent to a Customs port of entry where operations involving foreign merchandise can take place, which otherwise might have been done abroad for tariff and trade reasons. The revision sets forth the general provisions applicable to the administration of all zones and other specialized provisions applicable to subzones and zone sites.

In addition, changes in the language of the regulations will clarify some provisions, eliminate inconsistencies, and conform the regulations to current administrative practices.

**EFFECTIVE DATE:** May 12, 1986.

### FOR FURTHER INFORMATION CONTACT:

Operational Aspects: John Holl, (202-566-8151);

Inventory Control and Recordkeeping System Aspect: Marcus Sircus, (202-566-2812);

Appraisal and Valuation Aspect: Myles Flynn, (202-535-4134);

Liquidated Damages, Penalty and Suspension Aspect: William Lawlor, (202-566-5856);

Economic Aspect: Daniel Norman, (202-535-4138).

All of the above Customs personnel are located at: U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

### SUPPLEMENTARY INFORMATION:

#### Background

In 1934, Congress enacted the Foreign-Trade Zones Act to expedite and encourage foreign commerce. The Act created domestic foreign trade zones and was designed to stimulate international trade and create jobs in the U.S. At that time, zones were envisioned as storage, manipulation, and transshipment (exportation) centers. In 1950, an amendment to the Act was passed, authorizing manufacturing and exhibition inside zones. Foreign trade zones (zones) are areas within the U.S. (but outside the "Customs territory of the U.S.," as defined in § 101.1(e), Customs Regulations (19 CFR 101.1(e)), where foreign or domestic merchandise may be brought for manipulation, manufacture, assembly or other processing, or for storage or exhibition, provided that these operations are not otherwise prohibited by law. Foreign merchandise may be brought into a zone without being subject to the usual Customs entry procedures and payment of duty. Foreign or domestic merchandise may be exported or entered into the Customs territory from a zone. Quota restrictions do not normally apply to foreign merchandise in a zone. Merchandise moved to a zone for export may be considered exported upon its admission to a zone for purposes of excise tax rebates and drawback.

Zones are established under the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a-81u), and the general regulations and rules of procedure of the Foreign-Trade Zones Board (the Board), Department of



Commerce (15 CFR Part 400). Part 146, Customs Regulations (19 CFR Part 146), governs the admission of merchandise into a zone; the manipulation, manufacture, destruction, or exhibition in a zone; the exportation of merchandise from a zone; and the transfer of merchandise from a zone into the Customs territory.

Typically, a foreign trade zone is a fenced-in area with a general warehouse type building or buildings and access to all modes of transportation. Space is available for leasing to firms for authorized zone activity. Some zones have industrial park characteristics or are located within such facilities and have lots on which zone users can construct their own facilities. Subzones are locations authorized by the Board through zone grantees for operations by individual firms when zone procedures are vital for an operation that is in the public interest but cannot be accommodated within an existing zone.

Between 1934 and 1970, just 12 zones were approved by the Board. At this time, there are 109 general purpose zones and 60 subzones. It has been estimated that the volume of business in zones has multiplied substantially from 1970 to the present with zones now handling about \$4.8 billion worth of merchandise each year.

As can be appreciated from the foregoing, the number of zones and the operations conducted therein have increased tremendously in recent years. Historically, Customs has administered zones and their operations by the physical presence of Customs officers at the various zone locations. However, as time has passed, Customs staffing available to supervise zones has declined while zones have continued to proliferate. This has resulted in delays in the approval of activation of a given zone, and has presented problems for Customs in the exercise of effective control over some zone operations, especially subzone manufacturing activities. Therefore, Customs undertook an effort to devise a method to reduce Customs staffing requirements in zones and other areas (notably bonded warehouses) without endangering the revenue or law enforcement priorities, while also not hampering the growth of those areas and not impeding commerce.

The audit-inspection program approach to administration of those areas of Customs responsibility, which de-emphasizes the physical presence of a Customs officer to supervise each transaction, was successfully implemented in regard to the operation of bonded warehouses (see T.D. 82-204, published in the *Federal Register* on November 1, 1982 (47 FR 49355)). Audit-

inspection is a method of supervision based on spot checks and audits of foreign trade zone activities as represented in records maintained by the zone operator. This method is substituted in lieu of physical on-site supervision by Customs when merchandise is admitted to, transferred from, or processed in the zone.

The principal advantage for Customs of audit-inspection is that it requires fewer Customs personnel to administer the zones. The principal advantages for the importing community are that (1) merchandise may be admitted, transferred, or processed without a Customs officer being present, allowing increased flexibility in zone operations, and (2) for most zones, the reimbursable cost paid to Customs is reduced. Audit-inspection is based on several procedures, which are essential for its proper functioning and success. These procedures are:

1. The determination by Customs of the identity and nature of the merchandise through examination before or upon admission to the zone so that the initial responsibility of the operator for the merchandise can be determined.

2. The issuance of a prior permit by Customs to the zone operator for admission, transfer to the Customs territory, and processing in the zone.

3. The assumption by the zone operator of responsibility for the merchandise, maintaining records concerning the merchandise, and physical supervision of the zone. Quantities of merchandise received at the zone and transferred to the Customs territory are determined jointly by the zone operator and the carrier.

4. The performance by Customs of spot checks and audits to determine whether the zone operator is properly supervising the zone and maintaining records of the merchandise. The cost of the spot checks and audits is reimbursed to Customs through an annual fee charged the zone operator for this service.

5. The assessment of liquidated damages in an amount sufficient to ensure performance of the operator's duties and responsibilities under the rules and regulations needed for proper zone supervision and recordkeeping.

6. The temporary suspension by Customs of zone operations which do not comply with the rules and regulations.

It is noted that Customs initiated use of the audit-inspection method in August 1983, on the basis of voluntary agreements between Customs and zone operators. At present, 12 subzones and 6 general-purpose zones have entered into

voluntary agreements to use the audit-inspection method to administer their operations. Customs has taken that limited experience under the zone audit-inspection method into account in preparing this revision.

To implement the audit-inspection method of supervision in foreign-trade zones, it is necessary to substantially revise Part 146, Customs Regulations (19 CFR Part 146), concerning the administration of foreign trade zones, and to revise to a much lesser extent, Parts 18, 24, 112, 113, 141, 144, 178, and 191, to conform them to changes made by the revision to Part 146. Accordingly, by notice published in the *Federal Register* on July 17, 1984 (49 FR 28855), an extensive revision of Part 146 and minor conforming revisions of Parts 18, 24, 112, 141, 144 and 191 were proposed. A detailed discussion of the proposed amendments to Part 146 can be found on pages 28856-28859 of the notice.

Interested parties were given until October 15, 1984, to submit written comments. However, by notice published in the *Federal Register* on September 11, 1984 (49 FR 35658), the comment period was extended to November 30, 1984, as an accommodation to the National Association of Foreign-Trade Zones. Approximately 150 comments were received in response to the notice. A discussion of the comments and our responses to the comments follow.

#### Discussion of Comments

Most of the commenters commend efforts to improve the regulations. However, many of them have complaints about several provisions of the proposal. Many commenters question the reasonableness of the proposed fees, penalties and liquidated damages provisions. They also allege that the proposal is inconsistent with generally accepted accounting principles and the Foreign-Trade Zones Act, and that it could impede the flow of commerce. Commenters further complained that the proposed regulations do not provide an orderly transition to the new audit-inspection system, and that they were unduly complex and restrictive. Specific comments and our responses are as follows:

*Comment:* Under the proposed regulations, Customs would treat merchandise destined for a zone as imported and subject to examination prior to admission to the zone, unless a subzone or zone site qualifies under special procedures for exemption from the prior examination requirement. This



treatment of zone-destined merchandise may impede or delay shipments.

*Response:* We disagree. Merchandise which is destined for a zone is imported, within the meaning of § 101.1(h), Customs Regulations. Under section 499, Tariff Act of 1930, as amended (19 U.S.C. 1499), imported merchandise is subject to examination in Customs territory. Therefore, examination of zone-destined merchandise is already provided for under the law. The frequency and intensity of these examinations, however, will be reduced by selective examination procedures. Also, only occasional examinations will be necessary at certain subzones and zone sites because shipments to these sites are repetitive, liability for violations is known in advance, and elaborate audit trails for checking for diversions of the merchandise exist.

*Comment:* The proposed regulations do not clearly distinguish between physical and record identification of merchandise. The two systems cannot work together. Record identification is the only viable system under the proposed revision.

*Response:* We disagree. The physical and record systems of identifying merchandise are compatible. Under the specific identification system, the zone operator maintains a zone lot control system, physically segregating his merchandise by zone lots and controlling identification of merchandise by zone lot records from admission through final zone removal. Under the record identification system, the merchandise is identified by inventory records, using a Customs-approved inventory method, e.g., the first-in, first-out method (FIFO). Both methods require a reconciliation, at least annually, of physical merchandise on hand to quantities reflected by the Customs-approved inventory method. Any discrepancies would require corrective action by the operator.

The physical identification of merchandise is required to ensure reliability of admissions, inventory record accuracy, and proper zone status requests, among other things. For these reasons, it is retained in the regulations.

*Comment:* The proposal provides no mechanism or guidance for transition to the audit-inspection method of supervision. Serious consideration should be given to grandfathering in some zones or allowing them sufficient time to change over to the new method.

*Response:* We disagree. Allowing some zone operations to be grandfathered in, i.e., granted an exemption from the new foreign trade zone regulations, is not feasible because it would result in the perpetuation of

different sets of rules for some zones. The intent of the proposed regulations is that one set of rules should govern all zone operations.

The regulatory changes will become effective as a final rule 90 days from the date of publication, except that zones with Alternative Inventory Control Systems (AICS) will have either 180 days after the publication date or to the end of their current business year to comply with the new recordkeeping regulations. This 90-day period, instead of the 30-day period ordinarily granted, will allow zone operators a sufficient period of time for bringing their inventory system into compliance with the new regulations.

Zones under the AICS are different from other zones in that the record of inventory is maintained by the zone grantee or operator, or by the individual zone firms or their agents, under the supervision of the grantee or operator, rather than by Customs. The zone grantee or operator is responsible for the posting of inventory ledgers, the supervision of individual zone firms which maintain their own inventory records, the correction of inventory discrepancies, the conducting of periodic selective inventories of open lots of all zone firms, and various additional tasks which require time and other resources to handle the paperwork associated with these tasks. Because of the complexity of operating this type of inventory control system, these zones will require more time than non-AICS zones to convert to the audit-inspection supervision system under the new regulations. For this reason zones under AICS will be given either 180 days from the date of publication of the new regulations or to the end of their business year to bring their inventory system into compliance with the new regulations. However, they will be subject to the 90-day period for bringing all other aspects of their zone operations into compliance with the new regulations.

Conversion to audit-inspection supervision under the new regulations will occur as follows:

All zones operators, except as noted below, will furnish a certification that their inventory control and recordkeeping system complies with the new regulations, a procedures manual, the date of the end of their business year, and the annual fee on or before the date the new regulations take effect, and the prescribed zone operator's bond. If these requirements are not complied with by the effective date, no further merchandise will be admitted to the zone and the activated status of the zone may be suspended.

In addition, the following actions will be taken with respect to specific zones:

(a) *Zones where Customs has maintained inventory records.* Customs will provide a listing of inventory balances for all lots in the zone on the effective date. The operator will have 30 days to review the lot balances, conduct a physical inventory, and resolve any differences with Customs. On or before the end of the 30-day period, the operator will sign to accept the lot balances as reflecting the inventory on hand on the effective date, with such adjustments as are mutually agreed to between the operator and the district director.

(b) *Zones with voluntary audit-inspection agreements.* Zone operators will have the option of conducting a physical inventory before the effective date and certifying as to specific quantities of merchandise for which they are responsible on the effective date. Otherwise, they will be held responsible for losses and overages unless they can clearly show, with competent evidence, that the losses and/or overages occurred before the effective date.

(c) *Zones with alternative inventory control systems.* Zone operators may request postponement of the procedures manual and certification requirements until one of the following dates:

(i) 90 days after the effective date of the new regulations; or

(ii) end of their current business year. With respect to paragraph (c), the district director may approve the request for a postponement if he is satisfied that the postponement is necessary for the conversion of the operator's recordkeeping system to comply with the requirements of Subpart B, Part 146, Customs Regulations. During the interim before the procedures manual and certification are received, the operator will be allowed to maintain the inventory and recordkeeping system as agreed under the AICS, and he need not meet the requirements of Subpart B. However, the operator must meet and follow all the other requirements of the new regulations upon their effective date. The same physical inventory option will be available for zones with an AICS as for zones with a voluntary audit-inspection agreement. If that option is not exercised, any losses or overages found after the effective date will be considered to have occurred after the effective date, unless the operator can clearly show, with competent evidence, that the losses and/or overages occurred before the effective date.



*Comment:* The proposed regulations are inconsistent with generally accepted accounting principles as well as modern business practices.

*Response:* The commenters do not point to any specific instance of inconsistency. However, we do note that Customs method of identifying merchandise by the first-in, first-out (FIFO) method does not conform to generally accepted accounting principles (GAPP) under which FIFO is used to determine the value of goods in an ending inventory. Customs use of FIFO to identify merchandise expedites the movement of goods in and out of zones. It is used as an alternative to specific identification of merchandise.

*Comment:* While the proposed regulations provide for the removal of Customs officers from zones, there are no provisions detailing the methods and the time restraints for transmitting data and documents to Customs, particularly when a zone is remote from a Customs office. There should be a variety of mechanisms to transmit data and documents to expedite zone operations.

*Response:* We disagree. The regulations need not specify the method of transmittal. Many methods of transmittal, such as mail, messenger delivery, or electronic transmittal, can be accommodated so long as they can be administratively handled by Customs. There should be no problem with timely delivery of the required documentation to Customs on the part of any zone since, in order to be designated a foreign trade zone, it must be in or adjacent to a port of entry.

There are specific provisions for the timing of the transmittal and receipt of documentation by Customs from zone operators, such as in § 146.40(a) and (b), and wherever else specific provisions are necessary. In the absence of any stated provisions, documentation must be received by Customs before a permit to admit, handle or transfer merchandise can be issued.

*Comment:* The regulations should include a provision allowing merchandise to be temporarily removed from a zone for repair, restoration, or incidental operations and then returned to the zone.

*Response:* Customs has been testing such a proposal with, as yet, inconclusive results. If the test has favorable results, the procedure will be implemented on a permanent basis through a separate rulemaking proceeding.

*Comment:* One commenter state that Customs should not extend its concept of adjacency, in respect to subzones, beyond 35 miles from a port. Other commenters believe that subzones that

are distant from ports should not be required to deliver merchandise and documentation to Customs, as is required in proposed § 146.15(a).

*Response:* The adjacency concept, and its application to subzones which are 35 miles from a port, is under review in a separate rulemaking proceeding at the Department of Commerce. Since this entire issue is under review, proposed § 146.15 is premature. Accordingly, it has been deleted from the final regulations.

*Comment:* Several commenters believe that the proposed regulations are too complicated, impose unnecessary requirements, and make zones less manageable.

*Response:* We have simplified the proposed regulations and removed certain requirements. The regulations, as revised, impose minimum requirements for recordkeeping and inventory systems, which zone operators are free to supplement so as to meet their own recordkeeping and inventory control requirements. The requirements for recordkeeping are similar to those any conscientious businessman would adhere to in the supervision of his business. The revised regulations make zones more, not less, manageable. They also allow Customs to carry out its mission of protecting U.S. revenue and enforcing importation laws and regulations more efficiently.

*Comment:* Many commenters criticize the criteria under proposed § 146.14 for allowing domestic status merchandise to be admitted to a zone without a prior application and permit for each shipment. They believe the criteria are too stringent, particularly those involving commercially identical merchandise and merchandise which has been combined so that it has lost its identity.

*Response:* We agree with these comments. Therefore, proposed § 146.14 is deleted. The subject matter of § 146.14 is transferred to § 146.43, which is further amended to specify that no prior permit will be required for the admission, handling, or transfer to Customs territory of domestic status merchandise except: (1) When mixed or combined with merchandise of another zone status, or (2) when so ordered by the Commissioner of Customs under certain circumstances. This latter authority on the Commissioner's part allows Customs to properly control domestic status merchandise in unusual circumstances. The zone operator must still maintain proper inventory records of domestic status merchandise as prescribed in Subpart B, Part 146, Customs Regulations, even if no permit is required.

*Comment:* Several commenters inquire as to the authority for Customs allowing activation of a zone under § 146.6. They also question whether this allowance is not more appropriately within the authority of either the Board or the zone grantee.

*Response:* Authority for Customs approval of activation of zones is found in the individual grants to the zones and subzones, as well as the Act itself. The grants contain provisions to the effect that operations at the zone shall not commence until the grantee obtains all the necessary permits from Federal authorities, and that the grant is subject to an agreement between the grantee and Customs regarding compliance with requirements for the protection of the revenue.

Section 15(b) of the Foreign-Trade Zones Act (19 U.S.C. 810(b)) gives the Secretary of the Treasury broad authority to approve regulations for the protection of the revenue under the Act, while section 9 (19 U.S.C. 81(i)) directs the Board to cooperate with Customs. The activation procedure is the method which Customs has chosen for protecting the revenue. Through this procedure Customs is assured that the zone is ready to receive merchandise in zone status.

*Comment:* Section 146.65 creates a new valuation concept, i.e., "total zone value." There are a substantial number of Customs rulings dealing with zone valuation issues. These rulings should serve as the proper guidance for Customs position on this issue.

*Response:* "Total zone value" may be a new regulatory term, but it is not a novel regulatory concept. It is the value provided for by current § 146.48(e). Its significance relates to the valuation of recoverable waste or scrap from a zone operation and situations where the rate of duty applicable to nonprivileged foreign merchandise is dependent on the value of the article being transferred from a zone. Section 146.65 therefore, accurately reflects the current Customs position on zone valuation matters.

*Comment:* Many commenters are concerned with proposed § 146.8, which authorizes the zone operator to affix and break Customs in-bond seals. Heretofore, only Customs officers could affix and break Customs in-bond seals.

*Response:* Since under the audit-inspection approach a Customs officer will no longer be physically present in most cases, it is necessary that the zone operator be given authority in certain areas to perform functions that were previously conducted by Customs. One of these is the authority to affix and break in-bond seals. Under the new



regulation, the zone operator will report to Customs any discrepancies in seal condition. This will protect the zone operator from liability when it is determined that the loss of merchandise occurred prior to arrival of the merchandise at the zone site.

*Comment:* Special procedures for admitting and removing zone merchandise limited to subzones and zone sites should be extended to general-purpose zones. Also, the criteria for admittance and removal are too stringent for most zones.

*Response:* We disagree. The audit-inspection requirement is that a permit is required before admission to a zone or transfer to Customs territory. The purpose of proposed § 146.13 is to exempt shipments from this prior permit requirement only when they are repetitive, predictable, and relatively unchanging over a period of time. The exemption was intended to be restrictive because of Customs experience that a major portion of trade destined for zones is non-repetitive and difficult to predict.

In response to the comments on this subject, however, Customs has made a number of changes in the special procedures. First, the criteria for direct delivery are moved to § 146.39 since they are applicable only to merchandise being admitted to a zone, and § 146.13 is deleted.

Secondly, the criteria for direct delivery as they appear in § 146.39 have been simplified. There is now no requirement for direct transmittal of statistical information to the Bureau of the Census. Also, the criteria have been grouped according to those that apply to merchandise and those that apply to the operator. The specific restriction of the direct delivery procedure to subzones and zone sites has been limited. However, we believe that most general-purpose zones will not qualify for the procedure because the zone operator is not the owner or purchaser of the merchandise (as interpreted by Customs in Customs Directive 3530-02, dated November 6, 1984). The criteria for direct delivery ensure that not only are the shipments repetitive and relatively unchanging, but also that the zone operator is in a position to see that they remain so.

Finally, the criteria for direct delivery no longer apply to merchandise transferred from a zone for weekly entry or permit for consumption, transportation, or exportation under proposed §§ 146.63 and 146.69. Instead, the criteria for a weekly permit under the direct delivery procedure in these sections is whether the merchandise is manufactured or changed to its final

form just shortly (within 24 hours) before physical transfer from the zone. These sections are necessary for assembly-line type operations where there otherwise would be little time for examination of the merchandise and furnishing of proper entry documentation after the merchandise is in its final form but before physical removal from the zone. By allowing a weekly entry based on an estimate of merchandise to be removed during the week, Customs has prior information as to merchandise to be removed and documentation to serve as the basis of physical examination of the merchandise. At the same time, the assembly-line operation need not be delayed pending acceptance of an entry and Customs examination of the merchandise.

*Comment:* To qualify for many of the more liberal procedures, zones must provide statistical data directly to the Bureau of the Census instead of providing a statistical carbon copy of Customs Form 214-A, titled "Application For Foreign Trade Zone Admission And/Or Status Designation" to Customs. This may be very difficult for many zone users, and it abrogates the responsibility of Customs to collect statistics.

*Responses:* We disagree. Customs responsibility is to support the Census in collecting foreign trade statistics.

In some instances, Census has allowed direct transmittal of statistics by zone importers, relieving Customs of the necessity of collecting a copy of Customs Form 214-A. Normally, collection of this form is very important to Census because it ensures that statistical information is collected on each and every shipment to a zone. Direct transmittal of statistics is permitted by Census only when it is satisfied through other means that each and every shipment will be covered by the direct transmittal.

Census has indicated that trade statistics need not be collected for domestic status merchandise admitted to a zone. Therefore, the criteria in proposed § 146.13(b)(1) is not needed. Also, Customs will not, except as ordered by the Commissioner, require a prior permit for the admission of domestic status merchandise to a zone.

Under proposed § 146.13(b), direct transmittal of statistical information to Census is necessary to qualify a zone importer for direct delivery of merchandise to a zone without a prior permit to admit merchandise. Section 146.40 requires importers to submit Customs Form 214 for merchandise recorded into the zone inventory and recordkeeping system the previous

business day. The previous business day may not occur until several weeks after the merchandise is physically received in the zone. Census is concerned that statistical information on zone importations may not be reported timely.

To alleviate Census concern, yet reduce barriers to use of the direct delivery procedures by importers under § 146.40, Customs has decided to allow two alternatives to meeting Census statistical reporting requirements. The zone importer must either have a direct transmittal arrangement with Census or he must submit an individual Customs Form 214 and 214-A under § 146.40(c)(2) for each shipment, within 10 days after the end of the month in which the merchandise is physically received in the zone. No extension will be authorized to this statistical reporting requirement. The statistics for each shipment of merchandise to the U.S., including nationality of the shipping vessel or aircraft, date of exportation, and date of importation, must be reported separately.

These requirements are being incorporated into § 146.40 inasmuch as § 146.13 is deleted, as discussed above.

*Comment:* Many commenters object to proposed regulations concerning Customs examination and documentation requirements before or upon admission to zones. Specifically, the objections are that the examination required by the proposed regulations: (1) Is contrary to the Act; (2) would unreasonably delay the shipment of merchandise to zones; (3) reduces the advantages to using zones; and (4) would result in insufficient supervision for the proper enforcement of the foreign trade zone regulations. Commenters also state that examination should only be done in zones, that removal of Customs officers from zones would make it impossible to examine merchandise there, that commercial invoices are not usually available for presentation before or upon admission to a zone, further delaying shipments, and that merchandise admitted to a zone but destined only for exportation should not be examined by Customs.

*Responses:* We do not agree. Physical examination is a key principle of audit-inspection supervision because it enables Customs to determine the initial responsibility of the operator for the merchandise. Proper duty assessment and enforcement of admissibility requirements are also benefits of zone merchandise examination. The authority for such examinations is found in sections 4, 8, and 15(b) of the Act (19 U.S.C. 81d, h, and o(b)), as well as in



section 499 of the Tariff Act of 1930, as amended (19 U.S.C. 1499).

The purpose of providing a commercial invoice of similar documentation is to assist Customs in physical examinations by disclosing the purported nature of the merchandise. It also aids in planning examinations under Customs selective examination procedures.

Furthermore, the proposed examination and documentation requirements do not unreasonably delay shipments to zones. First, under selective examination procedures, only about 20-30 percent of shipments are examined. Secondly, merchandise destined for zone sites under direct delivery procedures (§ 146.40) is examined even less frequently. Thirdly, if proper documentation is not available or is incomplete, the merchandise may be temporarily deposited in the zone, pending its receipt and Customs examination (§ 146.35).

Additionally, the examination and documentation requirements do not decrease the advantages of zones. First, there would not be unreasonable delays. Secondly, zone importers would not have to await the arrival of a Customs officer to physically supervise admission, as under the existing system. Thirdly, at worst the delays caused by examination and documentation requirements and those caused by awaiting the arrival of a Customs officer for physical supervision are equal. Zones still have very significant advantages conferred upon them under the Act.

As to the place of examination, we believe that this should be left to the discretion of the district director, so as to allow the most efficient deployment of personnel to carry out Customs tasks. In many cases, examination can be done more quickly at the dock, where Customs officers may be stationed full time, rather than at a zone with no full-time Customs officers.

The main purpose of audit-inspection supervision is to replace the physical supervision of zones. It does not deal directly with Customs staffing of zones for examination or documentation purposes. If the workload of a zone is large enough to warrant assignment of an officer full-time to examine merchandise and review documentation, the district director may do so. If the zone workload is light and commitments to other segments of the import community heavy, it would be inefficient and unreasonable to assign a full-time officer to a zone. There is nothing in the Act or elsewhere that obliges Customs, in its deployment of personnel, to accord zones more

favorable treatment than other segments of the importing community.

Audit-inspection supervision will not result in ineffective enforcement of U.S. laws and regulations in zones. Under this system, Customs does not abandon supervision; rather, it supervises in a different manner, relying on physical supervision and recordkeeping by zone operators, enforced through liquidated damages, penalties, and suspension procedures. Customs believes these deterrents will provide better enforcement than physical supervision.

As to merchandise with no invoice or an incomplete invoice, we note that this merchandise may be sent to a zone for temporary deposit. Customs will accept alternate documentation in lieu of a commercial invoice, providing the documentation provides a clear description of the nature of the merchandise. However, Customs experience has been that commercial invoices exist for most zone shipments.

Finally, with regard to merchandise destined only for exportation, this merchandise is subject to examination for identification purposes under audit-inspection supervision just as any other merchandise destined for zones.

*Comment:* Proposed § 146.73(d)(2) prohibits duty-paid merchandise from being further processed in a zone. This provision is contrary to the Act and Customs Headquarters Ruling 215870. It therefore should be deleted.

*Response:* Whether or not the provision is contrary to Ruling 215870, the regulations take precedence. The prohibition against further processing of duty-paid merchandise is applicable only to merchandise previously in a zone, and not to all duty-paid merchandise.

The purpose of proposed § 146.73(d)(1) was to allow merchandise to remain in a zone after it has been constructively transferred to Customs territory and entered. It was intended to accommodate zone users who wished to make entry for a large amount of merchandise, but for various commercial reason did not wish to immediately remove all or some of the merchandise from the zone. The prohibition on further processing was intended to avoid abuse of this privilege by an assortment of schemes designed to circumvent high duty rates or import restrictions. Examples of such schemes are as follows:

1. Merchandise is entered for consumption at a duty rate of 5 percent. After entry the merchandise is retained in the zone, or it is removed but shortly thereafter returned to the same or a different zone in domestic status. Then it is further manufactured into a product

whose rate of duty is 25 percent.

However, the merchandise is no longer subject to duty since it is now wholly in domestic status.

2. There is a quota on sugar products containing over 65 percent sucrose. The importer adds another product to the sugar in a zone to produce a product with less than 65 percent sucrose content, which is not subject to the quota. The importer files an entry on the product in the latter state, but the merchandise is retained in the zone in domestic status. Then the added product is sifted out, leaving a sugar product containing 90 percent sucrose. The merchandise is no longer subject to quota upon its ultimate removal from the zone because it is in domestic status.

3. A firm produces pharmaceutical products in a zone. During an intermediate stage of processing, the merchandise is in a condition subject to a fee rate of duty, while the final rate of duty would be 15 percent. The intermediate stage is transitory, lasting no more than an hour. During this period, the firm files an entry at the free rate of duty. The intermediate stage merchandise is left in the zone for continuous processing, or is piped in a loop that runs into Customs territory and immediately back into the zone, whereupon the firm requests readmission in domestic status. By the time Customs accepts the entry and has an opportunity to examine the merchandise, it is no longer in its condition as entered. Besides circumventing the higher rate of duty, the merchandise covered by the entry can no longer be examined for verification or appraisal purposes.

Entry for consumption in these cases is a sham. Merchandise which is entered but not commingled with U.S. commerce is not, in Customs opinion, entered for consumption, and such entries may be declared null and void and cancelled by the district director. We note that there is a line of court decisions in support of the view that entered for consumption means that the merchandise has entered U.S. commerce as an integral part thereof. See *U.S. v. Rolls Royce of America, Inc.* T.D. 41202 and *U.S. v. Mussman and Schafer*, C.A.D. 506, C.D. 1367.

Section 3 of the Act permits zones two choices in the rate of duty upon entry for consumption—the rate of duty on the merchandise in its condition when the choice is made, or the rate of duty on the merchandise in its condition when transferred to Customs territory. A sham consumption entry allows a third choice—the rate applicable to the



merchandise in an intermediate stage of processing in the zone.

In lieu of a prohibition on further processing, proposed § 156.73(d)(1) (now § 146.71(d)(1)) is being amended to authorize district directors to reject or cancel consumption entries from zones when the merchandise is not timely removed from the zone after entry, and merchandise removed from the zone does not enter U.S. commerce and is subsequently readmitted to a zone in domestic status. If the merchandise is so readmitted and the entry cancelled, it will be restored to its last zone status and a new entry required upon its transfer to Customs territory. This amendment closes an existing loophole so as to protect the revenue and properly enforce U.S. import laws and regulations.

A determination as to whether merchandise has not entered the commerce will be made by district directors on a case by case basis, considering factors such as the following:

1. Length of time the merchandise was outside the zone before readmission.
2. Whether readmission was requested by the importer of record or his agent, or a person acting in collusion with the importer of record.
3. Credible evidence that there was an intent by the importer or others, at the time of entry, to seek readmission to the zone.
4. The merchandise evades a higher rate of duty or an import restriction because of its having been admitted in domestic status.
5. The merchandise was not used or was not the subject of a bona fide sale by the importer after entry.
6. The merchandise was not further processed or manufactured outside the zone, or such processing or manufacture was minimal or cosmetic in nature.

Entries of merchandise readmitted in zone-restricted status will not be cancelled under the provision. It is noted that the position set forth in § 146.71(d)(1) is consistent with those in §§ 146.61, 146.63(c)(1) and 146.71(d)(2) in that merchandise which was entered but never removed from the zone is treated as constructively transferred back to the zone in its previous zone status.

An exception is made in § 146.71(c) from the general requirement of prompt zone removal for articles for use in a zone, such as production equipment, construction materials, and articles to be consumed in a zone.

A new § 146.71(d)(3) is added to clarify that merchandise which is actually entered into commerce may be readmitted to a zone in domestic status.

*Comment:* Several commenters were concerned that under the revised regulations, Customs would no longer approve a zone's procedures manual.

*Response:* Currently, Customs has three methods of supervising zones: (1) Customs maintained zone inventory ledgers; (2) Alternative inventory Control Systems (AICS) maintained by the zone operator; and (3) the Audit-Inspection Program where the zone operator maintains his inventory control. Only under AICS has Customs approved a zone operator's inventory control system. The reason for Customs allowing the AICS method of operating a zone stems from the fact that Customs did not have regulatory guidelines available for use by zone operators. However, there were some problems with the AICS method due to Customs limited ability to assist in the design of sophisticated data processing systems within short time frames so as to allow zones to be activated. Also, several zone systems were approved where zone operations were delayed sometimes for several years, resulting in the original system either being rendered obsolete or in need of major changes at the time the zone was activated.

Accordingly, Customs decided to provide much needed inventory control guidelines in the regulations and allow the individual zones to adopt their own inventory systems with the guidelines devised by Customs. Questions as to whether particular elements of a proposed inventory control and recordkeeping system meet the criteria in revised Subpart B, Part 146, Customs Regulations, may be referred to the district director for a non-binding ruling, or to Customs Headquarters for a ruling in accordance with Part 177, Customs Regulations (19 CFR Part 177). Customs will not review any system in its entirety to render an opinion as to whether it meets all of the criteria in Subpart B.

*Comment:* Since the Government's expense in providing Customs officers at the zone is reimbursed by the zone itself, there is no logical reason why Customs personnel cannot be permanently stationed at the zone.

*Response:* Although the expense of maintaining a Customs officer at a zone is a consideration in our decision to implement audit-inspection supervision, there are other considerations of equal value. One is that audit-inspection supervision would provide protection to the revenue, which is equal to or greater than that under the existing systems. This was apparent from a 4-year study of warehouses which had converted to audit-inspection supervision. Another consideration is that the new system

allows Customs to assign personnel to other areas which have a higher priority. A great many zone operators, grantees and users do not realize that Customs warehouse and zone officer positions, although they are fully reimbursable, are counted against Customs overall personnel ceiling. If officers are assigned to warehouses and zones, there will be fewer officers for assignment to higher priority tasks.

*Comment:* The proposed regulations do not reduce recordkeeping and information costs to operators.

*Response:* We disagree. To meet present document filing requirements, zone operators must gather, maintain, and compile certain data on their zones's admissions and removals and file required documents with Customs. Under the proposal, data gathering and maintenance needs will not change appreciably, but required document filings will be reduced dramatically. We estimate 50,000—70,000 annual form filings will be eliminated by the proposal, resulting in operator data handling and form filing cost reductions of from \$600,000 to \$700,000. We regard document cost reductions of an average \$10,000 per year per activated zone site to be real and significant.

*Comment:* Since Customs no longer will be approving operator procedures manuals in their entirety, it is not fulfilling its obligations to assist the importing and exporting public. Customs should therefore provide some instruction to zone operators.

*Response:* We agree. Accordingly, Customs will provide the following assistance to the importing and exporting and exporting public:

1. Every attempt has been made to make the new regulations clear and concise.
2. Rewrite the Customs pamphlet on foreign trade zones.
3. Develop a booklet on foreign trade zones for operators and users.
4. Provide informational seminars for the public on the new regulations.
5. Rewrite operational guidelines based upon the new regulations.
6. Provide materials and seminars for Customs personnel, as well as the public.

*Comment:* Because of its impact, the proposal qualifies as a major rule under E.O. 12291 and thus requires a regulatory analysis.

*Response:* We disagree. Section 1(b) of E.O. 12291 requires a regulatory impact analysis for a proposal when one or more of the following criteria are met:

- (1) A net national economic cost of \$100 million or more;



(2) Significant cost increases for consumers; and

(3) Adverse effect upon the international competitiveness of U.S. firms.

In conducting an initial regulatory analysis under the terms of the Regulatory Flexibility Act (5 U.S.C. 603, 604), we concluded that none of the criteria was met.

**Comment:** Many commenters object to the penalty and liquidated damages provisions of the proposed regulations as excessive, unwarranted and not comparable to the bonded warehouse liquidated damages provisions or the penalties for fraud under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592). They also question the authority of district directors to suspend a zone's activated status, claiming that this action amounts to revocation of the zone grant.

**Response:** As to the liquidated damages and penalties provisions of the new regulations not being comparable to those for bonded warehouses, we note that there are considerable differences between zones and bonded warehouses. Merchandise in a bonded warehouse is in Customs territory, has been entered, and is secured by both the warehouse proprietor's bond and the warehouse entry bond, whereas merchandise in a zone is not in Customs territory, is not entered and is not generally subject to the Customs laws or the bonding requirements. Also, there is much greater freedom to manufacture and manipulate merchandise in a zone than in a bonded warehouse. In view of this relative freedom from Customs control of activities in zones as compared to warehouses, the bonding requirements proposed are minimal.

As to the comment that the liquidated damages provisions under the new regulations should be consistent with those for bonded warehouses, we note that the proposed liquidated damages provisions for restricted merchandise or alcoholic beverages are consistent with those for such articles under the importer's and warehouse proprietor's bonds. They are in a higher amount than liquidated damages for other merchandise. This is necessary to remove the economic incentive to breach the bond, in certain cases, in order to evade quota, licensing, labeling or other restrictions.

With respect to liquidated damages claims not relating to merchandise, the liquidated damages proposed were in an amount to be determined by the district director, but not more than \$200. Several commenters, however, were of the opinion that liquidated damages for non-merchandise related defaults of the zone

operator's bond should be consistent with those for default of the warehouse proprietor's bond. Customs agrees with this position. Therefore, proposed § 146.81 is deleted, and the zone operator's bond in § 113.73, Customs Regulations (19 CFR 113.73), is modified to include the provisions previously appearing in § 146.81. Liquidated damages for merchandise and non-merchandise related defaults of the zone operator's bond will conform to those applicable to the warehouse proprietor's bond as well as other Customs bonds.

The only penalty provision in the new regulations is a restatement of 19 U.S.C. 81s (section 19, the Act), which authorizes a fine of not more than \$1,000 for violation of the Act or any regulations thereunder. The regulations in Part 146, Customs Regulations, are regulations under the Act. The penalty for fraud under 19 U.S.C. 1592 is the domestic value of the merchandise plus any duties. These two penalty provisions are concerned with preventing two different types of activity which bear no relationship to each other. The penalties can in no way be compared to each other.

With respect to Customs authority to suspend activation of a zone, in proposed § 146.83, we note that sections 3, 5, 8, and 15(b) of the Act (19 U.S.C. 81c, e, h, o(b)), confer authority upon the Secretary of the Treasury to make rules and regulations under the Act. Customs derives this authority from the Secretary.

Suspension of activation of a zone is not a revocation of the zone grant, which is the only remedy currently available to Customs for improper activity or continued violations of the foreign trade zones regulations, provided that the Board orders the revocation. Furthermore, under section 18 of the Act (19 U.S.C. 81r), the zone grant cannot be revoked without giving four months notice and taking other actions.

Suspension gives Customs an alternative method for dealing with improper activity in a zone. It allows Customs to single out the improper activity, subzone, or zone site involved and apply certain sanctions, without disturbing other proper zone activities. For example, suspension may be limited to the activities of a particular site, such as suspension of the privilege to admit merchandise for a particular activity, and it may not necessarily be directed at the activation of the zone as a whole. Proposed §§ 146.83 (a) and (b)(1) (now §§ 146.82 (a) and (b)(1)) have been modified to clarify this procedure.

Some commenters also object to the proposed regulations on suspension on

the grounds that they recognize only the operator as a party to suspension proceedings. These commenters suggest that grantees and users also be made parties to suspension proceedings. Customs agrees with this suggestion with respect to grantees, and, accordingly, we have added new paragraph (4) to § 146.83(b) to recognize the grantee. However, we do not agree that a user should be a party. Approval of zone activation is given to a grantee or operator, not to users. Suspension, or partial suspension, of that approval is a matter between Customs and the grantee or operator who is responsible for the zone.

Finally, it is noted that suspensions are for a limited period, are designed for fast action to minimize developing problems, and are substantially less onerous than revocation provisions applicable to customs brokers, warehouse proprietors, container station operators, and cartmen.

**Comment:** Language is not used consistently and accurately throughout the proposal. In describing the process of merchandise flow through a zone, the following words are used: admit, brought, enter, receive, remove, transfer, deliver, and withdraw. Also the terms zone, zone site, noncontiguous zone site, zone user, zone firm, and zone seller are used with different intents but without definition.

**Response:** Customs does not agree with this comment. Nevertheless, it appears that some commenters do not understand, or misunderstand, the use of a number of terms. Accordingly, it has been decided to revise and expand the definitions section and, through editorial changes throughout the proposed regulations, improve clarity. "Secretary", "Board", "State", "Corporation", "Public Corporation", "Private Corporation", "Applicant", "Grantee", and "Zone", are defined in section 1 of the Act (19 U.S.C. 81a), and wherever those terms appear in Part 146, they are used in consonance with their statutory meaning, unless otherwise stated. The statutory definitions will not be repeated in the new regulations.

Definitions of several terms, i.e., "subzone", "operator", and "user" have appeared in the proposed regulations of the Board published on February 18, 1983, in the Federal Register (48 FR 7189). As it is not known when those proposed regulations may become final, and as the use of these words is necessary in these regulations, their definitions have been added to § 146.1. If it appears necessary, the definitions may be modified when the proposed regulations of the Board become final.



The terms "zone site" and "noncontiguous zone site" result from particular grants of authority by the Board to establish and operate a zone. It is believed that grantees and operators of those sites are aware of their meanings. The term "noncontiguous zone" has been deleted from these regulations wherever it appears. A definition of "zone site" has been added.

The exclusion of production equipment, building materials, and supplies from the definition of "merchandise" in § 146.1(h) is consistent with Customs decision on this subject. Production equipment, building materials, and supplies are not "merchandise" within the meaning of section 3 of the Act (19 U.S.C. 81c) for the reasons set forth in Customs Service Decision (C.S.D.) 79-418. Also, in H. Rept. 98-267 on H.R. 3398 (Trade and Tariff Act of 1984, June 24, 1983), at page 36, it is stated that the Act does not apply to machinery and equipment. They are, therefore, dutiable upon entry.

This position is supported by 19 U.S.C. 1311, the statute establishing bonded manufacturing warehouses, which specifically prohibits the duty-free entry of imported implements, machinery, or apparatus to be used in the construction or repair of any bonded manufacturing warehouse or for the prosecution of the business carried on therein. It would be inconsistent for Customs to prohibit the duty-free entry of such articles into a manufacturing warehouse, from which manufactured goods must be exported, and to permit the duty-free entry of the same articles into a zone. If zones had no such limitation, they would have a distinct advantage over domestic manufacturers since domestic manufacturers are required to enter and pay duty on those articles.

Review does not reveal differing intents in the use of "zone user", "zone firm", and "zone seller" and their meaning is self-evident in context. However, a definition of "user" has been added to § 146.1, and an effort has been made to remove the terms or to further clarify their meaning by editorial changes.

"Enter", where used, refers to the entry of merchandise into the Customs territory of the United States. "Withdrawal" refers to withdrawal from warehouses. Both words are used in the ordinary tariff sense.

To minimize confusion, and since goods are neither entered into nor withdrawn from a zone in the tariff sense, the words "admit", for bringing goods into a zone in zone status, and "transfer", for taking goods out of a zone, have been used. Definitions of these words have been added.

"Brought", "receive", "remove", and "deliver", wherever used, have their ordinary meaning. While inconsistent and inaccurate use of the terms in the proposed regulations is not evident, their use has been reviewed and editorial changes have been made wherever appropriate.

*Comment:* Several commenters objected to the procedures for appealing decisions of the district director denying applications to activate a zone or suspending the activated status of a zone, but these comments were not specific.

*Response:* We see no problem with the appeal procedure for suspensions of the activated status of a zone or of certain activities in a zone. The procedures include the right to request a hearing and to obtain the decision of the regional commissioner.

With respect to denial of an application to activate a zone or zone site, the decision of the district director is considered the final administrative decision for several reasons. First, there may not even be an appealable right. The grant to establish and operate a zone is conditioned upon the grantee's obtaining all necessary permits and licenses, and securing the permission of the district director to begin operations in the zone. Where the district director denies activation because the conditions have not been complied with, or for other stated reasons, denial of activation does not result in denial of an appealable right since the right to activate the zone has not been granted.

Secondly, the district director is more closely connected with the application for and activation of a zone than Customs regional or headquarters officials. Appeals of denials to the Customs region or to Headquarters would result in little more than delay and inquiries into the factual basis of the decision. We believe that the Board and the courts provide the most suitable forum for appeals from denials of activation on the part of the district director.

*Comment:* The annual fees proposed for zones are unreasonably high.

*Response:* We disagree. The purpose of the annual fee is to recover Customs costs incurred in carrying out the audit-inspection supervision program. The annual fee to be charged each zone is a function of the degree of complexity in Customs auditing and inspection of zones.

Under the present inspectional system, Customs bills zone operators approximately \$1.3 million annually for inspectional services. Zone operators recover this expense in their fee and rental/lease billings to zone users. We

estimate that the Customs component of these fees paid by zone users averages \$870 per year per user.

Under the proposed audit-inspection system with different fee tiers, Customs billings to operators of general purpose zones will amount to approximately \$1 million per year, versus the estimated \$1.3 million at present. The Customs component of small business users' payment to operators will average \$670 per year per user, versus the \$870 per year per user at present. Future increases in the annual fee will reflect cost increases incurred by Customs in delivering audit and inspection services. These increases will consist largely of annual rises in labor costs. It is expected that labor costs, and thus annual fees charged zone operators, will rise by a moderate 2-4 percent each year.

The proposed fees, therefore, are not unreasonable. Moreover, the proposed annual fee has been restructured into a three-tiered system with the larger, more active zones set to pay higher fees than the smaller zones. This would provide equitable treatment for the smaller zones in that they would no longer subsidize the larger zones. Appendix B reflects the revised structure of the annual fee.

*Comment:* Many commenters requested clarification of the respective liabilities to Customs of grantees, operators, and users of zones.

*Response:* As the privilege of establishing, operating, and maintaining a zone is given to a grantee, Customs is of the opinion that all liabilities to Customs involving zone activities reside ultimately with the grantee of the zone. If the operator is not the grantee, these liabilities can be minimized by the operator's being named as principal on the zone operator's bond. There is no liability to Customs on the part of zone users, other than users that are also operators.

It is the grantee or the grantee and operator who have responsibilities to Customs with the attendant liabilities. Grantees are free to make whatever contractual agreements regarding indemnification with operators and users that they choose. Furthermore, Customs is not aware of any way that a grantee can divest itself of all liability, or limit its liability, in the event of loss or damage to Customs resulting from zone activities. While 19 U.S.C. 1623(c) and § 113.51, Customs Regulations (19 CFR 113.51), authorize the cancellation of bonds or bond charges under certain circumstances, that authority does not apply to prospective transactions nor does it extend to the waiver of any lawful claims against the grantee, not



secured by bond, that arise from zone activities.

**Comment:** A few comments were received concerning Subpart D, Part 146. The commenters stated that many of the sections and subsections of Subpart D were definitional in nature and should be in Subpart A.

**Response:** The subject matter of Subpart D—the status of merchandise in a zone is of sufficient importance to merit its own subpart. The terms “privileged foreign merchandise,” “nonprivileged foreign merchandise,” “domestic merchandise,” and “zone-restricted merchandise” do not appear in the Act. They were coined to describe the status of certain merchandise in a zone with reference to particular provisos of section 3 of the Act (19 U.S.C. 81c). In that sense, the terms are not definitional but descriptive, in that they simply provide a name for conditions prescribed by law, e.g., “zone-restricted” describes the status of merchandise subject to the fourth proviso of 19 U.S.C. 81c.

One commenter urged that § 146.44 (zone-restricted merchandise) be expanded to include a requirement that merchandise placed in a zone to obtain payment of drawback and subsequently removed for shipment to an insular possession of the U.S. be reported by the zone operator to the district director. Upon consideration, it has been decided not to add that requirement to Part 146. Section 191.13, Customs Regulations (19 CFR 191.13), provides that there is no authority to allow drawback on articles shipped to insular possessions. There is authority to allow drawback on articles placed in a zone in zone-restricted status. Subsequent shipment of such articles to an insular possession would be contrary to the Act since it would not be an exportation, destruction, or storage. The likelihood of such shipments is remote and since § 191.13 essentially covers the situation, there is no need to make allowance for it in § 146.44.

In connection with the deletion of § 146.14, § 146.43 is amended to specify that no permit will be required for the admission, handling, or transfer to Customs territory of domestic status merchandise except: (1) When mixed or combined with merchandise of another zone status, and (2) when so ordered by the Commissioner in individual circumstances. The latter residual authority is retained to allow Customs to properly control domestic status merchandise in unusual circumstances. The operator must still maintain proper records of domestic status merchandise under Subpart B, Part 146, even if no permit is required.

Finally, a new § 146.14 has been added. This section is a restatement of the statutory limitation on retail trade in a zone, found in section 15(d) of the Act (19 U.S.C. 81o(d)).

Changes are made throughout the regulations to conform them to the changes made by this document. Also, as a general point, whenever the word “days” appears in this revision, it means calendar days, unless “working days” is specified.

After careful analysis of all the comments received and upon further review of the matter, it has been determined advisable to adopt the proposed regulatory amendments with the various modifications as set forth above.

#### Executive Order 12291

It has been determined that these amendments are not a “major rule” within the criteria provided in section 1(b) of E.O. 12291, and therefore no regulatory impact analysis is required.

#### 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 applicable to this document. An initial regulatory analysis was prepared and included in the NPRM as Appendix C. A final regulatory flexibility analysis is attached to this document as an appendix.

#### Paperwork Reduction Act

The collection of information requirements contained in § 146.25 and the recordkeeping requirement contained in § 146.4, are subject to the provisions of the Paperwork Reduction Act (44 U.S.C. 3504(h)) and have been cleared by the Office of Management and Budget (OMB). Accordingly, Part 178, Customs Regulations (19 CFR Part 178), which lists the information collections contained in the regulations and the control numbers assigned by OMB, is being amended to include OMB control number 1515-0151.

#### Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, 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 146 and 178

Customs duties and inspection, Exports, Foreign trade zones, Imports, Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

#### Amendments to the Regulations

Chapter I, Title 19, Code of Federal Regulations, is amended by revising Part 146 to read as follows:

#### PART 146—FOREIGN TRADE ZONES

Sec.

146.0 Scope.

##### Subpart A—General Provisions

- 146.1 Definitions.
- 146.2 District director as Board representative.
- 146.3 Customs supervision.
- 146.4 Operator responsibility and supervision.
- 146.5 Activation fee and annual fee.
- 146.6 Procedure for activation.
- 146.7 Zone changes.
- 146.8 Seals; authority of operator to break and affix.
- 146.9 Permission of operator.
- 146.10 Authority to examine merchandise.
- 146.11 Transportation of merchandise to a zone.
- 146.12 Use of zone by carrier.
- 146.13 Customs forms and procedures.
- 146.14 Retail trade within a zone.

##### Subpart B—Inventory Control and Recordkeeping System

- 146.21 General requirements.
- 146.22 Admission of merchandise to a zone.
- 146.23 Accountability for merchandise in a zone.
- 146.24 Transfer of merchandise from a zone.
- 146.25 Annual reconciliation.
- 146.26 System review.

##### Subpart C—Admission of Merchandise to a Zone

- 146.31 Admissibility of merchandise into a zone.
- 146.32 Application and permit for admission of merchandise.
- 146.33 Temporary deposit for manipulation.
- 146.34 Merchandise transiting a zone.
- 146.35 Temporary deposit in a zone; incomplete documentation.
- 146.36 Examination of merchandise.
- 146.37 Operator admission responsibilities.
- 146.38 Certificate of arrival of merchandise.
- 146.39 Direct delivery procedures.
- 146.40 Operator responsibilities for direct delivery.

##### Subpart D—Status of Merchandise in a Zone

- 146.41 Privileged foreign status.
- 146.42 Nonprivileged foreign status.
- 146.43 Domestic status.
- 146.44 Zone-restricted status.

##### Subpart E—Handling of Merchandise in a Zone

- 146.51 Customs control of merchandise.
- 146.52 Manipulation, manufacture, exhibition, or destruction; Customs Form 216.
- 146.53 Shortages and overages.



**Subpart F—Transfer of Merchandise From a Zone**

Sec.

- 146.61 Constructive transfer to Customs territory.
- 146.62 Entry.
- 146.63 Entry for consumption.
- 146.64 Entry for warehouse.
- 146.65 Classification, valuation, and liquidation.
- 146.66 Transfer of merchandise from one zone to another.
- 146.67 Transfer of merchandise for exportation.
- 146.68 Transfer for transportation or exportation; estimated production.
- 146.69 Supplies, equipment, and repair material for vessels or aircraft.
- 146.70 Transfer of zone-restricted merchandise into Customs territory.
- 146.71 Release and removal of merchandise from zone.

**Subpart G—Penalties; Suspension; Revocation**

- 146.81 Penalties.
- 146.82 Suspension.
- 146.83 Revocation of zone grant.

Authority: 19 U.S.C. 66, 81a–81u, 1202 (Gen. Hdnote 11), 1623, 1624, § 146.5 also issued under 31 U.S.C. 9701.

**§ 146.0 Scope.**

Foreign trade zones are established under the Foreign Trade Zones Act and the general regulations and rules of procedure of the Foreign Trade Zones Board contained in 15 CFR Part 400. This Part 146 of the Customs Regulations governs the admission of merchandise into a foreign trade zone, manipulation, manufacture, or exhibition in a zone; exportation of the merchandise from a zone; and transfer of merchandise from a zone into Customs territory.

**Subpart A—General Provisions****§ 146.1 Definitions.**

(a) The following words, defined in section 1 of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a), are given the same meaning when used in this part, unless otherwise stated: "Board", "Grantee", and "Zones".

(b) The following are general definitions for the purpose of this part:

(1) *Act*. "Act" means the Foreign-Trade Zones Act of June 18, 1934, as amended (48 Stat. 998–1003; 19 U.S.C. 81a–u).

(2) *Activation*. "Activation" means approval by the grantee and district director for operations and for the admission and handling of merchandise in zone status.

(3) *Admit*. "Admit" means to bring merchandise into a zone with zone status.

(4) *Alteration*. "Alteration" means a change in the boundaries of an activated zone or subzone; activation of a separate site of an already-activated

zone or subzone with the same operator at the same port; or the relocation of an already-activated site with the same operator.

(5) *Customs territory*. "Customs territory" is the territory of the U.S. in which the general tariff laws of the U.S. apply. "Customs territory of the United States" includes only the States, the District of Columbia, and Puerto Rico. (General Headnote 2, Tariff Schedules of the United States (19 U.S.C. 1202)).

(6) *Constructive transfer*. "Constructive transfer" is a legal fiction which permits acceptance of a Customs entry for merchandise in a zone before its physical transfer to the Customs territory.

(7) *Deactivation*. "Deactivation" means voluntary discontinuation of the activation of an entire zone or subzone by the grantee or operator. Discontinuance of the activated status of only a part of a zone site is an alteration.

(8) *Default*. "Default" means an action or omission that will result in a claim for duties, taxes, charges, or liquidated damages under the Foreign Trade Zone Operator Bond.

(9) *Merchandise*. "Merchandise" includes goods, wares and chattels of every description, except prohibited merchandise. Building materials, production equipment, and supplies for use in operation of a zone are not "merchandise" for the purpose of this part.

(10) *Domestic merchandise*. "Domestic merchandise" is merchandise which has been (i) produced in the U.S. and not exported therefrom, or (ii) previously imported into Customs territory and properly released from Customs custody.

(11) *Foreign merchandise*. "Foreign merchandise" is imported merchandise which has not been properly released from Customs custody in Customs territory.

(12) *Conditionally admissible merchandise*. "Conditionally admissible merchandise" is merchandise which may be imported into the U.S. under certain conditions. Merchandise which is subject to permits or licenses, or which may be reconditioned to bring it into compliance with the laws administered by various Federal agencies, is an example of conditionally admissible merchandise.

(13) *Prohibited merchandise*. "Prohibited merchandise" is merchandise the importation of which is prohibited by law on grounds of public policy or morals, or any merchandise which is excluded from a zone by order of the Board. Books urging treason or insurrection against the U.S., obscene

pictures, and lottery tickets are examples of prohibited merchandise.

(14) *Fungible merchandise*. "Fungible merchandise" means merchandise which for commercial purposes is identical and interchangeable in all situations.

(15) *Operator*. "Operator" is a corporation, partnership, or person that operates a zone or subzone under the terms of an agreement with the zone grantee. Where used in this part, the term "operator" also applies to a "grantee" that operates its own zone.

(16) *Reactivation*. "Reactivation" means a resumption of the activated status of an entire area that was previously deactivated without any change in the operator or the area boundaries. If the boundaries are different, the action is an alteration. If the operator is different, it is an activation.

(17) *Subzone*. "Subzone" is a special-purpose zone established as part of a zone project for a limited purpose, that cannot be accommodated within an existing zone. The term "zone" also applies to a subzone, unless specified otherwise.

(18) *Transfer*. "Transfer" means to take merchandise with zone status from a zone for consumption, transportation, exportation, warehousing, cartage or lighterage, vessel supplies and equipment, admission to another zone, and like purposes.

(19) *Unique identifier*. "Unique identifier" means the numbers, letters, or combination of number and letters that identify merchandise admitted to a zone with zone status.

(20) *User*. "User" means a person or firm using a zone or subzone for storage, handling, or processing of merchandise.

(21) *Zone lot*. "Zone lot" means a collection of merchandise maintained under an inventory control method based on specific identification of merchandise admitted to a zone by lot.

(22) *Zone site*. "Zone site" means the physical location of a zone or subzone.

(23) *Zone status*. "Zone status" means the status of merchandise admitted to a zone, i.e., nonprivileged foreign, privileged foreign, zone restricted, or domestic.

**§ 146.2 District director as Board representative.**

The district director in whose district the zone is located shall be in charge of the zone as the representative of the Board.

**§ 146.3 Customs supervision.**

(a) *Assignment of Customs officers*. Customs officers will be assigned or



detailed to a zone as necessary to maintain appropriate Customs supervision of merchandise and records pertaining thereto in the zone, and to protect the revenue.

(b) *Supervision.* Customs supervision over any zone or transaction provided for in this part will be in accordance with § 161.1 of this chapter. The district director may direct a Customs officer to supervise any transaction or procedure at a zone. Supervision may be performed through a periodic audit of the operator's records, quantity count of goods in a zone inventory, spot check of selected transactions or procedures, or review of recordkeeping, security, or conditions of storage in a zone.

#### § 146.4 Operator responsibility and supervision.

(a) *Supervision.* The operator shall supervise all admissions, transfers, removals, recordkeeping, manipulations, manufacturing, destruction, exhibition, physical and procedural security, and conditions of storage in the zone as required by law and regulations. Supervision by the operator shall be that which a prudent manager of a storage, manipulation, or manufacturing facility would be expected to exercise, and may take into account the degree of supervision exercised by the zone user having physical possession of zone merchandise.

(b) *Customs access.* The operator shall permit any Customs officer access to a zone.

(c) *Safekeeping of merchandise and records.* The operator is responsible for safekeeping of merchandise and records concerning merchandise admitted to a zone. The operator, at its liability, may allow the zone importer or owner of the goods to store, safeguard, and otherwise maintain or handle the goods and the inventory records pertaining to them.

(d) *Records maintenance.* The operator shall (1) maintain the inventory control and recordkeeping system in accordance with the provisions of Subpart B, (2) retain all records required in this Part and defined in § 162.1(a) of this chapter, pertaining to zone merchandise for 5 years after the merchandise is removed from the zone, and (3) protect proprietary information in its custody from unauthorized disclosure. Records shall be readily available for Customs review at the zone.

(e) *Merchandise security.* The operator shall maintain the zone and establish procedures adequate to ensure the security of merchandise located in the zone in accordance with applicable Customs security standards and specifications.

(f) *Storage and handling.* The operator shall store and handle merchandise in a zone in a safe and sanitary manner to minimize damage to the merchandise, avoid hazard to persons, and meet local, state, and Federal requirements applicable to a specific kind of goods. All trash and waste will be promptly removed from a zone. Aisles will be established and maintained, and doors and entrances left unblocked for access by Customs officers and other persons in the performance of their official duties.

(g) *Guard service.* The operator is authorized to provide guards or contract for guard service to safeguard the merchandise and ensure the security of the zone. This authorization does not limit the authority of the district director to assign Customs guards to protect the revenue under section 4 of the Act (19 U.S.C. 81d).

(h) *Miscellaneous responsibilities.* The operator is responsible for complying with requirements for admission, manipulation, manufacture, exhibition, or destruction, shortage, or overage; inventory control and recordkeeping systems, transfer to Customs territory, and other requirements as specified in this part.

#### § 146.5 Activation fee and annual fee.

The operator, or where there is no operator, the grantee, will be charged a nonrefundable fee to activate a zone or any portion of a zone, or to alter or relocate an activated portion of a zone, under the provisions of 31 U.S.C. 9701. The operator of an activated zone will be charged a nonrefundable annual fee for each activated zone as payment of the cost of the additional Customs service required under the Act as provided in 19 U.S.C. 81n and the regulations in this part. The operator or grantee shall pay the annual fee to the district director of the district in which the zone is located within 14 days after activation and within 14 days after the effective date of the published fee schedule for each year thereafter that the area remains activated. The fee schedule will be revised annually and published in the *Federal Register* and the *Customs Bulletin*.

#### § 146.6 Procedure for activation.

(a) *Application.* A zone operator, or where there is no operator, a grantee, shall make written application to the district director of the district in which the zone is located to obtain approval of activation of a zone or zone site. The area to be activated may be all or any portion of the zone approved by the Board. The application must include a description of all the zone sites covered

by the application, any operation to be conducted therein, and a statement of the general character of the merchandise to be admitted.

(b) *Supporting documents.* The application must be accompanied by the following:

(1) The application fee required by § 146.5;

(2) A blueprint of the area approved by the Board to be activated showing area measurements, including all openings and buildings; and all outlets, inlets, and pipelines to any tank for the storage of liquid or similar product, that portion of the blueprint certified to be correct by the operator of the tank;

(3) A gauge table, when appropriate, showing the capacity, in the appropriate unit, of any tank, certified to be correct by the operator of the tank;

(4) A procedures manual describing the inventory control and recordkeeping system that will be used in the zone, certified by the operator or grantee to meet the requirements of Subpart B; and

(5) The written concurrence of the grantee, when the operator applies for activation, in the requested zone activation.

(c) *Inquiry by district director.* As a condition of approval of the application, the district director may order an inquiry by a Customs officer into:

(1) The qualifications, character, and experience of an operator and/or grantee and their principal officers; and

(2) The security, suitability, and fitness of the facility to receive merchandise in a zone status.

(d) *Decision of the district director.* The district director shall promptly notify the applicant in writing of his decision to approve or deny the application to activate the zone. If the application is denied, the notification will state the grounds for denial which need not be limited to those listed in § 146.82. The decision of the district director will be the final Customs administrative determination in the matter. On approval of the application, a Foreign Trade Zone Operator's Bond shall be executed on Customs Form 301, containing the bond conditions of § 113.73 of this chapter.

(e) *Activation.* Upon the district director's approval of the application and acceptance of the executed bond, the zone or zone site will be considered activated; and merchandise may be admitted to the zone. Execution of the bond by an operator does not lessen the liability of the grantee to comply with the Act and implementing regulations.



**§ 146.7 Zone changes.**

(a) *Alteration of an activated area.* An operator shall make written application to the district director for approval of an alteration of an activated area, including an alteration resulting from a zone boundary modification. The application must be accompanied by the fee required in § 146.5 and the supporting document requirements specified in § 146.6, as applicable. The district director may review the security, suitability, and fitness of the area, and shall reply to the applicant as provided for in § 146.6.

(b) *Deactivation or reactivation.* A grantee, or an operator with the concurrence of a grantee, shall make written application to the district director for deactivation of a zone site, indicating by layout or blueprint the exact site to be deactivated. The district director shall not approve the application unless all merchandise in the site in zone status (other than domestic status) has been removed at the risk and expense of the operator. The district director may require an accounting of all merchandise in a zone as a condition of approving the deactivation. A zone may be reactivated using the above procedure if a sufficient bond is on file under § 146.6(d). No fee is required for deactivation or reactivation.

(c) *Suspension of activated site.* When approval of an activated status has been suspended through the procedure in Subpart G, the district director may require all goods in that area in zone status (other than domestic status) to be transferred to another zone, a bonded warehouse, or other location where they may lawfully be stored, if the district director considers that transfer advisable to protect the revenue or administer any Federal law or regulation.

(d) *New bond.* The district director may require an operator to furnish, on 10 days notice, a new Foreign Trade Zone Operator's Bond on Customs Form 301. If the operator fails to furnish the new bond, no more merchandise will be received in the zone in zone status. Merchandise in zone status (other than domestic status) will be removed at the risk and expense of the operator. A new bond may be required if (1) the activated zone area is substantially altered; (2) the character of merchandise admitted to the zone or operations performed in the zone are substantially changed; (3) the existing bond lacks good and sufficient surety; or (4) for any other reason that substantially affects the liability of the operator under the bond. Although a new bond may not be required, the operator shall obtain the consent of the

surety to any material alteration in the boundaries of the zone.

(e) *New operator.* A grantee of an activated zone site shall make written application to the district director for approval of a new operator, submitting with the application a certification by the new operator that the inventory control and recordkeeping system meets the requirements of Subpart B, and a copy of the system procedures manual if different from the previous operator's manual. The district director may order an inquiry into the qualifications, character, and experience of the operator and its principal officers.

(f) The bond in § 146.6 shall be submitted by the operator before the operating agreement may become effective in respect to merchandise in zone status. The district director shall promptly notify the grantee, in writing, of the approval or disapproval of the application.

(g) *List of officers, employees, and other persons.* The district director may make a written demand upon the operator to submit, within 30 days after the date of the demand, a written list of the names, addresses, social security numbers, and dates and places of birth of officers and persons having a direct or indirect financial interest in the operator, and of persons employed in the carriage, receipt or delivery of merchandise in zone status, whether employed by the zone operator or a zone user. If a list was previously furnished, the district director may make a written demand for the same information in respect to new persons employed in the carriage, receipt, or delivery of zone status merchandise within 10 days after such employment. The list need not include employees of common or contract carriers transporting goods to or from the zone.

**§ 146.8 Seals, authority of operator to break and affix.**

The district director may authorize an operator to break a Customs in-bond seal affixed under § 18.4 of this chapter, or under any Customs order of directive, on any vehicle or intermodal container containing merchandise approved for admission to the zone upon its arrival at the zone; or to affix a Customs in-bond seal to any vehicle or intermodal container of merchandise for which an entry, withdrawal, or other approval document has been obtained for movement in-bond from the zone. The authorized affixing or breaking of that seal will be considered to have been done under Customs supervision. The operator shall report to the district director, upon arrival of the vehicle or container at the zone, any seal found to

be broken, missing, or improperly affixed, and hold the vehicle or container and its contents intact pending instructions from the district director. If the operator does not obtain the written concurrence of the carrier as to the condition of the seal or delivering conveyance, the district director shall deem the seal or delivering conveyance to be intact.

**§ 146.9 Permission of operator.**

An application for permission to admit merchandise into a zone, or to manipulate, manufacture, exhibit, or destroy merchandise in a zone must include the written concurrence of the operator, except where the regulations of this part provide for the making of application by the operator itself or where the operator files a separate specific or blanket application. The written concurrence of the operator in the removal of merchandise from a zone is not required because the merchandise is released by the district director to the operator for delivery from the zone, as provided in § 146.71 (a).

**§ 146.10 Authority to examine merchandise.**

The district director may cause any merchandise to be examined before or at the time of admission to a zone, or at any time thereafter, if the examination is considered necessary to facilitate the proper administration of any law, regulation, or instruction which Customs is authorized to enforce.

**§ 146.11 Transportation of merchandise to a zone.**

(a) *From outside Customs territory.* Merchandise may be admitted directly to a zone from any place outside Customs territory.

(b) *Through Customs territory, foreign merchandise.* Foreign merchandise destined to a zone and transported in-bond through Customs territory will be subject to the laws and regulations applicable to other merchandise transported in-bond between two places in Customs territory.

(c) *From Customs territory, domestic merchandise.* Domestic merchandise may be admitted to a zone from Customs territory by any means of transportation which will not interfere with the orderly conduct of business in the zone.

(d) *From a bonded warehouse.* Merchandise may be withdrawn from a bonded warehouse under the procedures in § 144.37(g) of this chapter and transferred to a zone for admission in zone-restricted status.



**§ 146.12 Use of zone by carrier.**

(a) *Primary use; lading and unlading.* The water area docking facilities, and any lading and unlading stations of a zone are intended primarily for the unlading of merchandise into the zone or the lading of merchandise for removal from the zone. Their use for other purposes may be terminated by Customs if found to endanger the revenue, or by the Board if found to impede the primary use of the zone.

(b) *Carrier in zone not exempt from law or regulations.* Nothing in the Act or the regulations in this part shall be construed as excepting any carrier entering, remaining in, or leaving a zone from the application of any other law or regulation.

**§ 146.13 Customs forms and procedures.**

Where a Customs form or other document is required in this part, the number of copies of the form or document required to be presented and their manner of distribution and processing shall be determined by the district director, except as otherwise specified in this part.

**§ 146.14 Retail trade within a zone.**

Retail trade is prohibited within a zone except as provided in 19 U.S.C. 810(d). See also the regulations of the Board as contained in 15 CFR Part 400.

**Subpart B—Inventory Control and Recordkeeping System****§ 146.21 General requirements.**

(a) *Systems capability.* The operator shall maintain either manual or automated inventory control and recordkeeping systems or combination manual and automated systems capable of:

(1) Accounting for all merchandise, including domestic status merchandise; temporarily deposited, admitted, granted a zone status and/or status change, stored, exhibited, manipulated, manufactured, destroyed, transferred, and/or removed from a zone;

(2) Producing accurate and timely reports and documents as required by this part;

(3) Identifying shortages and overages of merchandise in a zone in sufficient detail to determine the quantity, description, tariff classification, zone status, and value of the missing or excess merchandise;

(4) Providing all the information necessary to make entry for merchandise being transferred to the Customs territory;

(5) Providing an audit trail to Customs forms from admission through manipulation, manufacture, destruction

or transfer of merchandise from a zone either by zone lot or Customs authorized inventory method.

**(b) Procedures manual.**

(1) The operator shall provide the district director with an English language copy of its written inventory control and recordkeeping systems procedures manual in accordance with the requirements of this part.

(2) The operator shall keep current its procedures manual and shall submit to the district director any change at the time of its implementation.

(3) The operator may authorize a zone user to maintain its individual inventory control and recordkeeping system and procedures manual. The operator shall furnish a copy of the zone user's procedures manual, including any subsequent changes, to the district director. However, the operator will remain responsible to Customs and liable under its bond for supervision, defects in, or failures of a system.

(4) The operator's procedures manual and subsequent changes will be furnished to the district director for information purposes only. Customs receipt of a manual does not indicate approval or rejection of a system.

(c) *Liability of operator.* Upon zone activation approval the operator remains liable for complying with all inventory control and recordkeeping system requirements set forth in this part.

**§ 146.22 Admission of merchandise to a zone.**

(a) *Identification.* All merchandise will be recorded in a receiving report or document using a zone lot number or unique identifier. All merchandise, except domestic status merchandise for which no permit for admission is required under § 146.43, will be traceable to a Customs Form 214 and accompanying documentation.

(b) *Reconciliation.* Quantities received will be reconciled to a receiving report or document such as an invoice with any discrepancy reported to the district director as provided in § 146.37.

(c) *Incomplete documentation.* Merchandise received without complete Customs documentation or which is unacceptable to the inventory control and recordkeeping system will be recorded in a suspense account or record until documentation is complete or the system is capable of accepting the information, at which time it will be formally admitted to the zone under § 146.32 or 146.40. The receiving report or document will provide sufficient information to identify the merchandise and distinguish it from other

merchandise. The suspense account or record will be completely documented for Customs review to explain the differences noted and corrections made.

(d) *Recordation.* Merchandise received will be accurately recorded in the inventory system records from the receiving report or document using the zone lot number or unique identifier for traceability. The inventory record will state the quantity and date admitted, cost or value where applicable, zone status, and description of the merchandise, including any part or stock number.

**§ 146.23 Accountability for merchandise in a zone.****(a) Identification of merchandise.**

(1) *General.* A zone lot number or unique identifier will be used to identify and trace merchandise.

(2) *Fungible merchandise.* Fungible merchandise may be identified by an inventory method authorized by Customs, which is consistently applied, such as First-In-First-Out (FIFO) and using a unique identifier.

(b) *Inventory records.* The inventory records will specify by zone lot number or unique identifier:

(1) Location of merchandise;

(2) Zone status;

(3) Cost or value, unless operator's or user's financial records maintain cost or value and the records are made available for Customs review;

(4) Beginning balance, cumulative receipts and removals, adjustments, and current balance on hand by date and quantity;

(5) Destruction of merchandise; and

(6) Scrap, waste, and by-products.

(c) *Physical inventory.* The operator shall take at least an annual physical inventory of all merchandise in the zone (unless continuous cycle counts are taken as part of an ongoing inventory control program) with prior notification of the date(s) given to Customs for any supervision of the inventory deemed necessary. The operator shall notify the district director of any discrepancies in accordance with § 146.53.

**§ 146.24 Transfer of merchandise from a zone.****(a) Accountability.**

(1) All zone status merchandise transferred from a zone will be accurately recorded within the inventory control and recordkeeping system.

(2) The inventory control and recordkeeping system for merchandise transfers must have the capability to trace all transfers back to a zone



admission under a Customs authorized inventory method.

(b) *Information.* The inventory control and recordkeeping system must be capable of providing all information necessary to make entry for transfer of merchandise from the zone.

#### § 146.25 Annual reconciliation.

(a) *Report.* The operator shall prepare a reconciliation report within 90 days after the end of the zone/subzone year unless the district director authorizes an extension for reasonable cause. The operator shall retain that annual reconciliation report for a spot check or audit by Customs, and need not furnish it to Customs unless requested. There is no form specified for the preparation of the report.

(b) *Information required.* The report must contain a description of merchandise for each zone lot or unique identifier, zone status, quantity on hand at the beginning of the year, cumulative receipts and transfers (by unit), quantity on hand at the end of the year, and cumulative positive and negative adjustments (by unit) made during the year.

(c) *Certification.* The operator shall submit to the district director within 10 working days after the annual reconciliation report, a letter signed by the operator certifying that the annual reconciliation has been prepared, is available for Customs review, and is accurate. The certification letter must contain the name and street address of the operator, where the required records are available for Customs review; and the name, title, and telephone number of the person having custody of the records. Reporting of shortages and overages based on the annual reconciliation will be made in accordance with § 146.53. These reports must accompany the certification letter.

#### § 146.26 System review.

The operator shall perform an annual internal review of the inventory control and recordkeeping system and shall report to the district director any deficiency discovered and corrective action taken, to ensure that the system meets the requirements of this part.

### Subpart C—Admission of Merchandise to a Zone

#### § 146.31 Admissibility of merchandise into a zone.

Merchandise of every description may be admitted into a zone unless prohibited by law. A distinction is made between prohibited and conditionally admissible merchandise.

(a) *Prohibited merchandise.* District directors shall not admit prohibited

merchandise. If there is a question as to whether the merchandise may be prohibited, district directors may permit the temporary deposit of the merchandise in a zone pending a final determination of its status. Any prohibited merchandise which is found within a zone will be disposed of in the manner provided for in the laws and regulations applicable to that merchandise.

(b) *Conditionally admissible merchandise.* The admission of this merchandise into a zone is subject to the regulations of the Federal agency concerned.

#### § 146.32 Application and permit for admission of merchandise.

(a) *Application on Customs Form 214 and permit.* Merchandise may be admitted into a zone only upon application on a uniquely and sequentially numbered Customs Form 214 ("Application for Foreign Trade Zone Admission and/or Status Designation") and the issuance of a permit by the district director. Exceptions to the Customs Form 214 requirement are for merchandise temporarily deposited (§ 146.33), transiting merchandise (§ 146.34), or domestic merchandise admitted without permit (§ 146.43). The applicant for admission shall present the application to the district director and shall include a statistical copy on Customs Form 214-A for transmittal to the Bureau of Census, unless the applicant has made arrangements for the direct transmittal of statistical information to that agency.

(b) *Supporting documents.*—(1) *Commercial documentation.* The applicant shall submit with the application two copies of an examination invoice meeting the requirements of Subpart F, Part 141, of this chapter, for any merchandise, other than that excepted in paragraph (a) of this section, to be admitted to a zone. The notation of tariff classification and value required by § 141.90 of this chapter need not be made, unless the merchandise is to be admitted in privileged status.

(2) *Evidence of right to make entry.* The applicant for admission shall submit with the application a document similar to that which would be required as evidence of the right to make entry for merchandise in Customs territory under § 141.11 or § 141.12 of this chapter.

(3) *Release order.* Merchandise will not be authorized for delivery by Customs to a zone until a release order has been executed by the carrier which brought the merchandise to the port, unless the merchandise is released back

to that same carrier for delivery to the zone (see § 141.11 of this chapter). When a release order is required, it will be made on any of the forms specified in § 141.111 of this chapter, or by the following statement attached to Customs Form 214:

Authority is hereby given to release the merchandise described in this application to \_\_\_\_\_

Name of Carrier \_\_\_\_\_

Signature and title of carrier representative \_\_\_\_\_

A blanket or qualified release order may be authorized for the transfer of merchandise to a zone as provided for in § 141.111 of this chapter.

(4) *Application to unlade.* For merchandise unladen in the zone directly from the importing carrier, the application on Customs Form 214 will be supported by an application to unlade on Customs Form 3171.

(5) *Other documentation.* The district director may require additional information or documentation as needed to conduct an examination of merchandise under Customs selective entry processing criteria, or to determine whether the merchandise is admissible to the zone.

(c) *Conditions for issuance of a permit.* The district director will issue a permit for admission of merchandise to a zone when:

(1) The application is properly executed and includes the zone status desired for the merchandise, as provided in Subpart D of this part;

(2) The operator's approval appears either on the application or in a separate specific or blanket approval;

(3) The merchandise is retained for examination at the place of unloading, the zone, or other location designated by the district director, except for merchandise for direct delivery to a zone under §§ 146.39 and 146.40. The merchandise may be examined as if it were to be entered for consumption or warehouse; and

(4) All requirements have been fulfilled.

(d) *Blanket application for admission of merchandise.* Merchandise may be admitted to a zone under blanket application upon presentation of a Customs Form 214 covering more than one shipment of merchandise. A blanket application for admission is for:

(1) Shipments which arrive under one transportation entry as described in § 141.55 of this chapter, or

(2) Shipments which are destined to the same zone applicant on a single



business day, in which case the applicant shall:

(i) Present the examination invoices required by paragraph (b) of this section to the district director before the merchandise is admitted into the zone;

(ii) Have been approved for the direct transmittal of statistical trade information to the Bureau of Census under an agreement with that agency; and

(iii) Have examination invoices containing a unique identifier to trace the shipment to the manifest of the carrier that brought the merchandise to the port having jurisdiction over the zone, as well as to the inventory control and recordkeeping system of the operator as described in Subpart B.

#### **§ 146.33 Temporary deposit for manipulation.**

Imported merchandise for which an entry has been made and which has remained in continuous Customs custody may be brought temporarily to a zone for manipulation and return to Customs territory under Customs supervision, pursuant to section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), and § 19.11 of this chapter. That merchandise will not be considered within the purview of the Act but will be treated as though remaining in Customs territory. No zone form or procedure will be considered applicable, but the merchandise will remain subject to any requirements necessary for the enforcement of section 562 and other Customs laws while in the zone.

#### **§ 146.34 Merchandise transiting a zone.**

The following procedure is applicable when merchandise is to be unladen from any carrier in the zone for immediate transfer to Customs territory, or if it is to be transferred from Customs territory through the zone for immediate lading on any carrier in the zone:

(a) *Application.* Application for permission to lade or unlade will be filed with the district director on Customs Form 3171 prior to transfer of the merchandise into the zone.

(b) *Permit.* The district director shall permit the transfer unless he has reason to believe that the merchandise will not be moved promptly from the zone or will be made the subject of an application for admission in accordance with § 146.32(a).

(c) *Treatment of merchandise.* Upon the issuance of a permit to lade, or unlade, the merchandise will be treated as though the lading or unlading were in the Customs territory.

(d) *Delay in zone transit.* Merchandise delayed while transiting a zone must be

made the subject of an application for admission in accordance with § 146.32, or it must be removed from the zone.

#### **§ 146.35 Temporary deposit in a zone; Incomplete documentation.**

(a) *General.* Temporary deposit of merchandise in a zone is allowed in circumstances where the information or documentation necessary to complete the Customs Form 214 is not available at the time of arrival of merchandise within the jurisdiction of the port. The merchandise will be subject to examination as provided in § 146.36.

(b) *Application.* An application for temporary deposit will be made to the district director on a properly signed and uniquely numbered Customs Form 214, annotated clearly "Temporary Deposit in a Zone".

(c) *Conditions.* Merchandise temporarily deposited under the provisions of this section has no zone status and is considered to be in the Customs territory. It will:

(1) Be physically segregated from all other zone merchandise;

(2) Be held under the bond and at the risk of the operator; and

(3) Be manipulated only to the extent necessary to obtain sufficient information about the merchandise to file the appropriate admission or entry documentation.

(d) *Approval.* The district director shall approve the application for temporary deposit of merchandise in a zone if the provisions of paragraphs (b) and (c) are met.

(e) *Submission of Customs Form 214.* A complete and accurate Customs Form 214 will be submitted, as provided in § 146.32, within 5 working days plus any extension granted by the district director, or the merchandise shall be placed in general order.

#### **§ 146.36 Examination of merchandise.**

Except for direct delivery procedures provided for in § 146.39, all merchandise covered by a Customs Form 214 may be retained for Customs examination at the place of unloading, the zone, or another location, as designated by the district director. The district director may authorize release of the merchandise without examination, as provided in § 151.2 of this chapter. If a physical examination is conducted, the Customs officer shall note the results of the examination on the examination invoices.

#### **§ 146.37 Operator admission responsibilities.**

(a) *Maintenance of admission documentation.* The operator shall maintain either:

(1) *Lot file.* The operator shall open and maintain a lot file containing a copy of the Customs Form 214, the examination invoice, and all other documentation necessary to account for the merchandise covered by each Customs Form 214. The lot file will be maintained in sequential order by using the unique number assigned to each Customs Form 214 as the file reference number; or

(2) *Authorized inventory method.* Where a Customs authorized inventory method other than a lot system (specific identification of merchandise) is used, e.g., First-In-First-Out (FIFO), no lot file is required but the operator shall maintain a file of all Customs Form's 214 in sequential order.

(b) *Examination invoice.* The operator shall give a copy of the examination invoice to the person making entry to transfer the merchandise from the zone upon request of that person or the district director.

(c) *Liability for merchandise.* The operator will be held liable under its bond for the receipt of merchandise admitted in the quantity and condition as described on the Customs Form 214, except as modified by a discrepancy report:

(1) Signed jointly by the operator and carrier on the Customs Form 214 or other approved form within 15 days after admission of the merchandise, and reported to the district director within 2 working days thereafter; or

(2) Submitted on Customs Form 5931 under the provisions of Subpart A, Part 158, of this chapter within 20 days after admission of the merchandise. The operator may file a Customs Form 5931 on behalf of the person who applied for admission of merchandise to the zone.

(d) *Supervision of merchandise.* The district director may authorize the receipt of zone status merchandise at a zone without physical supervision by a Customs officer (see § 146.3). In that case, the operator shall supervise the receipt of merchandise into the zone, report the receipt and condition of the merchandise, and mark packages with the unique Customs Form 214 number so that the merchandise can be traced to a particular Customs Form 214. Packages that are accounted for under a Customs-authorized inventory method other than specific identification, need not be marked with a unique Customs Form 214 number but must be adequately identified so Customs can conduct an inventory count. The operator shall submit the Customs Form 214 to Customs at the location specified by the district director.



### § 146.38 Certificate of arrival of merchandise.

Whenever a certificate prepared by Customs as to the arrival of any merchandise in a zone is required by a Federal agency, the district director shall issue the document certifying only that authorization to deliver the merchandise to a zone has been made. The operator shall issue a certificate of arrival of merchandise at a zone.

### § 146.39 Direct delivery procedures.

(a) *General.* This procedure is for delivery of merchandise to a zone without prior application and approval on Customs Form 214.

(b) *Application.* An operator, meeting the criteria of paragraph (c) of this section, shall file a written application with the district director at least 30 days before the special procedure is to become effective. The application will describe the merchandise to be handled or processed, and the kind of operation which it will undergo in the zone.

(c) *Criteria.* The district director shall approve the application if the following criteria are met:

(1) The merchandise is not restricted or of a type which requires Customs examination or documentation review before or upon its arrival at the zone;

(2) The merchandise to be admitted to the zone, and the operations to be conducted therein, are known well in advance, are predictable and stable over the long term, and are relatively fixed in variety by the nature of the business conducted at the site; and

(3) The operator is the owner or purchaser of the goods.

(d) *Application decision.* The district director shall promptly notify the operator, in writing, of Customs decision on the application. If the application is denied, the district director shall specify the reason for denial in his reply. The district director's decision will constitute the final Customs administrative determination concerning the application.

(e) *Revocation of approval.* The district director may revoke the approval given under this section if it becomes necessary for Customs routinely to examine the merchandise or documentation before or upon admission to the zone.

### § 146.40 Operator responsibilities for direct delivery.

(a) *Arrival of conveyance.* Upon arrival at a subzone or zone site of a conveyance containing foreign merchandise, the operator shall:

(1) Collect in-bond or cartage documentation from the carrier;

(2) Check the condition of any seal affixed to the conveyance, and if broken, missing or improperly affixed, notify the district director and receive instructions before unloading the merchandise;

(3) Check each incoming in-bond and cartage shipment to determine if the manifested quantity or the quantity on the cartage document agrees with the quantity actually received;

(4) Sign and date the in-bond or cartage documentation to accept responsibility for the merchandise under the Foreign Trade Zone Operator's Bond and to relieve the carrier of responsibility.

(5) Forward the in-bond or cartage documentation so as to reach the district director within 2 working days after the date of arrival of the conveyance at the subzone or zone site;

(6) Maintain a file of open in-bond manifests in chronological order of date of conveyance arrival to identify shipments that have arrived but the entire contents of which have not been admitted to the subzone or zone site; and

(7) Notify the district director, by annotation on the Customs Form 214, when the entire contents of a shipment have been admitted.

(b) *Admission of merchandise: alternative procedures.*—(1) *Cumulative Customs Form 214.* If the operator has an agreement with the Bureau of Census for direct transmittal of statistical information, he shall submit to the district director each business day a properly signed and uniquely numbered Customs Form 214 listing all merchandise except for domestic status merchandise admitted under § 146.43 recorded into the inventory control and recordkeeping system during the previous business day. The Customs Form 214 must contain a list of all in-bond (I.T.) numbers or the unique number of any cartage document, as well as the number of invoices for each I.T. or cartage document, pertaining to merchandise which has been entered into the system.

(2) *Individual Customs Form 214.* If a cumulative Customs Form 214 is not submitted as provided in paragraph (b)(1) of this section, the operator shall file with the district director each business day an individual Customs Form 214 and 214-A covering each shipment recorded into the inventory control and recordkeeping system during the previous business day. The forms shall be submitted within 10 days after the end of the month in which the merchandise was received in the zone, and no extension beyond that time will be approved by the district director.

(3) *General order.* Merchandise which is not admitted into a subzone or zone site as provided in this section within 5 working days after its arrival there may be sent to general order unless:

(i) The district director grants the operator's request for an extension of the 5 working day period; or

(ii) The importer of record files an appropriate Customs entry for the merchandise and removes it from the zone premises.

(4) *Inventory control and recordkeeping system.* The operator shall establish and maintain a continuing input quality control program to ensure that information concerning merchandise in admission documents, verified or corrected by counts and checks, is accurately recorded in the inventory control and recordkeeping system. Quantities recorded in the system, after allowance by the district director for any discrepancies, will be the quantities of merchandise for which the operator shall be held liable under its bond for admission to the subzone or zone site. A discrepancy involving a within-case shortage (or overage) need not be reported on Customs Form 5931, if the operator is able to report that information in another manner so that the district director can determine whether there is liability for the discrepancy under the bond of any party to the importation.

### Subpart D—Status of Merchandise in a Zone

#### § 146.41 Privileged foreign status.

(a) *General.* Foreign merchandise which has not been manipulated or manufactured so as to effect a change in tariff classification will be given status as privileged foreign merchandise on proper application to the district director.

(b) *Application.* Each application for this status will be made on Customs Form 214 at the time of filing the application for admission of the merchandise into a zone or at any time thereafter before the merchandise has been manipulated or manufactured in the zone in a manner which has effected a change in tariff classification.

(c) *Supporting documentation.* Each applicant for this status shall submit to the district director, with the application, an invoice notated as provided for in § 141.90 of this chapter.

(d) *Determination of duties and taxes.* Upon receipt of the application and accompanying invoice, the district director may examine the merchandise to determine whether to approve the application. The merchandise will be



subject to classification and valuation as provided in § 146.65.

(e) *Status as privileged foreign merchandise binding.* A status as privileged foreign merchandise cannot be abandoned and remains applicable to the merchandise even if changed in form by manipulation or manufacture, except in the case of recoverable waste (see § 146.42(b)), as long as the merchandise remains within the purview of the Act. However, privileged foreign merchandise may be exported or withdrawn for supplies, equipment, or repair material of vessels or aircraft without the payment of taxes and duties, in accordance with §§ 146.67 and 146.69.

#### § 146.42 Nonprivileged foreign status.

All of the following will have the status of nonprivileged foreign merchandise:

(a) *Foreign merchandise.* Foreign merchandise properly in a zone which does not have the status of privileged foreign merchandise or of zone-restricted merchandise;

(b) *Waste.* Waste recovered from any manipulation or manufacture of privileged foreign merchandise in a zone; and

(c) *Certain domestic merchandise.* Domestic merchandise in a zone, which by reason of noncompliance with the regulations in this part has lost its identity as domestic merchandise, will be treated as foreign merchandise. Any domestic merchandise will be considered to have lost its identity if the district director determines that it cannot be identified positively by a Customs officer as domestic merchandise on the basis of an examination of the articles or consideration of any proof that may be submitted promptly by a party-in-interest.

#### § 146.43 Domestic status.

(a) *General.* Domestic status may be granted to merchandise:

(1) The growth, product, or manufacture of the U.S. on which all internal-revenue taxes, if applicable, have been paid;

(2) Previously imported and on which duty and tax has been paid; or

(3) Previously entered free of duty and tax.

(b) *Application.* No application or permit is required for the admission of domestic status merchandise, including domestic packing and repair material, to a zone, except upon order of the Commissioner of Customs. No application or permit is required for the manipulation, manufacture, exhibition, destruction, or transfer to Customs

territory of domestic status merchandise, including packing and repair materials, except: (1) When it is mixed or combined with merchandise in another zone status, or (2) upon order of the Commissioner of Customs. When the Commissioner orders a permit to be required for domestic status merchandise, he may also order the procedures, forms, and terms under which the permit will be received and processed.

(c) *Return of merchandise of Customs territory.* Upon compliance with the provisions of this section, any of the merchandise specified in paragraph (a) of this section, may subsequently be returned to Customs territory free of quotas, duty, or tax.

#### § 146.44 Zone-restricted status.

(a) *General.* Merchandise taken into a zone for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage will be given zone-restricted status on proper application. That status may be requested at any time the merchandise is located in a zone, but cannot be abandoned once granted. Merchandise in zone-restricted status may not be removed to Customs territory for domestic consumption except where the Board determines the return to be in the public interest.

(b) *Application.* Application for zone-restricted status will be made on Customs Form 214.

(c) *Merchandise considered exported.*—(1) *For Customs purposes.* If the applicant desires a zone-restricted status in order that the merchandise may be considered exported for the purpose of any Customs law, all pertinent Customs requirements relating to an actual exportation shall be complied with as though the admission of the merchandise into zone constituted a lading on an exporting carrier at a port of final exit from the U.S. Any declaration or form required for actual exportation will be modified to show the merchandise has been deposited in a zone in lieu of actual exportation, and a copy of the approved Customs Form 214 may be accepted in lieu of any proof of shipment required in cases of actual exportation.

(2) *For other purposes.* If the merchandise is to be considered exported for the purpose of any Federal law other than the Customs laws, the district director shall be satisfied that all pertinent laws, regulations, and rules administered by the Federal agency concerned have been complied with before the Customs Form 214 is approved.

(d) *Merchandise entered for warehousing transferred to a zone.* Merchandise entered for warehousing and transferred to a zone, other than temporarily for manipulation and return to Customs territory as provided for in § 146.33, will have the status of zone-restricted merchandise when admitted into the zone. The application on Customs Form 214 will state that zone-restricted status is desired for the merchandise.

### Subpart E—Handling of Merchandise in a Zone

#### § 146.51 Customs control of merchandise.

No merchandise, other than domestic status merchandise provided for in § 146.43, will be manipulated, manufactured, exhibited, destroyed, or transferred from a zone in any manner or for any purpose, except under Customs permit as provided for in this part. The district director may require segregation of any zone status merchandise whenever necessary to protect the revenue or properly administer U.S. laws or regulations.

#### § 146.52 Manipulation, manufacture, exhibition or destruction; Customs Form 216.

(a) *Application.* Prior to any action, the operator shall file with the district director an application (or blanket application) on Customs Form 216 for permission to manipulate, manufacture, exhibit, or destroy merchandise in a zone. After Customs approves the application (or blanket application), the operator will retain in his recordkeeping system the approved application.

(b) *Approval.*

(1) The district director shall approve the application unless (i) the proposed operation would be in violation of law or regulation; (ii) the place designated for its performance is not suitable for preventing confusion of the identity or status of the merchandise, or for safeguarding the revenue; (iii) the district director is not satisfied that the destruction will be effective; or (iv) the Executive Secretary of the Board has not granted approval of a new manufacturing operation.

(2) The district director is authorized to approve a blanket application for a period of up to one year for a continuous or repetitive operation. The district director may disapprove or revoke approval of any application, or may require the operator to file an individual application.

(c) *Appeal of adverse ruling.* If an approved application is subsequently rescinded by the district director for any reason, the applicant or grantee may



appeal the adverse ruling pursuant to the hearing provisions of § 146.82(b)(2). The rescission shall remain in effect pending the decision on the appeal.

(d) *Report Results.*—(1) *Separate application.*—The operator shall report on Customs Form 216 the results of an approved manipulation, manufacture, exhibition, or certification of destruction (other than by a blanket application), unless the district director chooses physically to supervise the operation.

(2) *Blanket application.*—The operator shall maintain a record of an approved manipulation, manufacture, exhibition, or certification of destruction, in its inventory control and recordkeeping system so as to provide an accounting and audit trail of the merchandise through the approved operation.

(e) *Destruction.* The district director may permit destruction to be done outside the zone, in whole or in part and at the risk and expense of the applicant, and under such conditions as are necessary to protect the revenue, if proper destruction cannot be accomplished within the zone. Any residue from the destruction within a zone, which is determined to be without commercial value may be removed to Customs territory for disposal.

#### § 146.53 Shortages and overages.

(a) *Report required.* The operator shall report, in writing, to the district director upon identification, as such, of any:

- (1) Theft or suspected theft of merchandise;
- (2) Merchandise not properly admitted to the zone; or
- (3) Shortage of one percent (1%) or more of the quantity of merchandise in a lot or covered by a unique identifier, if the missing merchandise would have been subject to duties and taxes of \$100 or more upon entry into the Customs territory. The operator shall record upon identification all shortages and overages, whether or not they are required to be reported to the district director at that time, in its inventory control and recordkeeping system. The operator shall record all shortages and overages as required in the annual reconciliation report under § 146.25.

(b) *Certain domestic merchandise.* Except in a case of theft or suspected theft, the operator need not file a report with the district director, or note in the annual reconciliation report, any shortage or overage concerning domestic status merchandise for which no permit is required.

(c) *Shortage.*

(1) *Operator responsibility.* The operator is responsible under its Foreign Trade Zone Operator's Bond for any loss of merchandise or for any merchandise which cannot be located or otherwise accounted for (except domestic status merchandise for which no permit is required), unless the district director is satisfied that the merchandise was:

- (i) Never received in the zone;
- (ii) Removed from the zone under proper permit;
- (iii) Not removed from the zone; or
- (iv) Lost or destroyed in the zone through fire or other casualty, evaporation, spillage, leakage, absorption, or similar cause, and did not enter the commerce of the U.S.

(2) *Liability for duty and taxes.* Upon demand of the district director, the operator shall make entry for and pay duties and taxes applicable to merchandise which is missing or otherwise not accounted for.

(d) *Overage.* The person with the right to make entry shall file, within 5 days after identification of an overage, an application for admission of the merchandise to the zone on Customs Form 214 or file a Customs entry for the merchandise. If a Customs Form 214 or a Customs entry is not timely filed, and the district director has not granted an extension of the time provided, the merchandise shall be sent to general order.

(e) *Damage.* The liability of the operator under its Foreign Trade Zone Operator's Bond may be adjusted for the loss of value resulting from damage to merchandise occurring in the zone. The operator shall segregate, mark, and otherwise secure damaged merchandise to preserve its identity as damaged merchandise.

#### Subpart F—Transfer of Merchandise From a Zone

##### § 146.61 Constructive transfer to Customs territory.

The district director shall accept receipt of any entry in proper form provided under this subpart, and the merchandise described therein will be considered to have been constructively transferred to Customs territory at that time, even though the merchandise remains physically in the zone. If the entry is thereafter rejected or cancelled, the merchandise will be considered at that time to be constructively transferred back into the zone in its previous zone status.

##### § 146.62 Entry.

(a) *General.* Entry for foreign merchandise which is to be transferred

from a zone, or removed from a zone for exportation or transportation to another port, for consumption or warehouse, will be made on Customs Form 7512, Customs Form 3461, Customs Form 7501, or other applicable Customs forms. If entry is made on Customs Form 3461, the person making entry shall file an entry summary for all the merchandise covered by the Customs Form 3461 within 10 working days after the time of entry.

(b) *Documentation.* (1) Customs Form 7501 or the entry summary will be accompanied by the entry documentation, including invoices as provided in Parts 141 and 142 of this chapter. The person with the right to make entry shall submit any other supporting documents required by law or regulations that relate to the transferred merchandise and provide the information necessary to support the admissibility, the declared values, quantity, and classification of the merchandise. If the declared values are predicated on estimates or estimated costs, that information must be clearly stated in writing at the time an entry or entry summary is filed.

(2) Customs Form 7512 for merchandise to be transferred to another port or zone or for exportation shall state that the merchandise covered is foreign trade zone merchandise; give the number of the zone from which the merchandise was transferred; state the status of the merchandise; and, if applicable, bear the notation or endorsement provided for in § 146.64(c), § 146.66(b), or § 146.70(c).

(c) *Waiver of supporting documents.* The district director may waive presentation of an invoice and supporting documentation required in paragraph (b) of this section with the entry or entry summary, if satisfied that presentation of those documents would be impractical, and the person making entry or the operator either files invoices and supporting documentation with the district director or maintains and makes those records available for examination by Customs.

##### § 146.63 Entry for consumption.

(a) *Foreign merchandise.* Merchandise in foreign status or composed in part of merchandise in foreign status may be entered for consumption from a zone.

(b) *Zone-restricted merchandise.* Merchandise in a zone-restricted status may be entered for consumption only when the Board has ruled that merchandise can be entered for consumption.

(c) *Estimated production.*—(1) *Weekly entry.* When merchandise is



manufactured or otherwise changed in a zone (exclusive of packing) to its physical condition as entered within 24 hours before physical transfer from the zone for consumption, the district director may allow the person making entry to file an entry on Customs Form 3461 for the estimated removals of merchandise during the calendar week. The Customs Form 3461 must be accompanied by a *pro forma* invoice or schedule showing the number of units of each type of merchandise to be removed during the week and their zone and dutiable values. Merchandise covered by an entry made under the provisions of this section will be considered to be entered and may be removed only when the district director has accepted the entry on Customs Form 3461. If the actual removals will exceed the estimate for the week, the person making entry shall file an additional Customs Form 3461 to cover the additional units before their removal from the zone. Notwithstanding that a weekly entry may be allowed, all merchandise will be dutiable as provided in § 146.65. When estimated removals exceed actual removals, that excess merchandise will not be considered to have been entered or constructively transferred to the Customs territory.

(2) *Individual transfers.* After acceptance of the weekly entry, individual transfers of merchandise covered by the entry may be made from the zone.

(d) *Textiles and textile products.* Subject to the existing statutory authority of the Board, textiles and textile products admitted into a zone, regardless of whether the merchandise has privileged or nonprivileged foreign status, which would have been subject to quota or visa or export license requirements in their condition at the time of importation (if entered for consumption rather than admitted to a zone), may not be subsequently transferred into Customs territory for consumption if, during the time the merchandise is in the zone, there has been a change by manipulation, manufacture, or other means:

(1) In the country of origin of the merchandise as defined by § 12.130 of this chapter;

(2) To exempt from quota or visa or export license requirements other than a change brought about by statute, treaty, executive order or Presidential proclamation; or

(3) From one textile category to another textile category.

#### § 146.64 Entry for warehouse.

(a) *Foreign merchandise.* Merchandise in privileged foreign status or composed in part of merchandise in privileged foreign status may not be entered for warehouse from a zone. Merchandise in nonprivileged foreign status containing no components in privileged foreign status may be entered for warehouse in the same or at a different port.

(b) *Zone-restricted merchandise.* Foreign merchandise in zone-restricted status may be entered for warehouse in the same or at a different port only for storage pending exportation, unless the Board has approved another disposition.

(c) *Textiles and textile products.* Textiles and textile products which have been changed as provided for in § 146.63(d) may be entered for warehouse only if the entry is endorsed by the district director to show that the merchandise may not be withdrawn for consumption.

(d) *Time limit.* Merchandise may neither be placed nor remain in a Customs bonded warehouse after 5 years from the date of importation of the merchandise.

#### § 146.65 Classification, valuation, and liquidation.

(a) *Classification.*—(1) *Privileged foreign merchandise.* Privileged foreign merchandise provided for in this section will be subject to tariff classification according to its character, condition and quantity, at the rate of duty and tax in force on the date of filing, in complete and proper form, the application for privileged status. Classification of merchandise subject to a tariff-rate import quota will be made only at the higher non-quota duty rate in effect on the date privileged foreign status was granted.

(2) *Nonprivileged foreign merchandise.* Nonprivileged foreign merchandise provided for in this section will be subject to tariff classification in accordance with its character, condition and quantity as constructively transferred to Customs territory at the time the entry or entry summary is filed with Customs.

(b) *Valuation.*—(1) *Total zone value.* The total zone value of merchandise provided for in this section will be determined in accordance with the principles of valuation contained in sections 402 and 500 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a, 1500). The total zone value shall be that price actually paid or payable to the zone seller in the transaction that caused the merchandise to be transferred from the zone. Where there is no price paid or payable, the total

zone value shall be the cost of all materials and zone processing costs related to the merchandise transferred from the zone.

(2) *Dutiable value.* The dutiable value of merchandise provided for in this section shall be the price actually paid or payable for the merchandise in the transaction that caused the merchandise to be admitted into the zone less, if included, international shipment and insurance costs and U.S. inland freight costs. If there is no such price actually paid or payable, or no reasonable representation of that cost, the dutiable value may be determined by excluding from the zone value any included zone costs of processing or fabrication, general expenses and profit and the international shipment and insurance costs and U.S. inland freight costs related to the merchandise transferred from the zone. The dutiable value of recoverable waste or scrap provided for in § 146.42(b) will be the price actually paid or payable to the zone seller in the transaction that caused the recoverable waste or scrap to be transferred from the zone.

(3) *Allowance.* An allowance in the dutiable value of zone merchandise may be made by the district director in accordance with the provisions of Subparts B and C of Part 158 of this chapter, for damage, deterioration, or casualty while the merchandise is in the zone.

(c) *Liquidation; extension to update cost data.* When the declared value or values of the merchandise are based on an estimate or estimates, the person making entry may request an extension of liquidation pending the presentation of updated or actual cost data. A request for an extension may be granted at the discretion of the district director.

#### § 146.66 Transfer of merchandise from one zone to another.

(a) *At the same port.* A transfer of merchandise to another zone with a different operator at the same port (including a consolidated port) will be by a licensed cartman under an entry for immediate transportation on Customs Form 7512 or other appropriate form with a Customs Form 214 filed at the destination zone. A transfer of merchandise between zone sites at the same port having the same operator may be made under a permit on CF 6043 or under a local control system approved by the district director wherein any loss of merchandise between sites will be treated as if the loss occurred in the zone.

(b) *At a different port.* A transfer of merchandise from a zone at one port of



entry to a zone at another port will be by bonded carrier under an entry for immediate transportation on Customs Form 7512. All copies of the entry must bear a notation that the merchandise is being transferred to another zone designated by its number.

(c) *Forwarding of merchandise history; documentation.* When merchandise is transferred under the provisions of this section, the operator of the transferring zone shall provide the operator of the destination zone with the documented history of the merchandise being transferred.

(1) The following documentation must accompany merchandise maintained under a lot inventory control system:

(i) A copy of the original Customs Form(s) 214 with accompanying invoices for admission of the merchandise and all components thereof;

(ii) A copy of any Customs Form 214 filed subsequent to admission to change the status of the merchandise or its components; and

(iii) A copy of any Customs Form 216 to manipulate or manufacture the merchandise.

(2) The following documentation must accompany merchandise not under a lot system, and not manufactured in a zone:

(i) A copy of the original Customs Form(s) 214 with accompanying invoices for admission of the merchandise as attributed under the particular zone inventory method;

(ii) A copy of any Customs Form 214 filed subsequent to admission to change the status of the merchandise as attributed under the particular zone inventory method; and

(iii) A copy of any Customs Form 216 to manipulate the merchandise as attributed under the particular zone inventory method.

(3) If the documents specified in paragraph (c)(2) of this section are not presented, the operator of the transferring zone shall submit the following:

(i) A statement of the zone value, dutiable value, quantity, description, unique identifier, and zone status (showing any changes of status after admission and whether the merchandise was manipulated so as to change its tariff classification) of all the merchandise in the shipment covered by the transportation entry; and

(ii) A certification that the statement in paragraph (c)(3)(i) of this section, is true and that the information contained therein is contained in the inventory control and recordkeeping system of the transferring zone.

(4) The following documentation must accompany merchandise not under a lot system, but manufactured in a zone:

(i) A statement by the transferring zone operator of the zone value, dutiable value, quantity, description, unique identifier, and zone status of all the merchandise (and components thereof, where applicable) covered by the transportation entry. The statement will also show any change in zone status in the transferring zone and whether the merchandise has been manufactured or manipulated in the zone so as to change its tariff classification; and

(ii) A certification by the operator of the transferring zone that the statement in paragraph (c)(4)(i) of this section is true and the information therein is contained in the inventory control and recordkeeping system of the zone.

(5) The operator of the transferring zone shall transmit the historical documentation of the merchandise to the receiving zone within 10 working days after it has been delivered to the bonded carrier for transportation. The documentation will be referenced to the I.T. number covering the merchandise.

(d) *Arrival at destination zone.* Upon arrival of the merchandise at the destination zone, it will be admitted under the procedure provided for in § 146.32, except that no invoice or Customs examination will be required. When the historical documentation is received, the operator of the destination zone shall associate it with the Customs Form 214 for admission of the merchandise and incorporate that information into the zone inventory control and recordkeeping system.

#### § 146.67 Transfer of merchandise for exportation.

(a) *Direct exportation.* Any merchandise in a zone may be exported directly therefrom (without transfer into Customs territory) upon compliance with the procedures of paragraph (b) of this section.

(b) *Immediate exportation.* Each transfer of merchandise to the Customs territory for exportation at the port where the zone is located, will be made under an entry for immediate exportation on Customs Form 7512. The person making entry shall furnish an export bond on Customs Form 301 containing the bond conditions provided for in § 113.62 of this chapter.

(c) *Transportation and exportation.* Each transfer of merchandise to the Customs territory for transportation to and exportation from a different port, will be made under an entry for transportation and exportation on Customs Form 7512. The bonded carrier will be responsible for exportation of the merchandise in accordance with § 18.26 of this chapter.

(d) *Textiles and textile products.* Textiles and textile products which have been changed as provided for in § 146.63(d) may be exported and returned to Customs territory for warehousing provided the entry for warehouse is endorsed by the district director to show that the merchandise may not be withdrawn for consumption.

(e) *Merchandise produced or manufactured in a zone and returned to Customs territory after exportation.* Merchandise produced or manufactured in a zone and exported without having been transferred to Customs territory other than for exportation or for transportation and exportation will be subject, on its return to Customs territory, to the duties and taxes applicable to like articles of wholly foreign origin, unless it is conclusively established that it was produced or manufactured exclusively with the use of domestic merchandise. The identity of the domestic merchandise must have been maintained in accordance with the provisions of this part, in which case that merchandise will be subject to the provisions of Schedule 8, Part 1, Tariff Schedules of the United States (19 U.S.C. 1202).

#### § 146.68 Transfer for transportation or exportation; estimated production.

(a) *Weekly permit.* The district director may allow the person making entry for merchandise provided for in § 146.63(c) to file an application for a weekly permit to enter and release merchandise during a calendar week for exportation, transportation, or transportation and exportation. The application will be on Customs Form 7512 stating at the top the words "Application for Weekly Zone Permit," and will be filed with the district director. The application must be accompanied by a *pro forma* invoice or schedule like that required in § 146.63(c)(1). If actual transfers will exceed the estimate for the week, the person with the right to make entry shall file a supplemental Customs Form 7512 to cover the additional merchandise to be transferred from the subzone or zone site. No merchandise covered by the weekly permit may be transferred from the zone before approval of the application by the district director.

(b) *Individual entries.* After approval of the application for a weekly permit by the district director, the person making entry will be authorized to execute individual Customs Forms 7512 for exportation, transportation, or transportation and exportation of the



merchandise covered by permit. Upon transfer of the merchandise, the operator shall obtain a receipt from the carrier on Customs Form 7512 to ensure its assumption of liability under the carrier's or cartman's bond. Customs will consider the time of entry to be when the removing carrier signs the receipt for the merchandise. The operator shall give the bonded carrier a copy of the individual Customs Form 7512 and the destination copy (Customs Form 7512-C), as provided for in § 18.2(c) of this chapter. The operator also shall ensure that the district director receives a copy of the Customs Form 7512 and the origin copy (Customs Form 7512-C) by the end of the next working day after the carrier has receipted for the merchandise.

(c) *Statement of merchandise entered.* The person making entry for merchandise under an approved weekly permit shall file with the district director, by the close of business on the second working day of the week following the week designated on the permit, a statement of the merchandise entered under that permit. The statement must list each Customs Form 7512 by its unique I.T. number, and will provide a reconciliation of the quantities on the weekly permit with the manifested quantities on the individual Customs Forms 7512 submitted to Customs, as well as an explanation of any discrepancy.

**§ 146.69 Supplies, equipment, and repair material for vessels or aircraft.**

(a) *General.* Any merchandise which may be withdrawn duty and tax free in Customs territory under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), and under §§ 10.59 through 10.65 of this chapter, may similarly be transferred from a zone, regardless of its zone status, under those statutes and regulations. Each transfer from a zone for delivery to a qualified vessel or aircraft, will be made on Customs Form 7512 (see § 10.60 of this chapter). The person making entry shall furnish a bond on Customs Form 301 containing the bond conditions provided for in § 113.62 of this chapter.

(b) *Merchandise for delivery within zone.* Upon acceptance of the entry and bond, the district director shall release the merchandise to the operator for delivery to the qualified vessel or aircraft for lading in the zone.

(c) *Merchandise for delivery outside zone.* Upon acceptance of the entry and bond, the district director shall release the merchandise to the operator for delivery to the bonded cartmen, lighterman, or carrier, for transportation

through the Customs territory to the qualified lading vessel or aircraft.

**§ 146.70 Transfer of zone—restricted merchandise into Customs territory.**

(a) *General.* Zone-restricted merchandise may be transferred to Customs territory only for entry for exportation, for entry for transportation and exportation, for warehousing pending exportation, for destruction (except destruction of distilled spirits, wines and fermented malt liquors), for transfer from one zone to another, or for delivery to a qualified vessel or aircraft or as ground equipment of a qualified aircraft under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), unless the Board has ruled that the return of the merchandise to Customs territory for domestic consumption is in the public interest. With Board approval (See 15 CFR Part 400), that merchandise may be entered for consumption, for warehousing, for immediate transportation without appraisal, or under any other provision of the Customs laws, unless the Board has specified the form of entry to be made.

(b) *For consumption.* If the return of zone-restricted merchandise to Customs territory for consumption has been ruled by the Board to be in the public interest, the entry shall be endorsed by the district director to show the authority under which it was made, and that the merchandise is subject to the provisions of Schedule 8, Part 1, Tariff Schedules of the United States (19 U.S.C. 1202).

(c) *For warehousing.* Zone-restricted merchandise may be transferred from a zone to a Customs bonded warehouse for storage pending exportation. The Customs Form 7501 shall be endorsed by the district director to show that the merchandise may not be withdrawn for consumption. In the case of zone-restricted merchandise transported in bond to another port for warehousing and exportation, Customs Form 7512 shall be endorsed by the district director to show that the merchandise is foreign trade zone merchandise in zone-restricted status, which shall be entered for warehouse with proper endorsement on Customs Form 7501, and which may not be withdrawn for consumption. Zone-restricted merchandise transferred from a zone to a Customs bonded warehouse may not be manipulated, except for packing or unpacking incidental to exportation.

(d) *For other purposes.* Upon acceptance of an entry or withdrawal for zone-restricted merchandise for any purpose other than that described in a Board order, the entry shall be endorsed by the person making entry to show that

actual exportation of the merchandise is required by the fourth proviso to section 3 of the Act, as amended, or the entry endorsed to require delivery to a qualified vessel or aircraft, under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317).

**§ 146.71 Release and removal of merchandise from zone.**

(a) *General.* Except as provided for in § 146.43, no merchandise will be transferred from a zone without a Customs permit on the appropriate entry or withdrawal form or other document as required in this part. This district director may authorize transfer from a zone without physical supervision or examination by a Customs officer. Upon issuance of a permit, the district director will authorize delivery of the merchandise only to the operator, who then may release the merchandise to the importer or carrier.

(b) *Liability for discrepancy.* When a transfer is not physically supervised by a Customs officer, the operator will be relieved of responsibility only for the merchandise in a zone in the condition and quantity as shown on the entry, withdrawal, or other appropriate form. The operator will be relieved of responsibility only if it receives the signed receipt on the document of the importer or the carrier named in that document. The responsibility of the operator may be adjusted by any discrepancy report made jointly by the operator and the bonded cartman, lighterman, or carrier, or the importer, and signed by the above or an authorized representative within 15 days after transfer of the merchandise from the zone. Any adjustment must be noted on the permit copy of the entry, withdrawal, or other appropriate form or document. A copy of any joint report of discrepancy must be submitted to the district director within 10 working days of signing by the parties.

(c) *Time limit.* Except in the case of articles for use in a zone, merchandise for which a Customs permit for transfer to Customs territory has been issued must be physically removed from the zone within 5 working days of issuance of that permit. The district director, upon request of the operator, may extend that period for good cause. Merchandise awaiting removal within the required time limit will not be further manipulated or manufactured in the zone, but will be segregated or otherwise identified by the operator as merchandise that has been constructively transferred to Customs territory.



(d) *Retention of return or merchandise to zone for consumption.*

(1) The district director shall cancel any entry for consumption where: (i) The merchandise is not removed from the zone within the period specified in paragraph (c) of this section, or (ii) the merchandise was removed from the zone but did not enter the commerce of the U.S. in Customs territory and was subsequently readmitted to a zone in domestic status. If the district director has reason to believe any new entry would be cancelled under the provisions of this subparagraph, he may reject the entry or demand a written stipulation, as a condition of entry acceptance, that the merchandise will not be returned to a zone in domestic status. Merchandise covered by an entry which has been cancelled under this subparagraph shall be restored to its last foreign status.

(2) A component of merchandise which has been entered, but not physically removed from a zone, shall be restored to its last zone status, provided the district director determines that the component was included in the entry through clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of the law. Such an error, including that in appraisement of any entry or liquidation due to the above circumstances, may be corrected pursuant to section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), in accordance with the procedures described in Part 173 of this chapter. If the district director decides there has been no error, mistake, or inadvertence, or that the information was not timely provided, the component will be considered as an overage and subject to the provisions of § 146.53(d).

(3) When merchandise which has been entered for consumption is subsequently returned to a zone for a reason other than that specified in subparagraph (d)(1), it shall be admitted in domestic status.

#### Subpart G—Penalties; Suspension; Revocation

##### § 146.81 Penalties.

(a) *Amount.* Upon violation of the Act, or any regulation issued under the Act, by the grantee, or any officer, agent, operator or employee thereof, the person responsible for or permitting the violation shall be subject to a fine of not more than \$1,000. Each day during which a violation continues will constitute a separate offense. Liquidated damages, where applicable, will be imposed in addition to the fine (19 U.S.C. 81s).

(b) *Review.* All fines assessed by the district director under this section will

be reviewed by the Director, Entry Procedures and Penalties Division, Headquarters, to determine whether further action against the grantee or operator, such as suspension or a recommendation for revocation of the grant, is warranted.

##### § 146.82 Suspension.

(a) *For cause.* The district director may suspend for cause the activated status of a zone or zone site, or the privilege to admit, manufacture, manipulate, exhibit, destroy, transfer or remove merchandise at a zone or zone site for a period not to exceed 90 days. Upon order of the Board the suspension may be continued. If appropriate, the suspension may be limited to an individual user or users and not to the zone or zone site as a whole, or may be limited to a particular activity of an operator or user, such as suspension of the privilege to admit merchandise or the privilege to manufacture. An action to suspend will be taken in accordance with the procedure in paragraph (b) of this section if:

(1) The approval of the application to activate the zone was obtained through fraud or the misstatement of a material fact;

(2) The operator neglects or refuses to obey any proper order of a Customs officer or any Customs order, rule, or regulation relating to the operation or administration of a zone;

(3) The operator, or any officer of a corporation which has been granted the right to operate a zone, is convicted of or has committed an act that would constitute a felony, or would constitute a misdemeanor involving theft.

(4) The operator fails to furnish a current list of names, addresses, or other information as required by § 146.7;

(5) The operator does not provide a secure facility or properly safeguard merchandise within a zone;

(6) The operator fails to pay, within 30 days after the due date, all annual fees associated with the operation of a zone;

(7) The operator, or any officer, agent, or employee of the operator, discloses to an unauthorized person proprietary information contained on a Customs form or in the inventory control and recordkeeping system; or

(8) The inventory control and recordkeeping system is impaired to the point where the identity of merchandise in zone status has been lost and cannot be reestablished without a suspension of zone operations.

(b) *Procedure.*—(1) *Notice.* The district director may, at any time, serve notice, in writing, upon an operator to show cause why its right to continue operation of a zone should not be

suspended or why an individual user or activities of an individual user should not be suspended, as provided for in paragraph (a) of this section. The notice will advise the operator of the grounds for the proposed action and will afford the operator an opportunity to respond, in writing, within 15 days after receipt of the notice. Thereafter, the district director shall consider the allegations and any response made by the operator and issue a decision, unless the operator requests a hearing in the matter.

(2) *Hearing.* If the operator requests a hearing, it will be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following the operator's request. The operator may be represented by counsel at the hearing, and any evidence and testimony of witnesses in the proceeding, including substantiation of the allegations and the response thereto, will be presented. The right of cross-examination will be available to both parties. A stenographic record of the proceeding will be made and a copy will be delivered to the operator. At the conclusion of the hearing, the hearing officer shall transmit promptly all papers and the stenographic record of the hearing to the regional commissioner of the region in which the zone is located, together with a recommendation for final action.

(3) *Decision of regional commissioner.* Within 10 calendar days after delivery to the operator of a copy of the stenographic record of the hearing, the operator may submit to the regional commissioner in writing any additional views or arguments. The regional commissioner shall then render a written decision stating his reasons therefor. That decision will be served on the operator and will be considered the final Customs administrative action in the case.

(4) *Grantee.* If the grantee of the zone is not the operator, a copy of the notice to show cause will be served upon the grantee. The grantee, as a party-in-interest, may join the operator in any proceedings under this section.

##### § 146.83 Revocation of zone grant.

(a) *Recommendation of district director.* The district director may at any time recommend to the Board that the privilege of establishing, operating, and maintaining a zone or subzone under Customs jurisdiction be revoked for willful and repeated violations of the Act (19 U.S.C. 81r). If the district director believes that a substantial question of law exists as to whether willful and repeated violations of the Act have occurred, that officer may request



internal advice under the provisions of Part 177 of this chapter from the Director, Carriers, Drawback and Bonds Division, Headquarters. A recommendation to the Board that a zone or subzone grant be revoked does not preclude, and may be in addition to, any liquidated damages, penalty, or suspension for cause.

(b) *Decision of the Board.* The procedure for revocation of a grant, the decision of the Board, and appeal is covered by the provisions of the Act and Title 15, Chapter IV, Part 400, Code of Federal Regulations.

#### Conforming Amendments—Parts 18, 24, 112, 113, 141, 144, 178, and 191

To conform the Customs Regulations to the changes made by the revision of Part 146, Customs Regulations (19 CFR Part 146), Parts 18, 24, 112, 113, 141, 144, 178, and 191, Customs Regulations (19 CFR Parts 18, 24, 112, 113, 141, 144, 178, and 191) are amended in the following manner:

#### PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The authority citation for Part 18 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1551–1553, 1624.

#### § 18.2 [Amended]

2. Section 18.2 is amended in the following manner:

a. By revising the heading to paragraph (a)(1) to read "Merchandise other than from warehouse or foreign trade zone delivered to bonded carrier."

b. By removing the words "paragraph (a)(2)" in the first sentence of paragraph (a)(1) and inserting, in their place, the words "paragraphs (a)(2) and (a)(3) of this section."

c. By adding a new paragraph (a)(4) to read as follows:

#### § 18.2 Receipt by carrier manifest.

(a) \* \* \*

(4) *Merchandise delivered from foreign trade zone.* When merchandise is delivered from a foreign trade zone to a bonded carrier for transportation in bond, supervision of lading will be accomplished in accordance with the procedure set forth in § 146.71(a) of this chapter.

\* \* \* \* \*

#### PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for Part 24 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624, 31 U.S.C. 9701.

#### § 24.13 [Amended]

2. Section 24.13 is amended by inserting in the first sentence of paragraphs (c) and (f), the words "a foreign trade zone operator," before the words "and bonded warehouse proprietor," in paragraph (c) and before the words "bonded warehouse proprietor" in paragraph (f).

#### PART 112—CARRIERS, CARTMEN, AND LIGHTER MEN

1. The authority citation for Part 112 is revised to read as follows:

Authority: 19 U.S.C. 66, 1551, 1565, 1623, 1624.

2. All other statutory authority cited at the end of various sections in Part 112 is removed.

3. The last sentence of § 112.12(b)(3) is revised to read as follows:

#### § 112.12 Application for authorization. \* \*

(b) *Special requirements.*

\* \* \* \* \*

(3) *Private carriers.* \* \* \* If the private carrier is the proprietor of one or more Customs bonded warehouses or bonded container stations, or the operator of a foreign trade zone, to which imported merchandise will be transported, he shall accompany the bond and copies of the bond by a statement showing the location of each warehouse, container station, or zone.

\* \* \* \* \*

#### PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

2. Section 113.73 is amended by revising paragraphs (a)(1) and (a)(2), and by adding paragraph (d), to read as follows:

#### § 113.73 Foreign trade zone operator bond conditions.

\* \* \* \* \*

(a) *Receipt, Handling, and Disposition of Merchandise.* The principal agrees to comply with:

(1) The law and Customs Regulations relating to the receipt, admission, status, handling, transfer, and removal of merchandise from the foreign trade zone or subzone, and

(2) The Customs Regulations concerning the maintenance of inventory control and recordkeeping systems covering merchandise in the foreign trade zone or subzone. If the

principal defaults and the default involves merchandise other than domestic merchandise for which no permit for admission is required, the obligors (principal and surety) agree to pay liquidated damages equal to the value of the merchandise involved in the default, or three times the value of the merchandise involved in the default if the merchandise is restricted merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation. It is understood and agreed that whether the default involves merchandise is a determination made by Customs, that the amount to be collected under this condition shall be based upon the quantity and value of the merchandise as determined by Customs, and that value as used in these provisions means value as determined under 19 U.S.C. 1401a. If the principal defaults and the default does not involve merchandise, the obligors agree to pay liquidated damages of \$1,000 for each default, or such other amount as may be authorized by law or regulations.

\* \* \* \* \*

(d) *Payment of Annual Fee.* The principal agrees to pay timely any annual fee or fees as provided in the Customs Regulations. If the principal defaults, the obligors agree to pay liquidated damages equal to the amount of the annual fee due but not paid and an amount equal to one percent of the annual fee for each of the first seven days the annual fee is in arrears, two percent of the annual fee for each of the succeeding seven days the annual fee is in arrears, and three percent of the annual fee for each day thereafter in which the annual fee is in arrears.

#### PART 141—ENTRY OF MERCHANDISE

1. The authority citation for Part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 141.111(d) is revised to read as follows:

#### § 141.111 Carrier's release order.

\* \* \* \* \*

(d) *Qualified release order.* In the case of merchandise which is entered for warehousing, for transportation in bond, for exportation, or is to be admitted to a foreign trade zone, the release order may be qualified as follows:

(1) "For transfer to the bonded warehouse designated in the warehouse entry," if the merchandise is entered for warehousing;

(2) "For transfer to the bonded carrier designated in the transportation entry,"



if the merchandise is entered for transportation in bond;

(3) "For transfer to the carrier designated in the export entry," if the merchandise is entered for exportation; or

(4) "For transfer to the foreign trade zone designated in Customs Form 214," if the merchandise is to be admitted to a foreign trade zone.

#### PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. The authority citation for Part 144 is revised to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1854, 19 U.S.C. 66, 1311, 1312, 1484, 1552, 1553, 1555, 1556, 1557, 1559, 1562, 1563, 1623, 1624, 1646(a), 26 U.S.C. 5214; Pub. L. 95-410; Pub. L. 95-176; Pub. L. 96-511.

2. All other statutory authority cited at the end of various sections in Part 144 is removed.

3. Section 144.36(g) is revised to read as follows:

#### § 144.36 Withdrawal for transportation.

(g) *Procedure at destination.* Upon arrival at destination, the merchandise may be:

(1) Entered for rewarehouse in accordance with § 144.41;

(2) Entered for combined rewarehouse and withdrawal for consumption in accordance with § 144.42;

(3) Exported in accordance with paragraph (h) of this section;

(4) Forwarded to another port or returned to the port of origin in accordance with § 18.5 (c) or (d) of this chapter; or

(5) Admitted to a foreign trade zone in zone-restricted status as provided in Part 146 of this chapter.

4. Section 144.37 is amended by adding a new paragraph (g), to read as follows:

#### § 144.37 Withdrawal for exportation

(g) *Exportation at a foreign trade zone.* Merchandise may be withdrawn for exportation at a foreign trade zone in the same or at a different port. The merchandise will be considered exported upon admission to a zone in zone-restricted status, as provided in § 146.44(c) of this chapter.

#### PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting the following in the appropriate numerical sequence according to the section number under the columns indicated:

#### § 178.2 Listing of OMB Control Numbers.

19 CFR section	Description	OMB Control No.
146.6, 146.7	Procedures for activation of a foreign trade zone; procedures for zone changes, including alteration, deactivation and suspension.	1515-0151

#### PART 191—DRAWBACK

1. The authority citation for Part 191 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1313, 1624.

§§ 191.163-191.165 also issued under 19 U.S.C. 81c.

#### § 191.162 [Amended]

2. Section 191.162 is amended by removing reference to "§ 146.25," and inserting, in its place, reference to "§ 146.44."

3. Section 191.163(c) and (d) are revised to read as follows:

#### § 191.163 Articles manufactured or produced in the U.S.

(c) *Action of the district director on the notice of transfer.* The district director shall assign a number to each notice of transfer, return one copy to the transferor and forward another copy to the zone operator at the foreign trade zone.

(d) *Action of foreign trade zone operator.* After articles have been received in the zone, the zone operator at the zone shall certify on a copy of the notice of transfer the receipt of the articles (see § 191.164(d)(2)) and forward the notice to the transferor or the person designated by the transferor. The transferor shall verify that the notice has been certified before filing it with the drawback entry.

4. Paragraphs (b) and (c) of § 191.164 are revised to read as follows:

#### § 191.164 Merchandise transferred from continuous Customs custody.

(b) *Drawback entry.* Before the transfer of merchandise from continuous Customs custody to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the district director a

direct export entry on Customs Form 7512 in duplicate. The district director shall forward one copy of Customs Form 7512 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator at the zone shall certify on the copy of Customs Form 7512 the receipt of the merchandise (see paragraph (d)(2) of this section) and forward the form to the transferor or the person designated by the transferor. After executing the certifications provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 7512 to the district director in place of the bill of lading required by § 191.136.

5. Paragraphs (b) and (c) of § 191.165 are revised to read as follows:

§ 191.165 Same condition drawback merchandise and merchandise not conforming to sample or specifications or shipped without the consent of the consignee.

(d) *Drawback entry.* Before transfer of the merchandise to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the district director an entry on Customs Form 7539 in duplicate. The district director shall forward one copy of Customs Form 7539 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator at the zone shall certify on the copy of Customs Form 7539 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor. After executing the certifications provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 7539 to the district director in place of the bill of lading required by § 191.136.

William von Raab,  
Commissioner of Customs.

Approved: December 10, 1985.

David D. Queen,  
Acting Assistant Secretary of the Treasury.

Note.—This Table will be shown in the Code of Federal Regulations.

Parallel Reference Table—(This Table Shows the Relationship of Sections in Revised Part 146 of Superseded Part 146)

Revised section	Superseded section
146.0	146.0.
146.1(a)	New.
146.1(b)(2), (3), (4), (6), (7), (8), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23).	New.



Revised section	Superseded section
146.1(b)(1)	146.1(a)
146.1(b)(5)	146.1(c)
146.1(b)(9)	146.1(e)
146.1(b)(10)	146.1(e)(1)
146.1(b)(11)	146.1(e)(2)
146.2	146.2
146.3(a)	146.3
146.3(b)	New
146.4	New
146.5	146.4
146.6	New
146.7	New
146.8	New
146.9	146.5
146.10	146.6
146.11 (a), (b), and (c)	146.7 (a), (b), and (c)
146.11(d)	New
146.12	146.8
146.13	New
146.14	New
146.21	New
146.22	New
146.23	New
146.24	New
146.25	New
146.26	New
146.31	146.11
146.32(a)	146.12(a)
146.32(b)(1)	New
146.32(b)(2)	146.12(b)(1)(ii)
146.32(b)(3)	146.12(b)(1)(i)
146.32(b)(4)	146.12(b)(2)
146.32(b)(5)	New
146.32(c)(1), (2) & (4)	146.12(c)(1), (2) & (3)
146.32(c)(3)	New
146.32(d)	New
146.33	146.13
146.34	146.14
146.35	New
146.36	New
146.37	New
146.38	146.15
146.39	New
146.40	New
146.41 (a), (b), and (c)	146.21 (a), (b), and (c) (1) and (2)
146.41(d)	146.21(c)(3) (i) and (v)
146.41(e)	146.21(d)
146.42	146.23
146.43	146.22, 146.24
146.44	146.25
146.51	146.31 (a), (b)
146.52(a)	146.21(f), 146.32(a), 146.33(a)
146.52(b)	146.21(f), 146.32(b), 146.33(b)
146.52(c)	146.32(c)
146.52(d)(1)	New
146.52(d)(2)	146.32(d)
146.52(e)	146.33(b)
146.53 (a), (b)	146.31(c)
146.53 (c), (d), and (e)	New
146.61	146.47(c), 146.48(b)
146.62	New
146.63(a)	146.45, 146.46, 146.48(c)
146.63(b)	146.47
146.63(c)	New
146.63(d)	146.49
146.64(a)	146.48(c)
146.64(b)	146.47(e)(4)
146.64(c), (d)	New
146.65(a)(1)	146.21(c)(3)(iv)
146.65(a)(2)	146.48(e)(1)
146.65(b)	146.48(e)(2)
146.65(c)	New
146.66(a)	146.43(b)(1)
146.66(b)	146.43(b)(1)
146.66(c)	146.43(b)(2)
146.66(d)	New
146.67(a)	146.41
146.67 (b), (c)	146.45(d), 146.46(d)
146.67(d)	New
146.67(e)	146.46(e)
146.68	New
146.69	146.42
146.70(a)	146.47(a)
146.70(b)	146.47(e)(3)
146.70(c)	146.47(e)(4)
146.70(d)	146.47(e)(3)
146.71	New
146.81	New
146.82	New

Revised section	Superseded section
146.83	New
<hr/>	
Old section	New section
146.0	146.0
146.1(a)	146.1(b)(1)
146.1(b)	Removed
146.1(c)	146.1(b)(5)
146.1(d)	Removed
146.1(e)	146.1(b)(9)
146.1(e)(1)	146.1(b)(10)
146.1(e)(2)	146.1(b)(11)
146.1(f)	Removed
146.2	146.2
146.3	146.3(a)
146.4	146.5
146.5	146.9
146.6	146.10
146.7 (a), (b), & (c)	146.11 (a), (b), & (c)
146.8	146.12
146.11	146.31
146.12(a)	146.32(a)
146.12(b)(1)(i)	146.32(b)(3)
146.12(b)(1)(ii)	146.32(b)(2)
146.12(b)(2)	146.32(b)(4)
146.12 (c) (1), (2) & (3)	146.32 (c) (1), (2), & (4)
146.13	146.33
146.14	146.34
146.15	146.38
146.21 (a), (b), and (c) (1) (2)	146.41 (a), (b), and (c)
146.21 (c) (3), (i) and (v)	146.41 (d); 146.65 (a) (1)
146.21(c)(3)(iv)	146.65(a)(1)
146.21 (c) (3) (ii) and (iii)	Removed
146.21(d)	146.41(e)
146.21(e)	Removed
146.21(f)	146.52 (a) and (b)
146.22	146.43
146.23	146.42
146.24	146.43
146.25	146.44
146.31 (a) and (b)	146.51
146.31(c)	146.53 (a), (b)
146.32a	146.52(a)
146.32(b)	146.52(b)
146.32(c)	146.52(c)
146.32(d)	146.52(d)(2)
146.33(a)	146.52(a)
146.33(b)	146.52(b)
146.41	146.67(a)
146.42	146.69
146.43(a)	Removed
146.43(b) (1)	146.66(b)
146.43(b)(2)	146.66(c)
146.44	Removed
146.45 (a), (b), and (c)	146.63
146.45(d)	146.67 (b), (c)
146.46 (a), (b) and (c)	146.63
146.46(d)	146.67 (b), (c)
146.46(e)	146.67(e)
146.47(a)	146.70(a)
146.47(b), (d), and (e) (1) and (2)	Removed
146.47(c)	146.61
146.47(e)(3)	146.70 (b) and (d)
146.47(e)(4)	146.64, 146.70(c)
146.47(f)	Removed
146.48(a)	Removed
146.48(b)	146.61
146.48(c)	146.63 (a) and 146.64(a)
146.48(d)	Removed
146.48(e)(1)	146.65(a)(2)
146.48(e)(2)	146.65(b)
146.49(f)	Removed
146.49	146.63(d)

**Nota.**—This appendix will not appear in the Code of Federal Regulations.

#### Appendix—Final Regulatory Flexibility Analysis on Proposed Customs Regulations Amendments Relating to Foreign Trade Zones

##### Introduction

The economic impact review below constitutes the Customs Service final regulatory flexibility analysis in compliance

with the requirements of section 3 of the Regulatory Flexibility Act (5 U.S.C. 603). The Act requires that regulatory effects be analyzed so as to determine and quantify, if possible, the economic effects of proposals on small business operations. The Act's key concepts revolve around identifying "significant economic impacts on a substantial number of small entities." The initial analysis was modified as necessary into a final regulatory flexibility analysis upon receipt and review of public comments resulting from Federal Register publication of this rule as a notice of proposed rulemaking.

##### Rationale

The number of Foreign Trade Zones, complexity of operations and volume of trade passing through zones has increased significantly in recent years. From less than 20 zones in the early 1970's, activated zones and sub-zones reporting activity at the end of 1984 numbered 88 (57 general purpose zones and 31 sub-zones), with 83 other zones approved but not reporting activity (see table 1).

Meanwhile, Customs inspection and supervision of zone activity has changed little in practice. Secular reductions in agency resources have combined with unchanged practices to produce (1) operational hardships on zone grantees and users and (2) uncertain inspection and control of zone activity.

The proposed revisions to 19 CFR Parts 18, 24, 112, 141, 144, 146, and 191 (relating to Customs administration of foreign trade zones) is an administrative attempt to update zone supervision in accordance with current business practices.

##### Objectives

The proposal is intended to bring about three fundamental changes:

1. the method of accountability of merchandise admitted, stored, manipulated, exhibited, manufactured and removed from zones;
2. the method of enforcement of Customs laws through audits and spot checks instead of more costly physical presence of inspectional resources; and
3. the method of reimbursing Customs for its zone-related operational expenses.

##### Legal Basis For Proposal

This regulatory project is initiated under the authority of R.S. 251, as amended, Sections 1-21, 48 Stat. 998, 999, as amended, 1000, 1002, as amended, 1003, 77A Stat. 14, section 624, 48 Stat. 759 (19 U.S.C. 66, 81a-81u, 1202 (General Headnote 11), 1624).

##### Estimated Number of Small Entities Affected

Tallies of zone activity in Customs regions indicated that approximately 1,500 users occupy space in zones and carry out the range of permitted manipulation, manufacturing and storage activities. Of these, 600 operate on a full-time, year-round basis. The remaining 900 operate on a part-time basis. These estimates do not include users in foreign trade sub-zones. Sub-zone users tend to be large (oftentimes multinational) corporations and thus do not fit within the purview of the requirements of



the Regulatory Flexibility act which concentrate on small business concerns.

#### Economic Effects of Compliance With the Proposal

After review of the proposal's work plan, we have identified within the proposal the following seven procedural/administrative and fee-related changes likely to affect economic concerns of small business:

- A. Procedural administrative changes
  1. inventory control and record keeping system
  2. operator's control over admission and removal of goods
  3. elimination of customs forms 7502/7505/215
- B. Fee changes
  1. elimination of present form of reimbursement to Customs
  2. implementation of annual fee covering audits and spot checks
  3. zone activation and boundary alteration fee

TABLE I.—NUMBER OF FOREIGN TRADE ZONES IN THE UNITED STATES\*

	Approved	Reporting activity	No reported activity
Total	171	88	83
General purpose zones	111	57	54
Sub-zones	60	31	29

\*As of the end of FY 1984.

Source: Foreign Trade Zones Board, U.S. Department of Commerce and special reports from U.S. Customs Service Regions.

#### A. Procedural/Administrative Changes

##### Inventory Control and Record Keeping System

An inventory control and record keeping system with Customs prescribed data will result from this proposal. A similar system (Alternative Inventory Control System) has been in effect since 1976 and currently operates at 7 general purpose zones. Data required for the new system will consist of standard business data currently collected and tabulated for small users by each zone's operator/grantee. We do not anticipate a significant net reporting burden on users or operators as a result of this segment of the proposal.

##### Operators' Control Over Admission and Removal of Goods

Under present Customs supervision, a Customs officer must be present to clear admissions of merchandise to and removals of merchandise from a zone, thus limiting these transactions to the availability of a Customs officer. Under the present proposal, an operator will be able to admit and remove merchandise without a Customs officer being present, after receiving Customs approval. However, Customs approval for admission will require an invoice in support of the application for admission

on CF 214 and that the merchandise be retained for Customs examination at the place of unloading, the zone, or other location designated by the district director. Upon admittance to a zone, textile goods subject to visa controls will require a CF 214 with an invoice annotated by a Customs officer. Withdrawal of those goods will require the visa, either the original if withdrawn in its original lot size or new visas if withdrawn in break bulk, partial quantities. Presentation of an invoice and merchandise examination prior to admission are not currently required and will represent an additional paperwork requirement and possible delay in the arrival of merchandise at the zone. Customs approval for removals will be simplified by a reduction in paperwork as outlined in the next section. In total, the additional admission requirements will be offset by the simplified removal procedure and the enhanced business flexibility derived from being able to admit or remove merchandise freely into and out of the zone after Customs approval has been received.

#### Forms Reduction—Customs Forms 7501/7505/215

Under present practice, Customs forms 7501 and 214 are required to obtain privileged foreign status. Removal of privileged foreign status merchandise from a zone requires filing CF 7505 for consumption. CF 215 is required to remove all zone status merchandise, except merchandise in privileged status or wholly composed of merchandise in privileged status. The estimated number of forms filed in FY 1984 appear in Table 2 below.

TABLE II

Form	Number of forms
7501*	15,000
7505	20,000
215	45,000

\*The present CF 7501 requires data previously requested on the CF 7502.

Under a provision of this proposal, a request for privileged foreign status would require a CF 214 and invoice (as before) but would eliminate the CF 7501. Upon removal of privileged foreign status goods from a zone, the applicable entry form would replace the 7505 (no net gain or loss). Further, the CF 215 will be eliminated under this proposal. Current clerical, data base management and brokerage costs for an estimated 60,000 forms 7501/215 would be eliminated, giving small businesses a net gain on the order of \$650,000 yearly from this procedural change.

#### Mandatory Bonding

One of the major proposed changes in zone administration is to involve the operator/grantee in data keeping and reporting. A new mandatory bond at a minimum level of \$50,000 would be required in another provision of the proposal, with the goal of encouraging operator/grantee accuracy in compliance with his new responsibilities. The new bond would cover non-compliance with these proposed regulations as well as losses of merchandise. In terms of practical effects of this provision on small businesses, we anticipate no net appreciable added burden or cost. Most activated zones currently have bonds which meet or exceed the proposed minimum level.

#### B. Fee Changes

##### Elimination of Present Form of Customs Reimbursement

Under present practices, operators/grantees reimburse Customs for inspection services rendered at zones. In fiscal year 1984, payments to Customs totaled an estimated \$1.7 million, of which \$1.3 million pertain to operations at general purpose zones. Assuming operators charge users flat fees to recover these payments, then each small user pays an average of \$870 per year for these present Customs services. The proposed revisions would eliminate this \$1.3 million present fee, substituting in its place (see below) tiered fees which would cover Customs costs in carrying out audits and spot checks.

A particular concern is underscored at this point, concerning the distribution of this \$1.3 million benefits (eliminated Customs reimbursement). The 57 general purpose zones at the end of FY 1984 are widely distributed around the country. A small business interested in participating in a foreign trade zone generally finds itself limited to one and only one zone provider in its operating area. The offering of foreign trade zone services could thus be regarded as a monopolistic market condition. Significant regulatory requirements and administrative and application costs in seeking approval and setting up a zone essentially prevents access by (especially small) businesses. In essence, then, they must generally contract with the sole established zone operator in the geographic area.

In economic theory, the pricing practices of a good/service provided under monopolistic conditions are oriented towards extracting a maximum profit for the unique provider, and, in practice, the level of fees charged by



some zone operators/grantees is a known concern of the Commerce Department's Foreign Trade Zone Board.

As stated above, average savings per user from elimination of Customs reimbursement is expected to approximate \$870 per year. Based on actual trade zone market conditions, however, real actual savings to users may total well below the average \$870/year. We expect that zone operator/grantees will pass through to small users only a portion (quite possibly small) of the total \$1.3 estimated benefit of this provision of the proposed regulation. In the public comments, no commenters (largely major general purpose and sub-zone operators) addressed this issue. We expect that in most cases operators will neglect to pass on savings to small users. The Foreign Trade Zone Board has authority to review fees and charges to users if those fees are challenged as unreasonable.

The fiscal year 1984-based fee schedule is tiered. The purpose of the annual fee is to recover Customs costs incurred in carrying out the audit-inspection supervision program. The annual fee to be charged each zone is a function of the degree of complexity in Customs auditing and inspection of zones. In order to account for those distinct operating conditions, each zone will fall into a distinct size/complexity tier, with a specific fee for each tier. In this way, small, less operationally complex zones will not subsidize large zones. The tiers are based on operational complexity as measured by the number of admissions and removals of foreign and zone restricted merchandise.

A zone will be classified as to its fee tier according to the following simple criteria if admissions/transfers of foreign and zone restricted merchandise:

- (i) Are less than 300 per year, then TIER I (\$1,400 per year fee);
- (ii) Fall between 300 and 3,000 per year, then TIER II (\$15,500 per year fee);
- (iii) Are greater than 3,000 per year, then TIER III (\$33,800 per year fee).

We expect general purpose zones to be largely skewed towards the TIER I level (see Table 3).

The annual fee is due and payable on the effective date of final Rule and on January 1 of each subsequent year. For existing zones the tier will be based on the number of admissions and transfers of foreign and zone restricted merchandise made during fiscal year ending September 30, 1984. Zones currently under a voluntary audit-inspection agreement need not pay an additional annual fee for calendar year 1985, nor will there be any refunds of

fees paid. For subsequent years the tier will be based on the number of admissions and transfers of foreign and zone restricted merchandise made during the previous fiscal year ending September 30. Each zone operator is responsible for determining the appropriate tier. The operator's determination is subject to Customs verification. Operators of zones activated during a calendar year will be responsible for paying an annual fee based on tier I.

TABLE 3.—DISTRIBUTION OF FOREIGN TRADE ZONES BY ANNUAL FEE TIERS

	Tier I <sup>1</sup>	Tier II <sup>2</sup>	Tier III <sup>3</sup>	Small business users
Total .....	44	33	11	1,500
General purpose zones.....	30	18	8	1,300
Sub-zones .....	14	15	3	200

<sup>1</sup> \$1,400 fee per year.

<sup>2</sup> \$15,500 fee per year.

<sup>3</sup> \$33,800 fee per year.

Under the present inspectional system Customs bills general purpose zone operators approximately \$1.3 million annually for inspectional services. Zone operators recover this expense in their fee and rental/lease billings to zone users. As above, we estimate that the Customs component of these fees paid by zone users averages \$870 per year per user.

Under the proposed audit-inspection system with different fee tiers, Customs billings to general purpose operators will amount to approximately \$591,000 per year, versus the estimated \$1.3 million at present. The Customs component of small business users' payments to operators will average \$450 per year per user, versus the \$870 per year per user at present. Future increases in the annual fee will reflect cost increases incurred by Customs in delivering audit and inspection services. These increases will consist largely of annual rises in labor costs. It is expected that labor costs, and thus annual fees charged zone operators, will rise by a moderate 2-4% per year.

Since sub-zone users are generally large companies, the effects of fees on them do not fall within the purview of the RFA and this analysis and thus will not be considered in this economic review. The burden on small business from this fee schedule (yielding \$591,000/yr.) would be an average \$450 per small user. Elimination of the current reimbursement method (\$870 per small user annually), even under the caveats noted above, would more than cover these new audit-inspection approach fees.

## New Zone Activation and Boundary Alteration Fees.

Under present procedures, zone applicants are not billed for necessary Customs preparatory work prior to a zone's activation or alteration. The proposed revisions contain a provision allowing Customs to recover its costs for such tasks, among others, as site surveys, background investigations, zone approval processing, inventory systems review and associated clerical costs. These fees would be applicable to zones which are activated, relocated or altered on or after the effective date of final rulemaking.

*Prospective fees are currently estimated at the following:*

- (a) \$1,021 for zone activation;
- (b) \$442 for zone relocation; and
- (c) \$442 for zone alterations.

Concerning effects on small businesses, we expect average added cost pass-through from this source to be insignificant.

## Overlapping Rules

None identifiable.

## Alternative Proposals

None feasible. The *Status Quo* becomes more untenable as complex zone manufacturing operations increase in number, while Customs resources diminish.

## Summary of Economic Effects

Based on present available data, the proposed revisions would appear to provide net yearly benefits to zone operators and users of \$1.3 million, as summarized below:

### QUANTIFIED COST (-) BENEFITS (+)

(In dollars)

Document reduction .....	+ 650,000
Current reimbursement eliminated .....	+ 1,300,000
New annual fees for audit approach .....	- 591,000
Total .....	+ 1,359,000

### NON-QUANTIFIED FACTORS

	Added costs	New benefits	Neutral effect
Admission of goods .....	X		
Removal of goods .....		X	
Inventory control and record keeping system .....			X
Mandatory bonding .....			X

[FR Doc. 86-2399 Filed 2-10-86; 8:45 am]

BILLING CODE 4820-02-M



# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

## 24 CFR Part 201

[Docket No. R-86-1178; FR-1656]

### Mortgage and Loan Insurance Programs; Title I Property Improvement and Manufactured Home Loans; Correction of Final Rule and Announcement of Effective Date

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule and announcement of effective date; correction.

**SUMMARY:** This notice corrects a citation contained in the final rule on property improvement and manufactured home loans under Title I, Section 2 of the National Housing Act. This rule was published on October 25, 1985 (50 FR 43516). It also corrects certain phrases in provisions contained in the notice published on January 14, 1986 (51 FR 1495) that announced an effective date of January 15, 1986 for most provisions of the final rule.

**FOR FURTHER INFORMATION CONTACT:** William C. Sorrentino, Director, Office of Manufactured Housing and Regulatory Functions, room 9158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5210. (This is not a toll-free number.)

Accordingly, the Department is correcting FR Document 85-1178, published on October 25, 1985 (50 FR 43516) and the notice of announcement of the effective date for the final rule published on January 14, 1986 (51 FR 1495) as follows:

#### § 201.54 [Corrected]

1. In paragraph (d) of § 201.54, on the top of page 43539, column one, line 18 is corrected by replacing the reference to "paragraph (g)" with "paragraph (f)".

2. In the notice of announcement of the effective date of the rule, in the center and right-hand columns on page 1495, following the heading "DATES", the section reference to "201.10(b)(1)" is changed to "201.10(b)", the phrase "§ 201.10(b)(4) (sentence one only)" is removed, and the section reference "201.530(a)" is changed to "201.530". As amended by these changes, the text of the notice relating to dates reads as follows:

"**DATES:** Effective date: This rule is effective on January 15, 1986.

"However, a new manufactured home produced with a data plate and sold with a wholesale manufacturer's invoice that are both dated before January 15, 1986, and which has been sold with a manufacturer's invoice that complies with Title I regulations in effect before January 15, 1986; but not with regulations in effect on or after January 15, 1986, has until July 15, 1986 to comply with the following listed provisions: § 201.2(p), (hh), (ii), (kk), and (ll); § 201.10 (b) and (d)(1); § 201.21(b)(3); and § 201.10(d)(4) (sentence one only). For the loans eligible to use the delayed compliance date, the following provisions from the regulations in effect before January 15, 1986 shall be used with respect to the origination of Title I manufactured home loans through July 14, 1986: §§ 201.501(i), 201.530, 201.1502(i), and 201.1504(a)(2)."

3. In the list of regulatory provisions contained in paragraph D of the notice in the center column on page 1496, the section reference "201.10(b)(1)" is changed to "201.10(b)", the phrase "the first sentence of § 201.10(b)(4)" is removed, the phrase "during the period January 15, 1986 through July 1986" is changed to "during the period January 15, 1986 through July 14, 1986", and the section reference "201.530(a)" is changed to "201.530". As amended by these changes, paragraph D reads as follows:

"D. For a new manufactured home produced with a data plate and sold with a wholesale manufacturer's invoice that are both dated before January 15, 1986, but which has been sold with a manufacturer's invoice prepared under current Title I regulations that is not in compliance with the requirements of the new Title I final rule, the effective date of the final rule is January 15, 1986, except compliance with the following provisions of the new rule will not be required until July 14, 1986: § 201.1 (p), (hh), (ii), (kk), and (ll); § 201.10 (b) and (d)(1); § 201.21(b)(3); and the first sentence of § 201.10 (d)(4). With respect to the origination of Title I manufactured home loans concerning these homes during the period January 15, 1986 through July 14, 1986, §§ 201.501(i), 201.530, 201.1502(i), and 201.1504(a)(2) of the current Title I regulations shall continue in effect. Thereafter, such new homes shall only be eligible for Title I manufactured home loans originated on or after July 15, 1986 if their wholesale manufacturer's invoices wholly meet the requirements of the new Title I final rule."

Dated: February 5, 1986.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 86-2957 Filed 2-10-86; 8:45 am]

BILLING CODE 4210-27-M

## POSTAL RATE COMMISSION

### 39 CFR Part 3000

[Docket No. RM86-4; Order No. 663]

### Personnel Conduct; Outside Employment and Disclosure of Financial Interests

Issued February 4, 1986

**AGENCY:** Postal Rate Commission.

**ACTION:** Final rule.

**SUMMARY:** The Postal Rate Commission is amending its rules governing disclosure of financial interests. The Commission is adding a provision requiring all employees to certify annually that they are aware of the Commission's conflict-of-interest standards and that they have no interests that conflict with these standards. The Commission is also adding a subsection indicating that it has internal guidelines governing the amount of investments an employee may have in any one entity. Lastly, the rule governing financial disclosure for new employees is being modified to require new employees transferring from other government agencies to file financial disclosure statements unless the most recent disclosure statement filed with the employee's former government employer was publicly available.

**EFFECTIVE DATE:** April 1, 1986.

**FOR FURTHER INFORMATION CONTACT:** David F. Stover, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street NW., Washington, DC 20268-0001; Telephone (202) 789-6820.

**SUPPLEMENTARY INFORMATION:** The Postal Rate Commission has reviewed its Standards of Conduct (39 CFR Part 3000) and has determined that it is appropriate to amend its rules governing the reporting of financial interests. An explanation of the amendments is provided below.

Existing rules governing financial disclosure require that employees at grade level EAS 25 or above file financial disclosure statements. Employees below grade level EAS 25 are not required to file financial disclosure forms. The financial disclosure statements filed by reporting employees contain a *de minimis* exception. If the financial interest provides less than \$100



in income during the reporting year and has a value of less than \$1,000, the employee need not report it on the financial disclosure form. To minimize the possibility of an inadvertent violation of our Standards of Conduct, we are amending our rules to require that all employees certify annually that they do not have any investments that violate our conflict-of-interests standards.

Current Rule 402(a)(1) (39 CFR 3000.735-402(a)(1)) exempts new employees from filing financial disclosure statements if they have transferred from another government position which required the filing of a financial disclosure statement. If the financial disclosure statement filed at the employee's former government employer is treated on a confidential basis, the Commission would not have access to the disclosure statement and thus the Commission would be unable to review the new employee's financial interests. To insure that the Commission has an opportunity to review the new employee's financial disclosure form, we are amending our rules to exempt from filing financial disclosure statements only new employees who have filed a public financial disclosure statement.

The Commission's internal guidelines used to evaluate employee financial interests permit the Chairman to set a maximum limit on an employee's interest in any one entity or person. Employees who have investments exceeding this limitation must obtain a written determination that the interest is not so substantial as to affect the integrity of the services preformed by the employee. The Commission is amending its Standards of Conduct to give notice of this practice.

As the amendments herein involve matters of agency organization and procedure, the notice requirements of

the Administrative Procedure Act (5 U.S.C. 553) do not apply. These rule changes are limited to minor changes in employee reporting requirements. Thus, they do not constitute a "major rule" under E.O. 12291. For the same reason, the rule changes will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

#### List of Subjects in 39 CFR Part 3000

Standards of conduct.

#### PART 3000—STANDARDS OF CONDUCT

Accordingly, pursuant to 39 U.S.C. 3603, it is order that, effective April 1, 1986, 39 CFR Part 3000, Subparts C and D are hereby amended as follows:

1. The authority citation for Part 3000 of title 39 continues to read as follows:

Authority: E.O. 11222 of May 8, 1965, 3 CFR 1964-1965 Comp., p. 306; E.O. 11570 of Nov. 24, 1970, 35 FR 18183; and 5 CFR Part 735, unless otherwise noted.

#### Subpart C—Conflicts of Interest and Ethical Conduct

2. 39 CFR 3000.735-302 is amended by adding paragraph (h) to read as follows:

##### § 3000.735-302 Financial interests.

(h) The Chairman from time to time determines the appropriate maximum limit for an interest in any one entity or person. An employee may not maintain an interest above that limit unless he or she receives a written determination by the Chairman pursuant to section 208(b)(1) of title 18, U.S.C., that the interest is not so substantial as to be deemed likely to affect the integrity of the service which the Government may expect of him or her.

#### Subpart D—Reporting Outside Employment and Financial Interests

3. 39 CFR 3000.735-401 is amended by adding at the end a new sentence, reading as follows:

##### § 3000.735-401 General standards.

Each employee shall annually certify to the Counselor that, to the best of his or her knowledge, information and belief, neither the employee nor his or her spouse, minor children and other relatives who are residents of the employee's immediate household have any financial interests or any outside employment which violate the Commission's Standards of Conduct.

4. 39 CFR 3000.735-402 is amended by revising paragraph (a)(1) to read as follows:

##### § 3000.735-402 Reporting employment and financial interests—regular employees.

(a) \* \* \*

(1) A financial disclosure statement shall be filed by a covered employee within 30 days of assuming a position with the Commission. If such individual has left another government position for which public financial disclosure statements were filed, a copy of the most recent such statement will fulfill the requirement of this paragraph. With respect to Commissioners, the financial disclosure statement filed by such Commissioner with the Commission in connection with his or her nomination to the position of Commissioner will fulfill the requirement of this paragraph.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 86-2914 Filed 2-10-86; 8:45 am]

BILLING CODE 7715-01-M



# Proposed Rules

Federal Register

Vol. 51, No. 28

Tuesday, February 11, 1986

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 1136 and 1139

[Docket Nos. AO-309-A27 and AO-374-A11]

#### Milk in the Great Basin and Lake Mead Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of public hearing on proposed rulemaking.

**SUMMARY:** This hearing is being held to consider a merger of the Great Basin and Lake Mead Federal milk orders. Western General Dairies, Inc., Lake Mead Cooperative Association and Intermountain Milk Producers requested that the hearing be held to consider merging the two orders. These cooperative organizations contend that the territory covered by the two orders is now essentially one market. The proposed merged order would combine the marketing areas of the two existing orders and add some currently unregulated areas. It is expected that no additional handlers would be regulated. The present Class I price differentials at Salt Lake City and Las Vegas would be maintained.

The proposal contains the first component pricing plan to be considered for incorporation in a Federal milk order in recent times. The proposed merged order would modify current pricing provisions to accommodate a multiple component pricing plan using values for protein and butterfat to adjust the value of milk used in Class II and Class III products and payments to producers.

Other features of the proposal not now contained in either order would include in the pool plant definition a manufacturing plant located within the marketing area and operated by a cooperative association, allocate receipts to classes of utilization by

product pounds instead of by skim and butterfat pounds and pool the differential value of producer milk used in Class I and Class II rather than pooling the full value of producer milk. Prices paid to producers would not be affected by the differential pooling provision. The obligation of a partially regulated distributing plant operator regulated by a State order would be determined by subtracting any amount the handler has paid under the State order for the fluid milk products distributed in the Federal order marketing area from the value of those products at the applicable Federal order Class I price.

Three proprietary handlers submitted additional proposals related to the pooling standards, location pricing and producer payment provisions of the proposed merged order.

**DATE:** The hearing will convene at 9:00 a.m., on Tuesday, March 18, 1986.

**ADDRESS:** The hearing will be held in the Little America Motel, 500 South Main Street, Salt Lake City, Utah 84101 (Telephone 801/363-6781).

**FOR FURTHER INFORMATION CONTACT:** Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7311.

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Little America Motel, 500 South Main Street, Salt Lake City, Utah 84101, beginning at 9:00 a.m., local time, on March 18, 1986, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Great Basin and Lake Mead marketing areas.

The hearing is called 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).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions in

each of the aforesaid specified marketing areas which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Proposal No. 1, a proposal to combine the Great Basin and Lake Mead marketing areas and some currently unregulated areas under one order, raises the issue of whether the provisions set forth in that proposal would tend to effectuate the declared policy of the Act if they are applied to the proposed merged and expanded marketing area and, if not, what modifications of the proposal would be appropriate.

Issues raised by the proposals set forth herein also include whether the declared policy of the Act would tend to be effectuated by:

(a) Merging under one order the Great Basin and Lake Mead marketing areas.

(b) Adopting a component pricing plan to adjust the value of milk used by handlers in Class II and Class III and payments to producers by using values for protein and butterfat.

(c) Adopting any of the proposed provisions, or appropriate modification thereof, for separate orders or a combined order, including a review of the appropriate pricing and pooling provisions of the order whether separate or combined. The issue of consolidation of the Great Basin and Lake Mead marketing areas also raises the issue of the appropriate disposition of the producer-settlement funds, marketing service funds and administrative funds accumulated under the respective orders.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act (Pub. L. 96-354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest



modifications of these proposals for the purpose of tailoring their applicability to small businesses.

#### List of Subjects in 7 CFR Parts 1136 and 1139

Milk marketing orders, Milk Dairy products.

The authority citation for parts 1136 and 1139 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

*Proposed by Lake Mead Cooperative Association, Western General Dairies, Inc., and Intermountain Milk Producers: Proposal No. 1.*

### PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

#### Subpart—Order Regulating Handling

##### General Provisions

##### § 1139.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference, and made a part of this order.<sup>1</sup>

##### Definitions

##### § 1139.2 Great Basin marketing area.

"Great Basin marketing area" (hereinafter called the "marketing area") means all the territory, including all municipalities and government reservations and installations within, or partially within, the counties listed below:

##### Utah Counties

All.

##### Nevada Counties

Clark, Elko, Lincoln and White Pine.

##### Wyoming Counties

Lincoln and Uinta.

##### Idaho Counties

Bannock, Bear Lake, Bingham, Bonneville, Caribou, Franklin, Jefferson, Madison, Oneida and Power.

##### § 1139.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product from a plant to a retail or wholesale outlet (including any delivery to a distribution point by a vendor, from a plant store, or through a vending machine.) The term "route disposition" does not include a delivery to a plant defined in § 1139.7 (a) or (b).

##### § 1139.4 [Reserved]

##### § 1139.5 Distributing plant.

"Distributing plant" means a plant in which approved fluid milk products or filled milk are processed or packaged, and from which fluid milk products are disposed of on routes in the marketing area during the month.

##### § 1139.6 Supply plant.

"Supply plant" means a plant from which approved fluid milk products or filled milk are transferred in bulk form during the month to a pool distributing plant.

##### § 1139.7 Pool plant.

"Pool plant" means any plant, except a plant defined in § 1139.8, which meets the standards of one or more of the following paragraphs:

(a) A distributing plant;

(1) From which not less than:

(i) 50 percent in any month of September through February, 45 percent in any month of March and April, and 40 percent of any month of May through August of the approved fluid milk products, except filled milk, received at such plant (excluding milk received at such plant from other order plants or dairy farms which is classified in Class II, or Class III under this order and which is subject to the pricing and pooling provisions of any other order issued pursuant to the Act), are disposed of as route disposition; and

(ii) 15 percent of such receipts are disposed of as route disposition in the marketing area during the month.

(2) Producer milk which a cooperative association, or a federation of which it is a member, causes to be delivered to pool distributing plants of other handlers shall be included with receipts of producer milk at the distributing plants of the cooperative or federation and the quantity of such deliveries assigned to Class I pursuant to § 1139.45(d) shall be included as route disposition from such cooperative's or federation's plant(s) in determining their pool plant status as follows:

(i) If the cooperative association or federation operates more than one distributing plant as defined in § 1139.5, such producer milk and Class I utilization shall be included in the computation for whichever plant the cooperative association or federation requests in writing to the market administrator; and

(ii) If no such written request is made, such producer milk and Class I milk shall be prorated among the plants.

(3) If a handler operates more than one distributing plant, the combined receipts and fluid milk product

dispositions of such plants may be used as the basis for qualifying all of the plants pursuant to (a)(1)(i) of this section, provided the handler so notifies the market administrator in writing before the last day of the month for which such consolidation is desired.

(b) A distributing plant that meets the following conditions:

(1) The plant is located in the marketing area;

(2) The plant meets the requirements of (a)(1)(i) of this section; and

(3) The principal activity of such plant is the processing and distribution of aseptically processed and packaged fluid milk products.

(c) A supply plant from which during the month not less than 50 percent of its approved milk receipts from dairy farmers is transferred to a pool distributing plant pursuant to (a) or (b) of this section as fluid milk products. Any supply plant that has qualified as a pool plant in each of the immediately preceding months of August through February shall be a pool plant in each of the following months of March through July unless written request for nonpool status for any of such months is filed by the plant operator with the market administrator prior to the first day of the month the request is to be effective. A plant withdrawn from supply pool plant status may not be reinstated for any subsequent month of the March through July period unless it fulfills the transferring requirement of this paragraph for such month.

(d) Any plant not defined in (a), (b) or (c) of this section located within the marketing area at which milk is received from producers and which is operated by a cooperative association or federation, which has 60 percent or more of its producer milk (including that in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the amount in producer milk actually received at such plant) received at pool distributing plants during the current month or the 12-month period ending with the current month.

##### § 1139.8 Nonpool plant.

"Nonpool plant" means any plant defined in this section, and any other milk-receiving, manufacturing, or processing plant, other than a pool plant:

(a) "Producer-handler plant" means a plant operated by a producer-handler as defined in this, or any other order issued pursuant to the Act.

(b) "Other order plant" means a plant as specified under (1), (2) or (3) of this paragraph that is fully subject to the

<sup>1</sup> The provisions of part 1000 (7 CFR Part 1000) are set forth immediately following Proposal No. 1.



pricing and pooling provisions of another order issued pursuant to the Act:

(1) A distributing plant qualified pursuant to § 1139.7(a) that also meets the pool plant requirements of another Federal order, and from which the Secretary determines a greater quantity of Class I milk was disposed of as route disposition during the month in such other Federal order marketing area than was disposed of as route disposition in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of its Class I route disposition is made in such other marketing area;

(2) A supply plant qualified pursuant to § 1139.7(c) that also meets the pool plant requirements of another Federal order and from which a larger quantity of fluid milk products is transferred during the month to plants regulated under such other order than is transferred to distributing plants under this order, except that transfers to other order plants for Class III dispositions during the months of March through July shall be disregarded for purposes of this computation if the operator of the supply plant elects to retain pool status under this order; or

(3) A plant qualified pursuant to § 1139.7 (a), (b), or (c) which the Secretary determines, despite the provisions of this order, to be fully regulated under another Federal order.

(c) "Exempt plant" means a distributing plant having less than an average of one thousand pounds per day of route dispositions in the marketing area during the month.

(d) "Partially regulated distributing plant" means any other distributing plant not defined in this section that is not a pool plant.

(e) "Unregulated supply plant" means any other supply plant not defined in this section that is not a pool plant.

#### § 1139.9 Handler.

"Handler" means:

(a) Any person who operates one or more pool plants;

(b) Any cooperative association with respect to milk of its producers that it diverts for its account pursuant to § 1139.13;

(c) Any cooperative association or federation with respect to producer milk that is received at the farm for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association or federation; or

(d) Any person who operates a plant defined in § 1139.8 (a) through (e).

#### § 1139.10 Producer-handler.

"Producer-handler" means any person who is an individual, partnership, or corporation and who meets all of the following conditions:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by such person in accordance with the conditions set forth in (b) of this section, and provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is such person's sole risk, and under such person's complete and exclusive management and control;

(2) Each such farm is owned or operated by and at the sole risk of such person, and under such person's complete and exclusive management and control; and

(3) Only such person, and no other person (except a member of such person's immediate family, or a stockholder in the case of a corporate operator) employed on such farm(s) own, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced;

(b) Operates a plant in which approved milk is processed or packaged and from which there is route disposition during the month in the marketing area:

*Provided, That:*

(1) No fluid milk products are received at such plant during the month or by such person at any other location except:

(i) From the dairy farm(s) specified in (a) of this section; and

(ii) From pool plants, or other order plants, in an amount that is not in excess of the lesser of 5,000 pounds or 5 percent of such person's Class I disposition during the month;

(2) Such plant is operated under such person's complete and exclusive management and control and at such person's sole risk, and is not used during the month to process, package, receive or otherwise handle fluid milk products for any other person; and

(3) For the purpose of this section, all fluid milk products disposed of as route disposition or at stores operated by such person or by any person (including the operator of a plant, or vendor) who controls or is controlled by such person (e.g., as an interlocking stockholder) or in which such person (including, in the case of a corporation, any stockholder therein) has a financial interest, shall be considered as having been received at such person's plant; and the utilization

for such plant shall include all such route and store dispositions; and

(c) Disposes of no other source milk (except that in the fortification of fluid milk products) as Class I milk.

#### § 1139.11 Approved milk.

"Approved milk" means any milk, or fluid milk product that is approved for fluid consumption by a duly constituted regulatory authority.

#### § 1139.12 Producer.

(a) Except as provided in (b) hereof, "producer" means any person:

(1) Who produces approved milk; and

(2) Whose milk is received at a pool plant or diverted to a nonpool plant that is not a producer-handler plant within the limits set forth in § 1139.13

(b) "Producer" shall not include:

(1) A producer-handler as defined under any order (including this order) issued pursuant to the Act;

(2) Any person with respect to milk diverted to a pool plant from an other order plant, if the other order designates such person as a producer under that order, and such milk is allocated to Class II, or Class III utilization pursuant to § 1139.44(h)(3);

(3) Any person with respect to milk diverted to an other order plant if any part of such milk was allocated to Class I, or the other order defines such person as a producer; or

(4) Any person whose milk is received at a pool plant if during the month milk from the same farm shared in the returns from fluid milk sales in another market, or was received at a nonpool plant (except an other order plant or a milk manufacturing plant that is not approved for the handling of fluid milk products) other than as a diversion.

#### § 1139.13 Producer milk.

"Producer milk" means the skim milk and butterfat in milk of a producer that is:

(a) Received or diverted by a handler defined in § 1139.9(a) under one of the following conditions:

(1) Received at such handler's pool plant directly from the farm of such producer;

(2) Received at such handler's pool plant from a handler defined in § 1139.9(c); or

(3) Diverted to a nonpool plant that is not a producer-handler plant, subject to the conditions set forth in (d) of this section;

(b) Diverted by a handler defined in § 1139.9(b), to a nonpool plant that is not a producer-handler plant, subject to the conditions set forth in (d) of this section;



(c) Received by a handler defined in § 1139.9(c), from the producer's farm in excess of the producer's milk that is received at pool plants pursuant to (a)(2) of this section. Such producer milk shall be deemed to have been received by the handler at the location of the pool plant to which the milk was delivered;

(d) The following conditions shall apply to producer milk diverted to a nonpool plant that is not a producer-handler plant:

(1) The milk shall be priced at the location of the plant to which diverted;

(2) A cooperative association or federation may divert for its account the milk of any producer from whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed 25 percent in the months of April through August and 15 percent in other months of the producer milk which the association or federation causes to be delivered to pool plants during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of their combined deliveries of the producer milk which the cooperative associations cause to be delivered to pool plants, or diverted pursuant to this section if each association has filed a request in writing with the market administrator before the first day of the month the agreement is effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative association according to a method approved by the market administrator;

(3) The operator of a pool plant (other than a cooperative association or federation) may divert for its account the milk of any producer (other than milk diverted pursuant to (d)(2) of this section) from whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed 25 percent in the months of April through August, and 15 percent in other months of the milk received at such pool plant from producers for which the operator of such is the handler for the month. The milk for which the operator of such plant is the handler for the month may not duplicate milk diverted pursuant to (d)(2) of this section;

(4) Diversions in excess of such percentages shall not be producer milk, and the diverting handler shall designate the milk which is not producer milk. If the handler fails to make such designation, no milk diverted by the handler shall be producer milk; and

(5) Milk of a dairy farmer who was not a producer in the preceding month shall not be eligible for diversion until

after one day's milk production from such farmer has been received at a pool plant.

#### § 1139.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers defined in § 1139.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1139.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1139.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1139.40(b)(1) for which the handler fails to establish a disposition.

#### § 1139.15 Fluid milk product.

(a) Except as provided in (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in consumer-type packages), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), whey, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass, foil-lined paper, or all-metal containers, and any product that contains by weight less than 6.5 percent nonfat milk solids; and

(2) The quantity of skim milk in any modified product specified in (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

#### § 1139.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or

without the addition of other ingredients.

#### § 1139.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milk fat, so that the product (including stabilizers, emulsifiers, or flavoring), resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

#### § 1139.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of dairy farmers, including producers, which the Secretary determines, after application by the cooperative association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act", and any amendments thereto;

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk for its members; and

(c) To have its entire activities under the control of its members.

#### § 1139.19 Product prices.

The prices specified in this section as computed and published by the Director of the Dairy Division, Agricultural Marketing Service, shall be used in calculating the basic Class II formula price, and the term "work-day" as used herein shall mean each Monday through Friday that is not a national holiday.

(a) "Butter price" means the simple average of the prices per pound of Grade A (92-score) butter on the Chicago Mercantile Exchange for the work-days during the first 15 days of the month, using the price reported each week as the price for the day of the report, and for each succeeding work-day until the next price is reported.

(b) "Cheddar cheese price" means the simple average for the work-days during the first 15 days of the month, of the prices per pound of cheddar cheese in 40 pound blocks on the national Cheese Exchange (Green Bay, WI). The price reported for each week shall be used as the price for the day on which reported, and for each succeeding work-day until the next price is reported.

(c) "Nonfat dry milk price" means the simple average of the prices per pound of nonfat dry milk for the work-days during the first 15 days of the month computed as follows:



(1) Use the prices (using the midpoint of any price range as one price) reported each week for high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area;

(2) Compute a simple average of the weekly prices for the three types of nonfat dry milk in (c)(1) of this section. Such average shall be the daily price for the day on which the prices were reported and for each preceding work-day until the day such prices were previously reported; and

(3) Add the prices determined in (c)(2) of this section for the work-days during the first 15 days of the month and compute the simple average thereof.

(d) "Edible whey price" means the simple average of the prices per pound of edible whey powder for the Central States production area for the work-days during the first 15 days of the month. The prices used shall be the price (using the midpoint of any price range as one price) reported each week as the daily price for the day on which reported, and for each preceding work-day until the day such price was previously reported.

#### § 1139.20 Minnesota-Wisconsin price.

The "Minnesota-Wisconsin price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

#### § 1139.21 Federation.

Federation means a business organization which is incorporated under state law that is owned and operated by two or more cooperative associations as defined in § 1139.18.

#### Handler Reports and Records

##### § 1139.30 Reports of receipts and utilization.

On or before the seventh day after the end of the month, each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for such month:

(a) Each handler shall, with respect to each of its pool plants, report the quantities of, and the pounds of butterfat and milk protein contained in:

(1) Receipts of producer milk, including producer milk diverted by the handler;

(2) Receipts of milk from handlers defined in § 1139.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1139.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distribution plant shall report with respect to such plant in the same manner as prescribed for reports required by (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk.

(c) Each handler as defined in § 1139.9 (b) and (c) shall report:

(1) The quantities of, and pounds of butterfat and milk protein contained in, receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to all receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

##### § 1139.31 Payroll reports.

(a) On or before the 21st day after the end of each month, each handler who pay producers pursuant to § 1139.74 shall submit a producer payroll to the market administrator which shall include the following information for each producer from whom milk was received during such month:

(1) The name and address of the producer;

(2) The total pounds and, with respect to final payments, the average butterfat and milk protein content of the milk, and the number of days on which milk was received from each producer;

(3) The minimum payment required by the order, and the amount paid if more than the minimum required;

(4) The amount and nature of any deductions as authorized in writing by the producer, from such payment;

(5) The net amount of payment to the producer; and

(6) The date the payment was made.

(b) On or before the 21st day after the end of the month, each handler operating a partially regulated distributing plant who elects to make

payments pursuant to § 1139.76 (a) shall report to the market administrator with respect to milk received from each dairy farmer who would have been a producer if the plant had been fully regulated the following information for such month:

(1) The name and address of the dairy farmer;

(2) The total pounds of milk received from the dairy farmer;

(3) The average butterfat and milk protein content of such milk;

(4) The amount and nature of any deductions authorized in writing by the dairy farmer from the payment for such milk; and

(5) The net amount of payment paid.

##### § 1139.32 Other reports.

In addition to the reports required pursuant to §§ 1139.30 and 1139.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligations under this order.

##### § 1139.33 Milk component records.

In addition to the records otherwise required pursuant to this order, each handler shall maintain books and records concerning all milk and dairy products received, handled, disposed of or in inventory at the end of each month which shall state the volume and/or weight of each product which must be classified under this order, together with the butterfat and milk protein content thereof.

#### Classification and Accountability

##### § 1139.40 Classes of utilizations.

The classes of utilization of skim milk and butterfat shall be as follows:

(a) *Class I milk.* Except as provided in (b) and (c) of this section, Class I milk shall be all butterfat and skim milk:

(1) Disposed of as route dispositions; or

(2) Not specifically classified as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all butterfat and skim milk:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and and product containing 6 percent of more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in (c) of this section;

(2) In packaged inventory at the end of the month of products specified in (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk plant) at which food products (other than milk



products) are processed, and from which there is no disposition of fluid milk products, or fluid cream products other than those received in consumer type packages; and

(4) Used to produce:  
(i) Cottage cheese (all forms);  
(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk fluid form other than that specified in (c) (1) (iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, or aseptically packaged and hermetically sealed in foil-lined paper containers.

(c) *Class III milk.* Class II milk shall be all butterfat and skim milk:

(1) Used to produce:  
(i) Cheese, other than cottage cheese in any form;

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk fluid form that is used to produce a Class III product;

(v) Evaporated milk or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any other dairy product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form, and products specified in (b)(1) of this section in bulk form;

(3) In fluid milk products, and products specified in (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1139.15;

(6) In shrinkage assigned pursuant to § 1139.42(a) to the receipts specified in § 1139.42 (a)(2) and in shrinkage specified in § 1139.42 (b) and (c).

#### § 1139.41 General accounting and classification rules.

Each month the market administrator shall:

(a) Correct for mathematical and other obvious errors all reports filed pursuant to § 1130.30;

(b) Compute for each pool plant and for handlers defined in § 1139.9 (b) and (c) the amount, if any, by which the product pounds and the pounds of butterfat or milk protein to be accounted for exceed or are less than the pounds accounted for;

(c) Classify the receipts for each pool plant and for each handler pursuant to § 1139.9 (b) or (c) in accordance with §§ 1139.40, 1139.42, 1139.43, and 1139.44;

(d) Determine the classification of producer milk of a handler pursuant to § 1139.9 (b) and (c) separately from the operations of any pool plant operated by such handler;

(e) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this order as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids;

(f) In the absence of complete and verifiable information concerning the milk protein content of any milk or dairy product which must be classified at any pool plant, the market administrator shall make an assignment for purposes of pricing and classification as follows:

(1) Assign to the fluid milk products packaged, processed or disposed of at all such pool plants during the month, a milk protein content based on the minimum required percentages of milk protein prescribed in the appropriate State or Federal standards of identity for the product involved, provided that if no such minimum milk protein standards are prescribed, the market administrator shall base the milk protein content on the average content of producer milk which meets the minimum nonfat solids content required in such standards of identity.

(2) The balance of the milk protein to be accounted for at the pool plant(s) each month shall be assigned prorata to the Class II and Class III utilization of the handler during the month based on the skim milk solids or the skim equivalent utilized in those classes.

(g) Notwithstanding the provisions of (f) hereof, make the following computations for the purpose of determining the amount of milk protein in fluid milk products to be accounted for with respect to all Class I fluid milk products disposed of by pool handlers for pricing purposes:

(1) Compute the average milk protein content of all producer milk pooled during the month;

(2) Adjust the total pounds of Class I fluid milk products disposed of by each pool handler during the month to the average butterfat percentage of all producer milk by adding or subtracting butterfat as necessary; and

(3) Compute a total Class I milk protein utilization for each handler by multiplying the adjusted pound of fluid milk products as computed under (2) hereof by the percentage computed under (1) hereof.

(4) The resulting pounds of milk protein shall be that deemed to have been disposed of in Class I milk for purposes of computing handler obligations under § 1139.60(h)(2).

#### § 1139.42 Proration of shrinkage.

For purposes of prorating shrinkage of the product pounds reported by a handler pursuant to § 1139.30, the market administrator shall determine the following:

(a) The assignment of shrinkage at each pool plant shall be as follows:

(1) In the receipts specified in (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in (b) (1) through (6) of this section which was received in the form of bulk fluid milk product or a bulk fluid cream product;

(b) the shrinkage assigned pursuant to (a) of this section to the receipts specified in (a)(1) of this section that is not in excess of:

(1) Two percent of the producer milk (excluding milk diverted, or received from handlers defined in § 1139.9(c));

(2) Plus 1.5 percent of the milk received from handlers defined in § 1139.9(c), except if the operator of the plant to which the milk is delivered purchases such milk on the basis of quantities determined from its measurement at the farm and tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the producer milk diverted by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of quantities determined from its measurement at the farm and tests determined from farm bulk tank samples, the applicable percentage shall be zero;

(4) Plus 1.5 percent of the bulk fluid milk products received by transfer from other pool plants;



(5) Plus 1.5 percent of the bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the bulk fluid milk products transferred to other plants that is not in excess of the respective quantities to which percentages are applied in (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of shrinkage in milk from producers for which a cooperative association or federation is the handler pursuant to § 1139.9 (b) or (c), but not in excess of 0.5 percent thereof. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and tests determined from farm bulk tank samples, the applicable percentage for the cooperative association or federation shall be zero.

#### § 1139.43 Assignment of transfers and diversions.

(a) *Transfers to pool plants.* Fluid milk products or bulk fluid cream products transferred from a pool plant to another pool plant shall be assigned as Class I milk unless the operators of both plants request assignment to another class. In either case, the assignment of such transfers shall be subject to the following conditions:

(1) The quantities assigned in each class shall be limited to the amounts remaining in such classes at the transferee-plant after the computation pursuant to § 1139.44(1);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1139.44(g), the product so transferred shall be assigned so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1139.44 (k) or (l), the product transferred, up to the total of such receipts of other source milk, shall not be assigned as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Diversions or transfers of bulk fluid milk products or transfers of bulk fluid cream products from a pool plant to an other order plant shall be assigned in the following manner. Such

assignment shall apply only to the quantities in excess of any receipts at the pool plant from the other order plant in fluid milk products and bulk fluid cream products, respectively, that are in the same category as specified in (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, assignment shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred or diverted in bulk form, assignment shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be assigned as Class II or Class III milk to the extent such utilization is available for such assignment pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of assigning under this paragraph, assignment shall be Class I subject to adjustments when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this order, product allocated to a class consisting primarily of fluid milk products shall be assigned as Class I milk, and product allocated to the other classes shall be assigned as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, assignment under this paragraph shall be in accordance with the provisions of § 1139.40.

(c) *Transfers to producer-handlers and to plants defined in § 1139.8(c).*

Transfers by a handler defined in § 1139.9(a) to a producer-handler or to a nonpool plant as defined in § 1139.8(c) shall be assigned:

(1) As class I milk, if moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of bulk fluid cream products, prorata to each source.

(d) *Transfers and diversions to other nonpool plants.* Transfers and diversions in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a plant defined in § 1139.8(c) shall be assigned:

(1) As Class I milk if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product, or transferred in the form of a bulk fluid cream product unless the following conditions apply:

(i) If the transferor-handler or divertor-handler so requests, and the conditions defined in (d)(2)(i) (a) and (b) of this section are met, transfers or diversions in bulk form shall be assigned on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in (d)(2) (ii) through (viii) of this section:

(a) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1139.30 for the month within which such transaction occurred; and

(b) The nonpool plant operator maintains books and records showing the utilization of fluid and nonfluid milk products received at such plant which are made available for verification if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(a) Prorata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(b) Prorata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(c) Prorata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(d) Prorata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible prorata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such



transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(a) Prorata to receipts of fluid milk products at such nonpool plant from pool plants; and

(b) Prorata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(a) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of approved milk for such nonpool plant; and

(b) To such nonpool plant's receipts of approved milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of approved milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, prorata among such plants, to the extent possible, first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, prorata among such plants to the extent possible, first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities that are set forth in this paragraph.

#### § 1139.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk for each handler defined in § 1139.9(a) for each of the handler's pool plants separately and of each handler defined in § 1139.9(b) and (c) by allocating the handler's receipts to his utilizations as follows:

(a) Subtract from the total pounds in Class III the pounds in shrinkage specified in § 1139.42(b);

(b) Subtract from the total pounds in Class I the pounds in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(c) Subtract from the pounds remaining in each class the pounds in fluid milk products received in packaged form from another order plant, except that to be subtracted pursuant to (g)(6) of this section, as follows:

(1) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(2) From Class I milk, the remainder of such receipt;

(d) Subtract from the pounds in Class II the pounds in § 1139.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds remaining in Class II;

(e) Subtract from the remaining pounds in Class II the pounds in products specified in § 1139.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(f) Subtract from the remaining pounds in Class II the pounds in other source milk (except that received in the form of a fluid milk product, or a fluid cream product) that is used to produce, or added to, any product specified in § 1139.40(b), but not in excess of the pounds remaining in Class II;

(g) Subtract in the order specified below from the pounds remaining in each class; in series beginning with Class III, the pounds in each of the following:

(1) Other source milk (except that received in the form of a fluid milk product) and, if (e) of this section applies, packaged inventory at the beginning of the month of products specified in § 1139.40(b)(a) that were not subtracted pursuant to (d), (e), and (f) of this section;

(2) Receipts of fluid milk products (except filled milk) for which approved milk product status is not established;

(3) Receipts of fluid milk products from unidentified sources;

(4) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(5) Receipt of reconstituted skim milk in filled milk from an unregulated supply

plant that were not subtracted pursuant to (b) of this section;

(6) Receipts of reconstituted skim milk in filled milk from another order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk to allocated to Class I at the transferor-plant; and

(7) Receipts of milk from a dairy farmer pursuant to § 1139.12(b)(4);

(h) Subtract in the order specified below from the pounds remaining in Class II and Class III, in sequence beginning with Class III:

(1) The pounds in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to (b) and (g)(5) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds remaining in Class II and Class III combined;

(2) The pounds in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to (b), (g)(5), and (h)(1) of this section which are in excess of the pounds determined pursuant to (h)(2) (i) through (iii) of this section. Should the pounds to be subtracted from Class II and Class III combined exceed the pounds remaining in such classes, the pounds in Class II and Class III combined shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of Class I milk shall be decreased by a like amount. In such case, the pounds remaining in each class at this allocation step at the handler's other pool plant(s) shall be adjusted in the reverse direction in sequence, beginning with the plant(s) having the smallest location or zone differential(s).

(i) Multiply by 1.25 the sum of the pounds remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(ii) Subtract from the above result the sum of the pounds in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to (g)(6) of this section; and

(iii) Multiply any plus quantity resulting above by the percentage that the receipts of fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handlers; and

(3) The pounds in receipts of bulk fluid milk products that were priced and



pooled under another Federal order that are in excess of bulk fluid milk products transferred to plants under such order, and that were not subtracted pursuant to (g)(6) of this section, if Class II or Class III classification is requested by both the transferring and receiving handlers, but not in excess of the pounds remaining in Class II and Class III combined;

(i) Subtract from the pounds remaining in each class, in series beginning with Class III, the pounds in fluid milk products and products specified in § 1139.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (e) and (g)(1) of this section;

(j) Add to the remaining pounds in Class III the pounds subtracted pursuant to (a) of this section;

(k) Subject to the provisions of (k) (1) and (2) of this section, subtract from the pounds remaining in each class at the plant, prorata to the total pounds remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to (b), (g)(5), and (h) (1) and (2) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(1) Should the pounds to be subtracted from Class II and Class III combined pursuant to this paragraph exceed the pounds remaining in such classes, the pounds in Class II and Class III combined shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds in Class I shall be decreased by a like amount. In such case, the pounds remaining in each class at this allocation step shall be adjusted an offsetting amount at the handler's other pool plants in sequence, beginning with the plant having the smallest location or zone adjustment; and

(2) Should the pounds to be subtracted from Class I pursuant to this paragraph exceed the pounds remaining in such class, the pounds in Class I shall be increased by an amount equal to such excess quantity, such increase to be offset first by decreasing the pounds in Class III and then in Class II if necessary. In case such offset is made, the pounds remaining in each class at

this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a similar amount, in sequence, beginning with the plant having the smallest location or zone adjustment.

(l) Subtract in the manner specified herein from the pounds remaining in each class the pounds in receipts of bulk fluid milk products from another order plant that are in excess of bulk fluid milk products transferred or diverted to such plant that were not subtracted pursuant to (g)(6) and (h)(3) of this section;

(1) Subject to the provisions of (2), (3), and (4) of this paragraph, such subtraction shall be prorata to the pounds in Class I and in Class II and Class III combined, with the combined quantity being subtracted first from Class III and then from Class II. The pounds to be subtracted from each classification pursuant hereto shall be determined based on whichever of the following subsections results in the smallest assignment to Class I.

(i) The estimated utilization of all handlers in each class as announced for the month pursuant to § 1139.45(a); or

(ii) The total pounds remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(2) Should the proration pursuant to (l)(1) of this section cause the total pounds at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined to exceed the pounds remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds remaining in Class I after such proration at the pool plants at which such other source milk was received;

(3) Except as provided in (l)(2) of this section, should the computations pursuant to (l) (1) or (2) of this section result in a quantity to be subtracted from Class II or Class III combined that exceeds the pounds remaining in such classes the pounds in Class II and Class III combined shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds in Class I shall be decreased by a like amount. In this case, the pounds remaining in each class at this allocation step at one of the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(4) Except as provided in (l)(2) of this section, should the computations pursuant to (l) (1) or (2) of this section result in a quantity to be subtracted from Class I that exceeds the pounds

remaining in such class, the pounds in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds remaining in each class at this allocation step shall be adjusted in the reverse direction at one of the handler's other pool plants, if any;

(m) Subtract from the pounds remaining in each class the pounds in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1139.43(a); and

(n) If the total pounds remaining in all classes exceed the pounds in producer milk, subtract such excess from the pounds remaining in each class in series beginning with Class III. Any amount so subtracted is "overage";

(o) The pounds remaining in each class shall be the pounds of producer milk assigned to such classes.

#### **§ 1139.45 Market administrator's reports and announcements concerning classification.**

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1139.44(1), estimate and publicly announce the utilization (to the nearest whole percentage) in each class of all producer milk pooled under this order during the month. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from another order plant, the class to which such receipts are allocated pursuant to § 1139.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler as defined in § 1139.9(a) who has shipped fluid milk products to another order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such



allocation arising from the verification of such report.

(d) Report to each cooperative association that so requests, on or before the 12th day after the end of each month, the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handlers.

#### Class and Component Prices

##### § 1139.50 Prices for classes and components.

Subject to the provisions of § 1139.51 and § 1139.52, the class and component prices for the month, per hundredweight or per pound shall be as follows:

(a) *Class I price.* The Class I price shall be the Minnesota-Wisconsin price for the second preceding month plus \$1.90.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division, Agricultural Marketing Service, USDA, and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price for the month plus the amount that the value computed pursuant to (b)(1) of this section exceeds the value computed pursuant to (b)(2) of this section, except that in no event shall the final Class II price be less than the Minnesota-Wisconsin price for the month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest one cent) of the Minnesota-Wisconsin price and add 10 cents; and

(2) Determine for the same 12-month period as specified in (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices.

(c) *Butterfat price.* The butterfat price per pound shall be the simple average of the wholesale selling prices per pound, (using the mid-point of any price range as one price) of Grade A (92-score) bulk butter, f.o.b. Chicago, as reported by the Department for the month, multiplied by 1.15.

(d) *Milk protein price.* The price for milk protein per pound shall be computed by subtracting from the Minnesota-Wisconsin price the butterfat price multiplied by 3.5 and dividing the result by the average percentage of protein in all producer milk for the preceding month.

##### § 1139.51 Basic Class II formula price.

The "basic Class II formula price" for the month shall be the Minnesota-Wisconsin price for the second preceding month plus or minus the amount computed pursuant to (a) through (d) of this section.

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1139.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply and positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to (b) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in (c) (1) and (2) of this section:

(1) Combine the total production of American cheese for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent

preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to (b) of this section in accordance with the relative proportions of milk determined pursuant to (c) of this section.

##### § 1139.52 Price adjustments for zone and location differentials.

(a) The Class I price shall be adjusted for plants located in the zones set forth below as follows:

(1) *Zone 10 adjustments.*

##### Utah Counties

Box Elder, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Grand, Juab, Millard, Morgan, Rich, Salt Lake, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch and Weber.

##### Nevada Counties

Elko and White Pine, (2) *Zone 2* Minus \$0.25 adjustment.

##### Idaho Counties

Bannock, Bear Lake, Caribou, Franklin, Oneida and Power, (3) *Zone 3* Minus \$0.30 adjustment.

##### Idaho Counties

Bingham, Bonneville, Jefferson and Madison.

##### Wyoming Counties

Lincoln and Uinta.

##### Nevada Counties

Clark and Lincoln.

##### Utah Counties

Beaver, Garfield, Iron, Kane, Piute, San Juan, Washington and Wayne.

(b) Adjustment of Class I price for plants in other locations:

(1) For milk received from producers at a pool plant located outside the zones specified in (a) of this section, the Class I price shall be reduced at the following rate: 1.5 cents per hundredweight for each ten miles or fraction thereof of distance by shortest hard-surfaced highway as determined by the market administrator, between the plant and the nearest of the following courthouses:



Clark County, Nevada, Salt Lake County, Utah.

(2) For purposes of calculating such adjustment, transfers of fluid milk products between pool plants shall be assigned any Class I utilization at the transferee plant which is in excess of the sum of receipts at such plant from producers and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I differential applicable to other source milk shall be adjusted at the rates set forth in (a) or (b) of this section, except that the differential shall not be less than zero.

#### § 1139.53 Announcement of prices.

The market administrator shall announce publicly on or before:

(a) The 5th day of each month, the Class I price for the following month;

(b) The 15th day of each month, the tentative Class II price for the following month;

(c) The 5th day after the end of each month, the Minnesota-Wisconsin price, the prices for butterfat and milk protein computed pursuant to § 1139.50(c) and (d) and the final Class II price for such month; and

(d) The 12th day after the end of each month the uniform price computed for such month pursuant to § 1139.62(a), together with the weighted average differential value computed pursuant to § 1139.61.

#### § 1139.54 Equivalent price.

If for any reason a price or pricing constituent required by this order for computing class prices or for other purposes is not available as prescribed in this order, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

#### Differential Pool and Handler Obligations

#### § 1139.60 Computation of handlers' obligations to differential pool.

The market administrator shall compute each month for each handler defined in § 1139.9(a) with respect to each of his pool plants, and for each handler defined in § 1139.9 (b) and (c), an obligation to the differential pool as follows:

(a) Multiply the hundredweight assigned to Class I milk pursuant to § 1139.44 (n) and (o) by the Class I price

differential (\$1.90) as adjusted pursuant to § 1139.52;

(b) Add or subtract the amount obtained by multiplying the hundredweight used in (a) hereof by the amount by which the Minnesota-Wisconsin price for the second preceding month exceeds or is less than, respectively, such price for the current month;

(c) Multiply the hundredweight assigned to Class II milk pursuant to § 1139.44 (n) and (o) by \$0.10;

(d) Add or subtract the amount obtained by multiplying the hundredweight used in (c) hereof by the amount by which the Minnesota-Wisconsin price for the current month is more or less respectively than the tentative Class II price minus 10 cents, provided that the rate of subtraction shall not exceed 10 cents;

(e) Add the amount computed by multiplying the pounds of any overage of butterfat determined pursuant to § 1139.41(b) by the butterfat price established pursuant to § 1139.50(c);

(f) Add the amount computed by multiplying the pounds of any coverage of milk protein determined pursuant to § 1139.41(b) by the milk protein price established pursuant to § 1139.50(d);

(g) Add any amount by which the amount computed by multiplying the hundredweight of overage allocated pursuant to § 1139.44(n) times the Minnesota-Wisconsin price for the current month, exceeds the amount arrived at by combining the amounts computed under paragraphs (e) and (f) hereof; and

(h) Add or subtract a figure computed as follows:

(1) Multiply the pounds of milk protein accounted for by each handler as utilized in Class II and Class III or assigned for him to such classes pursuant to § 1139.41(f)(2) by the milk protein price computed pursuant to § 1139.50(d);

(2) Multiply the pounds of milk protein in Class I as computed for such handler pursuant to § 1139.41(g)(4) by the milk protein price computed pursuant to § 1139.50(d);

(3) Combine the values computed pursuant to (1) and (2) of this paragraph and subtract therefrom the amount to be paid by the handler pursuant to § 1139.74 to producers and cooperative associations for milk protein contained in milk received from them; and

(4) Add any amount by which the payments for milk protein under (3) hereof are less than the combined value determined under (1) and (2) hereof, or subtract the amount if such payments are more than such combined values.

(i) Add the amount obtained from multiplying the difference between the Minnesota-Wisconsin price for the preceding month and the Class I price applicable at the location of the pool plant, or the Class II price as the case may be, for the current month by the hundredweight subtracted from Class I or Class II pursuant to § 1139.44(i);

(j) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Minnesota-Wisconsin price by the hundredweight subtracted from Class I pursuant to § 1139.44(g) (1) through (4) and (7), excluding receipts of bulk fluid cream products from another order plant;

(k) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Minnesota-Wisconsin price by the hundredweight subtracted from Class I pursuant to § 1139.44(g) (5) and (6);

(l) Add the amount obtained from multiplying the difference between the Class I price applicable at the nearest unregulated supply plants from which an equivalent volume was received and the Minnesota-Wisconsin price by the hundredweight subtracted from Class I pursuant to § 1139.44(k), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plants by handlers fully regulated by any Federal order is classified and priced as Class I milk, and is not used as an offset for any other payment obligation under any order.

#### § 1139.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1139.60 for all handlers who made reports pursuant to § 1139.30 and who made payments pursuant to § 1139.71 for the preceding month;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1139.75;

(c) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk;



(2) The total hundredweight for which a value is computed pursuant to § 1139.60(1).

(e) Subtract not more than 5 cents per hundredweight. The result is the "Weighted Average Differential Value".

**§ 1139.62 Uniform price and handlers' obligation for producer milk.**

(a) A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential value determined pursuant to § 1139.61 to the Minnesota-Wisconsin price for the month.

(b) Handler obligations to producers and cooperative associations for producer milk shall be determined in accordance with the provisions of § 1139.74.

**Payments for Milk**

**§ 1139.70 Producer-settlement fund.**

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit payments made by handlers pursuant to §§ 1139.71, 1139.76 and 1139.77, and out of which he shall make payments pursuant to §§ 1139.72 and 1139.77: *Provided*, that any payment due a handler from the fund shall be offset as appropriate against payments due from such handler.

**§ 1139.71 Payments to the producer-settlement fund.**

(a) On or before the 14th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amount specified in (a)(1) of this section exceeds the amount specified in (a)(2) of this section:

(1) The total obligation of the handler for such month as determined pursuant to § 1139.60.

(2) The sum of:

(i) The obligation at the weighted average differential value adjusted pursuant to § 1139.75 with respect to such handler's receipts of producer milk and milk received from a handler defined in § 1139.9(c), and in the case of a cooperative association or federation which is a handler, less the amount due from other handlers pursuant to § 1139.73(e); and

(ii) The value at the weighted average differential value applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1139.60(1).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an

order providing for individual handler pooling shall pay the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route dispositions from such plant in the marketing area which was allocated to Class I at such plant; and

(2) Compute the value of the reconstituted skim milk assigned in (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price f.o.b. the other order plant and the Minnesota-Wisconsin price.

**§ 1139.72 Payments from the producer-settlement fund.**

On or before the 15th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1139.71(a)(2) exceeds the amount computed pursuant to § 1139.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as funds are available, provided that amounts due any handler shall be offset against payments due from such handler.

**§ 1139.73 Value of producer milk.**

(a) The partial payment for milk received during the first 15 days of the month shall be not less than 1.2 times the Minnesota-Wisconsin price for the preceding month times the quantity of milk received.

(b) The total value of milk received from producers during any month shall be computed as follows:

(1) The weighted average differential price computed pursuant to § 1139.61 subject to the appropriate plant location adjustment times the total hundredweight of milk received from the producer; plus

(2) The total milk protein contained in the producer milk received from the producer times the milk protein price computed pursuant to § 1139.50(d); plus

(3) The total butterfat contained in the producer milk received from the producer times the butterfat price computed pursuant to § 1139.50(c).

**§ 1139.74 Payments to producers and to cooperative associations.**

(a) Except as provided in (c), (d) or (e) of this section, each handler shall, on or before the last day of the month, make a partial payment to each producer from whom milk was received during the first

15 days of the month based on the provisions set forth in § 1139.73(a);

(b) Except as provided in (c), (d) or (e) of this section, each handler shall, on or before the 17th day of the following month make a final payment to each producer for milk received from him during the month at no less than the total amount computed in accordance with the provisions set forth in § 1139.73(b) with respect to such milk:

(1) Less any deductions for marketing services pursuant to § 1139.80;

(2) Less payment made pursuant to (a) of this section for such month;

(3) Plus or minus adjustments made in previous payments to such producer, and proper deductions authorized in writing by such producer; and

(4) If by the date specified such handler has not received full payment from the market administrator pursuant to § 1139.72 for such month, he may reduce his payments to producers prorata by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(c) In the case of a cooperative association authorized by its producers to collect payment for their milk, and which has requested such payment from any handler in writing and has so notified the market administrator, payment shall be made for milk received during the month as follows:

(1) On or before the 3rd day prior the last day of the month for milk received from the producers of such cooperative association at the rates set forth in § 1139.73(a);

(2) On or before the 14th day of the following month such handler shall pay to such cooperative association the sum of the payments computed in accordance with the procedures set forth in § 1139.73(b) with respect to deliveries by producers of such cooperative association to handler(s) from whom payment has been requested, less the amounts of payments made to such cooperative association pursuant to (c)(1) of this section, and less the amount retained by handlers as authorized deductions.

(d) Each handler who received milk from producers for which payment is to be made to a cooperative association pursuant to (c) of this section shall report to such cooperative association and to the market administrator on or before the 7th day of the following month as follows:



(1) The total pounds of milk received during the month, and if requested, the pounds received from each member producer;

(2) The amount of payment made pursuant to (c)(1) of this section and the quantity of milk to which such payment applied; and

(3) The amount or rate and nature of any proper deductions authorized to be made from payments.

(e) Each handler shall pay a cooperative for milk received by him from such cooperative association in its capacity as a handler defined in § 1139.9(c), or from a pool plant operated by such association as follows:

(1) On or before the 3rd day prior to the last day of each month for milk received during the first 15 days of the amount per hundredweight computed pursuant to the provisions of § 1139.73(a); and

(2) On or before the 14th day of the following month for milk received during the month not less than the amount computed for such milk in accordance with the provisions under § 1139.73(b), less the amounts of payments made to such cooperative association pursuant to (e)(1) of this section, and less the amount retained by handlers as authorized deductions.

§ 1139.75 Location and zone differentials for producer and nonpool milk.

(a) In making payments pursuant to § 1139.72 the market administrator shall reduce the weighted average differential value computed pursuant to § 1139.61 by the location or zone differential applicable at the plant where such milk was first received from producers.

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in § 1139.52(c) 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 Minnesota-Wisconsin price.

**§ 1139.76 Payments by a handler operating a partially regulated distributing plant.**

(a) Each handler who operates a partially regulated distributing plant, except such a plant which is subject to a milk classification and pricing program providing for a marketwide pooling of producer returns imposed under the authority of a state government, shall pay on or before the 25th day after the end of the month to the market administrator for deposit into the producer-settlement fund the amount computed pursuant to (a)(1) of this section, or, if the handler submits pursuant to §§ 1139.30(b) and 1139.31(c) the information necessary for making

the appropriate computations, and so elects, the amount computed pursuant to (a)(2) of this section;

(1) An amount computed as follows:

(i) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(ii) Subtract the pounds of fluid milk products received at the partially regulated distributing plant;

(a) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(b) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(iii) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(iv) Multiply the remaining pounds by the weighted average differential computed pursuant to § 1139.61 as adjusted by the appropriate location or zone differential (but in no case less than 0);

(v) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in (a)(1)(iii) of this section by the difference between the Class I price adjusted to the appropriate plant location (but in no case less than 0) and the Minnesota-Wisconsin price.

(2) An amount computed as follows:

(i) Determine the value that would have been computed pursuant to § 1139.60 for the partially regulated distributing plant if the plant had been a pool plant subject to the following modifications:

(a) Fluid milk products and bulk fluid cream products received at a partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(b) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to (a)(2)(i)(a) of this section. Any such transfers remaining

after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1139.60(j) shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price (or weighted average price) adjusted to the location of the nonpool plant (but not to be less than the class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order;

(c) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1139.60 for such handler shall include in lieu of the value of other source milk specified in § 1139.60(1) less the value of such other source milk specified in § 1139.71(a)(2)(ii) a value of milk determined pursuant to § 1139.60 for each nonpool plant that is not another order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1139.7(c) subject to the following conditions:

(1) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1139.30(b) and 1139.31(b) similar reports for each nonpool supply plant;

(2) The operator of such nonpool supply plant maintains books and records showing the utilization of all milk and milk products received at such plant which are made available if requested by the market administrator for verification purposes; and

(3) The value of milk determined pursuant to § 1139.60 for such nonpool supply plants shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plants; and

(ii) From the partially regulated distributing plant's value of milk computed pursuant to (a)(2)(i) of this section, subtract:

(a) The gross payment made by the operator of such partially regulated distributing plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(b) If (a)(2)(i)(c) of this section applies, the gross payments by the operator of such nonpool supply plant for milk received at the plant during the month



that would have been producer milk if the plant had been fully regulated;

(c) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant, and like payments by the operator of the nonpool supply plant if (a)(2)(i)(c) of this section applies.

(b) Each handler who operates a partially regulated distributing plant which is subject to marketwide pooling of returns under a milk classification and pricing program that is imposed under the authority of a state government shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund an amount computed as follows:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant;

(i) As Class I milk from pool plants and other plants, except that subtracted under a similar provision under another Federal milk order;

(ii) From another nonpool plant that is not another order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plants by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Multiply the remaining pounds by the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price), and subtract the amount the handler pays under the state program, based on the classification and the appropriate class prices therefor, of the products disposed of in the marketing area.

#### § 1139.77 Adjustment of accounts.

(a) Whenever audit by the market administrator of any handler's reports, books, records, or accounts or other verification discloses errors resulting in money due a producer, a cooperative association, or the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due, and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred; and

(b) Any unpaid balance due from a handler pursuant to §§ 1139.71 and 1139.76 or under this section shall be

increased 1% per month on the next day following the due date of such unpaid obligation and any balance remaining unpaid shall likewise be increased on the first day of each month thereafter until paid.

(c) For purposes of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

#### Administrative Assessment and Marketing Service Deduction

##### § 1139.80 Deduction for marketing services.

(a) Except as set forth in (b) hereof, each handler in making payments to producers for milk pursuant to § 1139.74 (other than milk of his own production) shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 14th day after the end of the month.

(b) The monies retained by the market administrator pursuant to (a) of this section shall be expended by the market administrator for market information and for the verification of weights, samples and tests of milk of any producer for whom a cooperative association is not performing the same services on a comparable basis as determined by the Secretary.

##### § 1139.81 Assessment for order administration.

As his prorata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 14th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including milk received from a handler defined in § 1139.9(c), but excluding in the case of a cooperative association which is a handler pursuant to § 1139.9(c), milk which was received at the pool plant of another handler) and such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 139.44 (g)(1) and (k), except such other source milk that is excluded from the computations pursuant to § 1139.60 (j) and (l);

(c) Route disposition in the marketing area from a partially regulated distributing plant during the month that exceeds the quantity subtracted pursuant to § 1139.76(a)(1)(ii).

#### PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS<sup>2</sup>

##### § 1000.1 Scope and purpose of Part 1000.

This part sets forth certain terms, definitions, and provisions which shall be common to and part of each Federal milk marketing order except as specifically defined otherwise, or modified, or otherwise provided, in an individual order.

##### § 1000.2 Definitions.

The following terms shall have the following meanings as used in the order:

(a) *Act*. "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

(b) *Order*. "Order" means the applicable part of Title 7 of the Code of Federal Regulations issued pursuant to section 8c of the Act as a Federal milk marketing order (as amended).

(c) *Department*. "Department" means the U.S. Department of Agriculture.

(d) *Secretary*. "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in his stead.

(e) *Person*. "Person" means any individual, partnership, corporation, association, or other business unit.

##### § 1000.3 Market administrator.

(a) *Designation*. The agency for the administration of the order shall be a market administrator selected by the Secretary and subject to removal at the Secretary's discretion. The market administrator shall be entitled to compensation determined by the Secretary.

(b) *Powers*. The market administrator shall have the following powers with respect to each order under his administration:

(1) Administer the order in accordance with its terms and provisions;

(2) Make rules and regulations to effectuate the terms and provisions of the order;

(3) Receive, investigate, and report complaints of violations to the Secretary; and

<sup>2</sup> These provisions are included solely for information of interested parties. They may not be changed on the basis of this proceeding.



(4) Recommend amendments to the Secretary.

(c) *Duties.* The market administrator shall perform all the duties necessary to administer the terms and provisions of each order under his administration, including, but not limited to, the following:

(1) [Reserved]

(2) Employ and fix the compensation of a person necessary to enable him to exercise his powers and perform his duties;

(3) Pay out of funds provided by the administrative assessment, except expenses associated with functions for which the order provides a separate charge, all expenses necessarily incurred in the maintenance and functioning of his office and in the performance of his duties, including his own compensation;

(4) Keep records which will clearly reflect the transactions provided for in the order, and upon request by the Secretary, surrender the records to his successor or such other person as the Secretary may designate;

(5) Furnish information and reports requested by the Secretary and submit his records to examination by the Secretary;

(6) Announce publicly at his discretion, unless otherwise directed by the Secretary, by such means as he deems appropriate, the name of any handler who, after the date upon which he is required to perform such act, has not:

(i) Made reports required by the order;

(ii) Made payments required by the order;

(iii) Made available records and facilities as required pursuant to § 1000.5;

(7) Prescribe reports required of each handler under the order. Verify such reports and the payments required by the order by examining records (including such papers as copies of income tax reports, fiscal and product accounts, correspondence, contracts, documents or memoranda of the handler, and the records of any other persons that are relevant to the handler's obligation under the order), by examining such handler's milk handling facilities; and by such other investigation as the market administrator deems necessary for the purpose of ascertaining the correctness of any report or any obligation under the order. Reclassify skim milk and butterfat received by any handler if such examination and investigation discloses that the original classification was incorrect.

(8) Furnish each regulated handler a written statement of such handler's

accounts with the market administrator promptly each month. Furnish a corrected statement to such handler if verification discloses that the original statement was incorrect; and

(9) Prepare and disseminate publicly for the benefit of producers, handlers, and consumers such statistics and other information concerning operation of the order and facts relevant to the provisions thereof (or proposed provisions) as do not reveal confidential information.

#### § 1000.4 Continuity and separability of provisions.

(a) *Effective time.* The provisions of the order or any amendment to the order shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

(b) *Suspension or termination.* The Secretary shall suspend or terminate any of all of the provisions of the order whenever he finds that such provision(s) obstructs or does not tend to effectuate the declared policy of the Act. The order shall terminate whenever the provisions of the Act authorizing it cease to be in effect.

(c) *Continuing obligations.* If upon the suspension or termination of any or all of the provisions of the order, there are any obligations arising under the order, the final accrual or ascertainment of which requires acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination.

(d) *Liquidation.* (1) Upon the suspension or termination of any or all provisions of the order, the market administrator, or such other liquidating agent designated by the Secretary, shall if so directed by the Secretary liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition; and

(2) If a liquidating agent is so designated, all assets and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

(e) *Separability of provisions.* If any provision of the order or its application to any person or circumstances is held invalid, the application of such provision and of the remaining provisions of the order persons or circumstances shall not be affected thereby.

#### § 1000.5 Handler responsibility for records and facilities.

Each handler shall maintain and retain records of his operations and make such records and his facilities available to the market administrator. If adequate records of a handler, or if any other persons, that are relevant to the obligation of such handler are not maintained and made available, any skim milk and butterfat required to be reported by such handler for which adequate records are not available shall not be considered accounted for or established as used in a class other than the highest priced class.

(a) *Records to be maintained.* (1) Each handler shall maintain records of his operations (including, but not limited to, records of purchase, sales, processing, packaging, and disposition) as are necessary to verify whether such handler has any obligation under the order, and if so, the amount of such obligation. Such records shall be such as to establish for each plant or other receiving point for each month:

(i) The quantities of skim milk and butterfat contained in, or represented by, products received in any form, including inventories on hand at the beginning of the month, according to form, time, and source of each receipt;

(ii) The utilization of all skim milk and butterfat showing the respective quantities of such skim and butterfat in each form disposed of or on hand at the end of the month; and

(iii) Payments to producers, dairy farmers and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

(2) Each handler shall keep such other specific records as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(b) *Availability of records and facilities.* Each handler shall make available all records pertaining to such handler's operations and all facilities the market administrator finds are necessary for such market administrator to verify the information required to be reported by the order and/or to ascertain such handler's reporting, monetary or other obligation under the order. Each handler shall permit the market administrator to weigh, sample,



and test milk and milk products and observe plant operations and equipment and make available to the market administrator such facilities as are necessary to carry out his duties.

(c) *Retention of records.* All records required under the order to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such records pertain. If, within such 3-year period, the market administrator notifies the handler in writing that the retention of such records, or of specified records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such records, or specified records, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

#### § 1000.6 Termination of obligations.

The provisions of this section shall apply to any obligation under the order for the payment of money:

(a) Except as provided in paragraphs (b) and (c) of this section, the obligation of any handler to pay money required to be paid under the terms of the order shall terminate 2 years after the last day of the month during which the market administrator receives the handler's report of receipts and utilization on which such obligation is based, unless within such 2-year period, the market administrator notifies the handler in writing that such money is due and payable. Service of such written notice shall be complete upon mailing to the handler's last known address and it shall contain but need not be limited to the following information:

- (1) The amount of the obligation;
- (2) The month(s) on which such obligation is based; and
- (3) If the obligation is payable to one or more producers or to a cooperative association (except an obligation to be prorated to producers under an individual handler pool), the name of such producer(s) or such cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under the order, to make available to the market administrator all records required by the order to be made available, the market administrator may notify the handler in

writing, within the 2-year period provided for in paragraph (a) of this section, of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such records pertaining to such obligation are made available to the market administrator;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under the order to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed; and

(d) Unless the handler files a petition pursuant to section 8c(15)(A) of the Act and the applicable rules and regulations (7 CFR 900.50 et seq.) within the applicable 2-year period indicated below, the obligation of the market administrator:

(1) To pay a handler any money which such handler claims to be due him under the terms of the order shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received; or

(2) To refund any payment made by a handler (including a deduction or offset by the market administrator) shall terminate 2 years after the end of the month during which payment was made by the handler.

*Proposed by Rowland's, Inc.:  
Proposal No. 2*

Change the Class I and producer price adjustment for locations in Idaho to more closely align Class I prices between Idaho handlers regulated under the Great Basin order and those regulated under the Southwestern Idaho-Eastern Oregon Federal milk order. The proposal would apply both to the proposed merged order and to the present Great Basin order.

*Proposed by Kraft, Inc.:  
Proposal No. 3*

Amend § 1139.13(d) (2) and (3) of Proposal No. 1 or 1136.13(c)(3) and (4) of the present Great Basin order to read as follows:

\* \* \* \* \*

(d) \* \* \*

(2) A cooperative association or federation may divert for its account the milk of any producer from whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed, in the months of April through August, the volume of the

producer milk which the association or federation causes to be delivered to pool plants during the month, and may not exceed 50 percent of such volume during other months. Two or more cooperative associations may have their allowable diversions computed on the basis of their combined deliveries of the producer milk which the cooperative associations cause to be delivered to pool plants, or diverted pursuant to this section, if each association has filed a request in writing with the market administrator before the first day of the month the agreement is effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative association according to a method approved by the market administrator.

(3) The operator of a pool plant (other than a cooperative association or federation) may divert for his account the milk of any producer (other than milk diverted pursuant to (d)(2) of this section) from whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed, in the months of April through August, the volume of milk received at such pool plant from producers for which the operator of such plant is the handler for the month, and may not exceed 50 percent of such volume during other months. The milk for which the operator of such plant is the handler for the month may not duplicate milk diverted pursuant to (d)(2) of this section.

*Proposed by Safeway Stores, Inc.:  
Proposal No. 4*

Amend Proposal No. 1 by revising proposed § 1139.52 to read as follows:

#### § 1139.52 Price adjustments for zone and location differentials.

\* \* \* \* \*

(b) \* \* \*

(1) For milk received from producers at a pool plant located outside the zones specified in (a) of this section, the Class I price (Zone 3, when Clark County, Nevada courthouse is used to determine mileage) shall be reduced at the following rate: 1.5 cents per hundredweight for each ten miles or fraction thereof of distance by shortest hard-surfaced highway as determined by the market administrator, between the plant and the nearest of the following courthouses:

Clark County, Nevada  
Salt Lake County, Utah

\* \* \* \* \*

*Proposal No. 5*

Amend Proposal No. 1 by revising



proposed § 1139.73 to read as follows:

*§ 1139.73 Value of producer milk.*

(a) The partial payment for milk received during the first 15 days of the month shall be not less than the Minnesota-Wisconsin price for the preceding month times the quantity of milk received.

*Proposed by the Dairy Division,  
Agricultural Marketing Service:*

*Proposal No. 6*

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator, W. Joe Albright, P.O. Box 440860, Aurora, Colorado 80044, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture  
Office of the Administrator, Agricultural  
Marketing Service  
Office of the General Counsel  
Dairy Division, Agricultural Marketing  
Service (Washington Office only)  
Office of the Market Administrator,  
Great Basin and Lake Mead  
Marketing Areas

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C., on: February 6, 1986.

James C. Handley,  
Administrator.

[FR Doc. 86-2931 Filed 2-10-86; 8:45 am]

BILLING CODE 3410-02-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

[Docket No. PRM-50-40]

#### John F. Doherty; Petition for Rulemaking

**AGENCY:** Nuclear Regulatory  
Commission.

**ACTION:** Receipt of petition for  
rulemaking.

**SUMMARY:** The Nuclear Regulatory Commission requests public comments on this notice of receipt of a petition for rulemaking dated November 27, 1985, that was filed by John F. Doherty. The petition was docketed by the Commission on December 2, 1985, and assigned Docket No. PRM-50-40. The petitioner requests that the Commission amend its regulations to require that, following a power reactor trip, the licensee, if unable to determine the cause of the reactor trip in eight hours, be required to place the reactor in cold shutdown pending further study of the event.

**DATES:** Submit comments by April 14, 1986. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

**ADDRESSES:** Send comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Obtain a copy of the petition by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

A copy of the petition and of comments on the petition are available for inspection or copying for a fee at the Public Document Room at 1717 H Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7086 or, Toll Free, 800-368-5642.

#### **SUPPLEMENTARY INFORMATION:**

##### **Petitioner's Proposal**

The petitioner urges the Commission to adopt a rule that would state: Following a power reactor trip, the licensee, if unable to determine the cause of the reactor [trip] in eight hours, shall be required to place the reactor in

cold shutdown pending further study of the event.

The petitioner states that this proposal could logically be included in 10 CFR 50.72, "Immediate Notification Requirements for Operating Nuclear Power Reactors," or in some other appropriate section of the regulations that could require the proposed licensee action.

##### **Basis of the Proposal**

The petitioner bases this proposal on a finding on page 2-8 of NUREG-1000, Vol. 1, "Generic Implications of ATWS Events at the Salem Nuclear Power Plant," April 1983. This document states that at one utility "... [i]f the cause for the reactor trip cannot be determined within eight hours, the plant is required by company policy to be placed in cold shutdown pending further study of the event." The petitioner contends that the Office of Nuclear Reactor Regulation cites this utility's policy favorably by continuing in the document with, "This operational philosophy exhibits the intuitively questioning attitude that NRC encourages in its licensees."

##### **Reason for the Proposal**

The petitioner contends that the 1983 Salem ATWS event is a prototype of the kind of incident that his proposal is designed to prevent. He further states that on the day preceding this event at Salem there was a "partial failure to SCRAM" that the utility thought had been caused by an operator manually tripping the reactor. The petitioner states that Salem operated under a rule that allowed higher management to authorize restart of the reactor if the cause for a trip could not be identified.

He further cites NUREG-1000 as indicating that in a study of a case such as Salem, a study of process recorders would have shown that a "SCRAM failure" had occurred and that restart would probably lead to a more serious "SCRAM failure," which is what occurred at Salem.

##### **Conclusion**

The petitioner concludes from the information cited from NUREG-1000, Vol. 1, and the seriousness of the 1983 Salem ATWS event, that the NRC should adopt a rule such as he proposes. He thinks that such a rule would lessen any of a number of possible accidents that may occur if a reactor is restarted after a reactor trip before ascertaining what caused the trip.

Dated at Washington, DC, this 5th day of February 1986.



For the Nuclear Regulatory Commission.  
 Samuel J. Chilk,  
*Secretary of the Commission.*  
 [FR Doc. 86-2954 Filed 2-10-86; 8:45 am]  
 BILLING CODE 7590-01-M

## INTERNATIONAL TRADE COMMISSION

### 19 CFR Part 201

#### Missing Children Information in Commission Mailings; Proposed Amendments

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Proposed amendment of rules; request for comments.

**SUMMARY:** This rule amends part 201 of the Commission's *rules of practice and procedure* to add a provision for implementing a policy of including information on missing children in certain mailing made by the Commission. This regulation is issued to comply with the requirement set out in 39 U.S.C. 3220. Comments are requested on the proposed amendments.

**DATE:** Comments will be considered if received by March 13, 1986.

**FOR FURTHER INFORMATION CONTACT:** Paul R. Bardos, Esq., Office of General Counsel, U.S. International Trade Commission, 701 E Street NW, Washington, DC 20436, telephone 202-523-0375.

**SUPPLEMENTARY INFORMATION:** Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

#### List of Subjects in 19 CFR Part 201

Administrative practice and procedure.

#### PART 201—[AMENDED]

Part 201 is amended as set forth below:

1. Section 201.3a, concerning missing children information, is added as follows:

##### § 201.3a Missing Children Information.

(a) Pursuant to 39 U.S.C. 3220, penalty mail sent by the Commission may be used to assist in the location and recovery of missing children. This section establishes procedures for such use and is applicable on a Commission-wide basis. The program and Planning Branch, Office of Management Services, 202-724-1234, shall be the point of contact for matters related to the implementation of this section.

(b) Missing children information shall be inserted in or affixed to such mailings of Commission monthly calendars, notices, press releases, and other documents as the Commission may direct. Such missing children information shall be obtained from the National Center for Missing and Exploited Children.

(c) The procedure established in subsection (b) above will result in missing children information being inserted in an estimated 25 percent of the Commission's penalty mail and will cost an estimated \$1,500 for the first year of implementation. The Director of Administration shall make such changes in the procedure as he deems appropriate to maximize the use of missing children information in the Commission's mail.

Issued: February 6, 1986.  
 By order of the Commission.  
 Kenneth R. Mason,  
*Secretary.*

[FR Doc. 86-2939 Filed 2-10-86; 8:45 am]  
 BILLING CODE 7020-02-M

### 19 CFR Part 210

#### Conduct of Investigations of Unfair Practice in Import Trade; Imposition of Attorneys Fees and Costs as an Additional Remedy for Discovery Abuse

**AGENCY:** International Trade Commission.

**ACTION:** Proposed rule to authorize the Commission's administrative law judge to provide for the imposition of attorneys fees and costs as an additional remedy for discovery abuse.

**SUMMARY:** The proposal would amend the Commission's rules to add the additional remedy of imposition of attorneys fees and costs against a party for several types of discovery abuse in adjudications before Commission administrative law judges pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under current practice, discovery abuses may be remedied by evidentiary means (such as drawing adverse inferences and permitting the introduction of secondary evidence).

Under the proposed rules, the presiding administrative law judge (ALJ) would be authorized to impose the remedy of attorneys fees and costs in addition to or in lieu of the existing discovery remedies. Subject to the qualifications set forth in the proposed rules, the proposed rules authorize the imposition of attorneys fees and costs in the following instances: (1) When a party moves to compel discovery or

opposes a motion to compel discovery; (ii) when a party fails to comply with a discovery order; (iii) when a party fails to answer or object to interrogatories, fails to appear for deposition, or fails to serve a proper response to a request for inspection; and (iv) when a party fails to admit the genuineness of a document or the truth of any matter. Comments are requested from the public regarding all aspects of the proposed rules.

**DATES:** All comments must be received on or before April 14, 1986.

**ADDRESSES:** All comments concerning the proposed rules should be submitted to the Secretary, U.S. International Trade Commission, 701 E Street NW, Washington, DC 20436.

**FOR FURTHER INFORMATION CONTACT:** Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW, Washington, DC 20436, telephone 202-523-0493.

**SUPPLEMENTARY INFORMATION:** Section 337 directs the Commission to conduct investigations of alleged unfair methods of competition and unfair acts in the importation of articles, or in their sale, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. These investigations must be concluded within one year, or 18 months in more complicated cases. In order to implement procedures to carry out the provisions of section 337, the Commission has adopted comprehensive rules of practice and procedure. 19 CFR Parts 210 and 211. These rules currently include provisions to authorize and regulate discovery and to authorize the ALJs to impose sanctions in cases where a party does not comply with discovery orders. 19 CFR 210.30 through 210.37. The proposed rules amend the current rules to authorize the ALJs to direct one party (other than the Commission investigative attorney) to reimburse another party's expenses (including costs and attorneys fees) in certain situations that amount to discovery abuse. The rules would provide an additional tool by which the ALJs could control the course of discovery in section 337 investigations. The proposed rules do not attempt to define the circumstances in which use of this sanction would be appropriate; that determination is left to the sound discretion of the ALJs for development on a case-by-case basis.

The proposed rules are not designed to punish a party who has engaged in improper discovery. Rather, they are



intended to remedy particular instances of improper discovery conduct (i.e., make whole the aggrieved party) and to deter such conduct in the future. The proposed rules are also designed to discourage discovery abuse in present and future investigations.

The proposed rules allow the ALJ, *sua sponte* or on motion, to direct the payment of expenses. The rules permit the imposition of expenses after such proceedings as the ALJ deems appropriate. The Commission anticipates that in the usual case, such proceedings will consist of a motion by the aggrieved party and responses by the other party or parties. In the event that the ALJ considers the imposition of expenses *sua sponte*, the Commission anticipates that he will offer the parties an opportunity to present their views (perhaps by means of a show cause order). In either case, a hearing is not mandated, although the ALJ may hold one if he so chooses.

The ALJ's determination regarding the imposition of costs under the proposed rules will be treated as an initial determination (ID) under rule 219.53(c) of the Commission's Rules of Practice and Procedure (19 CFR 210.53(c)). Accordingly, any party to the investigation may file a petition for Commission review of the ID in accordance with rule 210.54 or the Commission may determine to review the ID on its own motion in accordance with rule 210.55 of the Commission's Rules of Practice and Procedure. 19 CFR 210.54 and 210.55, respectively. To the extent that the ALJ's order on the imposition of expenses is incorporated into an ID on the merits of an investigation under rules 210.53(a) or 210.53(b), 19 CFR 210.53(a) and 210.53(b), the Commission intends to consider the ALJ's order as part of such ID.

The proposed rules do not permit recovery of more than the actual expenses incurred by the party or parties.

The proposed rules are patterned as closely as possible on the corresponding provisions of the Federal Rules of Civil Procedure. Decisions by the Federal courts explaining and interpreting the respective provisions of the Federal Rules will be treated as persuasive, but not necessarily conclusive, authority in the interpretation of the proposed rules.

#### Authority To Issue the Proposed Rule

The Commission's authority to issue the proposed rules are found in sections 335 and 337 of the Tariff Act of 1930, the Administrative Procedure Act (APA), and the due process provisions of the U.S. Constitution.

Congress has specifically authorized the Commission "to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties." 19 U.S.C. 1335. The violation phase of Commission investigations under section 337 is conducted pursuant to the APA. 19 U.S.C. 1337(c). Section 337 investigations are adjudicative and the parties are granted a series of due process rights. See generally 19 CFR Part 210. Moreover, Congress has granted administrative agencies the power to take steps necessary to prevent the deprivation of rights in adjudications. 5 U.S.C. 556(c). Accordingly, the Commission is empowered, under both section 335 and the APA, to issue rules and regulations necessary for the fair conduct of its adjudications.

Administrative proceedings that determine property rights (as section 337 investigations do) turn on specific issues of fact regarding particular parties. In such cases, whether or not they are governed by the APA, an adjudication is required by due process. "[D]iscovery must be granted if in the particular situation a refusal to do so would so prejudice a party as to deny him due process." *McClelland v. Andrus*, 606 F.2d 1278, 1286 (D.C. Cir. 1979). Agency discovery practice must conform to due process requirements. Denial of discovery could be a denial of due process in section 337 cases since, in most instances, there could be no full and fair proceeding without discovery.

Even in the absence of an express statutory grant of discovery authority, discovery authority is inherent in an agency's adjudicative authority. Courts have recognized that agencies may provide for discovery even in the absence of a specific statutory authorization. *E.g.*, *McClelland v. Andrus*, *supra*.

To make this discovery meaningful, an agency must have the ability to control the discovery process and to impose remedies for failures to abide by the rules. This need is particularly acute at the Commission because of the relatively short time period within which section 337 investigations must be completed.

Most agencies that conduct adjudications have enacted rules of procedure that provide sanctions for failure to make discovery and/or abuse of the discovery process. In general, agency rules provide for sanctions similar to those contained in the Federal Rules of Civil Procedure and those currently in force at the Commission. The Commission is aware of no reported decision in which a court has denied an

agency the authority to issue discovery sanctions. In at least one instance, moreover, an agency was required to impose discovery sanctions, even though such sanctions were not contained in its rules. *International Union (UAW), v. N.L.R.B.* 459 F.2d 1329 (D.C. Cir. 1972).

#### Explanation of the proposed rules

##### A. Failure To Comply With Order Compelling Discovery

The Commission proposes to amend rule 210.36(b) by adding a new subsection (6) authorizing the ALJ to impose the expenses incurred by any party as a result of another party's failure to comply with a discovery order unless such failure was substantially justified. This rule is based on F.R.C.P. 37(b). Imposition of the remedial sanction authorized by the proposed rules is discretionary and would be in addition to, or in lieu of, existing discovery sanctions. Consideration of whether to impose this sanction may be triggered by motion by an allegedly prejudiced party or the ALJ may raise the matter *sua sponte*.

The proposed rules would authorize the ALJ, for example, to require the party failing to comply with the discovery order to reimburse other parties their costs in obtaining secondary evidence for the evidence covered by the order. The Commission contemplates that the ALJ, in determining remedies for failure to comply with a discovery order, will consider the costs that such an order may impose on the party. Thus, in some circumstances, it may be more appropriate to draw adverse inferences rather than permit the introduction of secondary evidence, thereby relieving the party of the expenses of procuring such evidence. In some circumstances, the ALJ may find it appropriate to issue more than one sanction.

In considering whether failure was substantially justified, it is anticipated that the ALJ will consider, *inter alia*, good faith efforts, if any, to comply with the motion.

An order issued under this proposed rule will be an ID within the meaning of rule 210.53(c) of the Commission's Rules of Practice and Procedures. 19 CFR 210.53(c). Any party to the investigation may petition for review of the ID as provided in rule 210.54. 19 CFR 210.54.

##### B. Expenses for Motion To Compel or for Protective Order

The Commission further proposes to amend rule 210.36 by adding a new subsection (c) to address those



instances in which a party's conduct unnecessarily has caused another party to move for an order compelling discovery or for a protective order. The proposed rule is based on F.R.C.P. 37(a)(4). The purpose of this proposal is to encourage timely discovery and avoid needless delays. Here again, award of expenses by an ALJ is discretionary and will depend on the facts and circumstances of each particular instance. Among other factors, the Commission expects that the ALJ will consider whether the motion to compel or for protective order was filed absent informal attempts by the movant to amicably resolve the discovery dispute.

This proposed rule is not an alternative for the imposition of expenses under proposed rule 210.36(b)(6) and, in appropriate circumstances, expenses may be awarded both for obtaining an order to compel and for failure to comply with such an order.

Here again, an order issued under this proposed rule will be an ID within the meaning of rule 210.53(c) of the Commission's Rules.

#### c. Expenses on Failure To Admit

The Commission further proposes to amend rule 210.36 by adding a new subsection (d) to address those instances in which a party fails to admit the truth of any matter or the genuineness of a document as requested under rule 210.34. This rule is based on F.R.C.P. 37(c). The proposal is designed to remedy the situation in which one party is forced, because of another party's failure to admit, to take the time and expense to prove the truth of a matter or the genuineness of a document. This proposed rule will also foster economy at evidentiary hearings before the ALJ.

Although this proposal permits an award of attorneys fees and costs for failure to admit, its use by the ALJs is discretionary. It is expected that the ALJs will administer this provision in light of the realities of section 337 investigations, particularly the fact that there are usually foreign firms named as respondents. Thus, the Commission intends that the ALJs will give specific consideration to the timing of the request for admissions and will not impose attorneys fees and costs unless the party to whom the request is addressed has a reasonable opportunity, after notice, to ascertain the truth of the matter or the genuineness of the document and to communicate this to the other parties.

Here again, an order issued under this proposed rule will be an ID within the meaning of the Commission's Rules.

#### D. Failure To Attend Deposition, To Answer Interrogatories, or To Respond to Request for Inspection

The Commission proposes to amend rule 210.36 by adding a new subsection (e) to permit the ALJ to impose expenses in the event that a party or person designated to testify on behalf of a party fails to appear for deposition, fails to serve answers or objections to interrogatories, or fails to serve a written response to a request for inspection. This proposed rule is based on F.R.C.P. 37(d). The proposed rule would authorize the ALJs to impose this remedy without awaiting the filing of a motion to compel.

The asserted impropriety of the discovery sought may not be raised in opposition to the imposition of these costs. If the party believes that the discovery is improper, its remedy must be by way of seeking a protective order.

With regard to failure to attend at deposition, appearance at the deposition is, of itself, not sufficient to avoid the imposition of this remedy. It is expected that the deponent will substantially respond to the questions put. In the event that a party expects to object to major portions of the deposition, the proper procedures include good faith efforts among the parties to resolve their differences and, failing resolution, a motion for protective order. In the event that during the course of a deposition reasonably unforeseeable differences arise over lines of questioning, the proper procedures include good faith efforts among the parties to resolve those differences and, failing resolution, they may either recess that part of the deposition pending resolution by the ALJ or seek immediate resolution from the ALJ telephonically.

Here again, an order issued under this proposed rule will be an ID within the meaning of the Commission's Rules.

#### E. Conforming Amendments to Rule 210.53(c)

Since the Commission proposes that ALJ orders on motions regarding the imposition of expenses will be IDs, the Commission also proposes to amend rule 210.53(c) of the Commission's Rules of Practice and Procedure. 19 CFR 210.53(c). Rule 210.53(c) establishes certain enumerated ALJ orders as IDs. The proposed revisions to the rule add reference to ALJ orders on the imposition of expenses to that enumeration.

#### List of Subject in 19 CFR Part 210

Administrative practice and procedure; Business and industry,

Customs duties and inspection, Imports, Investigations.

#### PART 210—[AMENDED]

1. The authority citation for Part 210 is revised to read as follows:

Authority: Secs. 333, 335, and 337 of the Tariff Act of 1930, 46 Stat. 699; 19 U.S.C. 1333 and 72 Stat. 680; 19 U.S.C. 1335; 5 U.S.C. 51 et. seq.

#### § 210.36 [Amended]

2. Section 210.36 is amended by removing the word "and" following the semicolon in paragraph (b)(4).

3. Section 210.36 is further amended by removing the period at the end of paragraph (b)(5) and replacing it with "; and".

4. Section 210.36 is further amended by adding paragraph (b)(6) to read as follows:

\* \* \* \* \*

(b) \* \* \*

(6) *Sua sponte* or on motion and after such proceedings as he deems appropriate, rule that, in lieu of or in addition to any of the foregoing orders, the party failing to obey the order pay the reasonable expenses, including attorneys fees, caused by the failure, unless he finds that the failure was substantially justified or that other circumstances make an award of expenses unjustified.

5. Section 210.36 is further amended by adding paragraphs (c), (d), (e), and (f) to read as follows:

\* \* \* \* \*

(c) *Expenses for motion to compel discovery or for protective order.* (1) If a motion to compel discovery under paragraph (a) of this section is granted or if a motion for protective order under paragraph (a) of § 210.37 is granted, the administrative law judge, *sua sponte* or on motion by a party and after such proceedings as he deems appropriate, may require the party whose conduct necessitated the motion to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorneys fees, unless the administrative law judge finds that the failure was substantially justified or that other circumstances make an award of expenses unjustified.

(2) If a motion to compel discovery under paragraph (a) of this section is denied or if a motion for protective order under paragraph (a) of § 210.37 is denied, the administrative law judge, *sua sponte* or on motion by party and after such proceedings as he deems appropriate, may require the moving party to pay the party who opposed the motion the reasonable expenses



incurred in opposing the motion, including attorney's fees, unless it is found that the making of the motion was substantially justified or that other circumstances make an award of expenses unjustified.

(3) If a motion to compel discovery under paragraph (a) of this section or a motion of protective order under paragraph (a) of § 210.37 is granted in part and denied in part, the administrative law judge, *sua sponte* or on motion by a party and after such proceedings as he deems appropriate, may apportion the reasonable expenses incurred in relation to the motion among the parties in a just manner.

(d) *Expenses on failure to admit.* If a party ("requestee") fails to admit the genuineness of any document or the truth of any matter as requested under § 210.34, and if the party requesting the admissions ("requester") thereafter proves the genuineness of the document or the truth of the matter, the ALJ may, *sua sponte* or on motion of the requester, order that the requestee pay to the requester the reasonable expenses incurred in making that proof, including reasonable attorney fees. The administrative law judge shall not so order when it is found that (1) the request was held unreasonable under paragraph (c) of § 210.34 or paragraph (a) of § 210.37, or (2) that the admission sought was of no substantial importance, or (3) the requestee had reasonable ground to believe that it might prevail on the matter, or (4) there was other good reason for the failure to admit.

(e) *Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection.* If a party or an officer, director, or managing agent of a party or person designated to testify on behalf of a party fails (1) to appear for deposition after being served with a proper notice, or (2) to serve answers or objections to interrogatories under § 210.32 after proper service of the interrogatories, or (3) to serve a written response to a request for inspection under § 210.33 after proper service of the request, the administrative law judge, *sua sponte* or on motion of a party and after such proceedings as he deems appropriate, may issue such orders in regard to the failure as are just, including any action authorized under paragraph (b) of this section. In lieu of any order or in addition thereto, the administrative law judge may require the party failing to act to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the administrative law judge finds that the failure was

substantially justified or that other circumstances make an award of expenses unjust. The failure to act described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided in paragraph (a) of § 210.37.

(f) *Nonavailability of expenses against United States and/or the Commission.* Expenses and attorneys fees may not be imposed upon the United States, the Commission, or the Commission investigative attorney under this section.

#### § 210.53 [Amended]

5. Section 210.53(c) is redesignated as (c)(1).

6. Section 210.53 is amended by adding paragraph (c)(2) to read as follows:

\* \* \* \* \*

(c) \* \* \*  
(2) *On issues concerning the imposition of attorney's fees and costs.* *Sua sponte* or following the filing of a motion for imposition of attorneys' fees and costs pursuant to § 210.36 (b)(6), (c), (d), or (e), the administrative law judge shall grant or deny the payment of attorneys' fees and costs by filing with the Commission an initial determination.

\* \* \* \* \*

By order of the Commission.

Issued: January 29, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-2552 Filed 2-10-86; 8:45 am]

BILLING CODE 7020-02-M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1910

#### Health and Safety Standards; Occupational Exposure to Benzene

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Proposed rules; changes in hearing schedule and dates for submission of documents.

**SUMMARY:** This notice announces changes in the hearing schedule and dates for submission of comments and other documents for the proposed rule and notice of hearing on occupational exposure to benzene (50 FR 50512, December 10, 1985). On January 28, 1986 (51 FR 3474), a notice was published

canceling two of the four informal public hearings. Subsequently, a number of requests have been received by the Agency requesting an extension of the comment period. Consequently, OSHA has extended the date to receive public comments, notices of intention to appear and prehearing documentary evidence to March 6, 1986. The commencement date of the Washington hearing has been changed to March 18, 1986.

**DATES:** Comments concerning the proposed standard and notices of intention to appear at one of the informal rulemaking hearings must be received on or before March 6, 1986. Parties requesting more than 10 minutes for their presentation at the hearings and parties submitting documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence no later than March 6, 1986. Two informal public rulemaking hearings are scheduled to commence as follows.

Washington, D.C.: March 18, 1986

Los Angeles, CA.: April 2, 1986.

The public hearings will begin at 10:00 A.M. on the commencement dates.

**ADDRESSES:** Comments are to be submitted to the Docket Officer, Docket No. H-059C, Room N-3670, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, D.C. 20210, telephone (202) 523-7894.

Notices of intention to appear at the informal rulemaking hearings, testimony and documentary evidence are to be sent to: Tom Hall, OSHA Division of Consumer Affairs, Docket No. H-059C, Room N-3662, U.S. Department of Labor, Third Street and Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 523-8024.

The locations of the informal public hearings are as follows:

Washington, D.C.: The Auditorium, Frances Perkins Department of Labor Building, Third and Constitution Avenue NW.

Los Angeles, CA: Redondo Room, Sheraton Plaza—La Reina Hotel, 6101 West Century Boulevard, Los Angeles, CA 90045-5308 (Telephone (213) 642-1111).

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Foster, OSHA, U.S. Department of Labor, Office of Public Affairs, Rm 3641, 200 Constitution Avenue NW., Washington, D.C. 20210, Telephone (202) 523-8151.

**SUPPLEMENTARY INFORMATION:** On December 10, 1985 (50 FR 50512), the Assistant Secretary for Occupational Safety and Health issued a proposed rule and notice of hearing on



occupational exposure to benzene. That notice scheduled hearings in Washington, D.C., New Orleans, Los Angeles and Chicago. In a second **Federal Register** notice published on January 28, 1986 (51 FR 3474), OSHA determined that it is not essential as part of this rulemaking to conduct all three regional hearings, especially in light of the impact of the Gramm-Rudman budget reductions. As a result, OSHA canceled the two hearings which were to be held in New Orleans, LA, on March 25, 1986, and in Chicago, IL, on April 8, 1986.

Subsequent to that notice, OSHA received four requests asking for an extension of the public comment period. The American Coke and Coal chemicals Institute (Ex. No. 201-1) asked the Agency to extend the public comment period from February 14, 1986 to March 16, 1986. The American Iron and Steel Institute (AISI) (Ex. No. 201-3) and the Chemical Manufacturers Association (CMA) (Ex. No. 201-6) asked for extension of the public comment period to March 13, 1986. The American Petroleum Institute (API) (Ex. No. 201-5) asked for extension of the public comment period and testimony documentation to March 24, 1986. API also asked for a three-week postponement of the hearings to about March 31, 1986. All four requests indicate the need for more time to develop their analyses and comments on the benzene proposal.

OSHA has reviewed these four requests, the time needed to run an orderly hearing process, and the regulatory schedule that OSHA has presented to the U.S. Court Appeals for the District of Columbia Circuit. Based on this review, OSHA has concluded that it is appropriate to extend the last date for the receipt of comments and notices of intention to appear from February 14, 1986 until March 6, 1986. It is also appropriate to extend the last date for receipt of testimony (for those requesting more than 10 minutes to testify) and documentary evidence from February 26, 1986, until March 6, 1986. (Note that testimony and prehearing evidence are due to the same date for receipt of comments and notices of intention to appear.) It is also appropriate that the hearing in Washington, D.C. scheduled to commence on March 11, 1986 be changed to commence on March 18, 1986. The commencement date for the hearing in Los Angeles will remain unchanged as April 2, 1986.

OSHA believes that these changes are reasonable, fair and responsive to the needs of the requestors. They are also

consistent with the need to meet the schedule presented to the Court, as the date for the completion of the OSHA rulemaking hearing has not been extended.

The specific rules for submitting comments, notices of intention to appear, testimony and documentary evidence, and procedures for the hearings are set forth in the benzene proposal at 50 FR 50571-2 (December 10, 1985). Signed at Washington, D.C. this 5th day of February 1986.

Patrick R. Tyson,

*Acting Assistant Secretary.*

[FR Doc. 86-2947 Filed 2-10-86; 8:45 am]

BILLING CODE 4510-26-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Chapter I

[OAR-FRL-2968-6]

### Stratospheric Ozone Protection Activities

**AGENCY:** Environmental Protection Agency.

**ACTION:** Announcement of Upcoming Workshop and Conference.

**SUMMARY:** This notice provides information on an upcoming workshop and a conference being held as part of EPA's program related to stratospheric ozone protection (See 51 FR 1257; January 10, 1986). The first workshop, scheduled for March 6-7 in Washington, D.C., focuses on future use of chlorofluorocarbons (CFCs) and other ozone-modifying substances and the availability of technological controls to limit future emissions. The second meeting is scheduled for June 16-20 also in Washington, D.C. It is being co-sponsored by the United Nations Environmental Programme and the U.S. Environmental Protection Agency and is titled "Health and Environmental Effects of Ozone Modification and Climate Change." This notice sets forth the time and location of these meetings, and provides information for people who would like to present papers. EPA encourages the public's participation in these and other upcoming activities related to the issue of protecting the ozone layer.

**DATES:** Workshop on Demand and Technical Control Options; March 6-7, 1986. Conference on Health and Environmental Effects of Ozone Modification and Climate Change; June 16-20, 1986.

**ADDRESSES:** Workshop on Demand and Technical Control; Omni Shoreham

Hotel, 2500 Calvert Street, NW, Washington, D.C. 20008.

Conference on Health and Environmental Effects of Ozone Modification and Climate Change; Hyatt Regency-Crystal City, Arlington, Virginia.

### FOR FURTHER INFORMATION CONTACT:

Stephen Seidel, U.S. Environmental Protection Agency, PM-220, 401 M Street, SW, Washington, D.C. 20460, (202) 382-2787.

**SUPPLEMENTARY INFORMATION:** In early January 1986, EPA announced in the **Federal Register** its program plan for examination of issues related to protection of stratospheric ozone (See 51 FR 1257; January 10, 1986). The goal of this plan was to provide a sound scientific and technical basis for future Agency decision-making related to both domestic and international aspects of this issue.

As part of the plan EPA identified a series of workshops and a conference related to specific aspects of that issue. This announcement presents additional information on two of those meetings.

### Workshop on Demand and Control Technologies

The first meeting under the program plan is scheduled for March 6-7 in Washington, D.C. This meeting focuses specifically on examining possible future use of CFCs and other ozone-modifying substances and on possible technical control options for limiting their use.

Specific topics that will be addressed at this meeting include:

- Summary of atmospheric science issues related to ozone modification and climate change
- Overview of Federal and private sector programs and research activities related to stratospheric protection
- Analysis of short-term estimates of possible future demand for CFCs
- Review of currently available control technologies to limit emissions
- Analysis of issues related to longer-term demand for CFCs
- Analysis of possible nonregulatory constraints or limits to the future production of CFCs
- Review of future trends in other ozone-modifying substances.

EPA is encouraging broad participation and discussion of the issues presented above. The two-day workshop will be structured to allow those interested in participating to do so by presenting papers, serving as paper discussants, or raising issues during question and answer sessions.



This meeting serves as the preliminary step in preparation for the United States' participation in an upcoming workshop on the same issues sponsored by the United Nations Environment Programme (UNEP) and scheduled for the last week in May in Rome. This and related UNEP workshops are aimed at providing an expanded information base and increasing the dialogue among nations before negotiations concerning possible global strategies to protect the ozone layer resume in late 1986.

Paper presented at this workshop in March will also be included as part of the United States' submittal for the UNEP workshop in May. As a result, papers are limited to 20 pages, but can include technical annexes of unlimited length. They must also be peer-reviewed by an expert selected by the author of the paper. The name and qualifications of the reviewer should be included in the paper. Paper titles and abstracts should be submitted by February 19th to Stephen Seidel at the address provided above.

#### Conference on Health and Environmental Effects of Ozone Modification and Climate Change

EPA and UNEP are co-sponsoring this conference in an effort to bring together researchers, industrial planners, public health professionals, and policy-makers concerned about the potential health and environmental consequences if ozone layer modification or climate change occurs. Unlike many other meetings which have focused on the degree of scientific certainty concerning ozone modification and climate change and the potential magnitude of such changes, this meeting looks specifically at the potential health and environmental consequences that could result from stratospheric or climatic change.

Specific topics that will be addressed at the conference include:

- Effects of increased exposure to UV-B radiation on human health
- Effects of increased exposure to UV-B radiation on plants and aquatic organisms
- Effects of increased exposure to UV-B radiation on materials degradation
- Effects of increased exposure to UV-B radiation on photochemical smog formation
- Effects of climate change on water resources
- Effects of climate change on agriculture and forests
- Effects of climate change on sea level rise.

Researchers interested in preparing papers for this conference should submit a one-page abstract including the

paper's title, a brief summary of contents, and contact name and address. Abstracts must be received by March 1, 1986 and should be sent to Stephen Seidel at the address given above. Authors should state whether they want to be considered only for presentation of a paper or whether they would agree instead to present their research at a poster session. (All papers selected will also be presented at the poster session.)

EPA has also tentatively scheduled a second workshop on control strategies (e.g., product bans, emission fees, capacity limits) for July in Washington, D.C. This workshop precedes a UNEP meeting scheduled for September on the same topic. More information on this meeting will be presented in a forthcoming Federal Register notice.

Information and brochures concerning the March 6-7 and June 16-20 meeting can be obtained by contacting Stephen Seidel at the address given above.

Dated: February 5, 1986.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 86-2943 Filed 2-10-86; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 52

[A-5-FRL-2968-3]

#### Approval and Promulgation of Implementation Plans; Illinois

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Proposed rulemaking.

**SUMMARY:** On April 18, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a February 24, 1983, Illinois Pollution Control Board (IPCB) Order (R78-15) as a proposed revision to the Illinois State Implementation Plan (SIP) for Total Suspended Particulates (TSP). This Order establishes a 0.6 lb. TSP/MMBTU emission limit for the City of Rochelle Municipal Steam Power Plant. Today's Federal Register notice announces USEPA's proposed approval of this revision and solicits public comment on the proposed SIP revision and USEPA's proposed rulemaking action.

**DATE:** Comments on this revision and on the proposed USEPA action must be received by March 13, 1986.

**ADDRESSES:** Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886-6035, before visiting the Regional V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

#### FOR FURTHER INFORMATION CONTACT:

Randolph O. Cano, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6035.

**SUPPLEMENTARY INFORMATION:** The City of Rochelle operates a municipal steam plant on South Main Street, Rochelle in Ogle County. Ogle County is a rural, primary agricultural area that is designated as attainment for the TSP National Ambient Air Quality Standards (NAAQS). The plant contains two coal-fired boilers with a maximum rated capacity of 107 MMBTU/hr. each. Both boilers are vented to a common 45.7m stack. On April 19, 1983, IEPA submitted a site-specific rule change for the City of Rochelle Municipal Steam Power Plant as a revision to the Illinois TSP SIP. The IPCB adopted Order R78-15 on February 24, 1983. This Order establishes Illinois Rule 203(g)(1)(C)(iii) which reads as follows:

(iii) As of March 14, 1983, the rate of emissions from Boiler # 1 and # 2 located at the Rochelle Municipal Steam Power Plant, South Main Street, City of Rochelle in Ogle County, Illinois, shall not exceed 0.6 lbs/MMBTU of actual heat input.

This Order effectively establishes a 0.6 lb TSP/MMBTU emission limit for the Rochelle plant to replace the lower limit (i.e., 0.18 lbs/MMBTU) which, along with Rule 203(g), has been invalidated as a matter of State law by the Illinois Supreme Court. Illinois has recently recodified its air pollution control regulations and is currently seeking to revalidate old Rule 203(g). These other actions do not affect the applicability of the site-specific rule for the City of Rochelle.

On June 14, 1983, USEPA notified the State that the air quality analysis provided in support of the proposed SIP revision was not consistent with current air quality modeling guidelines and that the proposed SIP revision could not be



approved for this reason. On May 24, 1985, the State submitted a revised modeling analysis intended to satisfy USEPA's concerns.

The revised modeling analysis was performed in order to demonstrate that the proposed TSP emission limitation would not cause or contribute to a violation of the TSP NAAQS. The Rochelle plant stack TSP emissions were modeled to determine their impact against background concentrations that were determined from available TSP monitor data. There are no other major TSP sources in the area expected to significantly interact with the Rochelle Steam plant. An examination of the revised modeling analysis indicates that it is consistent with USEPA modeling requirements. The modeling predicted a high, second-high TSP 24-hour concentration of  $8.4 \mu\text{g}/\text{m}^3$  (at 2.164 km) and a high annual concentration of  $0.68 \mu\text{g}/\text{m}^3$  due solely to the Rochelle plant. When these results are added to the monitored background concentrations, no violations of the TSP NAAQS are predicted.

Because the Prevention of Significant Deterioration (PSD) baseline date has not been triggered in Ogle County for TSP, an increment consumption analysis is not necessary for this revision. Regardless, it is noted the maximum predicted 24-hour and annual TSP concentrations from the Rochelle plant are well below the corresponding PSD increments for TSP.

USEPA proposes to approve the incorporation of Rule 203(g)(1)(c)(iii) into the Illinois TSP SIP. Public comment is solicited on this proposed SIP revision and on USEPA's proposed rulemaking action. Public comments received by the date indicated above will be considered in developing USEPA's final rulemaking action.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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 52

Air pollution control,  
Intergovernmental relations, Ozone,  
Hydrocarbons.

Authority: 42 U.S.C. 7401-7642.

Dated: December 24, 1985.

Alan Levin,

Acting, Regional Administrator.

[FR Doc. 86-2945 Filed 2-10-86; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 52

[A-2-FRL-2968-5; Region II Docket No. 59]

#### State Implementation Plans for Visibility Monitoring Strategy

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** This notice announces the Environmental Protection Agency's (EPA's) proposed approval of a visibility monitoring plan submitted to EPA by the New Jersey Department of Environmental Protection (NJDEP) to satisfy the requirements of 40 CFR 51.305 and section 109A of the Clean Air Act. This plan applies to the Brigantine National Wilderness "Class I" area of New Jersey. EPA approval of this plan will result in New Jersey starting a visibility monitoring program for the Wilderness area. This program will monitor trends in visibility and evaluate sources of visibility impairment.

**DATE:** Comments must be received on or before March 13, 1986.

**ADDRESSES:** All comments should be addressed to: Christopher J. Daggett, Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the proposal submitted by the State of New Jersey are available for public inspection during normal business hours at the following addresses:

Environmental Protection Agency, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278

New Jersey Department of Environmental Protection, Division of Environmental Quality, Bureau of Air Quality Management and Surveillance, John Fitch Plaza, Labor and Industry Building, 11th Floor, Room 1110, Trenton, New Jersey 08625.

#### FOR FURTHER INFORMATION CONTACT:

William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

#### SUPPLEMENTARY INFORMATION: Background

On July 12, 1985, at 50 FR 28544, the Environmental Protection Agency (EPA) noted that the New Jersey Department of Environmental Protection (NJDEP) had submitted a visibility monitoring plan for EPA's approval.

Such plans are required by regulations promulgated at 40 CFR 51.305. Interested readers should refer to EPA's July 12, 1985 notice and to EPA's October 23, 1984 proposed rulemaking at 49 FR 42670 for the history of EPA actions with regard to the visibility portion of state implementation plans.

#### EPA's Review Criteria

The criteria EPA uses to determine if visibility monitoring plans meet the requirements of 40 CFR 51.305 are that the plan must:

- (1) Provide data for new source impact analysis;
- (2) If possible, determine sources, of visibility impairment;
- (3) Assess visibility conditions for the State Implementation Plan and periodic reports; and
- (4) Consult with the Federal Land Manager (FLM).

These criteria were described at 50 FR 28544 and explained in more detail in a March 25, 1985 Visibility Monitoring Strategy Requirements memorandum from the Director of the Control Programs Development Division, of EPA's Office of Air Quality Planning and Standards to EPA Regional Office Air Division Directors.

The NJDEP plan was submitted for EPA review on May 5, 1985 and November 21, 1985, and meets the EPA criteria for approval.

The NJDEP proposal is reviewed against each EPA criterion as follows:

**Criterion 1:** The NJDEP plan meets the criterion of collecting data for new source review analysis by first using airport visibility data. NJDEP will monitor with appropriate instrumentation at a site in, or adjacent to, the Class I area, the Brigantine National Wilderness Area, by the end of 1986.

**Criterion 2:** The plan commits to evaluating the extent of haze or discoloration from the plume of the B.L. England Generating Station, a source of visibility impairment identified by the Federal Land Manager. It will also deal with other visibility impairment problems identified by the FLM and communicated by him to NJDEP.

**Criterion 3:** NJDEP will use the visibility data collected to assess visibility trends for the SIP and for regular reports.



In addition, the NJDEP plan includes a statement noting where the plan, the data collected, and the correspondence related to the plan are available for public review, as required by 40 CFR 51.306(c).

Criterion 4: The NJDEP and the FLM are working together to define the extent of visibility impairment and to set up FLM review of State new source review and monitoring actions.

#### EPA's Proposed Action

Today, EPA proposes to approve the monitoring portion of the NJDEP visibility SIP since it meets EPA requirements for such plans.

EPA's proposed approval of the NJDEP visibility monitoring plan is based on its meeting Section 169A of the Clean Air Act and applicable EPA regulations and guidelines.

Interested parties are invited to comment on this proposed approval. Comments received by March 13, 1986, will be considered in EPA's final decision. All comments received will be available for inspection at the Region II office of EPA, at 26 Federal Plaza, Room 1005, New York, New York 10278.

Under 5 U.S.C. section 605(b), I certify that this SIP approval will 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 52

Air pollution control.

Authority: 42 U.S.C. 7401-7602.

Dated: December 10, 1985.

Christopher J. Daggett,

Regional Administrator, Environmental Protection Agency.

[FR Doc. 86-2942 Filed 2-10-86; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 65

[Docket No. 9-85-31; A-9-FRL-2967-1]

**State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposed Delayed Compliance Order for Packaging Industries, Inc., San Leandro, CA**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to issue an administrative order to Packaging

Industries, Inc. The Order requires the company to bring volatile organic compounds emissions from its flexographic printing and laminating lines in San Leandro, California into compliance with the Bay Area Air Quality Management District's Regulation 8, Rule 20, part of the Federally approved California State Implementation Plan (SIP). The SIP requires final compliance with Regulation 8, Rule 20 by July 1, 1985. Because the company is unable to comply with these regulations at this time, the proposed order would establish an expeditious schedule requiring final compliance by December 31, 1986. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on EPA's proposed issuance of the Order.

**DATES:** Written comments and requests for a public hearing must be received on or before March 13, 1986.

**ADDRESS:** Comments and requests for a public hearing should be submitted to Chief of the Compliance Section, Air Management Division, U.S. EPA, 215 Fremont Street, San Francisco, California 94105. Material supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Abra Bennett, Compliance Section, Air Management Division, U.S. EPA, 215 Fremont Street, San Francisco, California 94105 at (415) 974-8057.

**SUPPLEMENTARY INFORMATION:** Packaging Industries, Inc. operates four flexographic printing and laminating lines in San Leandro, California. The proposed Order addresses volatile organic compounds (VOC) emissions from the flexographic printing and laminating lines at this facility, which are subject to the Bay Area Air Quality Management District's (BAAQMD) Rule 8-20, which is part of the Federally approved California SIP. Rule 8-20 limits the VOC emissions from graphic arts printing and coating operations. Rule 8-20-404.5 specifies July 1, 1985 as the date by which Packaging Industries, Inc. must be in compliance with the Rule. The Order requires final compliance with Rule 8-20-404 by December 31, 1986 by conversion to the use of either complying low solvent inks and hot melt

laminates, or by the installation of an add-on control device. Packaging Industries, Inc. is to continue to evaluate its compliance options until August 31, 1986, at which time it will decide whether it will be able to convert to the use of complying inks and laminates, or must purchase an add-on control device consisting of an incinerator in order to reach final compliance by December 31, 1986. The source has consented to the terms of this Order. The source has agreed to meet the Order's increments during the period of this informal rulemaking.

The proposed Order satisfies the applicable requirements of section 113(d) of the Clean Air Act (the Act). If the Order is issued, source compliance with its terms would preclude further EPA enforcement action under section 113 of the Act against the source for violations of the regulations covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded. However, Packaging Industries, Inc. has been notified that it is subject to and may be required to pay a noncompliance penalty under section 120 of the Act. Comments received by the date specified above will be considered in determining whether EPA should issue the Order. Testimony given at any public hearing concerning the Order will also be considered. After the public comment period and any public hearing, the Administrator of EPA will publish in the Federal Register the Agency's final action on the Order in 40 CFR Part 65.

All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is a significant public interest in a hearing, it will be held twenty-one days after prior notice of the date, time, and place of the hearing has been given in this publication.

#### List of Subjects in 40 CFR Part 65

Air pollution control.

Judith E. Ayres,

Regional Administrator, Region IX.

Packaging Industries, Inc., by the duly authorized undersigned, hereby consents to the provisions of this Order and believes it to be a reasonable means by which its San Leandro, California facility can achieve compliance with the Bay Area Air Quality Management District's Rule 8-20, which is part of the California State Implementation



Plan. Packaging Industries, Inc., further waives any and all rights under any provisions of law to challenge this Order.

Dated: January 20, 1986.

Ian H. Reed,

Packaging Industries, Inc.

[FR Doc. 86-2926 Filed 2-10-86; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Parts 260, 261, 266, 270, and 271

[SW-FRL-2967-8]

#### Hazardous Waste Management System; Recycled Used Oil Standards

AGENCY: Environmental Protection Agency.

ACTION: Proposed rules; Correction.

**SUMMARY:** The purpose of this notice is to correct certain typographical errors and omissions found in the proposed standards for recycled used oil published in the *Federal Register* of November 29, 1985.

**DATES:** The deadline for submitting written comments on the proposed standards for recycled oil is February 11, 1986.

**ADDRESSES:** Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-565A), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** RCRA/Superfund Hotline at (800) 424-9348 or (202) 382-3000, or for technical information, Michael Petruska at (202) 382-7917.

**SUPPLEMENTARY INFORMATION:** In the November 29, 1985 issue of the *Federal Register* EPA proposed standards for the management of recycled oil [50 FR 49212-49258]. Since publication, EPA has identified the following typographical errors and omissions which, although of a non-substantive nature, could nonetheless cause confusion among commenters:

(1) [50 FR 49223.] The citation at the end of footnote 55 ["H.R. Rep. No. 98-198, 98th Cong., 1st Sess., at 67 (1983)"] is moved to the end of footnote 56.

(2) On 50 FR 49226, middle column, EPA explained that transporters who collect recycled oil from "small quantity recycled oil generators" would be subject to the special requirements of proposed § 266.42(e)(2)(iii). Phrases were omitted from the last two sentences in the paragraph. The last two sentences in the paragraph are corrected to read as follows:

EPA reasons that this approach would help

ensure sound management of small quantity recycled oil generators' oil, while minimizing the requirements (and costs) imposed on the small generators. Comments are requested on EPA's proposed policy for regulating collected "small quantity" recycled oil, including the proposed § 266.42(2)(iii) transporter requirements.

#### § 261.6 [Corrected]

(3) In the proposed regulations [50 FR 49250-49251], a regulatory action to delete § 261.6(a)(3)(iii) was inadvertently omitted. That section identifies used oil (recycled in some manner other than being burned for energy recovery) exhibiting one or more of the RCRA characteristics of hazardous waste as one of several hazardous wastes currently exempt from Subtitle C regulation. The proposed definition of "recycled oil," and the proposed requirements of §§ 261.5(j), 261.6(a)(2)(iii), 266.30(b)(1), and Part 266, Subpart E obviously would regulate recycled oil under Subtitle C, including recycling methods in addition to burning for energy recovery (and regardless of whether the oil exhibits one of the RCRA characteristics). Consequently, § 261.6(a)(3)(iii) is deleted and paragraphs (a)(3)(iv) through (a)(3)(ix) of the section are re-numbered accordingly.

#### § 266.40 [Corrected]

(4) In the proposed regulations [50 FR 49251], one parameter of the Recycled Oil Fuel Specification (the table in proposed § 266.40(a)(2)(i)) is listed as: "Flashpoint, 100 ppm maximum." This parameter in the specification is corrected to read: "Flashpoint, 100 °F minimum."

#### § 270.60 [Corrected]

(5) In the proposed regulations [50 FR 49258], the last sentence in proposed § 270.60(d)(3)(ii) refers to "... paragraph (b)(2) of this section ..." (i.e., § 270.60). This is corrected to read "... paragraph (d)(2) of this section ..."

(6) Footnote 168 in the preamble [50 FR 49244], last phrase, is corrected to read "... would generally be inconsistent with Congress' stated concern to reduce unnecessary impediments to recycling."

Dated: February 5, 1986.

J.W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 86-2940 Filed 2-10-86; 8:45 am]

BILLING CODE 6569-50-M

#### 40 CFR Part 271

[SW-5-FRL-2968-4]

#### Michigan: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

**ACTION:** Notice of tentative determination on application of Michigan for final authorization, public hearing, and public comment period.

**SUMMARY:** The State of Michigan has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Michigan's application and has made the tentative decision that upon receipt of adequate assurances by the Michigan Attorney General, Michigan's hazardous waste program satisfies all of the requirements necessary to qualify for RCRA final authorization. Thus, EPA intends to grant final authorization to the State to operate its program in lieu of the Federal program subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984) (HSWA). Michigan's application for final authorization is available for public review and comment and a public hearing will be held to solicit comments on the application if sufficient public interest is expressed.

**DATE:** If sufficient public interest is expressed in holding a hearing, a public hearing is scheduled for March 14, 1986 at 9:30 a.m. EPA reserves the right to cancel the public hearing if sufficient public interest in holding a hearing is not communicated to EPA by telephone or in writing by March 7, 1986. EPA will determine by March 12, 1986, whether there is sufficient interest to hold the public hearing. Michigan will participate in the public hearing held by EPA on this subject, if a hearing is to be held. All written comments on Michigan's final authorization application must be received by the close of business on March 14, 1986.

**ADDRESSES:** Copies of Michigan's final authorization application are available during the hours of 9:00 a.m. to 5:00 p.m., at the following addresses for inspection and copying:

1. Michigan Department of Natural Resources, Bureau of Environmental Protection, Hazardous Waste Division, South Ottawa Building, Lansing, Michigan 48909, Phone: (517) 373-2730



2. U.S. EPA Headquarters Library, PM 2110, 401 M Street SW., Washington, DC 20460, Phone: (202) 382-5926
3. U.S. EPA, Region 5, Waste Management Division, Solid Waste Branch, 230 South Dearborn Street, 13th Floor, Chicago, Illinois 60604, Phone: (312) 886-3718.

Written comments on the application and written or telephone communication of interest in EPA's holding a public hearing on the Michigan application must be sent to, Ms. Diane Sharrow, EPA Region 5, P.O. Box A3587, Chicago, Illinois 60690-3587; (312) 886-3718. If you wish to find out whether or not EPA will hold a public hearing on the Michigan application based upon EPA's decision that there was sufficient public interest in such a hearing, write or telephone after March 10, 1986, Ms. Diane Sharrow, EPA Region 5, Solid Waste Branch, P.O. Box A3587, Chicago, Illinois 60690-3587, (312) 886-3718. If sufficient interest is expressed EPA will hold a public hearing on Michigan's application for final authorization at 9:30 a.m., on March 14, 1986, at the State of Michigan Capitol Complex, Law Building Auditorium, 525 West Ottawa, Corner of Pine and Ottawa Streets, Lansing, Michigan.

#### FOR FURTHER INFORMATION CONTACT:

Ms. Diane Sharrow, EPA, Region 5, Waste Management Division, Solid Waste Branch, 230 South Dearborn Street, 13th Floor, Chicago, Illinois 60690-3587. Phone: (312) 886-3718; FTS 886-3718.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize a State hazardous waste program to operate in the State in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization," is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006 (c), 42 U.S.C. 6926 (c)). EPA's implementing regulations at 40 CFR 271.121-271.137 establish a phased approach to interim authorization. Phase I covers EPA's regulations in 40 CFR Part 260-263, and 265 (universe of hazardous wastes generator standards, transporter standards, and standards for interim status facilities).

Phase II, in turn, has three components. Phase II A covers general permitting procedures and technical standards for containers and tanks. Phase II B covers permitting of

incinerator facilities, and Phase II C addresses the permitting of landfills, surface impoundments, waste piles, and land treatment facilities. By statute, all interim authorizations expire on January 31, 1986. Responsibility for the hazardous waste program reverts to EPA on that date if a State with interim authorization has not received final authorization, as described below. Michigan did not receive Phase I Interim Authorization.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that a State's program: (1) Is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, (3) is no less "stringent" than the Federal program, and (4) provides for adequate enforcement authority and public participation in the permitting process (Section 3006 (b); 42 U.S.C. 6926(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA's regulations for final authorization appear at 40 CFR 271.1-271.23.

##### B. Michigan

On July 24, 1985, Michigan submitted a draft application for final authorization. The complete application for final authorization was submitted on November 7, 1985. Prior to submission of the application to EPA, Michigan solicited public comments from September 22, 1985, through October 29, 1985, and held a public hearing on October 29, 1985.

Notice of the submission of the application and public hearing were published in seven newspapers across the State. The State did not receive any comments.

On January 22, 1986, EPA transmitted to Michigan consolidated comments on the State's complete application for final authorization.

The EPA required further clarification from the Michigan Attorney General in the following areas: (1) Applicability of interim status of regulated facilities; (2) public hearing requirements for permitting; (3) warrant authority and its effect on enforcement actions; (4) ability to take court action and its effect on enforcement action; and (5) exemption from disclosure of confidential materials. Michigan is currently preparing a response to EPA's comments.

EPA has evaluated the Michigan Department of Natural Resources to determine its capability to administer a quality hazardous waste management program. EPA believes that the State is capable of administering a quality RCRA program. Michigan has been

successful over the past four years in establishing the framework and the policies, and in developing the resources and management needed for an effective hazardous waste management program. One area of the Michigan program which needed improvement was identified. This was improper classification of violations which caused problems with enforcement escalation in the third and fourth quarters of FY'85. EPA believes Michigan has already corrected these problems and will be taking action to avoid its recurrence. Region V will verify this at the first quarter FY'86 evaluation. If any further action is required, Region V and the State may negotiate a Letter of Intent which would outline the further actions which both parties will take. Region V believes that the State is capable of administering a quality RCRA program.

EPA has reviewed Michigan's application and has tentatively determined that upon receipt and evaluation of Michigan's response to the EPA's comments identified above, the State's program will meet all the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to Michigan.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely, in lieu of EPA. EPA's regulations no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. Now, however, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), the new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in non-authorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so.

As a result of HSWA, there would be a dual State/Federal regulatory program in Michigan if final RCRA authorization is granted. To the extent the authorized program is unaffected by HSWA, the State program will operate in lieu of the Federal program. EPA will administer and enforce the portions of HSWA in Michigan until the State receives authorization to do so.

Among other things, this will entail the issuance of Federal permits for those areas in which the State will not be authorized. Once Michigan is authorized to implement a HSWA requirement or prohibition, the State program will



operate in that area in lieu of the Federal provision. Until that time, the State will assist EPA's implementation of HSWA under a Cooperative Arrangement if final RCRA authorization is granted.

The HSWA-related requirements that are more stringent than the State's program will apply in Michigan. Any State requirement that is more stringent than a HSWA provision will also remain in effect; thus, the universe of the more stringent provisions in the authorized State program and today's tentative approval, defines the applicable requirements in Michigan.

The State of Michigan will be authorized for all the requirements of RCRA up to November 8, 1984 and includes: (1) Interim Status Applicability Standards, November 21, 1984; (2) Satellite Accumulation, December 20, 1984; (3) Redefinition of Solid Waste, January 4, 1985; (4) Interim Status Standards for TSDFs, April 23, 1985; (5) Technical Correction, April 11, 1985; and (6) Availability of Information Provision § 3006(f) of the HSWA, November 8, 1984.

Copies of Michigan's application are available for inspection and copying at the locations indicated in the "ADDRESSES" Section of this notice.

EPA will consider all significant public comments on this tentative determination. Issues raised by those comments may be the basis for changing our tentative decision to grant final authorization to Michigan. EPA expects to make a final decision on whether or not to approve Michigan's program by May 7, 1985, and will give notice of this decision in the *Federal Register*. The notice will include a summary of the reasons for the final determination and a response to all major comments.

#### **Certification Under the Regulatory Flexibility Act**

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous wastes in the State. It does

not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

#### **Compliance With Executive Order 12291**

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

#### **List of Subjects in 40 CFR Part 271**

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Inter-governmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), and EPA Delegation 8-7.

Dated: January 24, 1986.

**Alan Levin,**

*Acting Regional Administrator.*

[FR Doc. 86-2938 Filed 2-10-86; 8:45 am]

BILLING CODE 6560-50-M



# Notices

Federal Register

Vol. 51, No. 28

Tuesday, February 11, 1986

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

### Forest Service

#### Stanislaus National Forest Land and Resource Management Plan; Hearing

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of hearing.

**SUMMARY:** This notice sets for the schedule for a public hearing on the Stanislaus National Forest Proposed Forest Plan and Draft Environmental Impact Statement.

**DATE:** March 20, 1986, 2:00 p.m. to 5:00 p.m. and 7:00 p.m. to 10:00 p.m.

**ADDRESS:** Home Economics Building, Mother Lode Fairgrounds, 220 S. Southgate Dr., Sonoma, California.

**FOR FURTHER INFORMATION CONTACT:** Steve Waterman, Public Affairs Officer, Stanislaus National Forest, 19777 Greenley Road, Sonoma, California 95370 (209/532-3671).

Dated: February 5, 1986.

John D. Warnock,

Acting Forest Supervisor.

[FR Doc. 86-2952 Filed 2-10-86; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-427-044]

#### Stainless Steel Wire Rods From France; Initiation and Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice of Initiation and Preliminary Results of Antidumping Duty Administrative Review.

**SUMMARY:** In response to a request from Ugine Aciers, an exporter, the

Department of Commerce has conducted an administrative review of the antidumping finding on stainless steel wire rods from France. The review covers exports to the United States by Ugine Aciers and the period August 1, 1983 through July 31, 1984. The review indicates the existence of dumping margins for the period.

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.

Interested parties are invited to comment on these results.

**EFFECTIVE DATE:** February 11, 1986.

**FOR FURTHER INFORMATION CONTACT:** Phyllis Derrick or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 12, 1985, the Department of Commerce ("the Department") published in the *Federal Register* (50 FR 9813) the final results of its last administrative review of the antidumping finding on stainless steel wire rods from France (38 FR 22961, August 28, 1973). In accordance with § 353.53a of the Commerce Regulations, Ugine Aciers, an exporter, requested an administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

##### Scope of the Review

Imports covered by the review are shipments of stainless alloy steel wire rods, tempered, treated, or partly manufactured, currently classifiable under item 607.3400 of the Tariff Schedules of the United States Annotated. The review covers one exporter of French stainless steel wire rods, Ugine Aciers, and the period August 1, 1983 through July 31, 1984.

##### United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the f.o.b. warehouse price to the first unrelated purchaser in the United States. Where

applicable, we made deductions for U.S. customs duties, U.S. entry and port charges, storage charges, ocean freight, marine insurance, loading charges, and foreign inland freight. No other adjustments were claimed or allowed.

##### Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the delivered price, with adjustments, where applicable, for inland freight, insurance, differences in the physical characteristics of the merchandise, and credit costs. In addition, we used best information available to adjust for differences in other direct selling expenses. No other adjustments were claimed or allowed.

##### Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 8.19 percent exists for Ugine Aciers for the period August 1, 1983 through July 31, 1984.

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 after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any such written comments or hearings.

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 percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 8.19 percent shall be required on all shipments for Ugine Aciers. For any future entries from a new exporter not



covered in this or prior reviews, whose first shipments occurred after July 31, 1984, and who is unrelated to any covered firm, a cash deposit of 8.19 percent shall be required. These deposit requirements are effective for covered shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

This initiation, administrative review, and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: January 27, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-2953 Filed 2-10-86; 8:45 am]

BILLING CODE 3510-DS-M

## DEPARTMENT OF DEFENSE

### Corps of Engineers, Department of the Army

#### Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Multiple Purpose Storage Project in the South Umpqua River Drainage Basin in Douglas County, OR

**AGENCY:** U.S. Army Corps of Engineers, Department of Defense.

**ACTION:** Notice of Intent to prepare a DEIS.

The Corps of Engineers, Portland District, is currently investigating the feasibility of constructing a multiple purpose storage project in the South Umpqua River drainage basin in Douglas County, Oregon. The project would consist of a dam, or combination of dams, on tributaries to the South Umpqua River to provide storage for flood control, augmenting low flows for increasing anadromous fish production and water quality, municipal and industrial and irrigation water supplies, hydropower and recreation. A dam is being considered because alternative structures would not be able to serve all of these purposes, which have been identified as needs by Douglas County. Alternative locations for dams are being considered on the West Fork of Cow Creek, Elk Creek and Jackson Creek.

The scoping process will formally commence in the spring of 1986 with the issuance of a scoping letter and preliminary listing of potential effects which will be discussed in the DEIS. Federal, State, and local agencies, Indian tribes, and interested organizations and individuals will be

asked to comment on the draft outline and to identify significant issues relating to the potential effects of the alternatives. The DEIS is scheduled for agency and public review in the winter of 1988. The Final EIS is scheduled for publication in the spring of 1989.

**ADDRESS:** If you have any questions or need additional information, please contact Mr. Eric Braun, telephone (503) 221-6096, (FTS-423-6096), U.S. Army Corps of Engineers, Portland District, Natural Resources Branch, P.O. Box 2946, Portland, OR 97208-2946.

Dated: January 31, 1986.

Patrick J. Keough,

Chief, Planning Division.

[FR Doc. 86-2933 Filed 2-10-86; 8:45 am]

BILLING CODE 3710-AR-M

## DEPARTMENT OF EDUCATION

### Office of the Secretary

#### Education Appeal Board; Designation of Jurisdiction; Massachusetts

**AGENCY:** Department of Education.

**ACTION:** Notice of designation of jurisdiction to Education Appeal Board.

**SUMMARY:** The Secretary has designated the Education Appeal Board (EAB) as the forum which will review the appeal by the Commonwealth of Massachusetts (SEA) of the August 19, 1985 final letter of determination (FLD) issued by the Assistant Secretary for Special Education and Rehabilitative Services. That letter disallows \$676,256 of the award for fiscal year 1985 received by the SEA under Part B of the Education of the Handicapped Act (EHA-B). The FLD claims that the child count upon which the fiscal year 1985 EHA-B award of the SEA was based included more than 12 percent of the population in Massachusetts aged five through seventeen. This, according to the August 19, 1985 FLD, violated section 611(a)(5)(B) of the Act.

**FOR FURTHER INFORMATION CONTACT:** S. Crisler Lindsay, Acting Chairman, Education Appeal Board, 400 Maryland Avenue, SW. (Room 1065, FOB-6), Washington, DC 20202. Telephone: (202) 245-7835.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under sections 451 through 454 of the General Education Provisions Act (20 U.S.C. 1234-1234c), the EAB has jurisdiction to conduct: (1) Audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education, and (3)

other proceedings designated by the Secretary. Such review is specifically available in cases that concern the use of funds provided under the EHA-B. Final regulations implementing the statutory provisions in Sections 451-454 of the General Education Provisions Act were published in the Federal Register at FR 27305 on May 18, 1981 (34 CFR Part 78). Section 78.2 of those regulations contain the present jurisdiction of the EAB, which includes the authority to review proceedings as designated by the Secretary of Education in the Federal Register.

On August 19, 1985 the Assistant Secretary for Special Education and Rehabilitative Services issued an FLD requesting the SEA to refund \$676,256 of its fiscal year 1985 EHA-B grant. The FLD cites as the basis for this determination section 611(a)(5)(A) of the EHA-B, which provides that, for purposes of determining a State's allocation of funds under the Act, "the Secretary may not count handicapped children in such State . . . to the extent the number of such children is greater than 12 percentum of the number of all children aged five to seventeen, inclusive, in such State." 20 U.S.C. 1411(a)(5)(A).

The SEA filed an application for review of the FLD with the EAB on September 18, 1985. On September 23, 1985, the Acting Chairman of the EAB determined that the SEA's appeal of the August 19, 1985 FLD did not fall within the jurisdiction of the EAB. The decision to designate this case is not intended to reflect agreement or disagreement with the Acting Chairman's determination.

#### Designation of Jurisdiction

Under the authority in section 451(a)(4) of the General Education Provisions Act (20 U.S.C. 1234(a)(4)) and 34 CFR 78.2(a)(5) of the EAB regulations, the Secretary announces that on November 22, 1985, the Secretary designated the EAB as the forum to review the Assistant Secretary's August 19, 1985 FLD to the Commonwealth of Massachusetts. The EAB is to review the August 19, 1985 FLD under the rules of procedure governing final audit determinations, and those general rules governing the EAB's conduct of proceedings in 34 CFR 78.41-78.84.

Any questions should be addressed to S. Crisler Lindsay, Acting Chairman, Education Appeal Board, 400 Maryland Avenue SW. (Room 1065, FOB-6), Washington, DC 20202, Telephone: (202) 245-7835.

(Catalog of Federal Domestic Assistance Number Not Applicable)



Dated: February 7, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-3070 Filed 2-10-86; 2:32 pm]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Energy Information Administration

#### Agency Collections Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of submission of request for clearance to the Office of Management and Budget.

**SUMMARY:** The Department of Energy (DOE) has submitted the energy information collections, listed at the end of this notice, to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The collection number(s); (2) Collection title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (9) A brief abstract describing the proposed collection.

**DATES:** Last Notice published Monday, December 9, 1985 (50 FR 50200).

#### FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Data Collection Services Division (DCSD), Energy

Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252-2308

Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7313

**SUPPLEMENTARY INFORMATION:** Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer for the appropriate agency as shown above.

If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., February 5, 1986.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

#### DOE COLLECTIONS UNDER REVIEW BY OMB

Collection No.	Collection title	Type of request	Response frequency	Response obligation	Respondent description	Estimated number of respondents	Annual respondent burden HRS	Abstract
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
FERC FERC-519	Disposition of Facilities, Mergers, and Acquisition of Securities.	Extension.....	On occasion.....	Mandatory.....	Businesses or other for profit.	20	1,700	The FPA requires that public utilities file for approval of dispositions of jurisdictional facilities, mergers of such facilities with other such facilities owned by another person, or acquisitions of securities of other public utilities. Supporting data is required to determine if such transactions are consistent with the public interest.
FERC-534	Application for Production-Related Costs.	Extension.....	On occasion.....	Mandatory.....	Businesses or other for profit.	9,652	205,686	The Commission needs the information in order to review producer claims for the recovery of certain production-related costs which first sellers incur after gas is produced at the wellhead and which are not included in NGPA price categories.
FERC-580	Fuel Purchase Practices.	Revision.....	Biennially.....	Mandatory.....	Businesses or other for profit.	67	6,700	The information requested is needed to comply with the requirements of Section 205(f)(2) of the Federal Power Act for a review "not less frequently than every two years" of "practices . . . to ensure efficient use of resources." The information will be used in a review of generic practices, and practices of individual utilities.

[FR Doc. 86-2935 Filed 2-10-86; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[Docket No. ECAO-CD-81-2; ORD-2967-9]

### Revised Air Quality Criteria for Lead; Availability of Draft Addendum

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Availability of Draft Addendum.

**SUMMARY:** The existing criteria document for lead, Air Quality Criteria for Lead (EPA-600/8-77-017), has been updated and revised pursuant to sections 108 and 109 of the Clean Air Act, as amended, 42 U.S.C. 7408 and 7409. The revised document, now in draft final form, will be used as a basis for review and, as appropriate, revision of the existing National Ambient Air Quality Standards (NAAQS) for lead.

In light of the recent publication of several important papers in the scientific literature concerning the relationship between blood lead levels

and blood pressure, EPA is making available for public comment a draft addendum to the draft revised criteria document. The draft addendum discusses this newly available information, as well as recent papers concerning the relationship between blood and stature.

**DATES:** The Agency will make the draft addendum available on or about February 10, 1986. Comments must be postmarked by March 7, 1986.

**ADDRESSES:** To obtain a copy of the draft addendum, interested parties should contact the ORD Publications



Center, CERI-FRN, U.S. Environmental Protection Agency, 26 W. St. Clair St., Cincinnati, OH 45268, (513) 569-7562, (FTS: 684-7562), and request the draft addendum to the draft revised Air Quality Criteria for Lead, EPA-600/8-83-028B. Please provide your name and mailing address. The draft addendum will also be available for public inspection and copying at the EPA library, EPA headquarters, Waterside Mall, 401 M Street, SW, Washington, DC 20460.

Comments on the draft addendum should be sent in writing to the Project Manager, Air Quality Criteria for Lead, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, NC 27711. Copies of the draft addendum, all public comments received, and the Agency's response to these comments will be included in the docket established for the revision of the lead criteria document (docket no. ECAO-CD-871-2). The docket is available for inspection and copying between the hours of 8:00 a.m. and 4:00 p.m. at EPA headquarters in the Central Docket Section (A-130), Gallery 1, West Tower, Waterside Mall, 401 M Street, SW, Washington, DC 20460.

#### FOR FURTHER INFORMATION CONTACT:

Ms. Diane Ray, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, NC 27711 (919) 541-3637 (FTS: 629-3637).

**SUPPLEMENTARY INFORMATION:** The draft addendum will also be reviewed by the Clean Air Scientific Advisory Committee (CASAC) of the Agency's Science Advisory Board. Advance notice of the time and place of the meeting will be provided in a subsequent Federal Register notice. After incorporation of revisions in response to public comment and CASAC review, the addendum will be included in the revised criteria document and considered in any revision of the NAAQS for lead.

Dated: February 5, 1986

F. G. Hueter,

Acting Assistant Administrator for Research and Development.

[FR Doc. 86-2941 Filed 2-10-86; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 221-004109-001.

Title: Georgia Ports Authority Terminal Agreement.

#### Parties:

Georgia Ports Authority (Port)  
Japan Line, Ltd. (Line)  
Kawasaki Kisen Kaisha, Ltd. (Line)  
Mitsui O.S.K. Lines, Ltd. (Line)  
Nippon Yusen Kaisha (Line)  
Yamashita-Shinnihon Steamship Co., Ltd. (Line)

Synopsis: The proposed amendment would provide for the establishment of a "coordination center" to be staffed by, and represent the Lines in their dealings with the Port. The parties have requested a shortened review period.

Agreement No. 221-004109-002.

Title: Georgia Ports Authority Terminal Agreement.

#### Parties:

Georgia Ports Authority (Port)  
Japan Line, Ltd. (Line)  
Kawasaki Kisen Kaisha, Ltd. (Line)  
Mitsui O.S.K. Lines, Ltd. (Line)  
Nippon Yusen Kaisha (Line)  
Yamashita-Shinnihon Steamship Co., Ltd. (Line)

Synopsis: The proposed amendment would permit the Port to lease to the Lines fourteen acres of paved parking space located within Containerport at the Garden City Terminal of the Georgia Ports Authority. The parties have requested a shortened review period.

Agreement No. 207-010884.

Title: Trans Freight Lines Joint Venture Agreement.

#### Parties:

Trans Freight Lines, Inc.  
Overseas Containers Limited  
112 Corporation  
Orsett Depot Limited

Synopsis: The proposed agreement would operate an ocean common carrier service under the trade name Trans Freight Lines and would be a direct continuation of the services provided by Trans Freight Lines, Inc. The joint service will initially operate nine vessels, but shall be authorized to

operate as many as twelve vessels. The joint service will be responsible for setting rates, terms and all other conditions of service regulating the number and character of its own sailings and volume and character of cargo. For purposes of all currently effective agreements and tariffs and other activities of Trans Freight Lines, the joint service shall be considered a direct successor.

By Order of the Federal Maritime Commission.

Dated: February 6, 1986.

John Robert Ewers,  
Secretary.

[FR Doc. 86-2960 Filed 2-10-86; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Archer, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are 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 each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 5, 1986.

**A. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Archer, Inc.*, Palmer, Nebraska, through the merger of its subsidiary, Osceola Insurance, Inc., Osceola, Nebraska, with The Gretna Company, Gretna, Nebraska, proposes to indirectly acquire the Gretna Company's subsidiary Bank, Gretna, Nebraska.

Applicant and its subsidiary has also applied to indirectly engage in the activity of acting as agent for the sale of credit related insurance sold in connection with credit granted by its proposed subsidiary bank, The Gretna State Bank, which would be acquired through the merger of Osceola Insurance, Inc., with The Gretna Company, pursuant to § 225.25(b)(8)(i). Comments on this application must be received not later than March 3, 1986.

2. *Fourthco, Inc.*, Tulsa, Oklahoma; to become a bank holding company by acquiring 90 percent of the voting shares of Fourth National Corporation, Tulsa, Oklahoma, indirectly acquiring The Fourth National Bank of Tulsa, Tulsa, Oklahoma, and United Bancshares, Inc., indirectly acquiring United Bank of Tulsa, Tulsa, Oklahoma.

Applicant has also applied to acquire Fourth National Corporation ("FNC"), and its subsidiaries: Diversified Mortgage and Investment Company ("DMIC"), and Fourth Investment Advisors, Inc. ("FIA"), all of which are located in Tulsa, Oklahoma. Applicant proposed to engage in the various activities described below through the indicated companies: (1) Through FNC directly—in making and servicing loans and leasing real or personal property, pursuant to section 225.25 (b)(1) and (b)(5), respectively of Regulation Y; (2) through FNC's subsidiary, DMIC,—in mortgage banking activities, pursuant to § 225.25(b)(1) of Regulation Y; (3) through FNC's subsidiary, FIA—in providing investment or financial advice, pursuant to § 225.25(b)(4) of Regulation Y.

Board of Governors of the Federal Reserve System, February 6, 1986.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 86-2904 Filed 2-10-86; 8:45 am]

BILLING CODE 6210-01-M

**Florida National Banks of Florida, Inc., et al.; Formation 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, identifying 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 March 5, 1986.

**A. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Florida National Banks of Florida, Inc.*, Jacksonville, Florida; to merge with Citrus Banking Corporation, Tampa, Florida, thereby indirectly acquiring Citrus Park Bank, Tampa, Florida.

**B. Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Perry County Bancshares, Inc.*, Perryville, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Perry County Bank, Perryville, Arkansas.

**C. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Russell State Bancshares, Inc.*, Russell, Kansas; to acquire 100 percent

of the voting shares of Security State Bank, Great Bend, Kansas.

**D. Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Bryant-Irvin Bancshares, Inc.*, Benbrook, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank, Benbrook, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, February 6, 1986.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 86-2905 Filed 2-10-86; 8:45 am]

BILLING CODE 6210-01-M

**McLaughlin Holding Co.; Applications To Engage de Novo in Permissible Nonbanking Activities**

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and 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 3, 1986.

**A Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *McLaughlin Holding Company*, Moline, Illinois; to engage *de novo* through its subsidiary, *MBC Financial Corp.*, Moline, Illinois, and thereby engaging in making and servicing loans as a commercial finance company, and the leasing of personal property as the functional equivalent of an extension of credit to the commercial lessee of the property, pursuant to § 225.25 (b)(1)(iv) and (b)(5), respectively.

Board of Governors of the Federal Reserve System, February 6, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2906 Filed 2-10-86; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### Intergovernmental Review of Agency Programs and Activities

**ACTION:** Notice of proposed changes to program coverage, and of certain programs proposed to remain excluded.

**SUMMARY:** This notice proposes to make certain changes to the Department's lists of financial assistance programs that are subject to or excluded from E.O. 12372 and 45 CFR Part 100. This notice also proposes to continue excluding certain programs from coverage under E.O. 12372 and 45 CFR Part 100.

#### Background and Criteria

Executive Order 12372 of July 14, 1982, 47 FR 30959, as amended by E.O. 12416 of April 8, 1983, 48 FR 15887, established a new Federal policy of consultation and cooperation with State and local governments in the administration of Federal financial assistance and developing recommendations with respect to Federal programs, to accommodate State and local concerns or explain why those concerns cannot be accommodated, and to encourage simplification of the State planning requirements imposed by various Federal laws.

HHS published a list of programs covered by E.O. 12372 on June 24, 1983, at 48 FR 2903. This proposed notice would update the list of programs

previously identified as subject to the Executive Order's requirements. The proposed revisions reflect an evaluation of new programs that have not previously been reviewed and a reevaluation of programs that had previously been determined to be subject to or excluded from the Executive Order's requirements. Programs may be excluded from the Executive Order's coverage if they do not directly affect State or local governments or if intergovernmental consultation and cooperation is inappropriate. Accordingly, programs are not covered by the Executive Order if they involve proposed Federal legislation, regulations, or budget formulation, direct payments to individuals, financial transfers for which HHS has no funding discretion or direct authority to approve specific sites or projects, national security matters, procurement, research and demonstration projects whose goals and objectives are national in scope, and assistance to Federally recognized Indian tribes. Our review of a program's coverage status under the Executive Order was guided by these criteria.

#### I. Additional Programs to be Covered

The Department proposes that the following financial assistance programs be covered. These programs have not been previously designated either as covered or excluded.

CFDA No.	Program title
13.116	Project Grants & Cooperative Agreements For Tuberculosis Control Programs.
13.125	Mental Health Planning and Demonstration Projects.
13.128	Refugee Assistance—Mental Health.
13.283	Investigations and Technical Assistance.
13.663	Community Development Credit Union Revolving Loan Fund.
13.664	Rural Development Loan Fund.
13.665	Discretionary Grants Only—Community Services Block Grant.
13.888	Home Health Services And Training Grants and Loans.
None	WIN Discretionary Program.
None	Office of Refugee Resettlement Comprehensive Discretionary Social Services Grant Program.

#### 2. Additional Research Programs To Be Excluded

The Department proposes to exclude the following financial assistance programs because they support research of national significance not directly affecting State and local governments. These programs have not been previously designated either as covered or excluded, unless otherwise stated.

CFDA No.	Program title
13.112	Characterization of Environmental Health Hazards.
13.113	Biological Response to Environmental Health Hazards.
13.114	Applied Toxicological Research and Testing.
13.115	Biometry and Risk Estimation.
13.118	Acquired Immunodeficiency Syndrome (AIDS) Activity.
13.121	Diseases of the Teeth and Supporting Tissues.
13.122	Disorders of Structure, Function and Behavior (Research).
13.389	Research Centers in Minority Institutions.
13.390	Academic Research Enhancement Award.
13.809	Child Support Enforcement Research.
13.811	Child Support Enforcement Interstate Grants.
13.978	Preventive Health/Sexually-transmitted Diseases Research (previously covered).

Both 13.809 and 13.811 were previously excluded under 13.812 SSA Research but are now split out in the Catalog of Federal Domestic Assistance as separate research programs. They continue to be excluded because the nature of the programs remain the same.

#### 3. Additional Academic Training Programs to be Excluded

The Department proposes to exclude the following financial assistance programs because they support academic training that addresses national needs, and the location and purpose of the training does not directly affect States and local governments. These programs have not been previously designated either as covered or excluded.

CFDA No.	Program title and description
13.117	Grants for Preventive Medicine Residency Training: This program promotes the post-graduate education of physicians in preventive medicine to advance the cause of health promotion and disease prevention.
13.119	Grants for Podiatric Medicine Training: This program assists in the alleviation of the present geographic maldistribution of podiatrists by providing clinical training for students recruited from areas that are now underserved.
13.123	Health Professions Pregraduate Scholarship Program for Indians: This program provides scholarship grants to Indians for the purpose of completing compensatory preprofessional education to enable the recipient to qualify for enrollment or re-enrollment in a health professions school.
13.124	Nurse Anesthetist Traineeships—This program provides traineeships for full-time study in accredited training programs for registered nurses who have completed 12 months of study in a nurse anesthetist training program.
13.900	Grants for Faculty Development in General Internal Medicine and/or General Pediatrics—This program promotes the development of faculty skills in physicians who are currently teaching or who plan teaching careers in general internal medicine and general pediatrics.

#### 4. Closed-Ended Formula Grant Programs To Be Partially Excluded

The following closed-ended formula grant programs were previously designated as covered by the Executive Order. We propose to continue to allow the states to simplify and consolidate



Federally required State plan submissions. These formula grant programs, however, are financial transfers for which HHS has no funding discretion or direct authority to approve specific sites or projects; we therefore propose to exclude these programs from the Executive Order provisions and implementing regulations of 45 CFR Part 100 which require HHS to accommodate State and local concerns or explain why those concerns cannot be accommodated.

CFDA No.	Program title
13.630	Developmental Disabilities—Basic Support and Advocacy Grants.
13.633	Aging—Title III A&B—Grants for Supportive Services and Senior Centers.
13.635	Aging—Title III C—Nutrition.
13.645	Child Welfare Services—State Grants.
13.646	WIN.

### 5. Programs to Remain Excluded

HHS excluded programs in the following categories previously: (1) Research That Does Not Directly Affect States or Local Governments (71 programs); (2) Payments to Individuals (14 programs); (3) Financial Transfers for Which HHS Has No Funding Discretion or Direct Authority To Approve Specific Sites or Projects (16 programs); and (4) Programs Administered by Federally Recognized Indian Tribes (6 programs). Unless otherwise stated in this notice, those programs remain excluded. (Note that some programs were excluded in more than one category.)

The following programs, however, are currently excluded and are proposed to remain excluded even though they do not fall into the above categories. The first three of these programs are proposed to remain excluded because they have special characteristics that are not amenable to coverage. All the rest are proposed to remain excluded because they support academic training that addresses well-documented national needs, and their location and purpose have no direct impact on States or local governments.

CFDA No.	Program title and description
13.814	Refugee and Entrant Assistance—State Administered Programs.
(A&B)	This program helps needy eligible refugees, including Cuban and Haitian entrants, resettle throughout the country, by providing Social Services Assistance (Part A) and Cash and Medical Assistance (Part B) to designated State agencies. While this program is not statutorily a formula grant program, it is operated much like a formula grant program, with no exercise of funding discretion or prior approval of specific sites or projects by HHS. HHS, therefore, proposes to exclude both parts of this program from coverage under E.O. 12372.

CFDA No.	Program title and description
13.815	Refugee Assistance—Voluntary Agency Programs: This program assists refugees to become self-supporting and independent members of American society by providing HHS grants to a very limited number of State Department-designated national voluntary resettlement agencies. These national voluntary agencies then subgrant funds to many other appropriate organizations across the nation. Since this is a unique grant program with well-defined national purposes in which HHS does not provide prior approval of the numerous specific subgrant sites or projects funded by the national agencies throughout the country, HHS proposes to exclude this program from coverage. To cover this program under Executive Order 12372 would generate an inordinate burden upon the national voluntary resettlement agencies as they attempt to comply with multiple State review processes and it would seriously frustrate the refugee program purposes.
13.982	Mental Health Disaster Assistance: This program is an emergency, short-term grant program which precludes an E.O. 12372 60-day State Single Point of Contact comment period. The program provides grants to support mental health services to individuals in a disaster area. The National Institute of Mental Health acts as the agent for the Federal Emergency Management Administration. The Governor of the applicant State must approve the applicant agency. To wait for E.O. 12372 State reviews would impede quick action for services in a disaster and run contrary to the purpose of the program.
13.244	Mental Health Clinical or Service-Related Training Grants: The objectives of this program are to increase the number of qualified minority personnel in the mental health professions, and the number of mental health personnel trained to deal with the special problems of children, adolescents, the elderly, the chronically mentally ill, and rural populations; to encourage mental health specialists to work in areas and settings where severe shortages exist; and to assure that the skills and knowledge of mental health personnel are appropriate to the needs of those they serve.
13.263	Occupational Safety and Health Grants: This program develops specialized professional personnel in occupational safety and health problems with training in occupational medicine, occupational health nursing, industrial hygiene and occupational safety.
13.272	Alcohol National Research Awards for Research Training: This program provides both individual fellowships and grants to training institutions for support of training alcohol researchers at both the predoctoral and postdoctoral levels.
13.278	Drug Abuse National Research Service Awards for Research Training: This program consists of training grants to institutions and fellowships to individuals to provide high quality training in drug abuse including: (1) Basic and applied studies in all the life sciences relevant to drug abuse; (2) Research on behavioral and societal factors and the epidemiology of drug abuse and use; and (3) Special training in experimental design methodology.
13.282	Mental Health National Research Service Awards for Research Training: This program provides training grants to institutions and fellowships to individuals at both the predoctoral and postdoctoral levels for training in basic biomedical, clinical and behavioral research and other mental health research.
13.298	Nurse Practitioner Training Programs and Nurse Practitioner Traineeships: This program supports the education of registered nurses who will be qualified to provide primary health care.
13.299	Advanced Nurse Training Program: This program prepares nurses at the master's and doctoral levels to teach in the various fields of nurse training and to serve in administrative or supervisory capacities and in nursing specialties, and as nurse clinicians.
13.342	Health Professions—Student Loans: This program seeks to increase educational opportunities for students in need of financial assistance to pursue a course of study in specified health professions by providing long-term low interest loans.
13.358	Professional Nurse Traineeships: This program prepares registered nurses as administrators, supervisors, teachers, nursing specialists, and nurse practitioners for positions in hospitals and related institutions, in public health agencies, in schools of nursing, and in other roles requiring advanced training.
13.359	Nurse Training Improvement: This program helps schools of nursing and other institutions improve the quality and availability of nursing education through projects for specified purposes such as opportunities for individuals from disadvantaged backgrounds.
13.364	Nursing Student Loans: This program assists students in need of financial assistance to pursue a course of study in professional nursing education by providing long-term low interest loans, currently at the rate of 6 percent.
13.379	Grants for Graduate Training in Family Medicine: This program seeks to increase the number of physicians practicing family medicine by funding approved residency training programs and assistance to participants in such programs.
13.381	Health Professions—Financial Distress Grants: This program assists schools of medicine, osteopathy, dentistry, optometry, pharmacy, podiatry, public health and veterinary medicine which are in serious financial distress to meet costs of operation, which have special financial needs to meet accreditation requirements, or to carry out appropriate operational, managerial and financial reforms.
13.632	Developmental Disabilities—University Affiliated Facilities: This program assists with the cost of administration and operation of facilities for providing interdisciplinary training for personnel concerned with developmental disabilities.
13.648	Child Welfare Services Training Grants: This program provides grants to accredited institutions of higher learning for special projects for training personnel for work in the field of child welfare.
13.668	Special Programs for the Aging—Title IV: This program seeks to provide adequately trained personnel in the field of aging, improve knowledge of the problems and needs of the elderly, and to demonstrate better ways of improving the quality of life for the elderly.
13.820	Scholarships for First-Year Students of Exceptional Financial Need: This program makes funds available to authorized health professions schools to award scholarships to full-time, first-year health professions students of exceptional financial need.
13.822	Health Careers Opportunity Program: This program identifies, recruits and selects individuals from disadvantaged backgrounds for education/training in a health or allied health professions school.
13.824	Area Health Education Centers: —This program seeks to improve the distribution, supply, quality, utilization and efficiency of health personnel in the health service delivery system and for the purpose of increasing the regionalization of educational responsibilities of health professional schools.
13.884	Grants for Residency Training in General Internal Medicine and/or General Pediatrics: This program makes grants to promote the graduate education of physicians who plan to enter the practice of General Internal Medicine or General Pediatrics.
13.886	Grants for Physician Assistant Training: This program enables public or nonprofit private health or educational entities to meet the cost of projects to plan, develop, and operate or maintain programs for the training of physicians' assistants.
13.895	Grants for Faculty Development in Family Medicine: This program seeks to increase the supply of physician faculty available to teach in family medicine programs and to enhance the pedagogical skills of faculty presently teaching in family medicine.
13.896	Grants for Predoctoral Training in Family Medicine: This program assists schools of medicine and osteopathy in meeting the costs of projects to plan, develop, and operate or participate in professional predoctoral training programs in the field of family medicine.



CFDA No.	Program title and description
13.897	Residency Training in the General Practice of Dentistry: This program funds training institutions to plan, develop, and operate an approved residency program in the general practice of dentistry.
13.962	Health Administration Graduate Traineeships: This program provides support for eligible students enrolled in accredited graduate degree programs in health administration, hospital administration, or health policy analysis and planning.
13.963	Graduate Programs in Health Administration: This program supports accredited graduate educational programs in health administration, hospital administration, and health planning.
13.964	Traineeships for Students in Schools of Public Health and Other Graduate Public Health Programs: This program supports traineeships for students in graduate educational programs in schools of public health or other public or nonprofit educational entities which offer graduate programs for training in: (1) Biostatistics or epidemiology; (2) Health administration, health planning or health policy analysis and planning; (3) Environmental or occupational health; (4) Dietetics or nutrition; (5) Maternal and child health; or (6) Approved residency training in preventive medicine or dentistry.
13.969	(renamed) Health Professions Special Education Initiatives: This program assists allied health professional education programs to prepare allied health personnel for appropriate expanded roles in health promotion and disease prevention and to develop prototypical regional resource centers focused on strengthening multidisciplinary training of health professionals in generic health care.
13.964	Grants for the Establishment of Departments of Family Medicine: This program assists in establishing, maintaining, or improving family medicine academic administrative units to provide clinical instruction in family medicine in order that these units are comparable in status, faculty and curriculum to those other clinical units at the applying school.

## 6. Miscellaneous Programs

A. The following programs are discontinued. Eliminate them from the list of programs not subject to E.O. 12372:

CFDA No.	Program
13.256.....	Health Maintenance Organizations (funding discontinued).
13.274.....	Alcohol Clinical or Service-Related Training.
13.280.....	Drug Abuse Clinical or Service-Related Training.
13.363.....	Nursing Scholarships.
13.384.....	Health Professions Start-up Assistance.
13.776.....	Professional Standards Review Organizations.

B. The Cuban Haitian Special Placement Program listed on page 29203 in the June 24, 1983 Federal Register has been renamed the Mental Health Services for Cuban Entrants Program (13.120) and remains subject to E.O. 12372. Child Abuse and Neglect (13.628) has been separated into two programs in the Catalog of Federal Domestic Assistance and both remain subject to E.O. 12372. They are listed as Child Abuse & Neglect State Grants (13.669) and Child Abuse & Neglect Discretionary Activities (13.670). Adoption Assistance, Title IV-E (13.659), an open-ended entitlement program, is not subject to E.O. 12372 because it provides financial transfers for which HHS has no funding discretion

or direct authority to approve specific sites or projects.

C. The following two closed-ended formula grant programs, recently authorized by Congress, are covered by the State plan provisions of E.O. 12372 and 45 CFR Part 100 but are excluded from the State and local review and comment provisions of the Executive Order and Part 100. These formula grant programs are financial transfers for which HHS has no funding discretion or direct authority to approve specific sites or projects:

No CFDA Family Violence Prevention and Services  
No CFDA State Grants for Dependent Care Planning and Development.

**DATE:** Comments must be received by April 14, 1986.

**ADDRESS:** Send comments to Joel Feinglass, Director, Office of Assistance and Cost Policy, Department of Health and Human Services, Room 513D, 200 Independence Avenue SW., Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** Joel Feinglass or Robert Maslyn, same address, (202)-245-7565.

Dated: February 3, 1986.

Otis R. Bowen, M.D.,  
Secretary of Health and Human Service.  
[FR Doc. 86-2965 Filed 2-10-86; 8:45 am]

BILLING CODE 4110-02-M

## Poverty Income Guidelines; Annual Revision

**AGENCY:** Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** This notice provides a revision of the poverty income guidelines to account for increases in the Consumer Price Index.

**DATE:** Effective upon publication.

**ADDRESS:** Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** For information about the poverty guidelines in general, contact Joan Turek-Brezina (telephone: (202) 245-6141).

Questions about applying these guidelines to a particular program should be referred to the Federal office which is responsible for the program.

For information about the Hill-Burton Uncompensated Services Program, contact the Office of the Director, Division of Facilities Compliance (telephone: (301) 443-6512).

This notice provides the 1986 revision of the poverty income guidelines required by sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). As required by the statute, this revision reflects changes in the Consumer Price Index; it was accomplished using the same methodology used in previous years.

These poverty income guidelines are used as an eligibility criterion by a number of Federal programs. The guidelines are a simplified version of the poverty thresholds used by the Bureau of the Census to prepare its statistical estimates of the number of persons and families in poverty. The *poverty income guidelines* issued by the Department of Health and Human Services (formerly by the Community Services Administration) are used for administrative purposes—for instance, for determining whether a person or family is financially eligible for assistance or services under a particular Federal program. The *poverty thresholds* are used primarily for statistical purposes.

In certain cases, as noted in the relevant authorizing legislation or program regulations, a program uses the poverty guidelines as only one of several eligibility criteria, or uses a modification of the guidelines (for example, 130 percent or 185 percent of the guidelines). Some other programs, while not using the guidelines as a criterion of individual eligibility, use them for the purpose of targeting assistance or services. In some cases, these poverty income guidelines may not become effective for a particular program until a regulation or notice specifically applying to the program in question has been issued.

The poverty guidelines given below are applicable to both farm and nonfarm families.

The following definitions (derived for the most part from language used in U.S. Bureau of the Census, Current Population Reports, Series P-60, No. 147 and earlier reports in the same series) are made available for use in connection with the poverty income guidelines. Programs may use somewhat different definitions.

(a) *Family*.—A family is a group of two or more persons related by birth, marriage, or adoption who reside together; all such related persons are considered as members of one family. (If a household includes more than one family and/or more than one unrelated individual, the poverty guidelines are applied separately to each family and/or unrelated individual, and not, to the household as a whole.)



(b) *Family unit of size one.*—In conjunction with the poverty income guidelines, a family unit of size one is an unrelated individual (as defined by the Census Bureau)—That is, a person 15 years old or over (other than an inmate of an institution) who is not living with any relatives. An unrelated individual may be the sole occupant of a housing unit, or may be residing in a housing unit (or in group quarters such as a rooming house) in which one or more persons also reside who are not related to the individual in question by birth, marriage, or adoption. (Examples of unrelated individuals residing with others include a lodger, a foster child, a ward, or an employee.)

(c) *Income.*—Refers to total annual cash receipts before taxes from all sources. (Income data for a part of a year may be annualized in order to determine eligibility—for instance, by multiplying by four the amount of income received during the most recent three months.) Income includes money wages and salaries before any deductions, but does not include food or rent received in lieu of wages. Income also includes net receipts from nonfarm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses). Income includes regular payments from social security, railroad retirement, unemployment compensation, workers' compensation, strike benefits from union funds, veterans' benefits, public assistance (including Aid to Families with Dependent Children, Supplemental Security Income, and General Assistance money payments), training stipends, alimony, child support, and military family allotments or other regular support, from an absent family member or someone not living in the household; private pensions, government employee pensions, and regular insurance or annuity payments; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts. For eligibility purposes, income does not include the following money receipts: capital gains; any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car; tax refunds, gifts, lump-sum inheritances, one-time insurance payments, or compensation for injury. Also excluded are noncash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or rent received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm

housing, and such Federal noncash benefit programs as Medicare, Medicaid, Food Stamps, school lunches, and housing assistance.

1986 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	\$5,360
2	7,240
3	9,120
4	11,000
5	12,880
6	14,760
7	16,640
8	18,520

For family units with more than 8 members, add \$1,880 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	\$6,700
2	9,050
3	11,400
4	13,750
5	16,100
6	18,450
7	20,800
8	23,150

For family units with more than 8 members, add \$2,350 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	\$6,170
2	8,330
3	10,490
4	12,650
5	14,810
6	16,970
7	19,130
8	21,290

For family units with more than 8 members, add \$2,160 for each additional member.

Dated: February 5, 1986.

Otis R. Bowen,  
Secretary of Health and Human Services.  
[FR Doc. 86-2964 Filed 2-10-86; 8:45 am]  
BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 84N-0102]

Cumulative List of Orphan Products Designations

Correction

In FR Doc. 86-1994, in the issue of Thursday, January 30, 1986, beginning on page 3844, make the following corrections:

1. On page 3845, in the List, Biological Product Designations, under the

heading, Name of biological product, first column, seventh line, "XMMME" should read "XMMME". In the List, Drug Product Designations, under the heading, Name of drug product, first column, nineteenth line, "Clofazimine" should read "Colchicine".

2. On page 3846, in the List, Drug Product Designations, under the heading, Name of drug product, first column, thirtieth line from the bottom, "Prehnamustine" should read "Prednimustine".

BILLING CODE 1505-01-M

Office of Human Development Services Federal Council on the Aging; Meeting

Agency Holding the Meeting: Federal Council on the Aging, HHS.

Time and Date: Meeting begins at 9:00 AM and ends at 5:00 PM on Tuesday, February 25, 1986 and begins at 9:00 AM and ends at 3:00 PM on Wednesday, February 26, 1986.

Place: Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, Rooms #503-529A (Fifth Floor).

Status: Meeting is open to the public. Contact Person: Pete Conroy, Room #4243, HHS North Building, 245-2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93-29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given to the Federal Advisory Committee Act (Pub. L. 92-453, 5 U.S.C. App. 1, Sec. 10, 1976) that the Council will hold a meeting on February 25 and 26, 1986 from 9:00 AM-5:00 PM and from 9:00 AM-3:00 PM respectively in Rooms 503A-529A in the Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

The agenda will include an update briefing by AOA Acting Commissioner Carol Fraser Fisk on Older Americans Act programs and a presentation by Robert A. Harootyan, Project Director, Officer of Technology Assessment dealing with Life Sustaining Technologies and the Elderly. In addition, a substantial amount of time will be devoted to FCA Committee meeting and prioritizing subject areas for 1986-87.



Dated: January 22, 1986.

Adelaide Attard,  
Chairperson, Federal Council on the Aging.  
[FR Doc. 86-2963 Filed 2-10-86; 8:45 am]  
BILLING CODE 4130-01-M

## National Institutes of Health

### National Heart, Lung, and Blood Institute; Heart, Lung, and Blood Research Review Committee B; Meeting

Pursuant to Pub. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, on April 3, 1986, in Building 31, Conference Room 9.

This meeting will be open to the public on April 3, 1986, from 8:30 AM to approximately 10:00 AM to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) Pub. L. 92-463, the meeting will be closed to the public on April 3, 1986, from approximately 10:00 AM to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential, trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Louis M. Ouellette, Executive Secretary, NHLBI, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-7915, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 31, 1986.

[FR Doc. 86-2920 Filed 2-10-86; 8:45 am]  
BILLING CODE 4140-01-M

### National Heart, Lung, and Blood Institute; National High Blood Pressure Education Program Coordinating Committee; Meeting

Notice is hereby given of the meeting of the National High Blood Pressure Education Program Coordinating Committee, on April 21, 1986, 8 a.m. to 1 p.m., Bethesda Hyatt Regency, One Bethesda Metro Center, Bethesda, Maryland 20814, (301) 657-1234.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National High Blood Pressure Education Program. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants, and meeting summary contact: Dr. Edward J. Roccella, Coordinator, National High Blood Pressure Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A18, Bethesda, Maryland 20892, (301) 496-1051.

Dated: February 4, 1986.

Betty J. Beveridge,  
Committee Management Officer, NIH.  
[FR Doc. 2919 Filed 2-10-86; 8:45 am]  
BILLING CODE 4140-01-M

### National Institute of Dental Research Special Grants Review Committee; Meeting

Pursuant to Pub. L. 96-463, notice is hereby given of the meeting of the National Institute of Dental Research Special Grants Review Committee, March 16-17, 1986, in the Sea Pines Conference Room, at the Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland. The meeting will be open to the public from 9:00 a.m. to 9:30 a.m. March 16 for general discussions. Attendance by the public is limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 96-463, the meeting will be closed to the public from 9:30 a.m. March 16 to adjournment March 17 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Dr. H. George Hausch, Executive Secretary, NIDR Special Grants Review Committee, NIH, Westwood Building, Room 507, Bethesda, MD 20892, (telephone 301/496-7658) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121-Diseases of the Teeth and Supporting Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13-122-Disorders of Structure, Function, and Behavior; Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13-845-Dental Research Institutes; National Institutes of Health.)

Dated: January 31, 1986.

Betty J. Beveridge,  
NIH Committee Management Officer.  
[FR Doc. 86-2922 Filed 2-10-86; 8:45 am]  
BILLING CODE 4140-01-M

### National Institute on Aging; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the National Institute on Aging.

These meetings will be open to the public to discuss administrative details for approximately one-half hour at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Building 31, Room 2C05, National Institutes of Health, Bethesda, Maryland, 20892, (301/496-5898), will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Aging Review Subcommittee A.

Executive Secretary: Dr. Walter Spieth, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496-9666.



Dates of Meeting: March 19-20, 1986.  
Place of Meeting: National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: March 19, 8:30 a.m.-9:00 a.m.  
Closed: March 19, 9:00 a.m. to recess,  
March 20, 8:30 a.m. to adjournment.  
Closure Reason: To review grant applications.

Name of Committee: Aging Review Subcommittee B.

Executive Secretary: Dr. Marvin Kalt, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496-9666.

Dates of Meeting: March 20-21, 1986.  
Place of Meeting: National Institutes of Health, Building 31C, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: March 20, 8:30 a.m.-9:00 a.m.  
Closed: March 20, 9:00 a.m. to recess,  
March 21, 8:30 a.m. to adjournment.  
Closure Reason: To review grant applications.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

[FR Doc. 86-2921 Filed 2-10-86; 8:45 am]

BILLING CODE 4140-01-M

**National Library of Medicine;  
Biomedical Library Review Committee  
and the Subcommittee for the Review  
of Medical Library Resource  
Improvement Grant Applications;  
Meetings**

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biomedical Library Review Committee on March 13-14, 1986, convening each day at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland, to adjournment on March 14, and the meeting of the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications on March 14 from 2:00 p.m. to 5:00 p.m. in the 5th-Floor Conference Room of the Lister Hill Center Building.

The meeting on March 13 will be open to the public from 8:30 to 11:00 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(4) and 552(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92-463, the regular meeting and the subcommittee meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications as follows: The regular meeting on March 13 from 11:00 a.m. to 5:00 p.m., and on March 14, from 8:30 a.m. to adjournment; and the subcommittee meeting on March 14 from

2:00 p.m. to 5:00 p.m. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301-496-4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health.)

Dated: January 31, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-2923 Filed 2-10-86; 8:45 am]

BILLING CODE 4140-01-M

**Division of Research Resources;  
Subcommittee on Animal Resources  
of the Animal Resources Review  
Committee; Meeting**

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Subcommittee on Animal Resources, Animal Resources Review Committee, Division of Research Resources, on March 5, 1986, at 8:00 a.m., National Institutes of Health, Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on March 5, from approximately 2:00 p.m. to approximately 4:00 p.m., for a brief staff presentation on the current status of the Animal Resources Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 5, from 8:00 a.m. to approximately 2:00 p.m. for the review, discussion, and evaluation of individual grant applications submitted to the Laboratory Animal Sciences Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B13, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting and a roster of the committee members upon request. Dr. Carl E. Miller, Executive Secretary of the Animal Resources Review Committee, Division of Research Resources, National Institutes of Health, Building 31, Room 5B55, Bethesda, Maryland 20892, (301) 496-5175, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs No. 13.306, Laboratory Animal Sciences, National Institutes of Health)

Dated: January 31, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-2924 Filed 2-10-86; 8:45 am]

BILLING CODE 4140-01-M

**DEPARTMENT OF THE INTERIOR**

**Office of the Secretary**

**President's Commission on Americans  
Outdoors; 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 President's Commission on Americans Outdoors (Commission) will be held Thursday, March 6, 1986, starting at 9:00 am, in the Auditorium of the Indiana State Museum, 202 North Alabama, Indianapolis, Indiana 46204.

This will be a hearing to obtain information on the kinds of programs that are provided and opportunities afforded in recreation programs in this country. Attendees have been invited by the Commission for this public hearing; however interested parties may request time to testify by contacting the Commission.

This meeting is opened to the public, interested persons may attend. The Commission contact is Mr. James Gasser, and he may be contacted at the President's Commission on Americans Outdoors, P.O. Box 18547, 1111-20th Street, NW, Washington, DC 20036-8547, (202) 634-7310.

Dated: February 5, 1986.

Victor H. Ashe,

Executive Director, President's Commission on Americans Outdoors.

[FR Doc. 86-2949 Filed 2-10-86; 8:45 am]

BILLING CODE 4310-70-M



**Bureau of Land Management****Owyhee River; Availability of Final National Wild River Management Plan**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability of Final National Wild River Management Plan for the Owyhee River in Oregon.

**SUMMARY:** Pub. L. 98-494 amended the Wild and Scenic Rivers Act (16 U.S.C. 1374) by adding 120 miles of the Owyhee River in Oregon to the National Wild and Scenic Rivers System. Section 3(b) of the Wild and Scenic Rivers Act requires management plans and detailed boundaries be developed and submitted to Congress. The Owyhee River Final National Wild River Management Plan was submitted to Congress on January 27, 1986, and will become effective on April 27, 1986.

Copies of the Final National Wild River Management Plan are available upon request.

**ADDRESS:** Requests for copies of the Owyhee River Final National Wild River Management Plan should be sent to: Bureau of Land Management (933), 825 Northeast Multnomah Street, Post Office Box 2965, Portland, Oregon 97208.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. Brown at (202) 343-9353, Washington, D.C., or Ken White at (503) 231-6972, Portland, Oregon.

Robert F. Burford,  
Director.

[FR Doc. 86-2902 Filed 2-10-86; 8:45 am]

BILLING CODE 4310-84-M

**Albuquerque District, NM; Advisory Council Meeting**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of District Advisory Council Meeting.

**SUMMARY:** The Bureau of Land Management's (BLM) Albuquerque District Advisory Council will meet on Saturday, March 1, 1986, at 10:30 a.m., in the Conference Room of the BLM's Rio Puerco Resource Area Office at 3550 Pan American Highway, Albuquerque, New Mexico.

The Council's first agenda item will be to hear the recommendations from the Rio Grande Technical Review Team concerning the management of recreational use on the Rio Grande near the village of Pilar, New Mexico. The Rio Grande Technical Review Team is an eight-member team formed by the Albuquerque District Advisory Council at its last meeting.

Other items on the agenda include an update on the BLM's management efforts in the El Malpais Area.

The Council will elect officers for 1986.

This meeting date is contingent upon appointment of four members to the Council by the Secretary of the Interior. The meeting will be postponed if appointments are not finalized by March 1, 1986.

The District Advisory Council is managed in accordance with the Federal Land Policy and Management Act of 1976, the Federal Advisory Committee Act of 1972, and the Rangeland Improvement Act of 1976. Minutes of the meeting will be made available for review within 30 days following the meeting.

For additional information, contact R. Alan Hoffmeister, Public Affairs Specialist, P.O. Box 6770, Albuquerque, New Mexico 87197-6770, (505) 766-2328.

L. Paul Applegate,  
District Manager.

[FR Doc. 86-2959 Filed 2-10-86; 8:45 am]

BILLING CODE 4310-FB-M

**Fish and Wildlife Service****Intent To Prepare a Comprehensive Conservation Plan/Environmental Impact Statement, and Wilderness Suitability Assessment for the Arctic National Wildlife Refuge, AK, as well as Boundary Descriptions for the Management of the Ivishak, Wind, and Sheenjek Wild and Scenic Rivers**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that the Service intends to gather information necessary for the preparation of a Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Arctic National Wildlife Refuge in northeastern Alaska. In accordance with Alaska National Interest Lands Conservation Act (ANILCA), sec. 605, the Service intends to recommend corridor boundaries and management strategies for the three Congressionally approved Wild and Scenic Rivers in the Refuge, the Ivishak, the Wind, and the Sheenjek Rivers. Public meetings regarding preparation of this plan and wilderness assessment will be held. This notice is being furnished as required by the National Environmental Policy Act (NEPA Regulations 40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the

scope of issues to be addressed in the CCP/EIS. Comments and participation in this scoping process are solicited.

**DATES:** Formal, written comments should be received by June 1, 1986. Dates, times, and places for public scoping meetings or office visits or consultative conferences regarding the Arctic National Wildlife Refuge CCP, EIS, and wilderness assessment will be advertised by letters and print and broadcast media.

**ADDRESSES:** Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, Attention: Consuelo K. Wassink.

**FOR FURTHER INFORMATION CONTACT:** Consuelo K. Wassink, Public Involvement Specialist, Refuge Planning, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503. Telephone (907) 786-3496.

**SUPPLEMENTARY INFORMATION:** This comprehensive conservation plan, wilderness-suitability assessment, and wilderness proposal is being prepared to fulfill requirements of the ANILCA of 1980, section 304g. The environmental review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), other appropriate Federal regulations and Service procedures for compliance with those regulations.

We estimate the Draft Comprehensive Conservation Plan, Environmental Impact Statement will be made available to the public by January, 1987.

Dated: February 4, 1986.

Robert E. Gilmore,  
Regional Director.

[FR Doc. 86-2925 Filed 2-10-86; 8:45 am]

BILLING CODE 4310-55-M

**Intent To Prepare an Environmental Impact Statement on Operation of the National Wildlife Refuge System**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of Intent.

**SUMMARY:** The U.S. Fish and Wildlife Service (FWS) has begun the process of issuing a new programmatic environmental impact statement (EIS) on the operation of the National Wildlife Refuge System (NWRS). The purpose of this notice is to start the scoping process, and publicize when and where scoping meetings will be held. This notice also solicits public comment as to



what issues should be addressed in the EIS, and why.

**DATE:** Written comments should be submitted not later than May 3, 1986, to be considered in the preparation of the draft EIS.

**ADDRESS:** Comments should be addressed to: Director, U.S. Fish and Wildlife Service, Room 2343, Main Interior building, 18th and C Sts., NW, Washington, D.C. 20240.

#### Meeting Schedule

March 10, 1986: Newton Corner, MA; 7th Floor Conference Room, One Gateway Center; 7 pm; contact Curt Laffin, (617)965-5100, ext. 222

March 12, 1986: Washington, DC; Board Room, American Institute of Architects, 1735 New York Ave. NW; 9 am; contact Norma Opgrand, (202)653-2220

March 13, 1986: Portland, OR; Lloyd Center Meeting Room, Upper Level West Mall, 7 pm; contact Blayne Graves, (503)231-6771

March 19, 1986: Anchorage, AK; FWS Regional Office Conference Room, 1011 E. Tudor Rd.; 7 pm; contact William Knauer, (907)786-3399.

March 20, 1986: Denver, CO; Stapleton Plaza Hotel, 3333 Quebec St.; 7 pm; contact Gerald Nugent, (303)236-8150

April 1, 1986: Bloomington, MN; Thunderbird Motel, 2201 E. 78th St.; 7:30 pm; contact Wayne Weier, (612) 725-4689

April 2, 1986: Albuquerque, NM; Room H, Continuing Education Conference Center, University of New Mexico, 1634 University Blvd.; 7 pm; contact: Dave Segal (505) 766-8048

April 3, 1986: St. Louis, MO; Ramada Inn at the Airport, 9636 Natural Bridge Rd.; 7:30 pm; contact Wayne Weier, (612)725-4689

April 3, 1986: Atlanta, GA; L.D. Strom Auditorium, Richard B. Russell Bldg., 75 Spring St., SW; 7:30 pm; contact Patricia Prodriznik, (404)331-3551.

**SUPPLEMENTARY INFORMATION:** The NWRS is comprised of more than 430 national wildlife refuges throughout the United States, in every state except West Virginia. Some of these refuge units are as small as a few acres, while others, such as those in Alaska range into millions of acres; they represent a vast spectrum of fish and wildlife populations and their habitats.

Many laws govern how the FWS can manage national wildlife refuges and what uses can occur. Two of the more important laws are the National Wildlife Refuge System Administration Act, which authorizes the FWS to permit uses on refuges when determined to be compatible with the major purposes for

which a refuge was established; and the Refuge Recreation Act, which requires that any recreational use on a refuge be not only compatible, but also that sufficient funds are available for the development, operation and maintenance of the recreational use.

The FWS presently administers the NWRS using a variety of resource management programs that provide a wide diversity of productive fish and wildlife habitats and populations, while optimizing opportunities for compatible recreational, educational and economic uses. Examples of these varied wildlife management practices include forest management (such as timbering), cropland management (planting food and cover crops), burning vegetation, building dikes, or periodically draining marshes. Other management tools such as hunting, fishing, trapping, and haying also provide recreational and economic opportunities for the public. On some refuges, management may be much less intensive, as on designated wilderness or research natural areas.

Whatever the form of management, refuges are managed with certain goals in mind. Most refuges have been created to protect migratory waterfowl with a goal of assisting in the perpetuation of the migratory bird resource. On others, the goal is to preserve, restore and enhance threatened and endangered species. Some have been established in part to provide educational or recreational benefits.

In November 1976, the FWS published a final EIS on the operation of the NWRS. In that EIS, the FWS stated that in 10 years the document would be reviewed and revised if necessary. Over the past decade both changes in the way the NWRS operates, and changes in the method of preparing EIS's have led the FWS to conclude that a completely new programmatic EIS for the NWRS is desirable. Therefore, the FWS is beginning the scoping process, with a schedule for publishing the final EIS by December 1986.

The public is encouraged to participate in this process by providing your views on the management of the NWRS, and what options or alternatives should be considered and evaluated in the programmatic EIS. Written comments may be provided by May 3, 1986, to the address listed, or may be provided either verbally or in writing at any of the scoping meetings listed above. It is anticipated that a draft EIS will be published in the early summer, and the FWS will hold public meetings prior to the preparation of the final EIS.

Dated: February 5, 1986.

Ronald E. Lambertson,

Acting Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 86-2680 Filed 2-10-86; 8:45 am]

BILLING CODE 4310-55-M

#### Minerals Management Service

##### Analysis of Outer Continental Shelf Minimum Bid Policies

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Request for Comments.

**SUMMARY:** The Minerals Management Service (MMS) is analyzing Outer Continental Shelf (OCS) oil and gas minimum bid policies. The current minimum bid of \$150 per acre was established by the Secretary in May 1982, providing for reconsideration based on experience. In conjunction with the preparation of the new 5-year OCS oil and gas leasing program, a preliminary analysis has been conducted of minimum bid policies entitled: *Analysis of Minimum Bid Policies*, Branch of Economic Studies, Offshore Resource Evaluation Division, June 7, 1985. A summary of this analysis was made available to the OCS Policy Committee at their meeting on November 5-7, 1985. The analysis focused on the effects of the current minimum bid level on bidding and Government receipts and the timing of leasing, exploration, and development in 21 OCS planning areas.

This solicitation requests comments on the analysis and summary results and recommendations from interested parties. The MMS will consider comments in response to this request as part of its analysis of the likely consequences of modifying the current minimum bid level on a sale-specific basis. Any policy changes may be implemented by specification in the appropriate Notice of Sale.

**DATE:** Comments should be postmarked or hand delivered no later than the close of business, of the 30th calendar day following publication of this notice.

**ADDRESS:** Request for Comments on Minimum Bid Policies, Director, Minerals Management Service, U.S. Department of the Interior, 12203 Sunrise Valley Drive, MS-643, Reston, Virginia 22091.

**FOR FURTHER INFORMATION AND FOR A COPY OF THE ANALYSIS AND SUMMARY RESULTS CONTACT:** Dr. Marshall Rose, Minerals Management Service, MS-643, Reston, Virginia 22091, (703) 860-7558.



**SUPPLEMENTARY INFORMATION:****Background**

On May 4, 1982, the Under Secretary of the Interior changed the minimum bid requirement for OCS oil and gas leases from \$25 per acre to \$150 per acre. The \$150 per acre minimum was applied for the first time at Sale 71 (Diapir) on October 13, 1982, and has been applied to all subsequent sales to date.

The Draft Proposed 5-Year Program Secretarial Issue Document which was released in March 1985 raised the issue of further consideration and analysis of minimum bid levels as they relate to fair market value and economic efficiency. In June 1985, a subsequent preliminary analysis of minimum bid policies was completed. It is this analysis on which we are soliciting comments. The analysis focuses on the effects of minimum bid levels on Government receipts, extrapolating results from previous revenue studies; examines economic factors and their influence on the timing of exploration and development especially in high-risk/high-cost planning areas; and, derives a tentative listing of planning areas for reconsideration of the current \$150 per acre minimum bid based on the sensitivity of their profitability to economic conditions.

**Summary of Analysis**

The analysis initially examines the effects of the current \$150 per acre minimum bid on bidding and Government receipts. Using the theoretical and quantitative framework which formed the analytical basis for the change from \$25 per acre to \$150 per acre, it was found that in the 19 OCS lease sales examined from 1979 to 1984, raising the minimum bid from \$25 per acre to \$150 per acre would increase the high bids on the majority of affected tracts up to the new minimum. Beginning with the first areawide lease sale in the Gulf of Mexico and for each of the 5 subsequent sales it was estimated that the higher minimum bid of \$150 per acre increased aggregate bonuses by as little as \$50 million and as much as \$84 million per sale. Further analysis of the effect of raising the minimum bid from \$150 per acre to \$300 per acre on aggregate bonus bids indicated a resulting decline of \$50 to \$100 million per sale.

Perhaps of greater importance in examining minimum bid levels is their influence on the timing of leasing, exploration, and development of oil and gas prospects in specific planning areas. The goals of the OCS Lands Act include, *inter alia*, encouragement of "orderly development . . . in a manner consistent with . . . other national

needs." One way of meeting these goals is to lease tracts so as to maximize their economic value to the Nation. This requires that the sale of tracts be sequenced properly.

The minimum bid can be used as a tool to help produce the appropriate sequence.

The findings of the analysis derive from a mathematical model which initially solves for the smallest geologic field size (given estimates of costs, risks, and future prices of oil and gas) that should be leased currently from the perspective of economic efficiency. Next, the private value (after tax net present value (ATNPV)) of this designated field size is determined, incorporating taxes, royalties, etc. Finally, the minimum bid is specified at a level slightly above this private value, in order to preclude the leasing of smaller sized fields.

In general, the economic efficiency maximizing strategy requires that the largest, most valuable geologic fields and prospects be sold first, since in the presence of an assumed positive price growth for exhaustible resources, these prospects will grow in value most slowly. As might be expected, this strategy also requires adjustments to the minimum field size to be leased and to the minimum bid of the revised minimum field size as the input variables change, e.g., geologic and economic success, prices of oil and gas, costs of production, etc.

Typically, for changes in static system variables which increase the value of the geologic prospects, we find that it becomes desirable to accelerate the pace of leasing, so the minimum field size declines. Whether the private value and hence the minimum bid of this revised minimum field size to be leased increases or decreases depends upon the relative decline in private value owing to a reduction in the smallest field size to be leased compared to the increase in value of this revised minimum field size due to changes in the static system variables. Usually, we find that the decline in private value resulting from a smaller field size exceeds the gain in value from the changing static system variables, so that declines in the minimum field size are accompanied by declines in the minimum bid. For example, when resource prices increase or costs of production decline, the minimum field size to be leased declines, and the private value of this revised minimum field size as well as the minimum bid declines as compared to the original minimum field size and minimum bid. Similarly, an increase in the

probability of success lowers the size of the smallest field to be leased. However, it is found that in this case the private value of this revised smallest field size is raised, along with the minimum bid.

Different forms of the outcome solution are found for the dynamic system variables, although the results are consistent within this category of variables. We typically observe that changes in these variables (e.g., discount rates, real resource price growth) which increase the value of the geologic prospects also increase the minimum field size to be sold, because the benefits of holding inventory are increased. Further, the combination of larger minimum field size and higher valued fields results in a higher minimum bid.

Because of the inherent uncertainty about future states of nature, a supplemental analysis was conducted which views the minimum bid issues in a more aggregated setting. Within each planning area, some prospects' private value falls in the window between the minimum bid and zero value, making them highly sensitive to minimum bid policy. Using two levels of private value prospect—zero to \$6 million and zero to \$15 million, the percentage of undiscovered resources contained in these low valued prospects in each planning area was computed. The following planning areas were estimated to have 87 percent or more of their undiscovered resources (in positively valued prospects) in those prospects with a private value of less than \$15 million: Hope Basin, Lower Cook Inlet, Gulf of Alaska, Kodiak, North Aleutian Basin, Norton, Shumagin, and the North Atlantic (the percentage of undiscovered resources in prospects worth less than \$6 million in these same planning areas ranged from 39 to 100 percent). The planning areas were then ranked using the zero to \$15 million private value per prospect category to determine the percent of the positively valued prospects within the range of these low private values. An additional 5 planning areas—the Chukchi Sea, Washington-Oregon, Mid-Atlantic, Northern California, and the South Atlantic were identified as having 24 to 51 percent of positively valued prospects valued at less than \$15 million. This tentative listing of 13 planning areas represents prime candidates for reconsideration of their current minimum bid levels.

Focusing upon this listing of the 13 planning areas most sensitive to the minimum bid level, analysis of revised minimum bid levels can be conducted using the data and computer models developed for the quantitative economic



analysis employed in the 5-year proposed program document. The results would provide ranges of minimum bid levels which can be assessed to determine how they compare to the current minimum bid level and the extent to which minimum bid policy can be used to assure receipt of fair market value and to encourage expeditious and orderly development in a manner consistent with maintenance of competition and other national needs.

#### Questions

1. Do you consider the qualitative relationships between the system variables and the minimum economic field size and ATNPV to be accurate?

2. Assuming that the minimum economic field size and the ATNPV are sensitive to the factors in the analysis, does this lead to considerations of varying the minimum bid on a sale-specific basis? For all planning areas? For high-cost/high-risk areas?

3. Should the high-risk/high-cost areas tentatively identified be considered for lowering the minimum bid level in order to encourage leasing, exploration, and development? Will any such change make a significant difference in your company's bidding?

4. Is the framework of the analysis appropriate? Are the quantitative and analytical findings correct? Should additional factors be considered?

5. Should encouragement of exploration and development in frontier areas be considered a primary factor in considering modifying minimum bid levels? Should frontier areas be defined as those in which no commercial discovery has taken place? Should another definition be considered?

6. Do you agree with our finding that current \$150 per acre minimum has not adversely affected bidding interest or Government revenues in sales held in proven areas? Can the same statement be made about frontier areas?

Dated February 5, 1986.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 86-2918 Filed 2-10-86; 8:45 am]

BILLING CODE 4310-MR-M

#### Outer Continental Shelf Advisory Board—Policy Committee; Notice and Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. No. 92-463, 5 U.S.C. App. 1 and the Office of Management and Budget's Circular No. A-63. Revised.

The Policy Committee of the Outer Continental Shelf (OCS) Advisory Board will meet from 8:00 a.m. to 5:00 p.m., March 12 and 13, 1986, at the Sheraton Charleston, Charleston, South Carolina, (803-723-3000).

The meeting will cover the following principle subjects:

March 12, 1986

- Our Energy Future: Supplies, Prices, and Uncertainty
- 5-Year Oil and Gas Leasing Program

March 13, 1986

- Role of OCS gas in U.S. Energy Needs
- 5-Year Program: Discussion Panel
- Leasing Incentives and Strategies
- Commercial Fishing and the OCS

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the committee. Such requests should be made no later than February 28, 1986, to the OCS Policy Committee, Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, contact the Executive Secretary, Michele Tetley at 202/343-9314.

Minutes of the meeting will be available for public inspection and copying 8 weeks after the meeting at the Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

John B. Rigg,

Associate Director for Offshore Minerals Management.

Dated: February 6, 1986.

[FR Doc. 86-2982 Filed 2-10-86; 8:45 am]

BILLING CODE 4310-MR-M

#### National Park Service

##### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 31, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written

comments should be submitted by February 26, 1986.

Carol D. Shull,

Chief of Registration National Register.

#### ARIZONA

##### Maricopa County

Phoenix, *Blount Addition Historic District*, N side of W. Culver St. between Central and Third Aves.

#### CALIFORNIA

##### Humboldt County

Arcata, *Stone House*, 902 Fourteenth St.

#### CONNECTICUT

##### Fairfield County

Bridgeport, *U.S. Office—Bridgeport Main*, 120 Middle St.

##### New Haven County

Milford, *U.S. Post Office—Milford Main*, 6 W. River St.

##### New London County

Norwich, *U.S. Post Office—Norwich Main*, 340 Main St.

#### FLORIDA

##### Dade County

Cutler, *Deering, Charles, Estate*, SW Hundred Sixty-seventh St. and Old Cutler Rd.

#### INDIANA

##### Vigo County

Terre Haute, *Farrington's Grove Historic District*, Roughly bounded by Poplar and S. Fourth Sts. Hulman Ave., and S. Seventh St.

#### LOUISIANA

##### Lafourche County

Thibodaux, *Bank of Lafourche Building (Historic Resources of Thibodaux MRA)*, 206 Green St.

Thibodaux, *Breaux House (Historic Resources of Thibodaux MRA)*, 401 Patriot Thibodaux, *Building at 106 Green Street (Historic Resources of Thibodaux MRA)*, 103 Green St.

Thibodaux, *Chanticleer Gift Shop (Historic Resources of Thibodaux MRA)*, 103 W. Third

Thibodaux, *Citizens Bank of Lafourche (Historic Resources of Thibodaux MRA)*, 413 W. Fourth St.

Thibodaux, *Grand Theatre (Historic Resources of Thibodaux MRA)*, 401 Green St.

Thibodaux, *Lamartina Building (Historic Resources of Thibodaux MRA)*, 700-704 W. Third

Thibodaux, *McCulla House (Historic Resources of Thibodaux MRA)*, 422 E. First Thibodaux, *Peltier House (Historic Resources of Thibodaux MRA)*, 403 Canal Blvd.

Thibodaux, *Percy-Lobdell House (Historic Resources of Thibodaux MRA)*, 314 St. Mary St.



Thibodaux, *Riviere Building (Historic Resources of Thibodaux MRA)*, 405 W. Third

Thibodaux, *St. Joseph's Co-Cathedral and Rectory (Historic Resources of Thibodaux MRA)*, 721 Canal Blvd.

Thibodaux, *Robichaux House (Historic Resources of Thibodaux MRA)*, 322 E. Second St.

Thibodaux, *Riviere House (Historic Resources of Thibodaux MRA)*, 208 Canal Blvd.

## MASSACHUSETTS

### Berkshire County

Pittsfield, *Berkshire Life Insurance Company Building*, 5-7 North St.

### Hampshire County

Easthampton, *Main Street Historic District*, Main St. between Northampton and Center Sts.

### Middlesex County

Lowell, *U.S. Post Office*, 50 Kearney Sq.

### Suffolk County

Boston, *Bulfinch Triangle Historic District*, Roughly bounded by Canal, Causeway, Friend, and

Lancaster Sts., Lowell Sq., Merrimack, Portland, and Traverse Sts.

### Worcester County

Hudson, *Felton Street School*, 20 Felton St.  
Templeton, *Baldwinville Village Historic District*, Elm, Pleasant, Memorial, S. Main, and Circle Sts.

## NEW HAMPSHIRE

### Carroll County

Sandwich, *Bradbury—Jewell House*, Ferncroft Rd.

### Grafton County

Plymouth, *Plymouth Historic District*, Bounded by Main, Highland, and Court Sts.

### Hillsborough County

Hudson, *Sanders, G.O., House*, 10 Derry St.

### Merrimack County

Suncook, *Noyes, Jacob, Block*, 48 Glass St.

### Rockingham County

Londonderry, *Young, General Mason J., House*, 4 Young Rd.

### Strafford County

Rochester, *Hayes, Richard, House*, 184 Gonic Rd.

### Sullivan County

Washington, *Washington Common Historic District*, Intersection of Half Moon Pond Rd. and Millen Pond Rd.

## OREGON

### Benton County

Corvallis, *Kline, Lewis G., Building*, 146 SE Second St.

### Coos County

Coos Bay, *Coos Bay Carnegie Library*, 515 Market St.

### Jefferson County

Metolius, *Oregon Trunk Railway Passenger and Freight Station*, Washington St. at the foot of Sixth St.

### Josephine County

Grants Pass, *Clark-Norton House*, 127 NW D St.

### Multnomah County

Portland, *Ainsworth, Maud and Belle, House*, 2542 SW Hillcrest Dr.

Portland, *Cornelius Hotel*, 525 SW Park Ave.

### Umatilla County

Pendleton, *Vey, Joseph, House*, 1304 SE Court Pl.

Pendleton, *Johnson—Ellis House*, 326 SE Second St.

### Wasco County

The Dalles, *Bennett-Williams House*, 608 W. Sixth St.

### Yanhill County

McMinnville, *Spence, Jack, House* 536 E. Fifth St.

## PENNSYLVANIA

### Allegheny County

Pittsburgh, *House at 200 W. North Ave.*, 200 W. North Ave.

Pittsburgh, *Stanley Theater and Clark Building*, 207 Seventh St. and 701-717 Liberty Ave.

### Bucks County

Wrightstown Township, *Penns Park Historic District* Intersection of Second St. Pike and Penns Park Rd.

### Cumberland County

Lower Allen Township, *Etters Bridge*, Green Lane Dr. and Yellow Beeches Creek (also in York County)

### Franklin County

St. Thomas Township, *White House Inn*, 10111 Lincoln Way W

## WASHINGTON

### Pacific County

Tokeland, *Willapa Bay Boathouse*, US Coast Guard Station, Willapa Bay

## WYOMING

### Sweetwater County

Rock Springs, *Gras House*, 616 Elias

### Washakie County

Worland, *Worland House*, 520 Culbertson

[FR Doc. 86-2932 Filed 2-10-86; 8:45 am]

BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB-19 (Sub-No. 107); Docket No. AB-18 (Sub-No. 68)]

### Baltimore and Ohio Railroad Co. et al.; Abandonment and Discontinuance of Service in Lawrence and Jackson Counties, OH; Findings

The Commission has found that the public convenience and necessity permit the Baltimore and Ohio Railroad Company (B&O) to (1) abandon its 22.81-mile rail line between milepost 4.64 at Wellston and milepost 7.87 at Coalton, and between milepost 13.17 at Jackson and milepost 32.75 at Firebrick, and (2) discontinue service over 5.30 miles of trackage of the Chesapeake and Ohio Railway Company (C&O) between milepost 7.87 at Coalton and milepost 13.17 at Jackson and C&O seeks to (1) abandon its line between Coalton and Jackson, and (2) discontinue service over the B&O trackage between Wellston and Coalton, in Lawrence and Jackson Counties, OH.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower-left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

By the Commission, Division 1, Commissioners Sterrett, Gradison, and Lamboley.

James H. Bayne,  
Secretary.

[FR Doc. 86-2927 Filed 2-10-86; 8:45 am]

BILLING CODE 7035-01-M

### [Finance Docket No. 30770]

### Consolidated Rail Corporation; Trackage Rights; Chicago and North Western Transportation Co.

Chicago and North Western Transportation Company (CNW), has



agreed to grant Consolidated Rail Corporation trackage rights in Chicago, IL over the Rockwell Street Line between Ogden Avenue and Western Avenue. The trackage rights will be effective on January 28, 1986.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: February 5, 1986.

By the Commission, Jane F. Mackall,  
Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-3037 Filed 2-10-86; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Attorney General's Commission on Pornography; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Department of Justice announces the following meetings of the Attorney General's Commission on Pornography.

#### Meeting

Date and Time: February 26, 1986, 9:00 a.m.—11:00 p.m. (local time).

Place: Conference Room, Scottsdale City Hall, 3939 Civic Center Plaza, Scottsdale, Arizona 85251.

Status: Open to the public.

Matters to be considered at meeting: Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material and (4) Any other relevant matters.

#### Meeting

Date and Time: February 27, 1986, 9:00 a.m.—11:00 p.m. (local time).

Place: Conference Room, Scottsdale City Hall, 3939 Civic Center Plaza, Scottsdale, Arizona 85251.

Status: Open to the public.

Matters to be considered at meeting: Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material and (4) Any other relevant matters.

#### Meeting

Date and Time: February 28, 1986, 9:00 a.m.—11:00 p.m. (local time).

Place: Conference Room, Scottsdale City Hall, 3939 Civic Center Plaza, Scottsdale, Arizona 85251.

Status: Open to the public.

Matters to be considered at meeting: Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material and (4) Any other relevant matters.

#### Meeting

Date and Time: March 1, 1986, 9:00 a.m.—11:00 p.m. (local time).

Place: Conference Room, Scottsdale City Hall, 3939 Civic Center Plaza, Scottsdale, Arizona 85251.

Status: Open to the public.

Matters to be considered at meeting: Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material and (4) Any other relevant matters.

#### Meeting

Date and Time: March 2, 1986, 9:00 a.m.—12:00 noon (local time).

Place: Conference Room, Scottsdale City Hall, 3939 Civic Center Plaza, Scottsdale, Arizona 85251.

Status: Open to the public.

Matters to be considered at meeting: Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material and (4) Any other relevant matters.

The meetings and hearings will be open to the public. Written comments may be submitted regarding relevant issues. Approximately 20 seats will be available on a first-come, first-served basis. The Commission may take lengthy breaks from the meeting during each day. These will be announced as early as can be determined during the morning sessions on each day.

Copies of minutes will be available upon request, at the actual cost of duplication, 60 days after the final meeting on March 2, 1986.

Contact person for more information or to submit written comments: Alan E. Sears, Executive Director, Attorney General's Commission on Pornography, Department of Justice, Room 1018, HOLC Building, 320 First Street, NW., Washington, D.C. 20530, (202) 724-7837.

Henry Hudson,

Commission Chairman.

[FR Doc. 86-2934 Filed 2-10-86; 8:45 am]

BILLING CODE 4410-01-M

### Immigration and Naturalization Service

#### Reimbursable Services; Excess Cost of Preclearance Operations

Notice is hereby given that pursuant to Immigration and Naturalization

Service Regulations (8 CFR 235.5(c)), the biweekly reimbursable excess costs for each preclearance installation are determined as set forth below and will be effective with the pay period beginning February 2, 1986.

Installation	Biweekly excess cost
Montreal, Canada.....	\$10,209.48
Toronto, Canada.....	15,009.88
Kindley Field, Bermuda.....	2,185.55
Freeport, Bahama Islands.....	6,965.03
Nassau, Bahama Islands.....	7,025.84
Calgary, Canada.....	4,488.01
Edmonton, Canada.....	3,987.66
Vancouver, Canada.....	9,135.57
Victoria, Canada.....	2,398.58
Winnipeg, Canada.....	2,409.42

These amounts will be in effect and billed biweekly until the first full pay period after the next notice of reimbursable biweekly excess costs is published in the **Federal Register**.

Dated: February 2, 1986.

Malcolm E. Arnold,

Comptroller.

[FR Doc. 86-2958 Filed 2-10-86; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.



The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

**Comments and Questions:** Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

#### Revision

Employment and Training Administration

Work Application

1205-0001

Recordkeeping

Individuals or households; State or local governments; 52 recordkeepers; 208 hours

The Application is the basic operation document used in State public employment service and WIN local offices for new and partial applications for individuals seeking assistance in finding employment or employability development services. ETA proposes to eliminate the forms ETA 511, 511c and 516. The one-year recordkeeping requirement will be maintained.

#### Extension

Employment Standards Administration  
Request from Claimant for Information on Earnings, Dual Benefits, Dependents, and Third Party Settlement

1215-0151; CA-1032

Annually

Individuals or households

38,000 responses; 12,667 hours; 1 form

The CA-1032 is used to obtain information from claimants receiving compensation on the Division of Federal Employees' Compensation periodic disability roll. This information is necessary to ensure that the compensation being paid is correct.

Signed at Washington, DC, this 6th day of February 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86-2989 Filed 2-10-86; 8:45 am]

BILLING CODE 4510-27, 4510-30-M

#### Consumer Price Index for All Urban Consumers, United States City Average

Pursuant to section 112 of the 1976 amendments to the Federal Election Campaign Act (Pub. L. 94-283, 2 U.S.C. 441a), the Secretary of Labor has certified to the Chairman of the Federal Election Commission and publishes this notice in the *Federal Register* that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 118.1 percent from its 1974 annual average of 147.7 to its 1985 annual average of 322.2. Using 1974 as a base (1974=100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 118.1 percent from its 1974 annual average of 100 to its 1985 annual average of 218.1.

Signed at Washington, DC, on the 29th day of January 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86-2991 Filed 2-10-86; 8:45 am]

BILLING CODE 4510-24-M

#### Consumer Price Index for All Urban Consumers, United States City Average

Pursuant to section 604(c) of the Motor Vehicle Information and Cost Savings Act, which was added to the Motor Vehicle Theft Law Enforcement Act of 1984, and the delegation of the Secretary of Transportation's responsibilities under the Act to the Administrator of the National Highway Traffic Safety Administration (49 CFR 501.2(f)), the Secretary of Labor has certified to the Administrator and published this notice in the *Federal Register* that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 3.6 percent from its 1984 annual average of 311.1 to its 1985 annual average of 322.2.

Signed at Washington, DC, on the 29th day of January 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86-2992 Filed 2-10-86; 8:45 am]

BILLING CODE 4510-24-M

#### Employment and Training Administration

[TA-W-15,843]

#### Nutone Division of Scovill Corp.; Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 20, 1985, applicable to all workers of the Nutone Division of Scovill Corporation, Cincinnati, Ohio. The Notice of Certification was published in the *Federal Register* on September 4, 1985 (50 FR 35881).

On the basis of additional information, the Office of Trade Adjustment Assistance, on its own motion, reviewed the certification. The additional information revealed that the production of components at the Reading, Ohio plant was substantially integrated into the production of import-impacted household products produced at Nutone's Cincinnati, Ohio plant. Workers at the Reading plant were not separately identifiable by product.

The intent of the certification is to cover all workers at the Reading, Ohio and Cincinnati, Ohio plants of the Nutone Division of Scovill Corporation who were affected by the decline in the sales or production of heaters, fans, and other household products related to import competition. The notice, therefore, is amended by including workers at the Reading, Ohio plant.

The amended notice applicable to TA-W-15,843 is hereby issued as follows:

"All workers of the Reading, Ohio and Cincinnati, Ohio plants of the Nutone Division of Scovill Corporation who became totally or partially separated from employment on or after March 6, 1984 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 3rd day of February 1986.

Carolyn M. Golding,

Director, Unemployment Insurance Services, UIS.

[FR Doc. 86-2988 Filed 2-10-86; 8:45 am]

BILLING CODE 4510-30-M



[TA-W-15,772]

**United Technologies Corp. Diesel Systems; Adjustment Assistance**

On September 18, 1985, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers producing diesel fuel systems at United Technologies Corporation, Diesel Systems, Springfield, Massachusetts. This determination was published in the **Federal Register** on September 27, 1985 (50 FR 39185).

The application for reconsideration was filed by the International Union of Electrical Workers. The union claims that United Technologies' market share in the diesel pump business for trucks and farm vehicles has declined and that their leading competitors are foreign. The union also claims that imports of fully assembled trucks and farm vehicles with diesel fuel systems have adversely affected the workers at Springfield.

Findings in the Department's investigation for adjustment assistance show that all of the statutory criteria of the Trade Act of 1974 were met for workers producing nozzles at United Technologies' Springfield, Massachusetts plant. However, the findings did not substantiate that increased imports of diesel fuel systems contributed importantly to worker separations.

On reconsideration, the Department reviewed its findings on diesel fuel systems in the customer survey. The "contributed importantly" test is generally demonstrated through a survey of the subject firm's customers. The survey results showed that the respondents either did not purchase imported diesel fuel injection systems or had reduced import purchases in 1984 compared to 1983 and in the first quarter of 1985 compared to the same period in 1984. Therefore, the responding customers which accounted for a major part of United Technologies' 1984 sales, showed that they did not switch to

foreign imports of diesel fuel injection systems and the subject firm was not adversely affected by foreign competition.

The findings also showed the United Technologies Corporation had increased sales and production of diesel pumps and nozzles in 1984 compared to 1983 but had a substantial decrease in its export sales during the same periods. The loss of potential sales and declines in the export market would not provide a basis for certification under the Trade Act.

Imported products such as trucks and farm vehicles which incorporate diesel fuel systems adversely affecting domestic workers producing diesel fuel systems also would not provide a basis for certification. Final articles incorporating diesel fuel systems are not like or directly competitive with their component parts. Imports of diesel fuel systems must be considered by themselves in determining import injury to workers who manufactured this product at the Springfield plant. The courts have concluded that imported finished articles are not like or directly competitive with domestic component parts thereof, *United Shoe Workers of America, AFL-CIO v. Bedell*, 506 F.2d 174 (D.C. Cir., 1974). In that case the court held that imported, finished women's shoes were not like or directly competitive with shoe counters, a component of footwear.

**Conclusion**

After reconsideration, I affirm the original notice of determinations of eligibility to apply for adjustment assistance to workers and former workers at United Technologies Corporation, Diesel Systems, Springfield, Massachusetts.

Signed at Washington, DC, this 30th day of January 1986.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 86-2990 Filed 2-10-86; 3:45 am]

BILLING CODE 4510-30-M

**Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistant; American Standard, Inc., et al.**

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later February 21, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 21, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, D.C. this 31st day of January 1986.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

**APPENDIX**

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
American Standard, Inc. (UE)	Wilmerding, PA	1/23/86	1/17/86	TA-W-17,137	Freight-rail and mass transit systems equipment.
American Standard, Inc. (UE)	Greensburg, PA	1/23/86	1/17/86	TA-W-17,138	Freight-rail and mass transit systems.
American Standard, Inc. (UE)	Swissvale, PA	1/23/86	1/17/86	TA-W-17,139	Freight-rail and mass transit systems equipment.
Banco, Inc. (company)	Bridgeport, CT	1/15/86	1/10/86	TA-W-17,140	Ladies dresses & blouses.
Becky Dresses (workers)	Woodhaven, NY	12/13/85	12/10/86	TA-W-17,141	Ladies dresses.
Edgewater Steel Co. (USWA)	Oakmont, PA	1/27/86	1/22/86	TA-W-17,142	Forged railroad wheels and seamless rolled rings.
Elder Manufacturing Co. (ACTWU)	Webb City, MO	1/15/86	1/13/86	TA-W-17,143	Boy shirts.
Magnetic Peripherals Inc. (workers)	Bloomington, MN (3 plants)	1/16/86	1/13/86	TA-W-17,144	Computer storage units.
Magnetic Peripherals Inc. (workers)	Burnsville, MN	1/14/86	1/9/86	TA-W-17,145	SMD computer storage units.
Pope & Taibot, Inc. (workers)	Oakridge, OR	1/27/86	1/21/86	TA-W-17,146	Sawmill, green veneer, logging operation.
Roessing Bronze Co. (USWA)	Mars, PA	1/21/86	1/10/86	TA-W-17,147	Brass and bronze ingot/billets etc.



## APPENDIX—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
U.S. Repeating Arms Co. (IAM)	New Haven, CT	1/23/86	1/17/86	TA-W-17,148	Sporting rifles & shotguns.
Willamette Industries, Inc., Griggs Division (workers)	Lebanon, OR	12/31/85	12/27/85	TA-W-17,149	Plywood.
Alcan Rolled Products Co. (USWA)	Fairmont, WV	1/10/86	1/3/86	TA-W-17,150	Semifabricated cold rolled aluminum sheet foil and circles.
Alliance Machine Co. (The) (USWA)	Alliance, OH	1/21/86	1/15/86	TA-W-17,151	Steel mill cranes, heavy mill machinery.
Bethlehem Steel Corp. Sparrows Point Shipyard (USWA)	Sparrows Point, MD	1/17/86	1/10/86	TA-W-17,152	Ocean going ships, tankers, etc.
Black & Decker, Inc. (company)	Hampstead, MD (2 plants)	1/14/86	1/10/86	TA-W-17,153	Power tools & accessories.
Eagle Plastics of Maine, Inc. (workers)	Sanford, ME	1/15/86	1/7/86	TA-W-17,154	Shoe heels, shoe shanks.
Greenlee Tree Co. (IAMAW)	Rockford, IL	1/17/86	1/15/86	TA-W-17,155	Machine tool transfer lines and work centers.
International Paper Co., Liquid Packaging Division (workers)	Turlock, CA	1/21/86	1/16/86	TA-W-17,156	Printed paper milk carton containers.
Koehring Cranes & Excavators, AMCA International (Iron Workers)	Milwaukee, WI	1/21/86	1/15/86	TA-W-17,157	Cranes & excavators, back hoes.
Marine Drilling Co. (workers)	Corpus Christi, TX	1/23/86	1/20/86	TA-W-17,158	Drilling contractor—offshore oil & gas.
Riley Creek Lumber Co. (IWA)	LaCade, ID	1/8/86	1/6/86	TA-W-17,159	Lumber products.
Trane Manufacturing (workers)	Kearns, UT	1/13/86	12/24/85	TA-W-17,160	Refrigeration and air conditioning equipment.
W. F. Davis Motor Co. (company)	Whitesburg, KY	1/23/86	1/6/86	TA-W-17,161	Ford and Chrysler cars and truck dealership parts and service.
Easco Hand Tools, Inc. (workers)	Springfield, MA	1/13/86	1/8/86	TA-W-17,162	Administrative office.
Erie Mining Co. (workers)	Hoyt Lakes, MN	1/27/86	1/21/86	TA-W-17,163	Taconite pellets.
Eticon, Inc. (workers)	Auburn, ME	1/22/86	1/17/86	TA-W-17,164	Running shoes.
General Electric Indicating Devices, Inc. (workers)	Caguas, PR	1/27/86	1/16/86	TA-W-17,165	Panel meter, meter relay, transducers AD and DB switch-boards.
General Electric Co. Hermetic Motor Div. (workers)	Tiffin, OH	1/27/86	1/20/86	TA-W-17,166	Hermetics motors.
McKeesport Steel Foundry, Inc. (workers)	McKeesport PA	1/10/86	1/7/86	TA-W-17,167	Steel castings, valve castings.

[FR Doc. 86-2986 Filed 2-10-86; 8:45 am]

BILLING CODE 4510-30-M

### Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Powder Metal Products, Inc., et. al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period January 27, 1986-January 31, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) The a significant number or porportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm of subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

### Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-16,287; Powder Metal Products, Inc., St. Marys, PA

TA-W-16,327; Beatty Machine & Manufacturing Co., Hammond, IN

TA-W-16,336; Consolidation Coal Co., Robena Preparation Plant, Greensboro, PA

TA-W-16,330; Champion International Corp., McCloud, CA

In the following case the investigation revealed that criterion (3) has not been met for the reason specified.

TA-W-16,305; LaBelle Processing Co., LaBelle, PA

The investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of coal are negligible.

### Affirmative Determinations

TA-W-16,341; Pioneer Ltd, Plant #2, Lake City, SC

A certification was issued covering all works of the firm separated on or after August 14, 1984 and before August 31, 1985.

TA-W-16,345; Trimfoot Shoe Co., Farmington, MO

A certification was issued covering all workers of the firm separated on or after August 7, 1984.

TA-W-16,358; Dover Handbag Co., Inc., Netcong, NJ

A certification was issued covering all workers of the firm separated on of after August 1, 1984 and before August 1, 1985.

TA-W-16,357; Doe Spun, Inc., Cumberland Plant, Cumberland, MD

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA-W-16,322; Wayne Floral Co., Inc., Newark, NY

A certification was issued covering all workers of the firm separated on or after August 5, 1984 and before April 8, 1985.

I hereby certify that the aforementioned determinations were issued during the period January 27, 1986-January 31, 1986. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC during normal business hours or will be mailed to persons who write to the above address.

Dated: February 3, 1986.

Marvin M. Fooks,  
Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-2987 Filed 2-10-86; 8:45 am]

BILLING CODE 4510-30-M

### NATIONAL COMMISSION FOR EMPLOYMENT POLICY

#### Hearing

**ACTION:** Notice of hearing.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given of a public hearing of the National Commission for Employment Policy in Salons "A" and "B" of the Radisson Mart Plaza Hotel at 711 NW. 72nd Avenue, Miami, Florida.

**DATE:** Wednesday, March 5, 1986, 1:15 p.m. to 4:30 p.m.

**Status:** The hearing is open to the public.

**Matters to be discussed:** Commission members will hear testimony from



various witnesses representing both the public and private sectors. They will testify on two panels. One will focus on the implementation of the Job Training and Partnership Act in the state of Florida; the second will focus on labor market issues, such as those pertaining to older workers, pertinent especially to the region but also to the Nation in general.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathy McMichael, National Commission for Employment Policy, 1522 K Street NW, Suite 300, Washington, DC 20005, (202) 724-1545.

**SUPPLEMENTARY INFORMATION:** The National Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97-300). The Act gives the Commission the broad responsibility of advising the President and the Congress. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. No public testimony will be authorized except by those asked to do so prior to the hearing date. However, written testimony for the record will be accepted at the Commission offices through March 21, 1986.

Copies of the testimony and materials prepared for the hearing will be available for public inspection at the Commission's offices, 1522 K St. NW, Suite 300, Washington, DC 20005.

Signed this 3rd day of February 1986.

Carol J. Romero,

Acting Director.

[FR Doc. 86-2994 Filed 2-10-86; 8:45 am]

BILLING CODE 4510-30-M

## Meeting

**ACTION:** Notice of meeting.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby

given of a public meeting of the National Commission for Employment Policy in Salon "A" of the Radisson Mart Plaza Hotel at 711 NW 72nd Avenue, Miami, Florida.

**DATE:** Tuesday, March 4, 1986, 9:00 a.m. to 11:30 a.m.

**Status:** The meeting is open to the public.

**Matters to be discussed:** Commission members will discuss the status of the Commission's 10th Annual Report and the release of the *Computer's in the Work Place Report*. Other discussion includes past and future Commission hearings, plans for JTPA-related research and reports, and the status of the project on increased internationalization of the U.S. economy.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathy McMichael, National Commission for Employment Policy, 1522 K Street, NW, Suite 300, Washington, DC 20005, (202) 724-1545.

**SUPPLEMENTARY INFORMATION:** The National Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97-300). The Act gives the Commission the broad responsibility of advising the President and the Congress. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made.

Copies of the minutes and materials prepared for the meeting will be available for public inspection at the Commission's offices, 1522 K St. NW, Suite 300, Washington, DC 20005.

Signed this 3rd day of February 1986,

Carol J. Romero,

Acting Director.

[FR Doc. 86-2993 Filed 2-10-86; 8:45 am]

BILLING CODE 4510-30-M

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Forms Submitted to the Office of Management and Budget for Clearance

The following packages are being submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**Subject:** Monthly Corporate Central Credit Union Report (3133-0067).

**Respondents:** Federally Insured Credit Unions.

**Abstract:** Federally insured credit unions are required by section 202(a) (1) and (2) of the Federal Credit Union Act of make reports of financial condition to the National Credit Union Administration Board upon dates which shall be selected by it.

**Subject:** Voluntary Liquidation Procedures for Insured Credit Union (31333-0076).

**Respondents:** Federally Insured Credit Unions.

**Abstract:** The booklet provides suggested forms and outlines procedures for voluntary liquidation of federally insured credit unions by the credit union officials.

**OMB Desk Officer:** Robert Neal. A copy of the above information collection packages may be obtained by calling the National Credit Union Administration, Administrative Office on (202) 357-1055.

Written comments and recommendations for the listed information collections should be sent directly to the OBM Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated February 6, 1986.

Rosemary Brady,

Secretary of the NCUA Board.

[FR Doc. 86-2948 Filed 2-10-86; 8:45 am]

BILLING CODE 7535-01-M

## NATIONAL TRANSPORTATION SAFETY BOARD

### Responses to Safety Recommendations

Recommendation number	Respondent	Date	Subject
<b>Aviation</b>			
A-82-51	National Association of Flight Instructors	Dec. 9, 1985	Accurate position reporting in communications with ATC facilities.
A-85-51	Federal Aviation Administration	Dec. 13, 1985	Fairchild/Swearingen SA-226/227 engine ignition system operation.
A-71-59	do	Nov. 13, 1985	Fuel system fire safety devices.
A-85-7	do	Nov. 12, 1985	Mandatory inspection, repair, and removal procedures recommended in General Electric Service Bulletin 72-839.
A-81-27	do	do	Use of emergency exits on small airplanes.
A-84-86	do	Nov. 18, 1985	Priority 100 ampere alternators, concerning loss of output when flying in icing conditions.
A-84-104 through -107	do	Nov. 12, 1985	Fuel reservoir tank quick drains, supplement flight manuals to include routine draining of fuel reservoir tanks, supplement pilot handbooks to the location of fuel reservoir tanks and drains.
A-80-19	do	Dec. 17, 1985	Attitude-indicating instrument on large turboprop aircraft.



Recommendation number	Respondent	Date	Subject
A-85-35 through -49	do	Dec. 10, 1985	Equipment and procedures for air carrier water-contact accidents.
A-84-87	do	Dec. 12, 1985	Undetected structural deterioration on Mooney Model M-20 and M-20A airplanes.
A-80-50, A-84-8	do	Dec. 6, 1985	Illustrations of failure, failure trend information.
A-85-20 and -21	do	Dec. 10, 1985	Detection and repair of wing structural damage to Bellanca Model 86CBC.
A-76-100	do	Dec. 06, 1985	Simulated and actual engine-out emergencies in typical high performance multi-engine general aviation airplanes.
A-84-101	do	do	Uniform signs classified by function at all airports certificated for air carrier operations.
A-85-57 and -58	do	Dec. 10, 1985	Examination of piston connecting rods in Teledyne Continental Model TS10-360-E, -F, and -G engines which were installed in 1977, 1978, and 1979 model airplanes; and airworthiness design review of engines in Piper Model PA-28R-201T Turbo III Cherokee Arrow, PA-28RT-201T Turbo IV Cherokee Arrow, and PA-28-201T Turbo Dakota airplanes.
A-78-27 and -28	do	do	Minimum performance standards for flight recorders on complex aircrafts.
A-80-90, -92 and -94	do	Nov. 20, 1985	Airworthiness regulations for flexible, crash-resistant fuel lines, couplings, fuel cells, and fuel system components.
A-75-35	do	Nov. 12, 1985	Establishment of a Terminal Radar Service Area (TRSA) for the Tidewater area.
A-85-68	Aircraft Owners and Pilot Association	do	Practice instrument approach at uncontrolled airports.
A-84-66	Federal Aviation Administration	do	Unwarranted actuation of the stall avoidance system in Fairchild Swearingen Models SA 226 and SA 227 airplanes.
A-85-66 and -67	National Business Aircraft Association, Inc.	Nov. 27, 1985	Direct communications with the appropriate air traffic control facility at uncontrolled airports.
A-75-47	General Aviation Manufacturers Association	Nov. 21, 1985	Fuel conservation and minimum performance presentations at high density altitudes.
A-81-13	Federal Aviation Administration	Dec. 02, 1985	Fire safety standards for cargo or baggage compartments in transport category airplanes.
A-81-75 and -76	do	Nov. 29, 1985	Cockpit noise levels.
Highway			
H-85-41 through -43	Department of Highways, State of Colorado	Dec. 06, 1985	Sign maintenance plan.
H-85-22	Nissan Motor Corp. in U.S.A.	do	Child Passenger Safety.
H-85-22	State of Hawaii	Dec. 09, 1985	Do.
H-85-22	State of Alabama	Nov. 27, 1985	Do.
H-85-22	State of North Dakota	Nov. 26, 1985	Do.
H-85-22	State of Virginia, DMV	Dec. 09, 1985	Do.
H-85-22	State of Maryland	Dec. 06, 1985	Do.
H-85-22	State of Nebraska	Dec. 04, 1985	Do.
H-85-22	State of Kentucky	Dec. 06, 1985	Do.
H-85-22	State of Minnesota	Nov. 27, 1985	Do.
H-85-22	State of New Mexico	Dec. 03, 1985	Do.
H-85-22	State of Mississippi	Dec. 12, 1985	Do.
H-85-22	State of Virginia	Nov. 20, 1985	Do.
H-85-22	Pennsylvania State Police	Dec. 03, 1985	Do.
H-85-22	State of Tennessee Department of Safety	Nov. 21, 1985	Do.
H-85-49 and -50	State of California, Office of Traffic Safety	Dec. 16, 1985	Improved reporting of alcohol involvement in highway crashes.
H-85-22	State of Florida	Dec. 20, 1985	Child Passenger Safety.
H-85-22	State of Nevada	Dec. 17, 1985	Do.
H-85-22	State of New York	Dec. 20, 1985	Do.
H-85-49 and -50	State of Utah, Office of Legislative Research and General Counsel	Dec. 20, 1985	Improved reporting of alcohol involvement in highway crashes.
H-85-49 and -50	State of Nebraska	Dec. 20, 1985	Do.
H-84-75	National Highway Traffic Safety Administration	Dec. 23, 1985	Fail-safe latching devices on school bus seat cushions.
H-83-51	State of Rhode Island and Providence Plantations Department of Transportation	Nov. 08, 1985	Child safety seat restraints.
H-79-31, H-84-72, and H-85-12	Tennessee Department of Education	Nov. 21, 1985	Schoolbus driver qualifications.
H-82-35	State of New York	Nov. 18, 1985	Citizen reporting of drunk drivers.
H-82-35	Ohio Department of Highway Safety	Dec. 13, 1985	Do.
H-85-49 and -50	Alaska Department of Public Safety	Dec. 18, 1985	Improved reporting of alcohol involvement in highway crashes.
H-85-49 and -50	Commonwealth of Virginia	Dec. 18, 1985	Do.
H-85-18	Department of California Highway Patrol	Dec. 09, 1985	Deadbolt locks on emergency doors of schoolbuses.
H-82-25	Federal Highway Administration	Dec. 04, 1985	Proper use of citizens band radios.
H-84-94 and 95	Arkansas State Crime Laboratory	Nov. 08, 1985	Blood alcohol kits.
H-84-77 through -86	State of New York	Nov. 06, 1985	Repeat offender study.
H-85-4 through -6	State of North Dakota	Nov. 19, 1985	Schoolbus drivers and railroad crossing compliance.
H-82-18	State of Colorado	do	Proposal to raise the drinking age to 21.
H-79-31, H-84-72, and H-85-12	Alaska Department of Education	Nov. 15, 1985	Schoolbus driver testing and licensing.
H-82-35	Florida Department of Community Affairs	Dec. 17, 1985	Citizen reporting of drunk drivers.
H-85-30	National Safety Council	Nov. 27, 1985	Daytime running lights.
H-83-44 and -45	National Highway Traffic Safety Administration	Nov. 12, 1985	State quality control procedures for schoolbus repairs.
H-82-18	State of Hawaii	Nov. 29, 1985	Proposal to raise the drinking age to 21.
H-85-19	American Trucking Associations, Inc.	Dec. 02, 1985	Review of hours of service control policies and procedures.
Marine			
M-85-51 through -55	United States Coast Guard	Dec. 12, 1985	Safety precautions for use of air-mover ventilators in potentially combustible atmospheres.
M-85-57 through -61	do	Nov. 27, 1985	Instruction of inspectors conducting control verification examinations in emergency duties, fire drills, and safety demonstration.
Railroad			
R-85-113 through -116	New York Public Transportation Safety Board	Dec. 13, 1985	Integrated reporting systems on track and structures fires; hardwire communications system throughout subway tunnels; overloading of working motor control groups.
R-84-29 and -30	Metro-Dade Transportation Administration	Nov. 20, 1985	Standard operating procedure for emergency response.
R-85-79 and -80	Seaboard System Railroad	Dec. 17, 1985	Notification of local emergency response agencies of derailments of trains carrying hazardous materials.
R-85-74	Florida East Coast Railway Co.	Dec. 20, 1985	Railroad/highway grade crossing safety training for engineers.
R-84-19	New York City Transit Authority	Nov. 29, 1985	Training programs for track construction engineers and track inspectors.
R-85-102 through -104	Seaboard System Railroad	Dec. 11, 1985	Removal of equipment temporarily stored on tracks before dispatching trains.



Recommendation number	Respondent	Date	Subject
R-84-37 through -43	Amtrak	Dec. 17, 1985	Carrier violation of safe operating practices; regular review of speed tapes, securing of luggage in baggage racks; speed control devices; crew performance monitoring.
R-85-53	Alaska Railroad Corp.	Dec. 12, 1985	Emergency planning and response procedures for hazardous materials.
R-85-53	Chicago and Northwestern Transportation Co.	Dec. 17, 1985	Do.
R-85-53	The Denver and Rio Grande Western Railroad Co.	Dec. 19, 1985	Do.
R-85-68 and -69	Federal Railroad Administration	Dec. 12, 1985	Inspection and loading facilities at petrochemical plants.
Pipeline			
P-72-11, P-73-29 and P-76-10	Research and Special Programs Administration	Nov. 13, 1985	LPG pipeline failure, periodic hydrostatic retesting, and operator responsibility for piping inside building.
Intermodal			
I-85-7, -8, -10, and -11	U.S. Department of Transportation	Dec. 18, 1985	Shipper responsibilities when transporting hazardous materials; audits of hazardous waste shippers; adequacy of general shipping information for emergency response personnel.

The Safety Board has revised the format of these notices of availability to reduce significantly the cost of preparing and printing this information. Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page (\$1 minimum charge).

Alice F. Caldwell,

Alternate Federal Register Liaison Officer.

January 30, 1986.

[FR Doc. 86-2916 Filed 2-10-86; 8:45 am]

BILLING CODE 7533-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-336]

### Northeast Nuclear Energy Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix R to 10 CFR Part 50 to Northeast Nuclear Energy Company, et al. (the licensee), for the Millstone Nuclear Power Station, Unit No. 2, located in New London County, Connecticut.

#### Environmental Assessment

**Identification of Proposed Action:** The exemption would grant relief in eight fire areas to the extent that redundant safe shutdown related cable and equipment are not separated and/or protected in accordance with section III.G.2 of Appendix R. The eight fire areas are as follows: Main Control Room, Closed Cooling Water Pump Area, Boric Acid Pump Area, Chemical Addition Tank Area, Cable Vault, Intake Building, Charging Pump Room and Auxiliary Feed Pump Pit. Also, the exemption would grant relief for the main control room from the requirement of sections III.G.3 and III.L of Appendix

R concerning independence for the alternate shutdown capability.

The exemptions are responsive to the licensee's applications for exemptions dated March 1 and July 16, 1982; April 15 and May 25, 1983, and January 31 and August 7, 1985.

**The Need for the Proposed Action:** The proposed exemption is needed because the features described in the licensee's requests regarding the existing and proposed fire protection at the plant for these items are the most practical methods for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

**Environmental Impacts of the Proposed Action:** The proposed exemption will provide a degree of fire protection such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

**Alternative Use of Resources:** This action involves no use of resources not previously considered in the Final environmental Statements for the Millstone Nuclear Power Station, Unit No. 2.

**Agencies and Persons Consulted:** The NRC staff reviewed the licensee's

request and 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 exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have significant effect on the quality of the human environment.

For further details with respect to this action, see the applications for the exemptions previously listed, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Bethesda, Maryland this 4th day of February, 1986.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, PWR Project Directorate #8,  
Division of PWR Licensing-B.

[FR Doc. 86-2983 Filed 2-10-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-423]

### Northeast Nuclear Energy Co., Millstone Nuclear Power Station, Unit No. 3; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF-49 to Northeast Nuclear Energy Company and 15 owners listed below <sup>1</sup>(the licensees)

<sup>1</sup> Northeast Nuclear Energy Company acts as agent and representative for the following Owners: Central Maine Power Company, Central Vermont Public Service Corporation, Chicopee Municipal Lighting Plant, City of Burlington, Vermont, Connecticut Municipal Electric Energy Cooperative, The Connecticut Light and Power Company, Fitchburg Gas and Electric Company, Massachusetts Municipal Wholesale Electric

Continued



which authorizes operation of the Millstone Nuclear Power Station, Unit No. 3 (the facility), at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan. The issuance of this license was approved by the Nuclear Regulatory Commission at a meeting on January 29, 1986, and supersedes the License for Fuel Loading and Low Power Testing License NPF-44 issued on November 25, 1985.

The Millstone Nuclear Power Station, Unit No. 3 (Millstone Unit 3) is a pressurized water reactor located on the north shore of Long Island Sound in Waterford Township, New London County, Connecticut. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the *Federal Register* on March 4, 1983 (48 FR 9408).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF-49, with Technical Specifications (NUREG-1176) and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated September 10, 1984; (3) the Commission's Safety Evaluation Report, dated July 1984 (NUREG-1031), and Supplements 1 through 5; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; and (6) the Final Environmental Statement dated December 1984 (NUREG-1064).

These items are available for inspection at the Commission's Public

Document Room located at 1717 H Street, NW., Washington, DC 20555 and in the Waterford Public Library, Rope Ferry Road, Route 156, Waterford Connecticut 06385. A copy of Facility Operating License NPF-49 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Project Director, PWR Licensing-A. Copies of the Safety Evaluation Report and Supplements 1 through 5 (NUREG-1031) and the Final Environmental Statement (NUREG-1064) may be purchased at current rates from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7982 or by calling (202) 275-2060 or (202) 275-2171.

Dated at Bethesda, Maryland this 31st day of January 1986.

For the Nuclear Regulatory Commission.

Vincent S. Noonan,

Director, PWR Project Directorate #5  
Division of PWR Licensing-A.

[FR Doc. 86-2984 Filed 2-10-86; 8:45 am]

BILLING CODE 7590-01-M

#### **Advisory Committee on Reactor Safeguards Subcommittee on Advanced Reactors; Meeting**

The ACRS Subcommittee on Advanced Reactors will hold a meeting on February 25, 1986, Room 1167, 1717 H Street NW., Washington, DC.

To the extent practical the meeting will be open to public attendance. However, portions of the meeting may be closed to discuss proprietary information and applied technology information.

The agenda for the subject meeting shall be as follows:

Tuesday, February 25, 1986—8:30 a.m. until the conclusion of business.

The Subcommittee will review the advanced liquid metal reactor (LMR) design concept submitted by DOE and its contractors.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by member of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. M. El-Zeftawy (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 5, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-2955 Filed 2-10-86; 8:45 am]

BILLING CODE 7590-01-M

#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. IC-14929; File No. 812-6270]

#### **Allied Capital Corp., et al.; Application for an Order Pursuant to Section 17(b) of the Act Exempting Proposed Transaction From Section 17(a) of the Act and Pursuant to Section 17(d) of the Act and Rule 17d-1 Thereunder Approving Joint Transaction**

January 31, 1986.

Notice is hereby given that Allied Capital Corporation ("Allied"), 1625 Eye Street, NW., Washington, DC 20006, a closed-end, internally managed investment company registered under the Investment Company Act of 1940 ("Act"), Allied Investment Corporation ("Investment") a wholly-owned subsidiary of Allied and also a registered, closed-end, internally-managed investment company which is licensed as a small business investment company under the Small Business Investment Company Act of 1958, Allied Advisory, Inc. ("Advisory"), another wholly-owned subsidiary of Allied and general partner of Allied Management

Company, Montaup Electric Company, New England Power Company, Public Service Company of New Hampshire, The United Illuminating Company, The Village of Lyndonville Electric Department, Western Massachusetts Electric Company, and Vermont Electric Generation and Transmission Cooperative, Inc.



Partners, a limited partnership, of which certain Allied officers are the limited partners and which serves as the general partner of Allied Venture Partnership ("Venture"), a limited partnership whose limited partners are institutional investors (collectively, "Applicants") filed an application on December 27, 1985, and an amendment thereto on January 27, 1986, requesting an order of the Commission, pursuant to section 17(b) of the Act, exempting Applicants from the provisions of section 17(a) of the Act to the extent necessary to permit the transaction described below, and, pursuant to section 17(d) of the Act and Rule 17d-1 thereunder, approving the participation of Venture and Investment to the extent of \$500,000 each in a \$10,000,000 senior subordinated debt financing. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the complete text of the applicable provisions.

The application indicates that Jiffy Lube International, Inc. ("Issuer") is a Nevada corporation which operates, directly through franchises, approximately 300 quick service fluid maintenance centers for cars and light trucks throughout the United States. The application further indicates that Investment and Venture propose to participate, upon the terms summarized below, to the extent of \$500,000 each in a \$10,000,000 senior subordinated debt financing with the Issuer and, along with the other participants in the debt financing, they will receive warrants to purchase in the aggregate approximately 13% of the Issuer's common stock.

Applicants state that, in addition to Investment and Venture, the senior subordinated notes ("Notes") and warrants have been purchased by six other institutional investors, three of which, Teribe S.A. ("Teribe"), Teribe Investment, Inc. ("TII"), and Terrego S.A. ("Terrego"), are Panamanian corporations affiliated with Enterprises Quilmes, S.A. ("EQ"), a Luxembourg holding company. Applicants further state that Teribe is the parent of ALCAP Limited ("ALCAP"), a British Virgin Islands corporation which holds 13.3% of Allied's outstanding capital stock and, together with TII, is a shareholder in ALCAP, S.A., a Panamanian corporation which is a limited partner of Venture. As a result, the application states that Teribe and TII may be deemed affiliates

or affiliates of affiliates of Allied, pursuant to section 2(a)(3) of the Act. Applicants further state that Willem F.P. de Vogel, a deputy general manager of EQ and the president of Three Cities Research, Inc., New York ("Three Cities"), another EQ affiliate, is a member of Allied's, Investment's and Advisory's board of directors; in addition, he personally owns an incentive type equity interest in TII and, through a general partnership in which five other directors and certain officers of Allied are also partners, a limited partnership interest in Venture.

Applicants state that the purpose of the senior subordinated debt financing is to consolidate the Issuer's indebtedness and to provide it funds for further expansion. Applicants further state that the Notes will bear interest at 12% per annum, payable quarterly except in the first year, when a year's interest will be paid on December 15, 1986, and mature on December 15, 1992, subject to semi-annual mandatory prepayment without premiums of \$1,250,000 each beginning June 15, 1989, to optional prepayments with a premium at any time, and to mandatory prepayments without premiums of 50% of the principal at the time outstanding from the proceeds of a public offering by the Issuer of its common stock from which it derives net proceeds of at least \$10,000,000. The Notes are subordinated to other indebtedness for borrowed money or on mortgages.

The application indicates that the warrants entitle their holders to buy a number of shares (pro rata to their participation in the Notes financing) of the Issuer's common stock at \$6.00 per share (subject to adjustment pursuant to anti-dilution provisions), which may be paid in whole or in part by applying unpaid principal of the Notes. The holders will be entitled to certain mandatory and piggy-back registration rights for such shares. Moreover, the application states that the Issuer has agreed that either (i) prior to June 15, 1990, the Issuer shall have made an underwritten registered public offering of its common stock for gross proceeds of at least \$20,000,000 in which the participants have had the opportunity to sell at least 50% of their shares and such shares shall be traded on a national securities exchange or NASDAQ at prices ranging from \$17.50 in 1988 to \$40.00 in 1990; or (ii) the participants will have a right to sell to the Issuer the Notes and the warrants or shares between

December 20, 1990 and December 20, 1992, at a price calculated to provide to the participants a pre-tax internal rate of return on their investments in the Notes, warrants and shares of 30% per annum. Applicants state that no financing fees were or will be paid to any participant in this transaction.

Applicants submit that participation by Investment and Venture in a transaction in which affiliates of EQ also participate might be considered a participation by Investment or Venture and those EQ affiliates in a joint enterprise in contravention of section 17(d) of the Act and Rule 17d-1 thereunder unless authorized by order of the Commission. Applicants further submit that the terms of the transaction required the other parties to the transaction to proceed to a closing thereof on December 24, 1985, but that since it was impractical to obtain the required Commission order prior to that date, Teribe bought for its own account the participations proposed for Investment and Venture and has offered, upon issuance of the requested order within a reasonable time, to resell them to Investment and Venture at cost plus accrued interest at the rate applicable to those Notes being purchased by Investment and Venture. Applicants state that such resale would, however, contravene section 17(a)(1) of the Act unless exempted therefor by the Commission, pursuant to Section 17(b).

Applicants submit that the proposed transaction meets the standards for exemption of both sections 17(b) and 17(d) and Rule 17d-1 thereunder.

Applicants represent that the boards of directors of Allied, Investment and Advisory unanimously approved the proposed transaction and state that those boards of directors include one representative of Alcap, two representative of other institutional investors not involved in the proposed transaction, and 10 others. The 12 directors unaffiliated with and not interested in EQ, Teribe, Terrego, TII, Three Cities, Alcap, Alcap S.A., or anyone else involved in the proposed transaction personally own, in the aggregate, a number of Allied's outstanding voting shares greater than the number owned by Alcap.

Applicants contend that the terms of the proposed transaction may be presumed to be fair and reasonable because they have been negotiated at arm's length by parties all of whom are, or are advised by, sophisticated investment professionals. According to



Applicants, none of the parties has the economic power or influence to overreach any of the other parties.

Applicants submit that the terms of Investment's and Venture's participation in the purchase of the Issuer's Notes and warrants are identical to the terms of participation by the other investors therein. Applicants represent that Investment, Venture and the EQ affiliates will exercise any warrants, conversion privilege, or other rights to acquire equity securities of the Issuer, or affiliate of the Issuer, which were acquired by them respectively in this transaction, only at the same time and in amounts proportionate to their respective holdings of such rights. Applicants further represent that Investment, Venture and the EQ affiliates will sell, exchange, or otherwise dispose of an interest in any security of a class held by them respectively as a result of this transaction only at the same times and for the same unit consideration and in amounts proportionate to their respective holdings of such securities, unless at the time of sale there exists a public trading market in securities of such class and the sale by any of them is made in such market. Applicants further submit that the proposed investment is consistent with the fundamental investment policies of Investment and, hence, of Allied and of Venture, and that the proposed transaction is consistent with the general purposes of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 25, 1986, 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, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) 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. 86-2972 Filed 2-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24011; 70-7218]

**CSW Credit, Inc. and Central and South West Corp.; Proposed Financing of Subsidiary To Provide Funds to Factor Accounts Receivable of Nonassociated Electric Utility Companies**

January 31, 1986.

Central and South West Corporation ("CSW"), a registered holding company, and its nonutility subsidiary, CSW Credit, Inc. ("Credit"), 2121 San Jacinto Street, Dallas, Texas 75266-0264, have filed an application-declaration with this Commission pursuant to sections 6(a), 7, 9(a), 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50(a)(5) thereunder.

By order dated July 19, 1985 (HCAR No. 23767), CSW was authorized to organize Credit to purchase the accounts receivable (factoring) of the CSW operating companies and to finance such purchases with debt. Through December 31, 1986, Credit was authorized to borrow up to \$320 million, and CSW was authorized to make equity investments in Credit of up to \$80 million.

Credit now proposes to extend its business to the factoring of accounts receivable of nonassociated companies whose primary revenues are derived from the sale of electricity. Credit will use substantially the same procedures for factoring the accounts receivable of nonassociated electric utilities as are used for the transactions with CSW operating companies. Credit will purchase the accounts receivable from the respective nonassociated electric utilities on the day that such company prepares the bill. Accounts receivable will be assigned to Credit on a nonrecourse basis, except to the extent that such receivable is invalid, and Credit will bear the risk of the uncollectability of the account. Credit anticipates appointing each company from which accounts receivable are purchased as a collection agent. It is anticipated that all activities of Credit would be directed by existing CSW personnel, and no additional employees would be required.

Credit's operations will be conducted so that the risks associated with factoring operations for nonassociated electric utilities will be borne by the CSW shareholders and not the CSW operating companies or ratepayers. Separate audited accounting records would be maintained for any non-associated customer. Credit states that certain savings to the CSW operating companies may result from Credit's

expanded activities and that, in no case, would the cost of factoring CSW operating companies' receivables be increased as a result of Credit's expanded operations.

It is stated that the amount of investment in accounts receivable of nonassociated electric utilities and the requisite borrowings of Credit will depend on the level of accounts receivable purchased from each company, which amounts may vary depending upon the time of the year, the percent of accounts receivable so financed, and other factors. In order to engage in such factoring, CSW proposes to borrow up to an additional \$160 million through December 31, 1988. These borrowings will be secured by an assignment of accounts receivable purchased by Credit. The specific terms and conditions of the borrowings by Credit will be subject to negotiation with the particular lender or lenders. However, Credit states that, without prior approval of the Commission, such terms and conditions will be no less favorable than those of the financing previously approved by the Commission with respect to Credit's activities. Credit has received commercial paper ratings to enable it to sell commercial paper to finance its factoring.

CSW also proposes to make additional equity investments in Credit through capital contributions or the acquisition of Credit common stock of up to \$40 million through December 31, 1988, depending upon the amount of borrowing by Credit. In connection therewith, Credit proposes to issue and sell up to \$40 million of its common stock.

The application-declaration and any amendments thereto are available for public inspection through the Commission's office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 24, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicants-declarants at the address above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.



For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-2973 Filed 2-10-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-14697]

### Citicorp; Application and Opportunity for Hearing

January 31, 1986.

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of United States Trust Company of New York (the "Trust Company") under four existing indentures, and a Pooling and Servicing Agreement (the "Agreement") dated as of November 1, 1985 under which certificates evidencing interests in a pool of mortgage loans have been issued, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as Trustee under either of such indentures or the Agreement.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such a conflicting interest, either eliminate the conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which securities of an obligor upon the indenture securities are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of the subsection another indenture under which other securities of the same obligor are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under both the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under one of such indentures.

The Applicant alleges that:

(1) The Trust Company currently is acting as Trustee under four indentures

in which the Applicant is the obligor. The indenture dated as of February 15, 1972 involved the issuance of Floating Rate Notes due 1989, the indenture dated as of March 15, 1977 involved the issuance of various series of unsecured and unsubordinated Notes, the indenture dated as of August 25, 1977 involved the issuance of Rising-Rate Notes, Series A and the indenture dated as of April 21, 1980 involved the issuance of various series of unsecured and unsubordinated Notes. Said indentures were filed as, respectively, Exhibits 4(a), 2(b), and 2(a) to Applicant's respective Registration Statements Nos. 2-42915, 2-58355, 2-59396 and 2-64862 filed under the Securities Act of 1933, and have been qualified under the Trust Indenture Act of 1939. Said four indentures are hereinafter called the Indentures and the securities issued pursuant to the Indentures are hereinafter called the Notes.

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On November 26, 1985, the Trust Company entered into a Pooling and Servicing Agreement dated as of November 1, 1985 (the "1985-L Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which there were issued on November 26, 1985 Mortgage Pass-Through Certificates, Series 1985-L 11.00% Pass-Through Rate (the "Series 1985-L Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1985-L Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating \$145,171,771.79 at the close of business on November 1, 1985, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1985-L Certificates. On November 26, 1985, Applicant, the parent of Citibank, N.A., entered into a Guaranty of even date (the "1985-L Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1985-L Certificates, to be liable for 5.5% of the initial aggregate principal balance of the 1985-L Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1985-L Guaranty. The 1985-L Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1985-L Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series

1985-L Certificates were registered under the Securities Act of 1933 (Registration Statement on Forms S-11 and S-3, File No. 33-780) as part of a delayed or continuous offering of \$1,000,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1985-L Certificates were offered by a Prospectus Supplement dated November 20, 1985, supplemental to a Prospectus dated October 9, 1985. The 1985-L Agreement has not been qualified under the Trust Indenture Act of 1939.

(4) The obligations of Applicant under the Indentures and the 1985-L Guaranty are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1985-L Guaranty are unlikely to cause any conflict of interest among the trusteeships of the Trust Company under the Indentures and the 1985-L Agreement.

(5) The Applicant Company has waived notice of hearing, waived hearing, and waived any and all rights to specify procedures under Rule 8(b) of the Commission's rules of Practice in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22-14697, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC.

Notice is Further Given that any interested person may, not later than February 25, 1986, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-2975 Filed 2-10-86; 8:45 am]

BILLING CODE 8010-01-M



[File No. 22-14632]

**Georgia-Pacific Corp.; Application and Opportunity for Hearing**

February 3, 1986.

Notice is hereby given that Georgia-Pacific Corporation (the "Company"), has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Chase Manhattan Bank, N.A. ("Chase") under (i) the open end indenture of the Company dated as of March 1, 1983 (the "1983 Indenture") and (ii) the trusteeship of Chase under the indenture of the County of Otsego Industrial Development Agency (the "Issuer") dated as of December 1, 1982 (the "1982 Indenture") under which Bonds of the Issuer were issued, the principal, interest and redemption payments (including redemption premium, if any) on such Bonds to be funded (i) by payments to be received by the Issuer under a Sale Agreement dated as of December 1, 1982 between the Issuer and Riegel Textile Corporation ("Riegel"), as amended by a First Amendment to Sale Agreement dated September 30, 1985, between the Issuer and the Company (as amended, the "Sale Agreement") (the obligations under which indenture, Bonds and Sale Agreement were assumed by the Company pursuant to a Bond Assignment, Assumption and Indemnification Agreement dated September 30, 1985 (the "Assumption Agreement")), and (ii) by drawings under an irrevocable Letter of Credit dated September 30, 1985 (the "Credit") issued in favor of Chase, as trustee, by Chemical Bank, is not so likely to involve a material conflict of interest to make it necessary in the public interest or for the protection of investors to disqualify Chase from acting as trustee under the 1983 Indenture or the 1982 Indenture.

In support of its application the Company alleges that:

1. The Company has outstanding as of December 23, 1985 \$395,000,000 aggregate principal amount of unsecured debt securities of various series (the "Securities") issued under the 1983 Indenture between the Company and Chase. The Securities were registered under the Securities Act of 1933, as amended (the "Securities Act") (File Nos. 2-81929 and 2-97165), and the 1983 Indenture was qualified under the Act.
2. The Issuer has outstanding as of December 23, 1985 \$5,000,000 aggregate principal amount of its Industrial

Development Revenue Bonds ("Bonds") issued under the 1982 Indenture between the Issuer and Chase. Inasmuch as the Bonds were issued by a political subdivision of a state of the United States of America, the Bonds were not registered under the Securities Act, and the 1982 Indenture was not qualified under the Act.

3. Portions of the 1983 Indenture substantially conform to section 310(b)(1) of the Act which, with exceptions, prohibits service by a trustee under two indentures of one obligor, unless an order under section 310(b)(1)(ii) of the Act is obtained.

4. Service by Chase under 1982 Indenture may involve Chase in a conflict of interest within the meaning of section 6.10 of the 1983 Indenture since the 1982 Indenture has not been qualified under the Act and is not the subject of any other proceeding of the Commission.

5. The Company's obligations with respect to the Securities, the Bonds, the Sale Agreement and the Credit are wholly unsecured and rank on parity with each other. The only material differences between the provisions of the 1983 and 1982 Indentures relate to the fact that the Company is obligated with respect to the Bonds pursuant to the Assumption Agreement but is the primary obligor under the 1983 Indenture, and also relate to the aggregate principal amounts, dates of issue, events of default, maturity and interest payment dates, interest rates, redemption provisions, sinking fund provisions, trustee's reports, and other provisions of a similar nature. Any such differences and any other differences in the provisions of the 1983 and 1982 Indentures are unlikely to cause any conflict of interest between the respective trusteeships of Chase under said Indentures.

6. The Company is not in default under the 1983 or 1982 Indentures.

7. The Company has waived (a) notice of hearing, (b) hearing on the issues of its application and (c) all rights to specify procedures under the Commission's Rules of Practice with respect to the application.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22-14632 which is on file in the offices of the Commission at 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after February 28, 1986, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of section 310(b)(1) of the

Act. Any interested person may, not later than February 27, 1986 at 5:30 P.M., Eastern Standard Time, in writing, submit to the Commission his views of any additional facts bearing upon this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

For the Commission, by the Division of Corporation Finance, pursuant delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-2976 Filed 2-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24010; 70-6921]

**Indiana & Michigan Electric Co.; Proposed Issuance and Sale of Short-Term Notes and Commercial Paper; Exception From Competitive Bidding**

January 31, 1986.

Indiana & Michigan Electric Company ("Indiana"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, subsidiary of American Electric Power Company, Inc. ("AEP") a registered holding company, has filed a declaration with this Commission pursuant to sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(2) and 50(a)(5) thereunder.

During the period ending December 31, 1986, Indiana proposes to issue and sell short-term notes to various banks and commercial paper to a dealer in an aggregate principal amount not to exceed \$220 million outstanding at any one time. This amount exceeds 5% of the principal amount and par value of the other outstanding securities of Indiana. All bank notes will mature not more than 270 days after the date of issuance or renewal. None will mature later than June 30, 1987. No line of credit would result in an effective cost of borrowing exceeding 125% of the prime commercial rate in effect from time to time, or not more than 12.5% based on a prime rate of 10%.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request



a hearing should submit their views in writing by February 24, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,  
Secretary.

[FR Doc. 86-2974 Filed 2-10-86; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 34-22861; File No. SR-NASD-86-1]

**Self-Regulatory Organizations;  
Proposed Rule Change by National  
Association of Securities Dealers, Inc.  
Relating to NASD Assessments and  
Fees**

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 29, 1986 the National Association of Securities Dealers, Inc. 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 proposed amendment to Schedule A to the Association's By-Laws establishes a fee of \$500.00 to be paid in connection with the application for registration by individuals subject to disqualification as enumerated in Article II, Section 4 of the Association's By-Laws. The proposed amendment would require those member firms seeking to employ or continuing to employ a statutorily disqualified individual to submit the proposed fee to the Association together with the filing by such member firms of the

Membership Continuance Application (the "Form MC-400") on behalf of the disqualified individual.

**II. Self-Regulatory Organization's  
Statement on 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 statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

**A. Self-Regulatory Organization's  
Statement of the Purpose of, and  
Statutory Basis for the Proposed Rule  
Change**

The purpose of the proposed amendment to Schedule A is to assist the Association in recovering the costs associated with processing applications submitted by individuals who are statutorily disqualified from participation in the securities industry. Quite frequently, a hearing before a subcommittee of the Board of Governors is required in order to determine whether the admission of the subject individual into the securities industry is appropriate. The costs connected with these hearings involve, in addition to the commitment by the subcommittee members of their time, the costs of transportation and lodging when necessary, for the subcommittee members and Association attorney's as well as court reporter's fees. In addition, even in those situations where a hearing is not required, significant amounts of time and commitment of staff resources are required to process such applications.

For the foregoing reasons, the proposed fee is consistent with and in furtherance of the provisions of section 15(A)(b)(5) of the Securities Exchange Act which require that the rules of the Association provide for the equitable allocation of dues, fees and other charges among members and other persons using any of systems or facilities controlled or operated by the Association.

**B. Self-Regulatory Organization's  
Statement on Burden on Competition**

The Association does not believe that

the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act.

**C. Self-Regulatory Organization's  
Statement on Comments on the  
Proposed Rule Change Received from  
Members, Participants or Others**

Comments were neither solicited nor received with respect to the proposed amendment contained in this filing.

**III. Date of Effectiveness of Proposed  
Rule Change and Timing for Commission  
Action**

The proposed rule change is effective on filing pursuant to section 19(b)(3)(A)(ii) of the Securities Exchange Act in that it establishes a fee to be imposed by the Association exclusively upon its members and those individuals who wish to become associated with its members.

**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 5th Street, NW., Washington, DC 20549. Copies of the submissions, 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. 522 will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption, above and should be submitted by March 5, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated Authority.

Dated: February 4, 1986.

John Wheeler,  
Secretary.

[FR Doc. 86-2979 Filed 2-10-86; 8:45 am]  
BILLING CODE 8010-01-M



[Release No. 34-22858; File No. SR-NSCC-86-01]

### Self-Regulatory Organizations; Filing and Immediate Effectiveness of a Proposed Rule Change by the National Securities Clearing Corporation

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 22, 1986, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission (the "Commission") a proposed rule change that modifies NSCC's Automated Customer Account Transfer ("ACAT") System. The Commission previously approved NSCC's ACAT system (SR-NSCC-85-7) in Securities Exchange Act Release No. 22481 (September 27, 1985). NSCC's ACAT system enables members to effect automated transfers of customer accounts among themselves.

Under NSCC's ACAT system, an NSCC member to whom a customer's securities account is to be transferred may initiate the account transfer process by filing with NSCC a Transfer Initiation Request ("TIR"). Currently, if there is an error in the customer's account number on the TIR, the transfer would be rejected and the NSCC Member to whom the account is being transferred would have to re-initiate the transfer process by submitting another TIR. The proposed rule change permits NSCC, where appropriate, to accept an adjustment to customers' account numbers rather than reject the transfers.

#### I. Text of Proposed Rule Change

Modify National Securities Clearing Corporation's ("NSCC") SCC Division Rule 50 (Automated Customer Account Transfer "ACAT" Service) Section 13 by adding the following:

(Italics indicate addition.)

Sec. 13.

\* \* \*

*In addition to the foregoing, to the extent that a Receiving Member and/or a Delivering Member determines that the account number of his customer as reported on the Transfer Initiation Request Form is inaccurate, he may cause an adjustment to be made to a report by submitting such form, as established by the Corporation from time to time, within such time as established by the Corporation from time to time.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the current operation of the ACAT Service, the Corporation does not have the authority to adjust its records in order to rectify an error with respect to a customer's account number when the error was made on the Transfer Initiation Request Form submitted to the Corporation. Such errors may only be corrected by having the transfer rejected and re-initiated with the correct number. Since the intent of the service is to facilitate the processing of account transfers, it has been determined that such measures are counterproductive. Accordingly, in order to preclude the necessity for a transfer to be rejected merely because of an error in a customer account number, the Corporation has determined to modify its service in order to give the Corporation the authority to make such modifications to its records. Since the proposed rule change will facilitate the transfer of customer accounts, it is consistent with the requirements of the Securities Exchange Act of 1934 ("34 Act") and the rules and regulations thereunder applicable to the Corporation.

### III. Self-Regulatory Organization's Statement on Comments on the Burden on Competition

NSCC does not perceive that the proposed rule change will have an impact or impose a burden on competition.

### IV. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments on the proposed rule change have been solicited or received.

### V. Extension of Time Period for Commission Action

Not Applicable.

### Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

(a) The proposed rule change is being filed pursuant to section 19(b)(3)(A) of the '34 Act.

(b) Since the proposed rule change will merely permit the Corporation, upon direction of a Member, to adjust its records to rectify errors in customer account numbers, it effects a change in an existing service that does not adversely affect the safeguarding of securities and funds in the Corporation's custody or control or for which it is

responsible and does not significantly affect the rights or obligations for the Corporation or participants using the service.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number in the caption above and should be submitted by March 5, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 4, 1986.

John Wheeler,  
Secretary.

[FR Doc. 86-2981 Filed 2-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 2287; File No. SR-PSE-85-32]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by Pacific Stock Exchange, Inc., Relating to the Deletion of Rule XVII ("Wire Connections") of the PSE Rules of the Board of Governors

The Pacific Stock Exchange, Inc. ("PSE") submitted on November 15, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the



Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to delete Rule XVII of the PSE Rules of the Board of Governors, which currently provides, among other things, that the PSE approve telephone communications access between non-members and the PSE trading floor and that the PSE be provided prior notice of private wire connections between offices of members and non-members. According to the Exchange, it has proposed to delete the rule because "the primary basis for [it], i.e., the regulation of fixed commissions charged by members of the Exchange, no longer exists."<sup>1</sup>

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22698, December 11, 1985) and by publication in the *Federal Register* (50 FR 51646, December 18, 1985). No comments were received regarding the proposed rule change.

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.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 4, 1986.

John Wheeler,  
Secretary.

[FR Doc. 86-2980 Filed 2-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22854; File No. SR-OCC-85-14]

### Self-Regulatory Organizations; Proposed Rule Change; Options Clearing Corp.

The Options Clearing Corporation ("OCC") on August 22, 1985, submitted a

<sup>1</sup> The Exchange has stated further that the requirements of Rule XVII no longer seem necessary or appropriate because the Exchange routinely approves wire connections on the Exchange floors requested by member firms and that the PSE has no policy restrictions on wire access. The PSE states that the proposed rule change is not intended to restrict access, but should not be deemed to be advance approval of application for instruments such as cellular phones or other non-wire connections. See letter from Kenneth S. Marcus, Staff Attorney, PSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated December 16, 1985.

proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") to authorize OCC to issue, clear and settle standardized options on the European Currency Unit ("ECU"),<sup>1</sup> which have been proposed for trading by the Philadelphia Stock Exchange ("Phlx").<sup>2</sup> The Commission published notice of the proposal to solicit public comment.<sup>3</sup> No comments were received. This Order approves the proposal.

### I. Description and Rationale

OCC's proposal would amend several definitions in OCC By-Law Article XV, section 1 to accommodate ECU options.<sup>4</sup> Specifically, the term "foreign currency" in paragraph (a) now would include the ECU,<sup>5</sup> and new paragraph (o) would define "ECU" to "mean the European Currency Unit, which is the monetary unit of the European Monetary System representing a weighted average of the currencies of specified members of the European Economic Community." ECUs would be added to the list of underlying foreign currencies in paragraph (h) for purposes of calculating premiums. In paragraph (k), Belgium would be designated the "country of origin" for ECUs. The definition of "foreign government restrictions" in paragraph (1) would be amended to include restrictions imposed by the European Economic Community. Finally, Interpretation and Policy .01 to Article XV, section 1, which tracks Phlx's definition of the "unit of trading" to provide for Phlx-traded foreign currency options, would be amended to accommodate ECU options. The "unit of trading" would be set at 62,500 ECUs.

The proposal also would amend OCC By-Law Article XV, section 4, which

<sup>1</sup> The ECU is the monetary unit of the European Monetary System representing a weighted average of the currencies of specified members of the European Economic Community. OCC's proposal would adopt this definition in OCC By-Law Article XV, section 1.

<sup>2</sup> See Securities Exchange Act Release No. 22056 (May 20, 1985), 50 FR 21536 (May 24, 1985), publishing notice of File No. SR-Phlx-85-10. The Commission today is issuing a companion Order to this Order approving the Phlx proposed rule change ("Phlx Approval Order," Securities Exchange Act Release No. 22853 (February 3, 1986)). The Pacific Stock Exchange has proposed to trade cash-settled options on the ECU. See Securities Exchange Act Release No. 22508 (October 4, 1985), 50 FR 41431 (October 10, 1985) publishing notice of File No. SR-PSE-85-16. The Commission at this time is not taking action on the Pacific Stock Exchange proposal.

<sup>3</sup> Securities Exchange Act Release No. 22361 (August 27, 1985), 50 FR 35897 (September 4, 1985).

<sup>4</sup> OCC By-Law Article XV, section 1 defines special terms related to foreign currency options.

<sup>5</sup> Previously, a "foreign currency" was defined as "the standard unit of the official medium of exchange of a [foreign] sovereign government. . . ."

authorizes OCC to adjust the terms of OCC foreign currency options in extraordinary events. Under the proposal, OCC could adjust the terms of ECU options if the monetary authorities of the European Economic Community issue a new currency to replace the ECU or if those authorities officially alter the ECU exchange rate or characteristics. The proposal states further that OCC will adjust ECU options terms only in exceptional cases when OCC's Securities Committee determines that fairness to holders and writers of ECU options requires it. OCC indicates that it does not intend to adjust ECU options to reflect periodic adjustments to the weight or identity of the ECU's component currencies.<sup>6</sup>

OCC's proposal also would add an Interpretation and Policy to OCC's By-Law Article XV, section 4. That Interpretation and Policy would clarify that OCC normally will not adjust the terms of any foreign currency option in response to devaluations or revaluations of underlying foreign currency. OCC represents in its filing that the proposed Interpretation and Policy incorporates a long-standing policy that already is included in OCC's foreign currency options disclosure documents.

Finally, OCC's proposal states that ECU option exercises would be settled like other foreign currency option exercises, with foreign currency deliveries generally in the country of origin.<sup>7</sup> Thus, because the proposal designates Belgium as the country of origin for the ECU, OCC, under OCC Rules 1606 and 1606A, will deliver ECUs via bank wire (for settlement of ECU option exercises) to the Receiving Clearing Member's bank in Belgium, with deliveries only on days Belgium banks are open for business. Foreign currency deliveries and receipts also could be effected through "multi-currency accounts" under OCC Rule 1607.

OCC believes that the proposal is consistent with the Act in general, and with section 17A of the Act in particular. OCC states that the proposal facilitates

<sup>6</sup> The European Economic Community's monetary authorities review the ECU's composition every five years to ensure that it reflects economic and membership changes within the Community. Moreover, any state whose currency is an ECU component can request a special review of the ECU's composition if the weight of any currency in the ECU has changed by 25% or more since the last revision. Since the ECU's inception in 1978, the ECU's composition has been revised only once, on September 17, 1984, to include the Greek Drachma. No special reviews have been requested.

<sup>7</sup> See Chapter XVI of OCC's Rules for a detailed description of OCC's foreign currency option exercise settlement procedures.



the prompt and accurate clearance and settlement of options transactions by folding ECU options into OCC's existing foreign currency options clearance system, which has been proven safe and efficient.

## II. Discussion

The Commission agrees with OCC that the proposal is consistent with the Act and should be approved. The Commission believes that OCC's proposal, to the greatest extent possible, applies its existing foreign currency options clearance and settlement system to ECU options. The Commission agrees with OCC that that system has been proven safe and efficient. Thus, ECU options processing should be accomplished safely and efficiently.

The Commission concurs with OCC's determination to amend the definition of "foreign currency" in OCC By-Law XV to include ECUs. In connection with the Phlx ECU options filing, the Commission received comments from the Chicago Mercantile Exchange ("CME") and Commodity Futures Trading Commission arguing for a variety of reasons that the Commission lacks jurisdiction to authorize trading of ECU options on a national securities exchange. As discussed fully in the Phlx Approval Order, the Commission disagrees and believes that it is authorized by the Act to permit the trading of ECU options on a national securities exchange.<sup>8</sup> Similarly, the Commission concludes that it has authority to approve OCC rule amendments intended to authorize the issuance, clearance and settlement of ECU options traded on a national securities exchange.

The Commission also believes it appropriate for OCC to apply its current rules governing adjustment of the terms of options in extraordinary circumstances to ECU options, with the limited exceptions included in OCC's proposal. Specifically, the Commission believes it appropriate for OCC to be authorized to adjust ECU options terms if the monetary authorities of the European Economic Community issue a new currency to replace the ECU or if those authorities officially alter the ECU exchange rate or characteristics. The Commission agrees with OCC, however, that OCC limit the exercise of that authority to extraordinary events. In particular, the Commission concurs with OCC's indication that it will not adjust the terms of ECU options to reflect periodic adjustments to the weight or identity of the ECU's component

currencies.<sup>9</sup> Similarly, the Commission agrees with OCC that OCC, in general, not adjust the terms of foreign currency options in response to devaluations or revaluations of the underlying foreign currency. The Commission believes that to change the terms of these options to reflect periodic adjustments or devaluations and revaluations would be inconsistent with the economic use of ECU options (and other foreign currency options) as a hedge against such changes in the relative value of the ECU (and any other underlying foreign currency). The risks from these periodic adjustments and from possible currency devaluation or revaluation are "ordinary" in the sense that foreign currency options writers and holders contemplate these risks when deciding to sell or buy foreign currency options, including ECU options.

## III. Conclusion

For the reasons discussed above, the Commission finds that OCC's proposal is consistent with the Act, and in particular with section 17A of the Act. The proposal facilitates the prompt and accurate clearance and settlement of options transactions and ensures the safeguarding of funds and securities in OCC's custody or control or for which OCC is reasonable.

Accordingly, IT IS THEREFORE ORDERED, under section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-85-14) be, and it hereby is, approved.

By the Commission.

Dated: February 3, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-2977 Filed 2-10-86; 8:45 am]

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[Release No. 22853; File Nos. SR-Phlx-85-10]

### Self-Regulatory Organizations; Proposed Rule Change; Philadelphia Stock Exchange, Inc.

On April 12, 1985, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 under the Act,<sup>2</sup> a proposed rule change to

<sup>9</sup> For example, OCC would not have adjusted the terms of ECU options to reflect the September 1984 recomposition to include the Greek Drachma. See note 6, *supra*.

<sup>1</sup> 15 U.S.C. 78s(b)(1)(1982).

<sup>2</sup> 17 CFR 240.19b-4 (1985).

trade options on the European Currency Unit ("ECU").<sup>3</sup>

## I. Description of the Proposal

The ECU consists of specified amounts of currencies of ten of the Member States<sup>4</sup> on the EEC.<sup>5</sup> The amount of each currency in the ECU is determined generally according to the relative gross domestic products of, and trade among, the Member States.<sup>6</sup> The composition of the ECU is re-examined every five years to reflect economic changes in the EEC as well as any membership changes in the EEC.<sup>7</sup>

While the composition of the ECU is relatively fixed, the exchange rate of the ECU fluctuates against each component currency as well as non-component currencies according to market forces.<sup>8</sup>

<sup>3</sup> The proposed rule change was noticed in Securities Exchange Act Release No. 22056 (May 20, 1985), 50 FR 21536. The Phlx amended the proposed rule change twice subsequent to its original filing. Amendment No. 1, submitted on April 22, 1985, states that the Phlx's Board of Governors approved the proposed rule change on April 16, 1985. Amendment No. 2, filed on May 3, 1985, changed the size of the proposed ECU contract from 50,000 to 62,500 units.

<sup>4</sup> On January 1, 1986, Spain and Portugal became Member States of the European Economic Community ("EEC"), but their currencies are not yet included in the ECU.

<sup>5</sup> The EEC, popularly known as the "Common Market," was established by the Treaty of Rome. Under principles of international law, the EEC is an association of sovereign states with federal potential that can enter into treaties and send and receive envoys. Furthermore, EEC law overrides the national laws of the member states in case of conflict between the systems. See generally, D. Lasok & J.W. Bridge, *Introduction to the Law of European Communities*, (1982).

<sup>6</sup> The current composition of the ECU is as follows (numbers in parentheses indicate relative percentage weight of total ECU): Deutsch mark, .719 (32.3%); British pound sterling, .0878 (14.6%); French franc, 1.31 (19.2%); Italian lira, 140.00 (10.1%); Netherlands guilder, .256 (10.2%); Belgian franc, 3.71 (8.2%); Luxembourg franc, .14 (0.3%); Danish kroner, .219 (2.7%); Irish pundt, .0087 (1.2%); Greek drachma, 1.15 (1.2%).

<sup>7</sup> The only revision of the ECU since its creation in 1979 occurred on September 17, 1984, pursuant to the scheduled five year re-examination. Any member state also may request re-examination if the weight of any currency in the ECU has changed by 25% or more since the previous revision, although no adjustment will be made without unanimous consent from the Council of the European Communities. No such special revision has been approved since the inception of the ECU.

<sup>8</sup> The value of the ECU as of January 30, 1986, in U.S. dollars was approximately 90 cents. See *Wall St. J.*, January 31, 1986. Official ECU exchange rates relative to the component currencies and six major currencies (including the U.S. dollar) are calculated daily by the EEC at 2:30 p.m. Brussels time (8:30 a.m. EST), and at approximately 11:30 a.m. EST, these rates are disseminated on the Dow Jones wire. Several major papers publish these rates daily, including the *London Financial Times* and the *Wall Street Journal*. See Paper by First Boston Corporation Capital Markets, December 1984, submitted to the Commission by the Phlx ("First Boston Paper").

<sup>8</sup> See Phlx Approval Order, text at notes 40-48.



According to the First Boston Corporation, the ECU exchange rate "tends to be more stable than those of its component currencies, since changes in the latter may offset one another."<sup>9</sup>

The ECU was created in 1978 as part of the European Monetary System ("EMS") initiative to foster closer monetary cooperation among the EEC Member States.<sup>10</sup> Under the framework of the EMS, currencies are allowed to fluctuate within a narrow range around their parity rates. Any fluctuations wider than the stipulated limits require intervention by the Member State's central bank to stabilize its currency.<sup>11</sup> The ECU is used as a reference point for the calculation of these parities, as a measure of the claims and liabilities among the participating central banks, and as a reserve and settlement instrument created against gold and dollar deposits by those banks.<sup>12</sup>

Numerous other uses of the ECU also have developed. Among other things, the ECU is used in pricing, invoicing and settling commercial transactions, commercial lending by most major European banks, and for consumer travelers' checks and credit cards.<sup>13</sup>

<sup>9</sup> First Boston Paper, note 8, *supra*, at 6, citing the following figures: For the period 1979-84 the ECU fluctuated 11.22% per year against the U.S. dollar, compared to 12.19% for the Deutsch mark against the dollar, 11.77% for the French franc, and 10.67% for the British pound sterling. See also, Exhibit 2 to SR-Phlx-85-10.

<sup>10</sup> The following account of the origin and uses of the ECU is taken from the First Boston Paper, note 8, *supra*, and from *The ECU*, published in March 1984 by the EEC.

<sup>11</sup> While the British pound is included in the ECU, the United Kingdom does not participate in the EMS exchange rate mechanism. Spain and Portugal, whose currencies are not yet included in the ECU, also do not yet participate in the EMS.

<sup>12</sup> Specifically, member states participating in the EMS are required to deposit 20% of their gold reserves and 20% of their dollar reserves with the European Monetary Corporation Fund ("EMCF"), an arm of the EEC that acts as clearinghouse for official transactions between Member States monetary authorities. Each Member State is credited with ECUs for these deposits. These ECUs are used to settle creditor and debtor balances that have arisen between the monetary authorities, subject, however, to the restriction that a creditor central bank is required to accept settlement in ECUs of a maximum of 50% of its claim on the debtor central bank. The creditor may request that the remaining 50% be settled in other reserve assets of the debtor central bank. See *The ECU*, note 10, *supra*.

<sup>13</sup> Letter from Dr. Manfred Beschel, Chef de Cabinet de Commissaire Pfeiffer, EEC (Assistant to Director General of the EEC) dated December 5, 1985 ("EEC letter") and the First Boston Paper, *supra*, note 8. See also Institutional Investor (Int. Ed.), "Will the ECU Prevail?", December 1984; and letter from Jacques Bellut, Senior Vice President, Treasury, and Foreign Exchange, Credit Lyonnais, to Richard T. Chase, Associate Director, Division of Market Regulation, SEC, dated July 16, 1985 ("Credit Lyonnais letter").

According to the EEC, the ECU has all "the functional and fundamental characteristics of a currency," all Member States of the EEC (except West Germany) treat the ECU as a currency for all practical purposes including the application of foreign exchange regulations, and various countries outside the EEC (including Switzerland) have accepted the ECU and treat it as any other currency.<sup>14</sup> Certain European banks have established a clearing mechanism for the ECU, thus enabling the transfer of ECUs without having to make separate transactions in each of the component currencies.<sup>15</sup> Many financial institutions, primarily in Belgium, the Netherlands and Luxembourg, but also in Britain, France, Denmark and Italy, make both spot and forward markets in the ECU against the U.S. dollar and other currencies.<sup>16</sup> There is also an ECU market for overnight investments and investments with maturities of up to one year.

The ECU also is a significant currency for denominating international debt issues in the Eurobond markets. In 1983 and 1984, the ECU, accounting for 8.5% and 7.4%, respectively, of all new issues, was the third most utilized currency in the primary Eurobond market, after the U.S. dollar and Deutsch mark.<sup>17</sup> In the first nine months of 1985, the ECU has been the most widely used currency after the U.S. dollar in the Euromarket.<sup>18</sup> In 1984, the EEC made a public offering in the U.S. of ECU 200 million aggregate principal amount 12 year bonds, the first registered public offering in the U.S. of bonds denominated in a foreign currency.<sup>19</sup> In 1985 there were three

<sup>14</sup> EEC letter note 13, *supra*. The EEC letter does point out that certain limitations apply in the Federal Republic of Germany (West Germany), which does not recognize the ECU as a currency. In West Germany, commercial banks are not permitted to open ECU accounts for West German residents. On the other hand, West German banks are allowed to participate freely even as lead managers in ECU denominated issues.

<sup>15</sup> Credit Lyonnais letter, note 13, *supra*.

<sup>16</sup> First Boston Paper, note 8, *supra*. Among other things, this means that these institutions provide ECU quotations.

<sup>17</sup> First Boston Paper, note 8, *supra*; letter from David C. Batten, Managing Director, First Boston Corporation, to Richard T. Chase, Associate Director, Division of Market Regulation, SEC, dated July 2, 1985 ("First Boston Letter"), and Institutional Investor, note 13, *supra*. As of the end of 1984, there were 120 ECU denominated issues outstanding, representing over ECU 7.13 billion principal amount. First Boston Paper, note 8, *supra*. ECU issues included floating rate notes, low coupon notes, zero coupons and certificates of deposit. Institutional Investor, note 13, *supra*.

<sup>18</sup> EEC letter, note 13, *supra*.

<sup>19</sup> First Boston Paper and letter, notes 8 and 17, *supra*. The Commission notes that all payments relating to this issue are to be made in ECUs.

registered offerings in the U.S. of ECU-denominated debt instruments.<sup>20</sup> Issuers of ECU-denominated bonds include several U.S. corporations; from October 1982 to mid-July 1985, eleven ECU-denominated bonds were brought to market by U.S. corporations, principally in the Euromarket.<sup>21</sup>

Transactions on the Phlx in ECU options will be governed by Phlx's existing foreign currency options rules. ECU options specifications will be as follows: contract size (number of units of the underlying currency represented in each options contract); 62,500 units strike price interval: one cent; premium quotations (cents per unit currency): .01 = \$6.25; .10 = \$62.50; 1.0 = \$625.00; minimum premium: .01 cents per unit of currency or \$.75; bid/offer differentials: .40 or less = .04 (\$25.00), .041 - 1.60 = .08 (\$50.00), more than 1.6 = 16 (\$100.00); the ECU option will be traded on a March expiration cycle. The Phlx would apply to the ECU option its existing foreign currency options position and exercise limits of 50,000 contracts.

The ECU quotation disseminated to the Phlx floor will be calculated for Phlx by Telerate Systems, Inc. ("Telerate"). Telerate applies the EEC-determined ECU composition to quotations in the ten underlying currencies to reach this quotation.<sup>22</sup> Options exercises will be

<sup>20</sup> Hercules, Inc., Credit Foncier and the Kingdom of Denmark issued U.S. registered ECU denominated bonds in 1985. There have also been several U.S. registered offerings of floating rate bonds denominated in U.S. dollars convertible to ECUs. ECU-denominated bonds are entitled to the same margin treatment as other bonds denominated in foreign currencies. Federal Reserve Board Staff Opinion, May 21, 1985, Federal Reserve Regulatory Service, 5-671.52.

<sup>21</sup> Citibank was the first U.S. corporation to issue ECU denominated bonds, issuing a 15 million ECU principal amount bond in October 1982. Since then ECU-bond issuers have included Chrysler, Motorola, IBM World Trade and Walt Disney Products. The Hercules, Inc., 1985 issue, note 20, *supra*, was the only one of these registered in the U.S.

<sup>22</sup> Letter from Robert B. Gilmore, Senior Vice President, Phlx, to Brandon Becker, Assistant Director, Division of Market Regulation, SEC, dated October 8, 1985. Technically quotations in only nine of the ten ECU currencies will be used: because the Luxembourg franc is always at par with the Belgian franc, only quotations for the latter will be used by Telerate in calculating the ECU. In addition, Telerate filters the quotations to: (1) eliminate any quotation that differs by a predetermined amount from a previous quotation; and (2) eliminate generally the high and low quotations. Telerate then averages the bids and asks to reach the ECU bid and ask. While quotations for the ECU itself are available, note 8, *supra*, and text accompanying note 16, *supra*, Phlx proposes to use an ECU quotation derived from quotations in the underlying currencies because Telerate and other vendors do not vary consistently updated direct ECU quotations and it is difficult for Phlx itself to obtain such quotations, directly from ECU dealers. See also note 66, *infra*.



settled by book-entry delivery of the appropriate amount of ECUs and U.S. dollars.<sup>23</sup>

## II. Comments

The Commission received letters from seven commentators regarding Phlx's proposal. The Chicago Mercantile Exchange ("CME") asserted that the SEC has no jurisdiction to approve the Phlx proposal because options on ECUs are not securities as defined in the Act.<sup>24</sup> According to the CME, the grant to the SEC of jurisdiction over "options . . . relating to foreign currency" was intended to "deal with Phlx's then current filings," which involved options on five specific foreign currencies. In support of its interpretation of the Act, the CME cites the parallel amendments to the Commodity Exchange Act (CEA) in 1983, which excluded from the otherwise exclusive jurisdiction of the Commodity Futures Trading Commission ("CFTC") an "option on foreign currency traded on a national securities exchange."<sup>25</sup> In pertinent part, the CME argues that, because the amendments to the CEA were enacted last, they should control, so that the language in the Act (option "relating to foreign currency") should be read to mean "option on [a] foreign currency."

CME contends that the ECU is not a foreign currency because, unlike the currencies on which the Phlx proposed to trade options in 1982, it is not a "medium of exchange or payment issued by a foreign national government."<sup>27</sup>

The CME argues that Congress intended the term foreign currency to have its "conventional meaning," which CME asserts includes three characteristics: (1) It is issued by a sovereign government; (2) It is used in ordinary commerce; and (3) The issuing government established it as legal tender.<sup>28</sup> As evidence that Congress intended this meaning, CME points to discussion in the legislative history of gold coins such as discussions in the legislative history of gold coins such as the South African Krugerrand, and Congress' clear expression of intent that such gold coins not come within the definition of "currency" because they are not used in "ordinary commerce" and because their "true value derives from their gold content and not from the minimal currency value that may be attributed to them."<sup>29</sup> Because Krugerrands are legal tender and issued by a foreign government, CME argues that Congress, in indicating an intent that Krugerrands not be considered foreign currencies, indicated an intent that all three characteristics of a currency that the CME has identified must be present before an instrument can be deemed a foreign currency.<sup>30</sup> The CME argues that the ECU has note of these three characteristics because: (1) It is not issued by a sovereign government; (2) It is not used in ordinary every day commerce; and (3) It is not legal tender.<sup>31</sup>

The CFTC made arguments similar to the CME's.<sup>32</sup> Thus, the CFTC argues

that the ECU is a group or index of currencies and not itself a "foreign currency," and that options on groups of foreign currencies are not encompassed by the terms of the Act. The CFTC argues that Congress intended the term "foreign currency" to have its "commonly understood sense," and was intended to encompass units such as the British Pound "issued by a foreign government" and "used in ordinary commerce by the general public and whose value fluctuates in relation to the dollar."<sup>33</sup> The CFTC argues that the ECU at present is not a foreign currency because it is not "legal tender" and because it is not "used in every day commerce."<sup>34</sup>

In its comments<sup>35</sup>, the Phlx contends that, because the ECU is a "widespread medium of exchange," and fluctuates in value against the U.S. dollar and other major currencies, it comes within the intended meaning of the term "foreign currency" as used in the Act. Like the CFTC and the CME, the Phlx refers to the portions of the legislative history of the amendments to the CEA discussing gold coins,<sup>36</sup> but according to Phlx these passages indicate that Congress intended to include within the definition of a foreign currency any widespread medium of exchange used in ordinary commerce whose value fluctuates with the value of the U.S. dollar.

As indicated above, the EEC also commented that "the ECU has acquired by its particular nature and stability all the functional and fundamental characteristics of currency."<sup>37</sup> The EEC also stated that the Member States of the EEC except West Germany treat ECUs as currency.<sup>38</sup>

Finally the Commission received letters from the First Boston Corporation and Credit Lyonnais supporting Phlx's view that the ECU is a foreign currency or at least has many of the characteristics of a foreign currency.<sup>39</sup>

<sup>23</sup> The Commission approved today a proposal by the Options Clearing Corporation to issue, clear and settle ECU options. Securities Exchange Act Release No. 22854 (February 3, 1986).

<sup>24</sup> CME's comments are contained in the three letters: Letter from William J. Brodsky, President, CME, to John Wheeler, Secretary, SEC, dated June 13, 1985; and letters from Robert S. Scales, Freeman, Freeman & Salzman, P.C., Counsel to CME, to John P. Wheeler, Secretary, SEC, dated December 6 and 16, 1985. The CME also requested that, if the Commission approves the Phlx proposal, it stay its order. See Request of the CME for a Stay of the Commission's Orders Approving Proposed Rule Changes, dated November 27, 1985. The CME subsequently withdrew that request. Letter from Robert P. Scales, Freeman, Freeman & Salzman, P.C., Counsel to CME, to John Wheeler, Secretary, SEC, dated January 14, 1986.

<sup>25</sup> Section 3(a)(10) of the Act, 15 U.S.C. 78c(a)(10) (1982), as amended by the 1982 amendments to the Act, Pub. L. No. 97-303, 96 Stat. 1409 (1982). The 1982 amendments to the Act and the 1983 amendments to the CEA, note 26, *infra*, (collectively the "Accord Amendments") represented the legislative enactment of the so-called "Shad-Johnson" Accord, named for the then Chairman, John S.R. Shad and Phillip McBride Johnson, of the respective Commissions.

<sup>26</sup> Pub. L. No. 97-444, 96 Stat. 2294 (1983), codified at section 4c(f) of the CEA, 7 U.S.C. 6c(f) (1982).

<sup>27</sup> Neither the CEA nor the Act specifically defines the term "foreign currency."

<sup>28</sup> CME's December 6, 1985 letter, note 24 *supra*.

<sup>29</sup> H.R. Rep. No. 97-565, (I), 97th Cong., 2d. sess., 152 (1982).

<sup>30</sup> The CME also cites other statutes and regulations which it believes support its understanding of the common meaning of a foreign currency, including Uniform Commercial Code section 1-201 (24), (defining money as a "medium of exchange authorized or adopted by a domestic or foreign government as part of its currency"); and 31 CFR 103.11(c), as amended effective November 21, 1985, 50 FR 92691 (Treasury regulations under the Foreign Currency Reporting Act), defining "currency" as "the coin and paper money of any country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. . . . Currency also includes official bank notes that are customarily under and accepted as a medium of exchange in a foreign country."

<sup>31</sup> The CME also disputes that the value of the EEC's 1985 statements that the ECU has the functional and fundamental characteristics of a currency and contends that the ECU's 1984 publication *The ECU these rates daily, including the London Financial Times* is inconsistent with these statements.

<sup>32</sup> Letter from Jean A. Webb, Secretary, CFTC, to John Wheeler, Secretary, SEC, dated September 27, 1985 ("CFTC letter").

<sup>33</sup> CFTC letter, note 32, *supra*. In support of its argument, the CFTC also cites the passages in the legislative history of the 1982 Amendments to the CEA discussing gold coins. Note 29, *supra*.

<sup>34</sup> CFTC letter, note 32, *supra*.

<sup>35</sup> Letters from Arnold F. Staloff, President, Philadelphia Board of Trade, to Richard T. Chase, Associate Director, Division of Market Regulation, SEC, dated July 1, and December 24, 1985.

<sup>36</sup> In addition to the passages cited by the CME and the CFTC, notes 29 and 33, *supra*, the Phlx cites S. Rep. No. 384, 97th Cong. 2d Sess., 78 (1982): "[t]he term foreign currency. . . refers only to those currencies whose worth is determined not primarily by their metallic content, but rather by their value relative to other countries' currencies. . . ."

<sup>37</sup> EEC letter, note 13, *supra*.

<sup>38</sup> *Id.*

<sup>39</sup> Credit Lyonnais and the First Boston letters, notes 13 and 17, *supra*, respectively. Credit



Both the First Boston Corporation and Credit Lyonnais agreed with the Phlx that the ECU has become a "recognized medium of exchange in international commerce."<sup>40</sup>

### III. Discussion

Under section 19(b)(2) of the Act,<sup>41</sup> the Commission must approve a proposed rule change submitted by a self-regulatory organization such as the Phlx if the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations under the Act applicable to the self-regulatory organization. Section 6(b)(5) of the Act<sup>42</sup> requires that the rules of the exchange be designed "to prevent fraudulent and manipulative acts and practices" and "in general, to protect investors and the public interest." Section 6(b)(8) of the Act<sup>43</sup> requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Section 3(a)(10) of the Act<sup>44</sup> in pertinent part defines "security" as "any . . . option . . . entered into on a national securities exchange relating to foreign currency." No commentators have urged that the Phlx proposal is inconsistent with the standards contained in section 6(b) of the Act; rather, the principal issue raised by the Phlx proposal is whether ECU options are options "relating to foreign currency" as defined in section 3(a)(10) of the Act.

#### A. The Jurisdictional Issue

##### 1. The Statutory Issues

In general, there are two bases for concluding that ECU options are securities for the purposes of section 3(a)(10). First, if the ECU is a foreign currency, then ECU options clearly are

Lyonnais is one of the largest European banking institutions making markets in ECUs, and also is one of a consortium of five major European banks that presently provide for clearance and settlement of ECU transactions. First Boston has underwritten ECU offerings in the United States and effected for its customers multi-party currency and interest rate swaps involving ECU-denominated obligations.

<sup>40</sup> The PSE, which also submitted a proposal to trade cash-settled options on ECUs. (File No. PSE-85-28; noticed in Securities Exchange Act Release No. 22508, October 4, 1985, 50 FR 41431) submitted a comment letter making arguments essentially similar to those made by the Phlx. Letter from Robert F. Denham, Munger Tolles & Rickhershauer (counsel to the PSE), to Richard T. Chase, Associate Director, Division of Market Regulation, SEC, dated October 1, 1985. The PSE has granted an indefinite extension of time for Commission action on its proposal.

<sup>41</sup> 15 U.S.C. 78s(b)(2) (1982).

<sup>42</sup> 15 U.S.C. 78f(b)(5) (1982).

<sup>43</sup> 15 U.S.C. 78f(b)(8) (1982).

<sup>44</sup> 15 U.S.C. 78c(a)(10) (1982).

options relating to foreign currency. Second, even if the ECU is not itself viewed as a foreign currency, but rather as a composite index or group of the underlying currencies, ECU options still "relate to foreign currency" and, therefore, are securities under section 3(a)(10). For the reasons discussed below, the SEC concludes that, under both analytical approaches, the ECU options proposed by Phlx come within the SEC's jurisdiction pursuant to section 3(a)(10) of the Act.<sup>45</sup>

First, the Commission believes that the ECU is a "foreign currency" within the intended meaning of Congress.<sup>46</sup> While the term "foreign currency" is not defined in either the CEA or the Act, Congress did indicate that gold coins such as the South African Kruggerand are not currencies because they do not fluctuate in value against the other currencies and are not used in ordinary commerce as a medium of exchange.<sup>47</sup> The Commission believes that Congress thus indicated that the primary indicia of a foreign currency are its fluctuation in value against other currency and its use as a medium of exchange in ordinary commerce. Furthermore, the Commission believes that a foreign currency's use in commerce as a medium of exchange and its ability to fluctuate in value vis-a-vis other currencies are the essential characteristics that determine the commercial hedging or investment utility of options or other derivative products relating to the currency. In contrast, the utility of an instrument as a medium for purchasing consumer goods would appear less relevant to these considerations.

In sum, the Commission believes that the term "foreign currency", as used in the Act means an instrument that is used as a medium of exchange in ordinary commerce whose value fluctuates with the value of other foreign currencies.<sup>48</sup>

<sup>45</sup> Cf. Section 3(b) of the Act, 15 U.S.C. 78c(b) (1982) (empowering the Commission to define terms used in the Act).

<sup>46</sup> There is no evidence in the legislative history that Congress intended to set up a different standard in the CEA. Therefore, the Commission believes that ECU options also are "options on foreign currency" as that phrase is used in the CEA. See note 57, *infra*.

<sup>47</sup> Notes 29, 33 and 36, *supra*.

<sup>48</sup> We reject, therefore, the CME's and CFTC's contention that an additional characteristic of a currency is that it is the "legal tender of a foreign government." We do not believe that the passages in the legislative history discussing gold coins, notes 29, 33 and 36, *supra*, support this proposition. Rather these passages support the simple proposition that Congress intended that the term foreign currency include the two characteristics that differentiate currencies from gold coins. We also believe that in common usage currency means something different

As described above, Member States of the EEC maintain ECU reserves that are used to adjust claims arising from currency movements beyond the parity ranges established by the EMS. Furthermore, the ECU is used in pricing, invoicing and settling commercial transactions, and ECU-denominated travelers' checks and credit cards are available.<sup>49</sup> In addition, the ECU is now a major currency for denominating international debt issues in the Eurobond markets, and ECU denominated bonds have been publicly offered in the U.S. Furthermore, ECUs are used to purchase these bonds, and payments of principal and interest on these bonds are made in ECUs. In addition, ECU futures traded on the CME and New York Cotton Exchange ("NYCE") settle in ECUs, as will the Phlx options.<sup>50</sup> Significantly, the ECU is recognized as a foreign currency by the Member States of the EEC, except for West Germany, as well as by several countries outside the EEC.<sup>51</sup> Moreover, according to the EEC, the ECU has "the fundamental and functional characteristics of a currency."<sup>52</sup> For

than legal tender. For example, Webster's defines currency as "something that is in circulation as a medium of exchange including coin, government notes and bank notes." Webster's Unabridged Dictionary (3d. ed., 1969). The other statutes and regulations CME cites, note 30, *supra*, clearly do not establish a "common" meaning of currency, but rather establish definitions intended for use in the specific statutory or regulatory contexts in which promulgated. The Commission also notes that the Treasury regulation the CME cites seems to specifically envision the possibility that the term "currency" may encompass something that is not legal tender. See the last sentence of the definition of currency, Treasury regulation § 103.11(c), quoted in note 30, *supra*. Finally, the Commission notes that while we do not believe it is essential that an instrument be legal tender to come within the intended definition of foreign currency under the Act, the official ECU is required to be accepted by monetary authorities of the participants in the EMS as payment for a portion of their official EMS-related debts. Note 12, *supra*. To this extent, therefore, ECUs are legal tender within the system in which they originate and are issued.

<sup>49</sup> Note 13, *supra*.

<sup>50</sup> On December 18, 1985, and January 14, 1986, the CFTC approved the NYCE's and CME's respective applications for designation as contract markets for trading in physical delivery futures on ECUs. Trading in these futures commenced on January 7, 1986 and January 14, 1986, respectively. On January 28, 1986, the CFTC also approved an application by the Chicago Board of Trade ("CBT") for designation as a contract market for trading in physical delivery futures on ECUs, but the CBT has not yet commenced trading those futures. CBT also has pending with the CFTC an application for designation as a contract market for trading in options on ECUs.

<sup>51</sup> EEC letter, note 13, *supra*.

<sup>52</sup> The CME attempts to minimize the significance of this statement by arguing that it does not speak to the legal definition of a currency, and is contradicted by the EEC in the EEC's 1984



these reasons, the Commission believes that the ECU is used as a medium of exchange in ordinary commerce.<sup>53</sup> Moreover, the value of the ECU fluctuates in value vis-a-vis the U.S. dollar and other currencies.<sup>54</sup> Thus, the Commission believes that the ECU is both a "currency" and a "foreign currency."<sup>55</sup>

Second, whether or not the ECU itself is a "foreign currency," its value is comprised of the value of various foreign currencies. Thus, options on ECUs literally "relate to" foreign currency, and, thus, come within the plain meaning of section 3(a)(10).<sup>56</sup>

publication *The ECU*, note 10, *supra*, as well as by an article by Mr. Joel Dixon, the Washington representative of the EEC, published in January 1985. Although the EEC's letter may not determine whether ECUs are "currency" within the meaning of the Act, the EEC letter does show that the issuer of ECUs believes that ECUs have the commonly understood characteristics of a "currency." The statements in *The ECU* the CME discusses indicate the EEC's belief that as of March 1984 the ECU was not legal tender and was not widely used in consumer transactions. As discussed above, however, the Commission does not believe that the ECU need be legal tender for it to be considered a foreign currency under the Act. Moreover, since the March 1984 publication of *The ECU* ECU-denominated travelers' checks and credit cards have been issued, indicating that the ECUs use in consumer transactions has increased.

Finally, Mr. Dixon's statement is not entitled to the weight of the EEC's own statement, and was published 10 months prior to the EEC's 1985 letter. Moreover, throughout Mr. Dixon's article the ECU is referred to as a currency, and indeed the article states that "from the investor's point of view it is exactly like any other foreign currency."

<sup>53</sup> The Commission disagrees with the CME's and CFTC's suggestions that, because members of the general public do not use ECUs in their every day affairs, the ECU is not used "in ordinary commerce." First, the availability of travelers' checks and credit cards denominated in ECUs indicates that some members of the general public do use ECUs in their every day affairs. Moreover, as described above, ECUs also are used in a broad variety of business and commercial transactions. See text at notes 13-21, *supra*. For these reasons, in assessing whether ECUs should be deemed a currency in the context of the proposed options contracts, the Commission believes that the various uses of the ECU as described above clearly constitute use "in ordinary commerce." In addition, the Commission notes that the fact that ECUs do not exist in scrip form does not prevent the ECU from being a medium of exchange. With advancing technology it is possible for a book-entry instrument to function as a medium of exchange.

<sup>54</sup> Note 8, *supra*.

<sup>55</sup> CME asserts that the ECU must be issued by a "sovereign government" in order to be "foreign currency." The Commission does not believe that in order to be "foreign" a currency needs to be issued by a "sovereign government." The Commission, however, also believes that the EEC has the essential attributes of a sovereign entity. See note 5, *supra*.

<sup>56</sup> See, e.g., *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 197 (1975) ("The starting point in every case involving construction of a statute is the language itself.").

The CME and CFTC argue that both the CEA and the Act should be read to limit the SEC's jurisdiction to options "on foreign currency" (the words of the CEA), and that the preposition "on" must be read as meaning something less than "relating to." The Commission believes that Congress intended the amendments to the CEA and the Act to complement one another.<sup>57</sup> In addition, the Commission does not believe that, as a matter of semantics, an option "on" a basket or index of foreign currencies is not an option "on" foreign currency. The literal language of the CEA is "option on foreign currency," not "option on a foreign currency." This, coupled with the fact that the word "currency" is used for both singular and plural references, makes the approval of an option on an index of foreign currency on a national securities exchange perfectly consistent with the literal language of the CEA.<sup>58</sup>

There is no indication in the legislative history of the amendments to either Act that Congress intended the reading of the Acts that the CFTC and CME suggest. The mere fact that, at the time of the Shad-Johnson Accord, the Phlx was proposing options on five specific foreign currencies does not compel a conclusion that Congress intended merely to give the SEC jurisdiction over those products. Indeed, Congress made it clear that its purpose in adopting the Accord Amendments was to put an end to the jurisdictional confusion that had delayed the trading

<sup>57</sup> The amendment to the CEA excluded from the exclusive jurisdiction of the CFTC the foreign currency options traded on national securities exchanges that were added to the SEC's jurisdiction in 1982. See, e.g., Senate Rep. No. 384, 97th Cong., 2d Sess., 2 and 22 (1982). ("The effect [of the amendments to the CEA] is to permit trading of options on foreign currencies on both commodity exchanges and stock exchanges."). Section 9(g) of the Act [15 U.S.C. 78i(g)(1982)] indicates that if an option comes within the definition of Section 3(a)(10) of the Act, the Commission has jurisdiction notwithstanding conflicting provisions of other statutes.

<sup>58</sup> The CME and CFTC also argue that, if Congress intended the SEC's jurisdiction to extend to instruments that constituted currency indexes, it would have specifically so provided. In this regard, they note that, in granting the CFTC jurisdiction over futures contracts on groups or indexes of securities in the same legislation setting forth SEC jurisdiction over foreign currency options, Congress demonstrated fully its ability to grant specific jurisdiction over index products when that was its intention.

But in enacting the legislation it was necessary for Congress to focus specifically on stock index futures because it specifically prohibited futures on individual non-exempt securities. See section 2(a)(1)(B)(iv) of the CEA, 7 U.S.C. 2a(1)(B)(iv) (1982). Thus, the absence of specific provisions dealing with foreign currency indexes, rather than evidencing an intent to exclude such products from SEC jurisdiction, reflects the fact that there was no reason or need for Congress to address separately foreign currency indexes.

of new and potentially useful instruments in the securities and commodities markets.<sup>59</sup> To limit the definitions added to the CEA and the Act by the Accord legislation to those products actually proposed or traded at that time would have merely resolved existing jurisdictional questions and postponed the resolution of the inevitable additional questions that would arise over products not yet specifically contemplated.<sup>60</sup> One clear purpose of the Accord Amendments was to resolve jurisdictional disputes in order to accommodate both existing proposals and the development of new and evolving financial instruments.<sup>61</sup> For these reasons, the Commission also believes that the options on the ECU proposed by Phlx represent options "relating to foreign currency," and, thus, are securities within the meaning of section 3(a)(10) of the Act.

## 2. Policy Considerations

Apart from an analysis of the language of the CEA and the Act, the Commission believes there are important policy reasons—both economic and competitive—in support of its determination that options on the ECU are securities under section 3(a)(10) of the Act. ECU options could serve several economic purposes.<sup>62</sup> ECU options could be used by investors, issuers and underwriters of ECU-denominated bonds to manage the exchange rate risk inherent in such positions.<sup>63</sup> ECU options also could be used to manage the exchange rate risk associated with either transactions denominated in ECUs or with multinational transactions involving a combination of currencies. In this latter function, the ECU option would represent a means not now available of diversifying exchange rate risk without incurring the cost of transacting in

<sup>59</sup> See, e.g., S. Rep. No. 384, 97th Cong. 2d Sess., 22-23 (1982).

<sup>60</sup> The Commission notes that neither futures nor options on ECUs were trading or even proposed for trading at the time of the consideration and enactment of Accord Amendments.

<sup>61</sup> S. Rep. No. 384, 97th Cong., 2d Sess., 22 (1982). See also remarks of Sen. D'Amato and Sen. Garn, 128 Cong. Rec. S 13112, 13113 (October 1, 1982).

<sup>62</sup> The economic utility of ECU options is also important in evaluating whether Phlx's proposal is consistent with section 6(b)(5) of the Act, and particularly in determining whether the proposal is in the public interest. See Section B., *infra*.

<sup>63</sup> See Credit Lyonnais and First Boston letters, notes 13 and 17, *supra*. In this respect, ECU options would serve the same economic function as existing foreign currency options. See, e.g., SEC, CFTC and Federal Reserve Board Study of the Effects on the Economy of Trading of Futures and Options (December 1984) ("Futures/Options Study"), at 27-33, IV 28-30, and Appendix IV-A, 38-40.



several different individual foreign currency options.<sup>64</sup>

The primary practical effect of adopting the CME's and CFTC's reading of the Acts would be to preclude registered broker-dealers who are not registered futures commission merchants ("FCM") (and registered representatives who are not registered as FCM associated persons) from offering a useful alternative risk-shifting foreign currency option to their customers. In addition, this reading would preclude one group of market participants (*i.e.*, options traders) from competing with another group (*i.e.*, commodities traders). By contrast, the Commission's reading of the Acts allows for the introduction of a potentially useful product, is pro-competitive, and thus, accords more with the underlying policy concerns of the amendments to the Acts.

Significantly, neither the CME nor the CFTC has indicated any policy reasons for their interpretation of the two Acts. Options on ECUs will be used for the identical purposes of transferring foreign currency risk or dollar valuation risk that other foreign currency options provide. The trading of options on ECUs on a securities exchange concurrently with the trading of futures (or options on futures or physical options) on ECUs on commodity exchanges<sup>65</sup> would in no way threaten to disrupt the CFTC's regulation of those markets. Indeed, the amendments to both Acts specifically envisioned that competing options, options on futures and futures could trade concurrently on exchanges and boards of trades without altering the regulatory structure of either marketplace.

#### B. Section 6(b) of the Act

As discussed above, the proposed ECU options contract shares the essential attributes of Phlx's existing foreign currency options, and will trade subject to Phlx's existing foreign currency options rules. In light of the liquid cash markets for each of the currencies in this basket, particularly the most heavily weighted currencies, the fact that the ECU's value, unlike that of the other foreign currencies on which Phlx trades options, derives from the aggregate weighted value of a basket of ten currencies in itself raises no significant regulatory issues.<sup>66</sup>

Moreover, the Phlx's position, and exercise limits for its existing foreign currency options will apply to the ECU options contract. In addition, because the ECU tends to be more stable than each of its component currencies,<sup>67</sup> the Phlx will apply its existing margin rules for its foreign currency options to the option on the ECU. As discussed above, the Commission also believes ECU options have a useful economic function.<sup>68</sup> Finally, the Phlx has submitted to the Commission an adequate surveillance program for ECU options.

For these reasons, the Commission finds that the Phlx proposal is designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. The Commission also finds that the Phlx proposal imposes no burden on competition not necessary or appropriate in furtherance of the Act.

#### IV. Conclusion

For the reasons discussed above, the Commission finds that Phlx's 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.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be approved.

Dated: February 3, 1986.

susceptibility to manipulation of certain options and futures whose values are derived from quotations rather than last sale reports for the component securities. *See, e.g.*, letter from George A. Fitzsimmons, Secretary, SEC, to Paula Tosini, Director, Division of Economics and Education, CFTC, dated July 23, 1984 [commenting on Chicago Board of Trade application for designation as a contract market to trade futures contracts on the Municipal Bond Index ("Municipal Bond Index letter")]; and Securities Exchange Act Release No. 22558, October 25, 1985, 50 FR 45516 (approving Chicago Board Options Exchange proposal to trade options on the Standard and Poor's OTC Industrial Index). The Commission does not believe that use of quotations in the underlying currencies to calculate the ECU values disseminated to the Phlx floor raise such manipulation concerns because: (1) Telerate's filtering of quotations, note 22, *supra*, tends to ensure that artificial quotations in the ECU currencies will not establish the ECU quotations; (*see* the Municipal Bond Index letter); (2) the markets for the ECU currencies, particularly those that have the greatest weight in the ECU, are large and liquid enough that it would be very difficult to enter artificial quotations that will effect the ECU quotation to any significant degree; and (3) the ECU option is settled in ECUs (and not, thus, cash-settled) so that manipulations of the quotations for the underlying currencies would not have the direct effect of potentially creating artificially profitable exercise opportunities.

<sup>67</sup> Note 9, *supra*.

<sup>68</sup> *See* section III.A.2., *supra*.

By the Commission.

John Wheeler,  
Secretary.

[FR Doc. 86-2978 Filed 2-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24012; 70-7219]

#### Columbus and Southern Ohio Electric Co.; Proposed Sale of Electric Utility Assets

February 4, 1986.

Columbus and Southern Ohio Electric Company ("C&SOE"), 215 North Front Street, Columbus, Ohio 43215, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration with this Commission pursuant to section 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and rule 44 promulgated thereunder.

C&SOE proposes to sell its existing Broadway Substation #168 to the City of Jackson, Ohio for a total price of \$117,714.00, which includes all expenses expected to be incurred by C&SOE in the sale. The replacement cost, less observed depreciation, for the equipment is \$108,151.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 28, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,  
Secretary.

[FR Doc. 86-2968 Filed 2-10-86; 8:45 am]

BILLING CODE 8010-01-M

<sup>64</sup> *See* the Phlx filing, SR-Phlx-85-10, at 10. Of course, the extent to which this latter function would be viable would depend on the correlation between movements in the actual, multiple currency position being hedged and movements in the ECU.

<sup>65</sup> *See* note 50, *supra*.

<sup>66</sup> In this connection, the Commission notes that it previously has expressed concern with the



[Release No. 35-24013; 70-7167]

**Indiana and Michigan Electric Co.;  
Proposal To Render Affiliated and  
Nonassociated Transportation  
Services**

February 5, 1986.

Indiana & Michigan Electric Company ("I&M"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, Appalachian Power Company, 40 Franklin Road, SW., Roanoke, Virginia 24011, Ohio Power Company ("OPCo"), 301 Cleveland Avenue, SW., Canton, Ohio 44701, AEP Generating Company, 1 Riverside Plaza, Columbus, Ohio 43215, Columbus and Southern Ohio Electric Company, 215 North Front Street, Columbus, Ohio 43215, Kentucky Power Company 1701 Central Avenue, Ashland, Kentucky 41101 (referred to collectively as "Applicants") and other companies of the American Electric Power System ("System"), all direct or indirect subsidiaries of American Electric Power Company, Inc., a registered holding company, have filed an application-declaration with the Commission pursuant to sections 12(f) and 13 of the Public Utilities Holding Company Act of 1935 ("Act") and rules 43 and 80 through 95 thereunder.

For many years, the System has purchased coal and owned in fee or leased coal reserves, mined coal, and transported it to its various generating stations. As a national energy crisis deepened and environmental considerations became more complex in the early 1970's, the System made provisions for supplies of coal in addition to coal otherwise available to it under then existing arrangements. Accordingly, the System acquired additional coal reserves and coal mining, handling and transportation equipment for such purpose. Included in fuel transportation equipment, which was acquired by the System, either through direct ownership or through chartering or leasing arrangements with nonassociated charterers or lessors, were a number of towboats, barges and related property which have been employed in transporting coal for System use. This transportation property is currently being operated for the benefit of the System by the River Transportation Division of I&M ("River Transportation Division").

The Applicants propose for I&M, (1) to continue to own and operate the assets of its River Transportation Division for transportation services for itself and the other applicants, and during times of nonutilization by I&M and the other Applicants, to provide such services or equipment therefor to nonassociated

companies, (2) to institute a schedule of fees and charges providing for transportation services to affiliates and nonassociates, and (3) to acquire ownership of the Lakin Facility from OPCo.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 3, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any notice or order issued in this matter. After said date the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,  
Secretary.

[FR Doc. 86-2969 Filed 2-10-86; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 34-22851; File Nos. 4-281, S7-433]

**Joint Industry Plan; Filing and  
Immediate Effectiveness of  
Amendments to the Consolidated  
Quotation Plan and Consolidated Tape  
Association Plan Relating to  
Consolidated Subscriber From**

The participants in the Consolidated Quotation Plan ("CQ Plan") and Consolidated Tape Association ("CTA") on January 20, 1986 submitted amendments<sup>1</sup> to the Plan governing the operation of the consolidated quotation reporting system ("CQS") and the "Restated and Amended Plan submitted to the Securities and Exchange Commission pursuant to rule 17a-15 under Securities Exchange Act of 1934" ("CTA Plan").<sup>2</sup>

<sup>1</sup> The amendments to the CQ and CTA Plans were submitted pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"). The CTA Plan also was submitted pursuant to Rule 11Aa3-1 under the Act.

<sup>2</sup> The CQ Plan and subsequent amendments are contained in File No. 4-281. The Commission approved the CQ Plan in Securities Exchange Act Release No. 16518 (January 22, 1980), 45 FR 6521. The CTA Plan and subsequent amendments are

**I. Description of the Amendments**

The purpose of the amendments is to adopt a new, consolidated form for use by professional subscribers to the CQ and CTA Plans. Section VIII of the CQ Plan and section VII of the CTA Plan currently require every "Professional" subscriber who receives quotation information or last sale prices relating to Network A Eligible Securities to, among other things, execute a form of agreement with the New York Stock Exchange (acting or behalf of the Network A Participants) substantially in the form of Exhibit D to the CQ Plan or Exhibit C to the CTA Plan ("Network A Form"). The Consolidated Form consolidates the Network A Form and several other subscriber agreements and addenda thereto.

The Commission believes that the amendments represent a positive enhancement to the administration of the CQ and CTA Plans that creates opportunities for more efficient and effective market operations.<sup>3</sup> In light of this conclusion, and because the CQ and CTA Plan participants have stated in their filings that the amendments involve solely technical and ministerial matters relating to subscriber forms, the amendments have become effective pursuant to paragraph (C)(3)(iii) of rule 11Aa3-2.

**II. Request for Comment**

Although the amendments were effective upon filing with the Commission, the Commission may summarily abrogate the amendments within 60 days of its filing and require refiling and approval of the amendments by Commission order pursuant to rule 11Aa3-2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a national market system, or otherwise in furtherance of the purposes of the Act.

In order to assist the Commission in determining whether to abrogate the amendments and to require refiling and further review, interested persons are invited to submit their views to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, within 21 days from the date of publication of this notice in the **Federal Register**. The amendments to the CQ and CTA Plans

contained in File No. S7-433. The Commission approved the CTA Plan in Securities Exchange Act Release No. 1693 (July 16, 1980), 45 FR 49414.

<sup>3</sup> See section 11A(a)(1)(B) of the Act.



will be available for public inspection in the Commission's public reference room. All communications should refer to File Nos. 4-281 or S7-433.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

John Wheeler,  
Secretary.

January 31, 1986

[FR Doc. 86-2970 Filed 2-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22850; File No. S7-433]

### Joint Industry Plan; Filing of Amendment to the Consolidated Tape Association Plan Relating to Regulatory Halt Periods.

The participants in the Consolidated Tape Association ("CTA") on January 20, 1986 submitted to the Commission, pursuant to rules 11Aa3-1 and 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), an amendment to the "Restated and Amended Plan submitted to the Securities and Exchange Commission pursuant to Rule 17a-15 under the Securities Exchange Act of 1934" ("CTA Plan").<sup>1</sup>

#### I. Description of the Amendment

The amendment alters the regulatory halt provision of the CTA Plan. Section X(a) of the CTA Plan governs procedures for discontinuing dissemination of last sale information during regulatory halts and for the resumption of dissemination after termination of the halts. The procedures currently include two overlapping time periods that work to delay recommencement of dissemination of consolidated last sale information for at least 30 minutes from the time the primary market terminates a regulatory halt. The amendment deletes one period and shortens another, reducing the overall minimum delay to 15 minutes.<sup>2</sup> The CTA participants stated that the amendment will provide the investing public with faster access to market information, thereby contributing to the national market system objectives

regarding dissemination of last sale information under sections 11A(a)(1) (C) and (D) and 11Aa(a)(3)(B) of the Act.

#### II. Request for Comment

Interested persons are invited to submit written comments on the amendment. Persons submitting comments should file six copies with John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission and related items, 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 Room, 450 Fifth Street, NW., Washington, DC. All communications should refer to File No. S7-433 and should be submitted within 21 days from the date of publication of this notice in the **Federal Register**.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3(a)(29).

Dated: January 31, 1986.

John Wheeler,  
Secretary.

[FR Doc. 86-2971 Filed 2-10-86; 8:45 am]

BILLING CODE 8010-01-M

### DEPARTMENT OF STATE

[Public CM-8/933]

#### Oceans and International Environmental and Scientific Affairs Advisory Committee; Partially Closed Meeting

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will meet at 2:00 P.M., Thursday, February 20, 1986, in Room 1205, Department of State, Washington, D.C.

At this meeting, officers responsible for Antarctic affairs in the Department of State will discuss key issues and problems involving the Antarctic in the context of current domestic and international developments. This session will be open to the public. The public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussion according to the instructions of the Chairman. As access to the Department of State is controlled, persons wishing to attend the February 20 meeting should enter the Department through the Diplomatic ("C" Street) Entrance. Department officials will be at the Diplomatic Entrance to escort attendees to Room 1205.

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will also meet on Friday, February 21, 1986 in Room 355 of the National Academy of Sciences' Joseph Henry Building, Pennsylvania Avenue, NW., Washington, D.C., in sessions that will not be open to the public. As these sessions will include discussion of classified material, they have been closed pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9)(B). The disclosure of classified material and revelation of considerations which go into policy development would substantially undermine and frustrate the U.S. position in future negotiations. The purpose of these discussions will be to elicit views concerning the further development of United States policy regarding Antarctica particularly with respect to Antarctic resource issues. This portion of the meeting will include classified briefings and examination and discussion of classified documents pursuant to Executive Order 12356.

Requests for further information on the meetings should be directed to R. Tucker Scully of OES/OPA, Room 5801, Department of State. He may be reached by telephone on (202) 647-3262.

John D. Negroponte,  
Chairman.

[FR Doc. 86-2911 Filed 2-10-86; 8:45 am]

BILLING CODE 4710-09-M

[Public Notice CM-8/935]

#### Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on February 19, 1986 at 10:00 a.m. in Suite 301, Control Data Corporation, 1201 Pennsylvania Avenue, N.W., Washington, D.C.

Study Group B deals with the preparation of U.S. positions for CCITT Study Group PC/WATTC.

Study Group B will review contributions and U.S. positions relating to the upcoming meeting of CCITT Study Group PC/WATTC taking place in Geneva March 3-7, 1986. In addition, it will make its final preparations regarding the U.S. Delegation to that meeting; and its final assessment of the

<sup>1</sup> 17 CFR 200.30-3(a)(27).

<sup>2</sup> See Securities Exchange Act Release No. 16983 (July 16, 1980), 45 FR 49414.

<sup>3</sup> The procedures currently provide that the CTA Plan Processor may not disseminate indications of interest until at least 15 minutes after the primary market determines to terminate the regulatory halt ("T Time"). They also provide that the processor may generally resume disseminating last sale information 30 minutes after T Time. The amendment eliminates the initial 15 minute period to enable the processor to disseminate indications immediately. The amendment also permits the processor to resume disseminating last sale information 15 minutes after T Time.



current international contributions that have been submitted for consideration.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. All persons wishing to attend the meeting should contact the office of Philip Onstad, Control Data Corporation, telephone (202) 789-6784.

Dated: January 22, 1986.

**Domenick Iacovo,**  
*Acting Director, Office of Technical Standards and Development.*  
[FR Doc. 86-2908 Filed 2-10-86; 8:45 am]  
BILLING CODE 4710-07-M

[Public Notice, CM-8/934]

**Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting**

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on February 21, 1986 at 1:00 p.m. in Salon D, the Wyndham Hotel/Greenspoint, 12400 Greenspoint Drive, Houston, Texas.

The purpose of this meeting is to establish the U.S. position to support the CCITT Study Group XI Experts' meeting on signalling, to be held during March in Paris.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. All persons planning to attend the meeting should contact Mr. Henry Marchese at (201) 234-3790.

Dated: January 22, 1986.

**Domenick Iacovo,**  
*Acting Director, Office of Technical Standards and Development.*  
[FR Doc. 86-2909 Filed 2-10-86; 8:45 am]  
BILLING CODE 4710-07-M

[Public Notice, CM-8/936]

**Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting**

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on February 28, 1986 at 9:30 a.m. in Room 1205, U.S. Department of State, 2201 C Street, NW., Washington, D.C.

The purpose of this meeting is to review the status of preparations and possible U.S. contributions to the May meeting of the CCITT Special "S" group, to be held at ITU Headquarters in Geneva.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Earl Barbely, Department of State, Washington, D.C.; telephone (202) 647-6700. All attendees must use the C Street entrance to the building.

Dated: January 22, 1986.

**Domenick Iacovo,**  
*Acting Director, Office of Technical Standards and Development.*  
[FR Doc. 86-2910 Filed 2-10-86; 8:45 am]  
BILLING CODE 4710-07-M

[Public Notice CM-8/939]

**Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea Working Group on the Carriage of Dangerous Goods; Meeting**

The Working Group on the Carriage of Dangerous Goods of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on April 2, 1986 at 9:30 AM in Room 2417 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C.

The purpose of this meeting is to discuss:

- United States positions on matters to be considered at the 38th Session of the International Maritime Organization (IMO) Subcommittee on the Carriage of Dangerous Goods to be held April 21-25, 1986;
- United States proposals made to the 38th Session of the IMO Subcommittee of the Carriage of Dangerous Goods;
- Revision of the International Maritime Dangerous Goods (IMDG) Code requirements for the shipment of explosives;
- Inclusion of additional shipping requirements in the IMDG Code for marine pollutants;
- Medical and emergency response for accidents involving hazardous materials with general not otherwise specified (N.O.S.) shipping names;
- Revision of the IMDG Code stowage and segregation requirements; and
- IMO activities of a continuing nature.

Members of the public may attend up to the seating capacity of the room.

For further information contact Lieutenant Commander John P. Aherne,

U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street, SW., Washington, D.C. 20593. Telephone: (202) 426-1577.

Dated: February 4, 1986.

**Richard C. Scissors,**  
*Chairman, Shipping Coordinating Committee.*  
[FR Doc. 86-2912 Filed 2-10-86; 8:45 am]  
BILLING CODE 4710-07-M

[Public Notice, CM-8/938]

**Soviet and Eastern European Studies Advisory Committee; Recommendations Approved for FY-86 Awards**

On December 23, 1985 the Department of State approved the recommendations of the Soviet and Eastern European Studies Advisory Committee for the following FY-86 awards.

1. *American Council of Teachers of Russian*—\$76,540 to provide fellowships for *in situ* graduate study of Russian.<sup>1</sup> Contact: Dan E. Davidson, Director, USSR Programs Group, American Council of Teachers of Russian, 815 New Gulph Road, Bryn Mawr, PA 19010 (215) 525-6559.

2. *Hoover Institution/Stanford University*—\$191,360 to fund post-doctoral fellowships and summer research grants.<sup>1</sup> Contact: John B. Dunlop, Associate Director, The Hoover Institution on War, Revolution and Peace at Stanford University, Stanford, CA 95405-2323 (415) 723-4273.

3. *University of Illinois*—\$157,879 to partially fund the University's Slavic Reference Service and Summer Research Laboratory on Russia and Eastern Europe.<sup>1</sup> Contact: Diane Merridith, Program Administrator, Russian and East European Center, University of Illinois at Urbana-Champaign, 1208 W. California Avenue, Urbana, IL 61801 (217) 333-1244 or 3278.

4. *International Research and Exchanges Board*—\$799,880 to provide improved field access to the US scholarly community by funding (1) short-term visits by senior specialists; (2) regular contact with the non-Russian areas of the USSR; (3) specialized on-site language training; (4) group research and collaborative projects; (5) enhancement of comparative studies using Soviet and EE materials; (6) better preparation for research abroad; and (7) systematic dissemination of field research results.<sup>1</sup> Contact: Dorothy Knapp, Assistant Director, International Research & Exchanges Board, 655 Third

<sup>1</sup> Actual amounts pending grant negotiations.



Avenue, New York, NY 10017 (212) 490-2002.

5. *The Joint Committee on Eastern Europe of the ACLS and SSRC*—\$442,040 to fund research and training fellowships, continued start-up monies for journal on East European politics, and establishment of an East European summer language institute.<sup>1</sup> Contact: Jason Parker, Executive Associate, Joint Committee on Eastern Europe, 228 East 45th Street, New York, NY 10017 (212) 697-1505.

6. *The Joint Committee for Soviet Studies of the SSRC and ACLS*—\$805,630 to fund (1) a national fellowship program for junior scholars entering graduate work in Soviet studies, further study by students already having completed two years of graduate work, completion of Ph.D. dissertations, and postdoctoral research by junior scholars, sharing with universities costs of initial appointments; (2) collaborative research projects and dissemination of results; (3) a national competition for grants to American institutions that offer intensive training in the Russian language.<sup>1</sup> Contact: Blair Ruble, Staff Associate, Social Science Research Council, Soviet Program, 605 Third Avenue, New York, NY 10158 (212) 661-0280.

7. *The National Council for Soviet and East European Research*—\$1,245,220 to augment existing programs designed to develop and sustain long-term fundamental research dealing with major Soviet and East European policy issues on the basis of a national research agenda, soliciting responsive bids through an annual national competition, and the awarding of contracts.<sup>1</sup> Contact: Vladimir I. Toumanoff, Executive Director, The National Council for Soviet and East European Research, 1755 Massachusetts Avenue, N.W., Suite 304, Washington, D.C. 20036.

8. *The Woodrow Wilson Center of the Smithsonian Institution*—\$789,360 to provide additional support to the Kennan Institute for Advanced Russian Studies (\$526,240) and the East European Program (\$263,120) for their research and dissemination programs.<sup>1</sup> Contact: Peter Reddaway, Secretary, Kennan Institute for Advanced Russian Studies, The Wilson Center, 955 L'Enfant Plaza, SW, Suite 7400, Smithsonian Institution Building, Washington, D.C. 20560 (202) 278-3105 and George Hoffman, Acting Secretary, East European Program, European Institute, The Wilson Center, Smithsonian Institution Building, Washington, D.C. 20560 (202) 357-2952.09

Those interested in program details should contact the grantees directly. A national, open competition for FY 1987 will be held depending upon availability of funds.

Dated: January 31, 1986.

Paul K. Cook,  
*Soviet and Eastern European Studies  
Advisory Committee.*

[FR Doc. 86-2907 Filed 2-10-86; 8:45 am]

BILLING CODE 4710-32-M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Environmental Impact Statement: Shelby County, TN

**AGENCY:** Federal Highway  
Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Shelby County, Tennessee.

**FOR FURTHER INFORMATION CONTACT:**  
Mr. Thomas J. Ptak, Division  
Administrator, Federal Highway  
Administration, Federal Building, U.S.  
Courthouse, 801 Broadway—Suite A—  
926, Nashville, Tennessee 37203,  
telephone (615) 736-5394.

**SUPPLEMENTARY INFORMATION:** The FHWA in cooperation with the Tennessee Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to construct Nonconnah Parkway, a four to six lane access control highway on new location, from Interstate Route 240 near Quince Road in southeast Memphis to State Route 57 (U.S. 72) west of Collierville in Shelby County, Tennessee. The proposed improvement would have a length of approximately 10 miles. Improvements to the corridor are considered necessary to provide for the proposed traffic demands.

Options under consideration include (1) taking no action; and (2) constructing a four to six lane roadway on new location.

Letters describing the proposed action and soliciting comments were sent to appropriate federal, state and local agencies on September 30, 1985. A public hearing will be held at a future date. Public notice will be given of the time and place of this hearing. The draft EIS will be available for public and agency review and comment. These activities are providing input regarding the scope of the EIS.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and suggestions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program).

Issued on February 3, 1986.

Wright B. Aldridge, Jr.,  
*Community Planner, Tennessee Division,  
Nashville, Tennessee.*

[FR Doc. 86-2915 Filed 2-10-86; 8:45 am]

BILLING CODE 4910-22-M

### National Highway Traffic Safety Administration

#### Kmart Corp., Motor Vehicle Safety Standards; Denial of Petition for Defect Remedy Hearing

This notice sets forth the reasons for the denial of a petition by Kmart Corporation of Troy, Michigan, to conduct a hearing to determine whether Kmart had reasonably met its obligation to notify purchasers and to remedy a noncompliance with Federal Motor Vehicle Safety Standard No. 108 (15 U.S.C. 1416).

On September 19, 1985, Kmart filed a "Petition for Hearing Pursuant to 49 CFR 557.3" so that it could be determined whether Kmart Corporation could reasonably have "done anything more" to fulfill its notification and remedial responsibilities under the National Traffic and Motor Vehicle Safety Act with respect to agency investigative files CIR 2564 and 2565. It also sought "to present factual and technical data which it considers relevant to the purpose of mitigation of compromise penalties". The agency investigative files referenced cover the failure of Kmart to certify approximately 878,080 hazard warning signal and turn signal flashers in accordance with section 114 of the National Traffic and Motor Vehicle Safety Act, and the universal failure of a representative sample of those flashers to comply with the requirements of Standard No. 108 for turn signal and hazard warning signal flashers.

NHTSA denied Kmart's petition on November 7, 1985, noting that the United States of America had filed a complaint against Kmart in the United States



District Court for the District of Maryland on August 14, 1985. The complaint alleges, among other things, that Kmart failed to file a noncompliance report as required by 49 CFR Part 573, and to conduct a notification campaign in a timely manner. The complaint also seeks recovery of maximum civil penalties for such failures. Kmart was informed that its petition was denied because the issues presented by its Petition were in litigation and the District Court had become the appropriate forum for their resolution.

Kmart was also informed that its petition was moot because no useful purpose could be served by holding the kind of hearing contemplated by 49 CFR Part 557. That Part sets forth the procedures under which the agency conducts hearings upon whether manufacturers have reasonably met their obligations to notify and remedy pursuant to recall campaigns. If the Administrator determines that the manufacturer has not reasonably met such an obligation, the manufacturer is ordered to take specified action to comply with the obligation. This procedure is intended as a means of redress for improper notification and/or remedy by providing the Administrator with authority to order a specific course of action tailored to the deficiencies determined to exist in any individual case. Neither the wording of the regulation nor its statutory authority and associated legislative history indicate that a purpose of this section was to afford a means by which a manufacturer might itself petition for a determination of the adequacy of its part conduct where no remedial order is sought. To date no manufacturer other than Kmart has petitioned for such a determination under Part 557.

(Sec. 156, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1416); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on February 6, 1986.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 86-2966 Filed 2-10-86; 8:45 am]

BILLING CODE 4910-59-M

#### Urban Mass Transportation Administration

[Docket No. 85-D]

#### Classification of Contact Third Rail for Buy America Requirements

**AGENCY:** Urban Mass Transportation Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** Section 165 of the Surface Transportation Assistance Act of 1982 provides, with exception, that Federal funds may not be obligated for mass transportation projects unless a preference is given to domestically produced products (the Buy America Requirement). The Urban Mass Transportation Administration (UMTA) has been requested by the L.B. Foster Company to reclassify coextruded (bi-metallic) contact third rail as an electrical conductor rather than as steel rail. This would permit contact third rail to be subject to the section 165(b)(3) exception to the Buy America requirements. UMTA is seeking the views and recommendations of all interested parties.

**DATE:** Comments must be received on or before March 13, 1986.

**ADDRESS:** Comments should be submitted to UMTA Docket No. 85-D, Urban Mass Transportation Administration, Room 9228, 400 Seventh Street SW., Washington, DC 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Edward J. Gill, Jr., Office of the Chief Counsel, Room 9228, 400 Seventh Street SW., Washington, DC 20590, (202) 426-4063.

**SUPPLEMENTARY INFORMATION:** Section 165 of the Surface Transportation Assistance Act of 1982 provides that Federal funds may not be obligated by the Urban Mass Transportation Administration (UMTA) for mass transportation projects unless steel and manufactured products used in the project are produced in the United States. Section 165(b)(3) further provides an exception in the case of procurement of traction power equipment if the cost of components of the equipment which are produced in the United States is more than 50 percent of the cost of all components and final assembly takes place in the United States. UMTA Buy America regulations contained in 49 CFR Part 661 *et seq.* specifically exclude third rail from the section 165(b)(3) provision for traction power equipment. Third rail is therefore subject to the section 165(a) requirement that steel products be produced in the United States.

The L.B. Foster Company has brought to UMTA's attention the information that the Customs Service, Department of Treasury, has classified bi-metallic third rails for use in rapid transit system as electrical apparatus for tariff purposes. This classification of some third rail as electrical apparatus appears to be

inconsistent with UMTA's classification of all third rail as subject to the Buy America requirement for steel contact rail. Indeed, UMTA has included in the Buy America exemption for traction power equipment other electrical apparatus, such as power cables.

Customs' classification of bi-metallic contact third rail as electrical apparatus is based upon a determination that the third rail is different, not only in name but also in use, from regular track rails. The third rail is a conductor of electricity. The third rail assembly, often referred to as a conductor rail, is used for electrical power distribution in a rapid transit system.

UMTA believes there are grounds to reclassify bi-metallic contact third rail as electrical apparatus categorized as traction power equipment subject to the section 165(b)(3) Buy America Requirement. Before acting on L.B. Foster's request for a reclassification of bi-metallic contact third rail, UMTA is seeking public comment from all interested parties on whether bi-metallic third rail should be categorized as traction power equipment and on whether *all* contact third rail should be categorized as traction power equipment.

Dated: February 4, 1986.

Ralph L. Stanley,

Administrator.

[FR Doc. 86-2985 Filed 2-10-86; 8:45 am]

BILLING CODE 4910-57-M

#### DEPARTMENT OF THE TREASURY

#### Bureau of Alcohol, Tobacco and Firearms

[Notice No. 582]

#### Dollar Limitation for Display and Retail Advertising Specialties

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms, Treasury.

**ACTION:** General notice.

**SUMMARY:** This notice sets forth the annually updated dollar limitations prescribed for industry members in 27 CFR Part 6, as established by the use of a "cost adjustment factor" in accordance with 27 CFR 6.82. Industry members who wish to furnish, give, rent, loan or sell product display or retailer advertising specialties to retailers are subject to dollar limitations (27 CFR 6.83, 6.85). Industry members making payments for advertisements in programs or brochures issued by retailer associations at a convention or trade show are also subject to dollar



limitations (27 CFR 6.100). The cost adjustment factor is defined as a percentage equal to the change in the Bureau of Labor Statistics' consumer price index. Adjusted dollar limitations are established each January using the consumer price index for the preceding December.

Based on data of the Bureau of Labor Statistics, the consumer price index was 3.8 percent higher in December 1985 than in December 1984. Therefore, effective January 1, 1986, the dollar limitation for "Product Displays" (27 CFR 6.83(c)) should be increased from \$122.00 to \$127.00 per brand. Similarly, the "Retailer Advertising Specialities" (27 CFR 6.85(b)) should be increased

Room \$60.00 to \$62.00 per brand. Also, the "Participation in Retail Association Activities" (27 CFR 6.100(e)) should be increased from \$122.00 to \$127.00 per year.

**EFFECTIVE DATE:** This notice shall be effective as of January 1, 1986.

**FOR FURTHER INFORMATION CONTACT:** Norbert Hymel, Tax and Trade Compliance Branch, 1200 Pennsylvania Ave., NW, Washington, DC 20226, (202) 566-7715.

Signed: January 31, 1986.

Stephen E. Higgins,

Director.

[FR Doc. 86-2962 Filed 2-10-86; 8:45 am]

BILLING CODE 4810-31-M

## UNITED STATES INFORMATION AGENCY

### Reporting and Information Collection Requirement Under OMB Review

#### Correction

FR Doc. 86-2579 published February 6, 1986, at page 4681 and FR Doc. 86-2618 published February 5, 1986 at page 4561 are duplicate documents. Only one document should have been published.

BILLING CODE 1505-02-M



# Sunshine Act Meetings

Federal Register

Vol. 51, No. 28

Tuesday, February 11, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 4261, dated February 3, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time), Monday, February 10, 1986.

CHANGE IN THE MEETING: The open portion of the meeting has been cancelled. The closed session will begin at 2:00 p.m.

### CONTACT PERSON FOR MORE

INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

This Notice Issued February 6, 1986.

Cynthia C. Matthews,

Executive Officer.

[FR Doc. 86-3052 Filed 2-7-86; 1:48 pm]

BILLING CODE 6750-06-M

2

### FEDERAL ENERGY REGULATORY COMMISSION

February 5, 1986.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

TIME AND DATE: February 12, 1986, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

### CONTACT PERSON FOR MORE

INFORMATION: 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, 829th Meeting—February 12, 1986, Regular Meeting (10:00 a.m.)

CAP-1.

Project No. 9315-001, Sheep Falls Associates

CAP-2.

Project No. 3286-009, Puget Sound Power and Light Company

CAP-3.

Project No. 2934-008, New York State Electric and Gas Corporation

Project No. 4684-004, Long Lake Energy Corporation

CAP-4.

Project No. 9413-001, Winooski One Partnership Corporation

CAP-5.

Project No. 5926-003, city of Bellevue, Washington

CAP-6.

Project No. 9371-001, Browns Valley Associates

CAP-7.

Project No. 9074-001, Adirondack Hydro Development Corporation

CAP-8.

Project No. 2503-011, Duke Power Company

CAP-9.

Project No. 8194-007, James W. Caples

CAP-10.

Project No. 4456-002, Zoes J. Dimos and James C. Katsekas

CAP-11.

Project Nos. 7182-002, 003 and 004, Gerald L. and Lois R. Simms

Project No. 5449-001, Western Power, Incorporated

Project No. 6193-001, Public Utility District No. 1 of Lewis County, Washington

CAP-12.

Project No. 8929-001, Modular Hydro Research Corporation

CAP-13.

Project No. 2305-007, Sabine River Authority of Louisiana and Sabine River Authority of Texas

CAP-14.

Project No. 4113-003, Long Lake Energy Corporation

Project No. 6806-004, New York State Energy Research and Development Authority

CAP-15.

Docket No. QF85-139-000, Antrim Mining Company

CAP-16.

Docket No. ER86-212-000, Kentucky Power Company

CAP-17.

Docket Nos. ER81-428-001 and ER82-483-026, Middle South Services, Inc.

Docket No. EL81-12-001, State of Arkansas v. Middle South Utilities, Inc.

CAP-18.

Docket Nos. ER85-738-002 and 003, Pacific Gas & Electric Company

CAP-19.

Docket No. ER84-679-002, Florida Power Corporation

CAP-20.

Docket Nos. ER84-590-003 and ER84-591-002, Indiana & Michigan Electric Company

CAP-21.

Omitted

CAP-22.

Docket No. ID-2210-000, Dr. Gloria M. Shatto

### Consent Miscellaneous Agenda

CAM-1.

Docket No. RM85-1-153 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Columbia Gas Transmission Corporation)

CAM-2.

Docket Nos. RM85-1-000 and 146 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (United Gas Pipe Line Company, Natural Gas Pipeline Company of America and Delhi Gas Pipeline Corporation)

CAM-3.

Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (United Cities Gas Company)

CAM-4.

Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Columbia Gas Transmission Corporation and Tennessee Gas Pipeline Company, a division of Tenneco Inc.)

CAM-5.

Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (U.S. Steel)

CAM-6.

Docket Nos. GP84-23-022, 023 and 024, Stowers Oil & Gas Company, et al.

CAM-7.

Docket No. GP86-5-000, Northern Natural Gas Company, a division of Internorth, Inc.

CAM-8.

Docket No. GP85-50-000 Bureau of Land Management, State of New Mexico, J.E.M. Resources, Inc. and Diamondback Financial Corporation, section, 102 NGPA determinations, Levers No. 5 Well, Cave Gray Sar Andres Pool, FERC JD No. 82-56622, Levers No. 6 Well, Cave



Gray San Andres Pool, FERC JD No. 82-56623

**CAM-9.**

Docket No. RO85-23-002, Petrotech Trading Company and David L. Hooper

**CAM-10.**

Docket No. RA85-2-000, Gulf States Oil & Refining Company

**CAM-11.**

Docket Nos. GP80-43-010 through 016 (Phase, I), Northern Natural Gas Company, Division of Internorth, Inc.

**CAM-12.**

Docket No. RA84-2-000, Caribou Four Corners, Inc.

*Consent Gas Agenda*

**CAG-1.**

Docket Nos. TA86-3-42-000 and 001 (PGA86-3), Transwestern Pipeline Company

**CAG-2.**

Docket No. RP85-175-003, Transwestern Pipeline Company

**CAG-3.**

Docket No. RP85-150-006, Natural Gas Pipeline Company of America

**CAG-4.**

Docket No. RP86-37-000, Southern Natural Gas Company

**CAG-5.**

Omitted

**CAG-6.**

Docket Nos. CP84-146-001, TA86-3-29-000, 001 and CP84-334-000, Transcontinental Gas Pipe Line Corporation

**CAG-7.**

Docket Nos. RP85-125-002 and RP85-165-010, Distrigas of Massachusetts Corporation

**CAG-8.**

Docket No. RP86-22-001, ANR Pipeline Company

**CAG-9.**

Docket Nos. TA86-1-48-000, 002 and 004, ANR Pipeline Company

**CAG-10.**

Docket No. TA86-1-33-004, El Paso Natural Gas Company

**CAG-11.**

Docket No. TA85-3-22-002, Consolidated Gas Transmission Corporation

**CAG-12.**

Docket Nos. TA86-1-7-000 and 002, Southern Natural Gas Company

**CAG-13.**

Docket No. TA85-3-28-003, Panhandle Eastern Pipe Line Company

**CAG-14.**

Docket No. TA86-1-42-002, Transwestern Pipeline Company

**CAG-15.**

Docket Nos. RP86-10-003 and 004, Williston Basin Interstate Pipeline Company

**CAG-16.**

Docket Nos. RP83-93-012, 013 and 014, Trunkline Gas Company

**CAG-17.**

Docket Nos. RP85-203-001 and 002, Panhandle Eastern Pipe Line Company

**CAG-18.**

Omitted

**CAG-19.**

Docket No. TA86-1-7-000, Southern Natural Gas Company

**CAG-20.**

Docket No. RP86-30-000, Alabama-Tennessee Natural Gas Company

**CAG-21.**

Docket No. TA86-1-49-000, Williston Basin Interstate Pipeline Company

**CAG-22.**

Docket Nos. RP82-16-005, 006 and RP85-209-000, United Gas Pipe Line Company

**CAG-23.**

Docket Nos. TA85-1-13-003 and 004, Gas Gathering Corporation

**CAG-24.**

Docket No. RP85-63-000, Northwest Pipeline Corporation v. Cascade Natural Gas Corporation

Docket No. RP85-103-000, Cascade Natural Gas Corporation v. Northwest Pipeline Corporation

**CAG-25.**

Docket No. RI86-1-000, Cenergy Exploration Company

**CAG-26.**

Docket Nos. RI74-188-074, and RI75-21-069, Independent Oil & Gas Association of West Virginia

**CAG-27.**

Omitted

**CAG-28.**

Docket No. RP74-50-010, Florida Gas Transmission Company (Basic Magnesia, Inc.)

Docket Nos. RP74-50-011 and 015, Florida Gas Transmission Company (Wenczel Tile Company of Florida, Inc.)

Docket No. RP74-50-013, Florida Gas Transmission Company (Borden, Inc.)

Docket Nos. RP74-50-012 and 014, Florida Gas Transmission Company (Gardiner, Inc.)

**CAG-29.**

Docket Nos. CP85-636-000 and CP85-775-000, Northern Natural Gas Company, Division of internorth, Inc.

**CAG-30.**

Docket No. CP86-42-000, Consolidated Gas Transmission Corporation

**CAG-31.**

Docket No. CP86-77-000, United Gas Pipe Line Company

**CAG-32.**

Docket No. CP85-801-000, United Gas Pipe Line Company

**CAG-33.**

Docket No. CP84-306-001, Consolidated Gas Transmission Corporation

**CAG-34.**

Docket No. CP83-151-005, Carnegie Natural Gas Company

**CAG-35.**

Docket No. CP79-115-024, Northwest Pipeline Corporation

**CAG-36.**

Docket No. TA83-1-59-007, Northern Natural Gas Company, a division of Internorth, Inc.

**CAG-37.**

Docket Nos. RP83-8-003, 004 and 005, et al., Tennessee Gas Pipeline Company, a division of Tenneco Inc.

Docket Nos. CP84-441-004, 005 and 006, Tennessee Gas Pipeline Company, a division of Tenneco Inc.

Docket No. CP85-264-001, Transcontinental Gas Pipe Line Corporation

**I. Licensed Project Matters**

**P-1.**

Omitted

**II. Electric Rate Matters**

**ER-1.**

Docket No. QF84-326-000, Adolph Coors Company

*Miscellaneous agenda*

**M-1.**

Reserved

**M-2.**

Reserved

**M-3.**

Omitted

**M-4.**

Docket No. RM83-31-000, Emergency Natural Gas Sale, Transportation and Exchange Transactions

**M-5.**

Omitted

**M-6.**

Omitted

**M-7.**

Docket No. GP84-44-000, Mobil Oil Exploration & Producing Southeast Inc.  
Docket No. GP84-45-000, Exxon Corporation  
Docket No. GP85-6-000, Gulf Oil Corporation

**I. Pipeline Rate Matters**

**RP-1.**

Omitted

**II. Producer Matters**

**CI-1.**

Omitted

**III. Pipeline Certificate Matters**

**CP-1.**

Omitted

**CP-2.**

Docket No. CP86-143-000, Texas Gas Transmission Corporation

**CP-3.**

Docket No. CP84-386-000, ANR Pipeline Company

**CP-4.**

Docket Nos. CP65-393-004 and TC82-63-000, Florida Gas Transmission Company

**Kenneth F. Plumb.**

*Secretary.*

[FR Doc. 86-3056 Filed 2-7-86; 1:53 pm]

**BILLING CODE 6717-01-M**

**3**

**FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS**

**TIME AND DATE:** 10:00 a.m., Friday, February 14, 1986.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

*Summary Agenda*

Because of its routine nature, no substantive discussion of the following item



is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposal to extend, with revisions, the Survey of Terms of Bank Lending (FR 2028A, FR 2028A-s, and FR 2028B).

#### Discussion Agenda

2. Consideration of renewal of temporary seasonal discount credit program.

3. Proposals regarding the Federal Reserve System's 1986 budget.

4. Any items carried forward from a previously announced meeting.

**Note.** This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: February 6, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-3050 Filed 2-7-86; 1:46 pm]

BILLING CODE 6210-01-M

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#### FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

**TIME AND DATE:** Approximately 12:00 Noon, Friday, February 14, 1986, follow a recess at the conclusion of the open meeting.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Street, NW., Washington, DC 20551.

**STATUS:** Closed.

#### MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 7, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-3051 Filed 2-7-86; 1:47 pm]

BILLING CODE 6210-01-M

5

#### INTERNATIONAL TRADE COMMISSION

[USITC SE-86-5]

**TIME AND DATE:** Wednesday, February 12, 1986 at 10:00 a.m.

**PLACE:** Room 117, 701 E Street, NW., Washington, DC 20436.

**STATUS:** Open to the public.

#### MATTERS TO BE CONSIDERED:

1. Agenda.

2. Minutes.

3. Ratification List.

4. Petitions and Complaints:

a. Certain prefabricated bow forms (Docket No. 1277).

5. Investigation Nos. 701-TA-253 [Final] and 731-TA-252, [Final] (Certain welded carbon steel pipes and tubes from Turkey and Thailand)—briefing and vote.

6. Investigation No. 731-TA-263 [Final] (Iron construction castings for Canada)—briefing and vote.

7. Any items left over from previous agenda.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Kenneth R. Mason, Secretary (202) 523-0161.

Dated: February 3, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-3074 Filed 2-7-86; 2:41 pm]

BILLING CODE 7020-02-M

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#### INTERNATIONAL TRADE COMMISSION

**TIME AND DATE:** Thursday, February 20, 1986 at 3:00 p.m.

**PLACE:** Room 117, 701 E Street, NW., Washington, DC 20436.

**STATUS:** Open to the public.

#### MATTERS TO BE CONSIDERED:

1. Agenda.

2. Minutes.

3. Ratification List.

4. Petitions and Complaints.

5. Investigation No. TA-201-57 (Electric shavers)—briefing and vote on injury.

6. Investigation Nos. 731-TA-301/303 (Certain butt-weld pipe fittings from Brazil, Japan and Taiwan)—briefing and vote.

7. Any items left over from previous agenda.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Kenneth R. Mason, Secretary (202) 523-0161.

Dated: February 7, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-3075 Filed 2-7-86; 2:42 pm]

BILLING CODE 7020-02-M

7

#### NUCLEAR REGULATORY COMMISSION

**DATE:** Weeks of February 10, 17, 24, and March 3, 1986.

**PLACE:** Commissioners' Conference Room, 1717 H Street, NW., Washington, DC

**STATUS:** Open and Closed.

#### MATTERS TO BE CONSIDERED:

##### Week of February 10

Tuesday, February 11

10:30 a.m.

Classified Security Briefing (Closed—Ex. 1)

10:45 a.m.

Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.

Briefing by AIF on Technical Specification Improvements (Public Meeting)

Wednesday, February 12

2:00 p.m.

Discussion of Staff Recommendations on Enforcement Policy (Public Meeting)

Thursday, February 13

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Final Rule Establishing Criteria for Reopening Records to Formal Licensing Proceedings (Tentative)

##### Week of February 17—Tentative

Tuesday, February 18

2:00 p.m.

Briefing by TVA on Status, Plans and Schedules (Public Meeting)

Wednesday, February 19

2:00 p.m.

Staff Briefing on Integrated Safety Assessment Program (Public Meeting)

Thursday, February 20

2:00 p.m.

Report on Safety Goal Evaluation (Public Meeting)

3:30 p.m.

Affirmation Meeting (Public Meeting) (if needed)

Friday, February 21

10:00 a.m.

Briefing by Southern California Edison Co. on San Onofre (Public Meeting)

##### Week of February 24—Tentative

Tuesday, February 25

10:00 a.m.

Briefing by Incident Investigation Team on Status of Rancho Seco (Public Meeting)

Wednesday, February 26

10:00 a.m.

Briefing on NUMARC Initiatives (Public Meeting)

Thursday, February 27

10:00 a.m.

Discussion of DOE High Level Waste Program (Public Meeting)

2:00 p.m.

Affirmation Meeting (Public Meeting) (if needed)

2:30 p.m.



Discussion of Management-Organization  
and Internal Personnel Matters (Closed—  
Ex. 2 & 6) (if needed)

**Week of March 3—Tentative**

*Wednesday, March 5*

10:00 a.m.

Status of Pending Investigations (Closed—  
Ex. 5 & 7) (Tentative)

11:30 a.m.

Affirmation Meeting (Public Meeting) (if  
needed)

**TO VERIFY THE STATUS OF MEETINGS**

**CALL (RECORDING):** (202) 634-1498.

**CONTACT PERSON FOR MORE**

**INFORMATION:** Julia Corrado (202) 634-  
1410.

Dated: February 6, 1986.

Julia Corrado,

*Office of the Secretary.*

[FR Doc. 86-3094 Filed 2-7-86; 343 pm]

BILLING CODE 7590-01-M



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Federal Register

Vol. 51, No. 28

Tuesday, February 11, 1986

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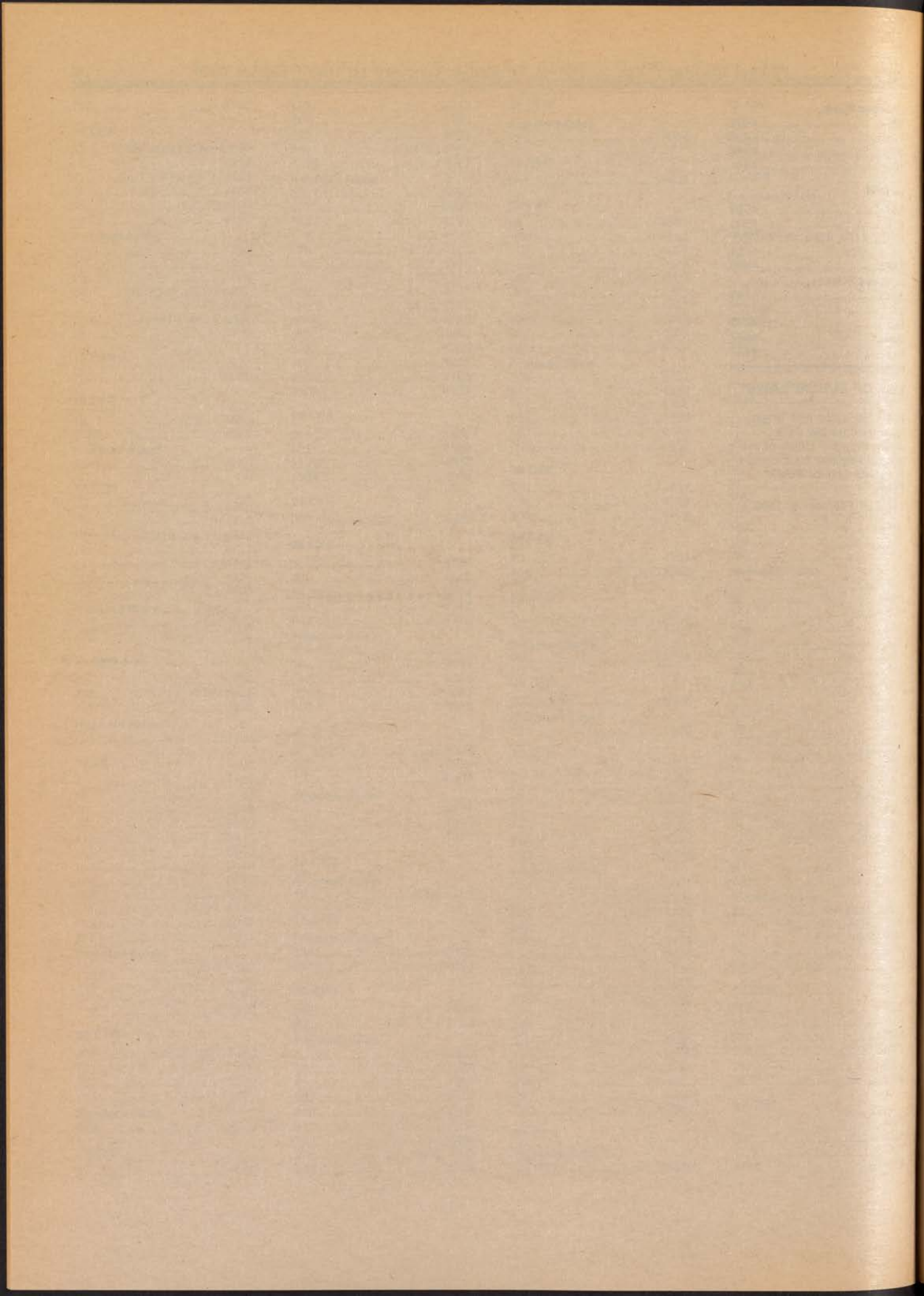
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