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

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Presidential Documents

Title 3—

The President

Proclamation 5861 of September 14, 1988

National Medical Research Day, 1988

By the President of the United States of America

A Proclamation

As the 20th century approaches its close, medical researchers are peering ever deeper into the mysteries of living processes. Their investigations and discoveries are yielding a rich harvest of information and insight, suggesting strategies for alleviating countless ailments that afflict or kill millions of our fellow citizens each year. National Medical Research Day, 1988, gives us the opportunity to pause in gratitude for all that American medical research has done through the decades to save lives and preserve health.

The progress made by today's medical researchers is part of a long tradition in American biomedical research. In the past century, researchers have triumphed over such formerly deadly diseases as diphtheria, polio, and tetanus. Furthermore, vaccines and treatments developed in America's biomedical laboratories have helped lead to virtually global elimination of formerly deadly epidemics such as cholera, smallpox, yellow fever, and bubonic plague. Medical research has also resulted in the development of new drugs and surgical procedures and improved understanding of environmental and behavioral components of individual health. These advances have benefited Americans and all humanity.

Such successes occur because of our continuing commitment to such Federal agencies as the National Institutes of Health; the Alcohol, Drug Abuse, and Mental Health Administration; and the Centers for Disease Control, which support studies not only in their own laboratories, but also at universities and research institutions throughout the country; and because of the work of academia, industry, and voluntary organizations. Such cooperation in medical research has led to products that contribute to America's economy and to our Nation's ability to compete successfully in international trade.

The investment of the United States in biomedical research continues, and so does our national commitment to training those who will conduct this research in the years to come.

In recognition of American medical research, the Congress, by Senate Joint Resolution 328, has designated September 14, 1988, as "National Medical Research Day" and authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim September 14, 1988, as National Medical Research Day, and I call upon the people of the United States and Federal, State, and local government officials to observe this day with appropriate events and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-21447
Filed 9-15-88; 4:03 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5862 of September 14, 1988

Fire Prevention Week, 1988

By the President of the United States of America

A Proclamation

We consider fire an essential part of our daily lives, because with it we cook our food, heat our homes, and generate the energy that fuels businesses and industries across our country. But uncontrolled, fire becomes an enemy that threatens our homes, friends, and families.

Fire exacts a heavy price in the United States, disproportionately striking young people and senior citizens. Fire is deadliest in the home, where it can strike without warning, late at night, when we are least prepared to defend ourselves. Each year, hundreds of thousands of fires in the home cause thousands of civilian deaths and injuries, and billions in direct property damage.

Human error is largely responsible for the tragedy of fire in the home—and human intervention can do much to stop that tragedy. Each of us has the ability to prevent needless suffering from the destructive power of fire.

This fall, Fire Prevention Week will be an opportunity for Americans to show their best, as they help one another learn and practice fire safety steps. The tools we need to protect our homes and our loved ones from fire are simple. This year, the National Fire Prevention Week theme, "A Sound You Can Live With—Test Your Smoke Detector!", emphasizes easy steps we can take to give us valuable time to escape a home fire.

During Fire Prevention Week, all Americans should test their home smoke detectors, replace the batteries if needed, and learn the simple maintenance practices that will keep a smoke detector ready to protect the home. Replacing batteries and keeping a smoke detector dust- and dirt-free are a small investment of time that can make possible the precious minutes members of a household need to reach safety. Families across America should also use Fire Prevention Week as a time to practice a home escape plan. We should likewise spend time checking our homes for fire dangers—improperly stored flammable liquids; electrical problems; creosote buildup in chimneys; lack of spacing around home heating equipment such as woodstoves, or flammable materials too close to portable heaters; and other hazards.

Every small measure we as individuals take to prevent fire increases the level of fire safety throughout our country. Many organizations dedicated to fire safety across the United States will sponsor activities during Fire Prevention Week; they deserve our cooperation and gratitude. These organizations include the National Fire Protection Association, the International Association of Fire Fighters, the International Association of Fire Chiefs, the National Volunteer Fire Council, the International Society of Fire Service Instructors, the Fire Marshals Association of North America, and all the organizations that belong to the Joint Council of National Fire Service Organizations.

We should honor the dedicated men and women of these organizations, especially the thousands of fire fighters throughout the United States. We pay special honor to the selfless fire fighters who have made the ultimate sacrifice, losing their lives in the line of duty so that others might live.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of October 9 through October 15, 1988, as Fire Prevention Week, and I call upon the people of the United States to plan and actively participate in fire prevention activities during this week and throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-21448
Filed 9-15-88; 4:04 pm]
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Presidential Documents

Proclamation 5863 of September 15, 1988

Mental Illness Awareness Week, 1988

By the President of the United States of America

A Proclamation

Mental Illness Awareness Week, 1988, offers all Americans a welcome and much-needed chance to expand their knowledge about the nature, causes, and treatments of mental illness and to grow in understanding concerning those afflicted; their families; and appropriate attitudes toward, and assistance for, victims of mental illness. This is an opportunity we surely should utilize, because it can do much good throughout our land.

The 20th century has seen more and more recognition of the role of disease processes in mental disorders. This message has reached millions, but pockets of misinformation, prejudice, and misunderstanding remain. Everyone should be aware that research has discovered many genetic, biochemical, and environmental causes of mental dysfunction. Further, changes in medicine and technology are taking place so rapidly that many citizens have not yet heard of vital recent advances that allow health professionals to diagnose and treat many forms of mental illness with increasing effectiveness.

We have also learned that people can take purposeful steps toward improving the lives of their loved ones, friends, and fellow citizens who are affected by mental illness—and that many of the burdens experienced by family members as they care for the mentally ill should and can be shared by the wider community. During Mental Illness Awareness Week and all year long, we can recall and be thankful for our continuing progress into diagnosis, treatment, assistance, and understanding for all those of every age and condition who cannot reach their potential or lead independent, fulfilling lives because of mental illness. Let us also resolve to put into practice, as individuals and in private and community efforts, all that we have learned and achieved regarding ways to help, encourage, and befriend mentally ill Americans and their families.

The Congress, by Public Law 100–390, has designated the week of October 2 through October 8, 1988, as "Mental Illness Awareness Week" and authorized and requested the President to issue a proclamation in its observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of October 2 through October 8, 1988, as Mental Illness Awareness Week. I call upon the people of the United States to observe this week with ceremonies and activities that will enhance the well-being of our Nation by increasing knowledge and understanding about mental illnesses and their treatments.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of September, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-21449]
Filed 9-15-88; 4:05 pm]
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Rules and Regulations

Federal Register
Vol. 53, No. 181
Monday, September 19, 1988

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

[DA-88-117]

Milk in the Iowa Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action increases for the months of September, October and November 1988 the limits on the quantity of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the Iowa order. The suspension was requested by a cooperative association in order to maintain pool status for the milk of its member producers without incurring costs for hauling and handling milk that would otherwise be unnecessary.

EFFECTIVE DATE: September 19, 1988.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 5, 1988; published August 11, 1988 (53 FR 30291).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities.

Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Iowa marketing area.

Notice of proposed rulemaking was published in the Federal Register on August 11, 1988 (53 FR 30291) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. One comment was received.

After consideration of all relevant material, including the proposal in the notice, the comment received, and other available information, it is hereby found and determined that for the months of September through November 1988 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1079.13(d) (2) and (3) the words "50 percent in the months of September through November and", and the words "in other months," as they appear in each paragraph.

Statement of Consideration

This action makes inoperative for September through November 1988 the seasonal reduction (from 70 to 50 percent) of the limit on the proportion of a handler's milk that may be moved directly from the farm to a nonpool manufacturing plant and still be pooled. Associated Milk Producers, Inc. (AMPI), an association of producers had requested the suspension. The cooperative asked that the diversion provisions be relaxed in order to avoid the costs associated with receiving and transferring milk merely to keep it pooled.

AMPI stated that milk production increased for the first six months of 1988 relative to the Class I use level. January through June milk production, they said, increased approximately 4.1 percent from a year earlier, while Class I sales remain at the 1987 level of about 27 percent of production. The cooperative expects that during the fall months, only about 30 percent of the market's milk supply will be needed for Class I use. Thus, the cooperative believes that the suspension would enable them to move the other 70 percent in the most economical manner to processing facilities. This, they say, would avoid the pumping of milk into their supply plant and the subsequent transfer to a nonpool manufacturing plant.

Market data indicates that producer receipts for the period of January through July 1988 increased approximately 4.3 percent when compared to the same period of 1987. For this seven-month period, Class I utilization as a percentage of producer receipts, except for February 1988 (30.0 percent), has been below 30 percent.

The 50-percent limit on diversions to nonpool plants is inadequate to permit efficient handling of milk that is not needed for fluid uses in cases where nonpool plants are the only outlet used for disposing of reserve milk. For example, a supply plant must ship at least 35 percent of its milk supply to other plants to qualify as a pool plant. However, with milk diversions limited to 50 percent, the other 15 percent must be received at the supply plant and then transferred to a nonpool plant. AMPI contends that the extra handling involved adversely affects milk quality (more pumping than if diverted), and is an uneconomic means of pooling its reserve milk supplies. Suspending the 50-percent diversion limit will alleviate these concerns and allow improved handling efficiences.

Under the conditions cited by AMPI and an analysis of market data, a suspension of the 50-percent limitation in the diversion provisions is appropriate so that producer milk receipts not needed for fluid use may be moved directly from farms to manufacturing plants and still be priced under the order. A suspension of the 50-percent limitation will tend to improve efficiencies in disposing of AMPI's reserve milk supplies.

Concurrently issued with this suspension is a temporary relaxation of the supply plant shipping standard from 35 to 25 percent for this same period requested by Beatrice Cheese, Inc. Beatrice cited similar supply-demand conditions in the market.

Pool plant handlers should be aware

that suspension of the 50-percent diversion limitation as well as the relaxation of the supply plant shipping standard from 35 to 25 percent would allow the operator of a pool supply plant to divert up to 70 percent of the plant's producer milk supply. Pool distributing plants, because of other pooling standards, would be able to divert up to 60 percent of the plant's producer milk supply.

Interested parties were given an opportunity to submit written data, views, and arguments concerning the proposed suspension. One comment was received.

Kraft, Inc., which operates a pool supply plant located in Earlville, Iowa, stated that producer receipts at their plant for May, June and July 1988 were up 3.0, 3.8, and 7.5 percent, respectively, over the same month of the previous year. Kraft indicated that although they anticipate that the percentage increases over the same month of the previous year will decline, it expects the trend of increased production to continue through the fall months. Without the temporary suspension, Kraft indicated that it would have to make uneconomic shipments of unneeded milk to distributing plants or not pool milk historically associated with the Iowa market.

This action should provide additional economies for AMPI by eliminating milk hauling and handling, which also adversely affects milk quality. Moreover, such benefits of this action will be available to other handlers who may have more reserve milk to dispose of this fall.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that uneconomic movements of milk would be made solely for the purpose of pooling the milk of producers who have regularly been associated with the Iowa market;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions in § 1079.13(d) (2) and (3) of the Iowa order are hereby suspended for September through November 1988.

PART 1079—MILK IN THE IOWA MARKETING AREA

1. The authority citation for 7 CFR Part 1079 continues to read as follows:

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

§ 1079.13 [Suspended in part]

2. In § 1079.13(d) (2) and (3) the words "50 percent in the months of September through November and", and the words "in other months," as they appear in each paragraph are suspended during the months of September through November 1988.

Signed at Washington, DC, on September 14, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88–21322 Filed 9–16–88; 8:45 am]

BILLING CODE 3410–02–M

[DA–88–115]

7 CFR Part 1079

Milk in the Iowa Marketing Area; Temporary Revision of Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rule.

SUMMARY: This action temporarily relaxes for September, October and November 1988 the supply plant shipping requirements under the Iowa milk order. The revision is made in response to a request by the operator of a pool supply plant who ships milk to distributing plants regulated by the order. The revision would prevent uneconomic movements of milk.

EFFECTIVE DATE: September 19, 1988.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Temporary Revision of Shipping Percentage: Issued August 8, 1988; published August 11, 1988 (53 FR 30290).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact on certain milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been revised under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1079.7(b)(1) of the Iowa order.

Notice of proposed rulemaking was published in the **Federal Register** (53 FR 30290) concerning a proposed decrease in the shipping requirements for pool supply plants for the months of September, October and November 1988. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by August 18, 1988. One comment received.

Statement of Consideration

After consideration of all relevant material, including the proposal set forth in the aforesaid notice and other available information, it is hereby found and determined that the supply plant shipping percentage should be lowered by 10 percentage points from the present 35 percent to 25 percent for the months of September through November 1988.

Pursuant to the provisions of § 1079.7(b)(1), the supply plant shipping percentages set forth in §1079.7(b) may be increased or decreased by up to 10 percentage points during any month to encourage additional milk shipments to pool distributing plants or to prevent uneconomic shipments.

Beatrice Companies, Inc. (Beatrice), on behalf of Beatrice Cheese, requested the action in order to prevent uneconomic shipments of milk during September through November 1988. Beatrice said that the market's producer milk receipts showed an increase each

month over the same month of 1987. The monthly increases for this period cited by Beatrice were less than 1.0 percent for April, about 2.5 for May and 3.3 for June. Beatrice indicated that receipts at their supply plant increased for this same period by 2.7, 1.4 and 3.3 percent and that they expect their receipts for the balance of 1988 to continue this trend. Beatrice also indicated that without a downward revision in the supply plant shipping standards, it would have to uneconomically backhaul approximately 2.8 to 3.2 million pounds of milk per month in order to pool this milk.

The petitioner stated that distributing plants could be adequately served if supply plant shipping requirements were lowered to 25 percent. Beatrice said that thus there will be no need for supply plants to ship as much as 35 percent of their producer receipts and that a temporary lowering of the supply plant shipping requirement to a 25-percent shipping standard, is needed to prevent uneconomic shipments of fluid milk.

Market data indicates that producer receipts for the period of January through July 1988 increased approximately 4.3 percent when compared to the same period of 1987. For this seven-month period, Class I utilization as a percentage of producer receipts, except for February 1988 (30.0 percent), has been below 30 percent.

The shipping percentage reductions are aimed at facilitating the delivery of milk to the market from supply plants for Class I use without requiring shipments merely for pooling purposes. It is expected that less than 35 percent of the producer milk supply on the market will be needed for Class I use during the months of September through November 1988. It is concluded that the supply-demand conditions in the market warrant a lowering of the shipping requirements by 10 percentage points for the months of September through November 1988.

One comment was received in response to the proposed action. Kraft, Inc., which operates a pool supply plant located in Earlville, Iowa, stated that producer receipts at its plant for May, June and July 1988 were up 3.0, 3.8, and 7.5 percent, respectively, over the same month of the previous year. Kraft indicated that although they anticipate that the percentage increases over the same month of the previous year to decline, it expects the trend of increased production to continue through the fall months. Without the temporary revision, Kraft indicated that it would have to make uneconomic shipments of unneeded milk to distributing plants or not pool milk historically associated with the Iowa market.

Concurrently issued with this action is a suspension of a portion of the diversion limitation provisions for the same period. Associated Milk Producers, Inc., requested the suspension citing similar supply-demand conditions in the market.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of September, October and November 1988;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision. No comments were filed in opposition to this action.

Therefore, good cause exists for making this temporary revision effective upon publication of this notice in the **Federal Register.**

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of § 1079.7(b) of the Iowa milk order are hereby revised for the months of September, October and November 1988.

PART 1079—MILK IN THE IOWA MARKETING AREA

1. The authority citation for 7 CFR Part 1079 continues to read as follows:

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

§ 1079.7 [Temporarily amended in part]

2. In the introductory text of §1079.7(b), the provision "35 percent" is revised to "25 percent" for the months of September, October and November 1988.

Signed at Washington, DC, on September 14, 1988

W.H. Blanchard,

Acting Director, Dairy Division.

[FR Doc. 88–21321 Filed 9–16–88; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Parts 1940, 1942, and 1944

Revision of Policies and Procedures for Considering the Environmental Impacts of Proposed Agency Actions

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation regarding policies and procedures for considering the environmental impacts of proposed Agency actions. This rule is being amended in order to make editorial changes, amend processing requirements associated with the completion of environmental reviews, and reference Federal requirements promulgated subsequent to this subpart. The intended effect of this action is to clarify the regulation and provide greater flexibility to Agency officials so that the environmental review can be better incorporated into the Agency's application review process.

EFFECTIVE DATE: October 19, 1988.

FOR FURTHER INFORMATION CONTACT: John Hansel, Environmental Protection Specialist, Program Support Staff, FmHA Room 6309, South Agriculture Building, Washington, DC, telephone (202) 382–9619.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291 and has been determined to be "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions or significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

The FmHA programs and projects which are affected by this rule are subject to intergovernmental consultation in the manner delineated in 7 CFR Part 3015. The Catalog of Federal Domestic Assistance programs affected are: Nos. 10.404, Emergency Loans; 10.405, Farm Labor Housing Loans and Grants; 10.406, Farm Operating Loans; 10.407, Farm Ownership Loans; 10.411, Rural Housing Site Loans; 10.414, Resource Conservation and Development Loans; 10.415, Rural Rental Housing Loans; 10.416, Soil and Water Loans; 10.418, Water and Waste Disposal Systems for Rural Communities; 10.419, Watershed Protection and Flood Prevention Loans; 10.420, Rural Self-Help Housing Technical Assistance; 10.422, Business and Industrial Loans; 10.423, Community Facility Loans; 10.427, Rural Rental Assistance Payments; 10.428, Economic Emergency Loans; 10.433, Housing Preservation Grants; and 10.434, Nonprofit National Corporations Loan and Grant Program.

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), Mr. Vance L. Clark, Administrator of the Farmers Home Administration, has determined that this action will not have a significant economic impact on a substantial number of small entities because in terms of the Agency's grant programs, less than 30 grants will be affected annually.

These amendments to FmHA's environmental regulation result from the Agency's experience in implementing the regulation since its initial publication in January 1984. This experience has shown that some portions of the regulation are confusing to the reader; there is an unnecessary duplication of effort in publishing public notices for projects involving other Federal agencies; and that environmental reviews, when conducted in the pre-application stage of loan processing, result in unnecessary delay in the consideration of other important factors that are postponed to the application review stage. These amendments address all of these problems as well as update the regulation with respect to Federal environmental requirements promulgated subsequent to its initial publication. Conforming changes are also made to other FmHA regulations affected by these amendments.

On September 23, 1986, FmHA published proposed amendments in the **Federal Register** (51 FR 33763–33789) with a comment period ending November 24, 1986. Comments were received from several Federal agencies and two national housing organizations. Following is a discussion of the major comments and FmHA's responses.

One Federal agency suggested that references be included to the Advisory Council on Historic Preservation's (ACHP) recent revisions to its regulations entitled, "Protection of Historic Properties," (36 CFR Part 800). Because these revisions were not available prior to FmHA's publishing its proposed amendments, a separate proposed rulemaking will be initiated in the near future to incorporate the ACHP's revisions.

One Federal agency recommended that appropriate references and requirements be included in order to implement the highly erodible land and wetland conservation provisions of the Food Security Act of 1985, Pub. L. 99–198. These requirements were added by an interim rule dated June 27, 1986 and published at 51 FR 23496.

One Federal agency recommended that the amendments include a greater emphasis on water quality, both in terms of the content of FmHA's environmental policies and our environmental assessment requirements. FmHA concurs in this recommendation and has included as § 1940.304(h) a policy statement on water quality as well as highlighted this concern in all levels of the environmental assessment process.

One Federal agency commented that the explanation of Class I and Class II actions was not clear. Also, regarding Class I actions, the same agency stated that such actions are not subject to public notice, but can have significant impacts on fish and wildlife resources. It recommended that fish and wildlife agencies be invited to comment on all Class I actions. FmHA believes that the explanation of Class I and Class II actions in Sections 1940.311 and 1940.312 is sufficient because immediately following such explanation is a specific list of actions that fall under Class I and Class II. With respect to the concern for greater consultation on Class I actions, these actions do undergo public notice requirements if wetlands or floodplains are to be impacted. Consequently, the Class I actions most likely to affect fish and wildlife resources are not exempt from public notices. Also, all Federal and State consultation requirements apply whether a Class I or Class II action. Finally, whether a Class I or Class II action, the FmHA official preparing the environmental assessment must consult with fish and wildlife agencies whenever the FmHA official does not have the data or expertise to assess the potential impacts. For these reasons, no additional public notice or consultation requirements have been added to the Class I assessment process.

Another Federal agency commented that the distinctions between a categorically excluded action and a Class I action for loan guarantees to business and industrial facilities were not particularly clear. FmHA agrees with this comment and has modified § 1940.310(c)(1) and 1940.311(b)(3) to include more objective standards based upon the specific types or amounts of gaseous, liquid, or solid wastes to be produced, for example.

A Federal agency objected to the change in § 1940.315 that the applicable environmental review would be completed in the application stage as opposed to the present requirement that it be done in the preapplication stage. The agency stated that this change could constrict FmHA's consideration of the full range of alternatives and the development of mitigation measures. Two national housing organizations supported the change. FmHA has decided to go forward with the change because the present system causes unnecessary application processing delays and because there is sufficient flexibility in the application stage to avoid or mitigate potential adverse environmental impacts.

One Federal agency indicated that § 1940.320 Preparing EISs, does not specifically address filing procedures with the Environmental Protection Agency. These procedures have been incorporated.

A national housing organization objected to the public participation requirements associated with the preparation of an Environmental Impact Statement (EIS). Specifically, in § 1940.320, the organization did not see the need for two public meetings, the scoping meeting and the meeting to review the draft EIS. It also did not believe that it was practical to post a notice of these meetings at the project site. Because public involvement is stressed by the Council on Environmental Quality (CEQ) and experience has shown the value of this involvement, these public participation requirements have been retained. Additionally, the requirement to post the meeting notices at the intended construction site has been retained. This is a commonly practiced notice procedure at all levels of government and is effective in reaching the affected public.

A national housing organization objected to the proposed change to § 1940.332 Emergencies, in which the Administrator reserves the authority to

waive the procedural provisions of the regulation under emergency circumstances. It was feared that this authority could be abused. It has been determined to go forward with this change because FmHA believes it is necessary and that there is little chance for abuse given the limitations on the authority. This authority will only apply to an emergency circumstance, one involving an immediate or imminent danger to public health or safety. If the action requires an EIS, the Council on Environmental Quality (CEQ) must first be consulted. For non-EIS actions, only FmHA's procedural requirements can be waived and, then, only by the Administrator. All applicable consultation and coordinating procedures required by law or regulation must be initiated with the appropriate Federal or State agency.

Although not the subject of a specific comment, Exhibit C, which includes FmHA's procedures for addressing potential impacts to floodplains and wetlands, has been revised to reference a recently executed Memorandum of Understanding (MOU) with the U.S. Fish and Wildlife Service (FWS). The MOU secures FWS' assistance in addressing these impacts.

The following is a summary of the major changes made by this action:

Section 1940.301(c)(16) is updated to cross-reference the Soil Conservation Service's (SCS) regulations for implementing the Farmland Protection Policy Act. These regulations apply to all Federal agencies. Exhibit C of this subpart contains FmHA's requirements for implementing this act and is also being amended to cross reference the SCS regulations and to make conforming changes. Since Exhibit C of this subpart was originally prepared in contemplation of the SCS regulations, the conforming changes are not substantial.

Section 1940.302(b) provides for clarification purposes a definition or listing of the environmental review documents that are required to be prepared under this subpart.

Section 1940.302(i) defines the FmHA officials who have the authority to prepare and sign the environmental review documents. Formerly, the environmental review document for an action could only be signed at the office level having the approval authority for an action even though the majority of the application review and processing may have been completed at a lower office level, District or County office, for example. District and County staff could only draft the environmental review document under these circumstances and it was completed and signed at the higher office level. As amended, the FmHA official who assembles the data and initiates the analysis for the environmental review signs it as the preparer. Any additional required reviews for the environmental review document must then be executed on a concurrence basis. This change better reflects the tasks actually being accomplished and is made in all sections and exhibits of the regulation where preparation responsibilities are discussed.

Section 1940.304(h) is revised by adding a policy on water quality protection which states that FmHA will not provide financial assistance to an activity that would impair a State water quality standard.

Section 1940.305(b) is revised to delete the requirement that the State Office's Natural Resources Management Guide be considered by the State Director in deciding how FmHA's various program funds will generally be allocated across the State on a fiscal year basis. This requirement has been too complex to implement given other Agency allocation priorities which are much clearer to measure and has been of little benefit to decisionmakers.

Section 1940.307(b)(13) is added to clarify and emphasize that it is the responsibility of the State Environmental Coordinator to coordinate the monitoring of the State Office's compliance with this regulation and to keep the State Director advised of the monitoring results.

Section 1940.309(c) is revised to state that applicants for actions that are normally categorically excluded from the environmental assessment process but subsequently lose their exclusion need not submit Form FmHA 1940–20, "Request for Environmental Information." The former regulation is unclear on this point and some FmHA offices have been requiring the form which is unnecessary. This change is further referenced in §§ 1940.317(c) and 1940.319(c) of this subpart.

Section 1940.310(a) contains changes in the requirements for determining whether a proposed action is categorically excluded from the environmental assessment process. First, a normally excluded activity will now lose its exclusion status if it would impair a State water quality standard. Second, under the former regulation, an excluded action lost its exclusion status if one of the environmentally sensitive resources listed in the section was either affected or was located within the project site. For an action such as a proposed loan to a farmer for operational purposes, any continued farming of important farmland would technically cause the exclusion to be lost and a Class I assessment completed. This is an unnecessary analysis since no real change would occur to the important farmland. These amendments provide, therefore, that in similar situations the presence of an important resource within the project site is not enough to cause loss of an exclusion but that there must also be a proposed change in land use or some other trigger that would cause the resource to be affected. For example, if a single family house was proposed to be constructed on important farmland, the exclusion would be lost. Section 1940.317(e) has been added to explain how this change should be implemented in completing Form FmHA 1940–22, "Environmental Checklist for Categorical Exclusions."

Section 1940.310(d) differentiates the replacement of farm irrigation facilities from the installation of new such facilities by normally excluding the former from environmental assessment provided the facilities to be replaced have been used for similar irrigation purposes at least two out of the last three consecutive growing seasons.

Section 1940.310(e)(6) covering criteria for determining the environmental review requirements applicable to the proposed sale of FmHA inventory is corrected to cover leases as well. Similar changes are made under the sections for Class I assessments, § 1940.311(d)(3), and for Class II assessments, § 1940.312(d)(6).

Section 1940.311(b) expands for proposed new water and sewer systems the definition of a Class I action. Specified limitations must first be met, as applicable, regarding the amount of effluent discharge or water withdrawal, as well as the extent of the service area. Class II assessments were required for all new central water and sewer systems no matter how small. State Offices have advised that small systems do not automatically warrant the more extensive Class II assessment because of their limited potential environmental impacts.

Section 1940.315(b) changes the requirements for when the environmental review must be completed in those FmHA financial assistance programs that use a preapplication process. The applicable review would no longer be completed during the preapplication review process but will be initiated after a complete application has been filed and will be completed prior to issuance of a letter of conditions for Community Programs, prior to issuance of a conditional commitment for Business

and Industry and Farmer Programs Guaranteed Loan Programs, and prior to loan approval for all other programs. The Agency believes tht application processing is unnecessarily delayed under the present system and that the proposed change better integrates the environmental review process into other application reviews. A resulting change is the elimination of Exhibit G of this subpart which identifies those programs subject to the preapplication review requirement.

Section 1940.318(b) clarifies under what circumstances FmHA personnel preparing environmental assessments should contact for assistance environmental protection agencies and experts.

Section 1940.320(g) is added to explain the filing requirements for an EIS.

Section 1940.324(d) is revised to eliminate FmHA's issuing a public notice of its finding of no significant environmental impact whenever another Federal agency participating in the action has published a similar public notice with (1) was published less than 18 months from FmHA's completion of its environmental review, (2) accurately describes the proposal being considered by FmHA, and (3) was published in a manner similar to FmHA's publication requirements. This change eliminates a duplication of time and effort in those situations where FmHA is requested to jointly fund a project with another Federal agency and that agency has already completed its environmental assessment and public notice requirements. Formerly, we were able by regulation to adopt the assessment but has to complete an independent, though redundant, public notice if a Class II action. This change does not eliminate FmHA's responsibility to make an independent finding as to the significance of a proposal's potential environmental impacts. Whenever these impacts are found to be non-significant by FmHA, we will simply not publish this finding if a similar finding for the proposal had previously been published by a participating Federal agency.

Section 1940.331 has been rewritten to clarify the Agency's requirements regarding public notice and public participation in the environmental review process.

Section 1940.332(b) is added to provide the Administrator with the authority to waive, in an emergency circumstance, the procedural provisions of this subpart as they apply to actions not requiring an EIS. Alternative arrangements will be established on a case by case basis and will attempt to achieve the substantive provisions of this subpart. An emergency circumstance is defined as one involving an immediate or imminent danger to public health or safety. Former requirements allowed for procedural flexibility only in emergency cases where the proposal required an EIS. FmHA believes that this was overly restrictive and provisions were needed to address the much more likely eventuality of an emergency case that requires an assessment.

Exhibit D, which covers the implementation of the Endangered Species Act, is amended to cover potential impacts to candidate species as well. These are species presently under consideration for listing. This change is being made to comply with the National Environmental Policy Act and Departmental Regulation 9500-4, Fish and Wildlife Policy, which specifies that USDA agencies will avoid actions which may cause a species to become threatened or endangered.

List of Subjects

7 CFR Part 1940

Endangered and threatened wildlife, Environmental protection, Floodplains, National wild and scenic river systems, Natural resources, Recreation, Water supply.

7 CFR Part 1942

Community development, Community facilities, Loan programs—Housing and community development, Loan security, Rural areas, Water treatment and disposal—Domestic, Water supply—Domestic.

7 CFR Part 1944

Administrative practice and procedure, Aged, Farm labor housing, Grant programs—Housing and community development, Handicapped, Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Migrant labor, Mobile homes, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Rural housing, Subsidies.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1940—GENERAL

1. The authority citation for Part 1940 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Sections 1940.301 through 1940.350 are revised to read as follows:

Subpart G—Environmental Program

§ 1940.301 Purpose.

(a) This subpart contains the major environmental policies of the Farmers Home Administration (FmHA). It also provides the procedures and guidelines for preparing the environmental impact analyses required for a series of Federal laws, regulations, and Executive orders within one environmental document. The timing and use of this environmental document within the FmHA decision-making process is also outlined.

(b) This subpart is intended to be consistent with the Council on Environmental Ouality's (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA), 40 CFR Parts 1500–1508. CEQ's regulations will not be repeated in this subpart except when essential for clarification of important procedural or substantive points. Otherwise, citations to applicable sections of the regulations will be provided. The CEQ regulations will be available at all FmHA offices.

(c) This subpart is designed to integrate the requirements of NEPA with other planning and environmental review procedures required by law, or by Agency practice, so that all such procedures run concurrently rather than consecutively. The environmental document, which results from the implementation of this subpart, provides on a project basis a single reference point for the Agency's compliance and/or implementation of the following requirements and policies:

(1) The National Environmental Policy Act, 42 U.S.C. 4321;

(2) Safe Drinking Water Act—Section 1424(e), 42 U.S.C. 300h;

(3) Endangered Species Act, 16 U.S.C. 1531;

(4) Wild and Scenic Rivers Act, 16 U.S.C. 1271;

(5) The National Historic Preservation Act, 16 U.S.C. 470 (See Subpart F of Part 1901 of this chapter for more specific implementation procedures);

(6) Archaeological and Historic Preservation Act, 16 U.S.C. 469 (See Subpart F of Part 1901 of this chapter for more specific implementation procedures);

(7) Coastal Zone Management Act—Section 307(c) (1) and (2), 16 U.S.C. 1456;

(8) Farmland Protection Policy Act, Subtitle I, Pub. L. 97–98;

(9) Coastal Barrier Resources Act, Pub. L. 97–348;

(10) Executive Order 11593, Protection and Enhancement of the Cultural Environment (See Subpart F of Part 1901

of this chapter for more specific implementation procedures);

(11) Executive Order 11514, Protection and Enhancement of Environmental Quality;

(12) Executive Order 11988, Floodplain Management;

(13) Executive Order 11990, Protection of Wetlands;

(14) Title 7, Parts 1b and 1c, Code of Federal Regulations, Department of Agriculture's National Environmental Policy Act; Final Policies and Procedures;

(15) Title 7, Part 3100, Code of Federal Regulations, Department of Agriculture's Enhancement, Protection, and Management of the Cultural Environment (See Subpart F of Part 1901 of this chapter for more specific implementation procedures);

(16) Title 7, Part 658, Code of Federal Regulations, Department of Agriculture, Soil Conservation Service, Farmland Protection Policy;

(17) Title 87, Part 12, Code of Federal Regulations, Highly Erodible Land and Wetland Conservation;

(18) Departmental Regulation 9500–3, Land Use Policy (See Exhibit A of this subpart);

(19) Departmental Regulation 9500–4, Fish and Wildlife Policy.

(d) The primary objectives of this subpart are for the Agency to make better decisions by taking into account potential environmental impacts of proposed projects and by working with FmHA applicants, other Federal agencies, Indian tribes, State and local governments, and interested citizens and organizations in order to formulate actions that advance the program goals in a manner that will protect, enhance, and restore environmental quality. To accomplish these objectives, the identification of potentially significant impacts on the human environment is mandated to occur early in the Agency's planning and decisionmaking processes. Important decision points are identified. The completion of the environmental review process is coordinated with these decision points, and this review must be completed prior to the Agency's first major decision on whether or not to participate in the proposal. This early availability of the results of the environmental review process is intended to ensure that Agency decisions are based on an understanding of their environmental consequence, as well as the consequences of alternative courses of action.

(e) Reducing delays, duplication of effort, and superfluous analyses are provided for in this subpart. FmHA environmental documents are to be supported by accurate analyses and will concentrate on the issues that are timely and relevant to the action in question, rather than amassing needless detail. Such documents and their preparation and review will be coordinated with other Federal or State agencies jointly participating in proposed actions or related actions, in order to avoid duplication of effort, and to achieve a coordinated and timely response.

(f) Public involvement is desirable, and to facilitate public involvement, environmental documents will be available to interested citizens as early in the decisionmaking process as possible and before decisions are made. Provisions are included for citizens or interested parties to express their views and any concerns.

(g) The FmHA officials responsible for the environmental review process are identified.

(h) The FmHA actions covered by this subpart include:

(1) Financial assistance to include grants, loans, and guarantees,

(2) Subdivision approvals,

(3) The management, leasing and sale of inventory property, and

(4) Other major federal actions such as proposals for legislation and the issuance of regulations.

§ 1940.302 Definitions.

Following is a list of definitions that apply to the implementation of this subpart. Please note that § 1940.301(b) of this subpart refers to the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR Parts 1500–1508. Consequently, the definitions contained in Part 1508 of the Council's regulations apply to this subpart, as well as those listed below.

(a) *Emergency circumstance.* One involving an immediate or imminent danger to public health or safety.

(b) *Environmental review documents.* The documents required by this subpart for the purpose of documenting FmHA's compliance with the environmental laws and regulations applicable to the FmHA actions covered in this subpart. These documents include:

(1) Form FmHA 1940–22, "Environmental Checklist for Categorical Exclusions,"

(2) Form FmHA 1940–21, "Environmental Assessment of Class I Action,"

(3) Environmental Assessment for Class II Actions (Exhibit H of this subpart), and

(4) Environmental Impact Statements (EIS).

(c) *Flood or flooding.* A general and temporary condition of partial or complete inundation of land areas, from the overflow of inland and/or tidal waters, and/or the rapid accumulation or runoff of surface waters from any source. Two important classifications of floods are as follows.

(1) A one-percent chance flood or based flood—A flood of a magnitude that occurs once every 100 years on the average. Within any one-year period there is one chance in 100 of the occurrence of such a flood. Most importantly, however, the cumulative risk of flooding increases with time. Statistically, there is about one chance in five that a flood of this magnitude will occur within a 20-year period, the length of time commonly defined as the useful life of a facility. Over a 30-year period, the life of a typical mortgage, the probability of such a flood occurring increases to greater than one chance in four.

(2) A 0.2-percent chance flood—A flood of a magnitude that occurs once every 500 years on the average. (Within any one-year period there is one chance in 500 of the occurrence of such a flood.) As with the one-percent chance flood, the cumulative risk of this flood occurring also increases with time.

(d) *Floodplains.* Lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands. At a minimum, floodplains consist of those areas subject to a one percent or greater chance of flooding in any given year. The term floodplain will be taken to mean the base floodplain, unless the action involves a critical action, in which case the critical action floodplain is the minimum floodplain of concern.

(1) Base floodplain (or 100-year floodplain)—The area subject to inundation from a flood of a magnitude that occurs once every 100 years on the average (the flood having a one-percent chance of being equalled or exceeded in any given year).

(2) Critical action floodplain (or 500-year floodplain)—The area subject to inundation from a flood of a magnitude that occurs once every 500 years on the average (the flood having 0.2-percent chance of being equalled or exceeded in any given year).

(e) *Indirect impacts.* Those reasonably foreseeable environmental impacts that result from the additional public facility, residential, commercial, or industrial development or growth that a federally financed project may cause, induce or accommodate. Consequently, indirect impacts often occur later in time than the construction of the Federal project

and can be removed in distance from the construction site. For example, a water transmission line may be designed to serve additional residential development. The environmental impacts of that residential development represent an indirect impact of the federally funded water line. Those indirect impacts which deserve the greatest consideration include changes in the patterns of land use, population density or growth rate, and the corresponding changes to air and water quality and other natural systems.

(f) *Mitigation measure.* A measure(s) included in a project or application for the purpose of avoiding, minimizing, reducing or rectifying identified, adverse environmental impacts. Examples of such measures include:

(1) The deletion, relocation, redesign or other modifications of the project's elements;

(2) The dedication to open space of environmentally sensitive areas of the project site, which would otherwise be adversely affected by the action or its indirect impacts;

(3) Soil erosion and sedimentation plans to control runoff during land-disturbing activities;

(4) The establishment of vegetative buffer zones between project sites and adjacent land uses;

(5) Protective measures recommended by environmental and conservation agencies having jurisdiction or special expertise regarding the project's impacts;

(6) Storm water management plans to control potential downstream flooding effects that would result from a project;

(7) Zoning; and

(8) Reuse of existing facilities as opposed to new construction.

(g) *No-action alternative.* The alternative of not approving an application for financial assistance, a subdivision feasibility analysis, or an Agency proposal.

(h) *Practicable alternative.* An alternative that is capable of attainment within the confines of relevant constraints. The test of practicability, therefore, depends upon the particulars of the situation under consideration and those constraints imposed by environmental, economic, legal, social and technological parameters. This test, however, is not limited by the temporary unavailability of sufficient financial resources to implement an alternative. That is, alternatives cannot be rejected solely on the basis of moderately increased costs. The range of alternatives that must be analyzed to determine if a practicable alternative exists includes the following three categories of alternatives:

(1) Alternative project sites or designs,

(2) Alternative projects with similar benefits as the proposed actions, and

(3) The no-action alternative.

(i) *Preparer of Environmental Review Documents.* The FmHA official who is responsible for reviewing the potential environmental impacts of the proposed action and for completing the appropriate environmental review document. Under the circumstances indicated, the following Agency positions and divisions will act as the preparer of the environmental review documents covered by this subpart.

(1) *County Office.* When the approval official for the action under review is located at the County Office level, that official will prepare, as required, Environmental Checklist for Categorical Exclusions and Class I and Class II assessments.

(2) *District Office.* When the approval official for the action under review is located at the District Office level, that official will prepare, as required, Environmental Checklist for Categorical Exclusions and Class I and Class II assessments or may delegate this responsibility to either:

(i) The District Office staff member having primary responsibility for assembling the associated pre-application, application or other case materials, analyzing the materials and developing recommendations for the approval official, or

(ii) A County Office staff member having the same responsibilities as the District Office member, if the action is initiated at the County Office level.

(3) *State Program Chief.* For actions approved within the State Office, the Chief will prepare, as required, Environmental Checklist for Categorical Exclusions and Class I and II assessments or may delegate this responsibility to either:

(i) The appropriate State Office Loan Specialist, if not the State Environmental Coordinator (SEC),

(ii) An architect or engineer on the Chief's staff who is not the SEC, or

(iii) A District or County Office staff member located within the office in which the action is initiated and having the responsibilities outlined in paragraph (i)(2)(i) of this section.

(4) *State Environmental Coordinator.* EIS's for actions within the approval authority of County Supervisors, District Directors, and State Office officials.

(5) *Assistant Administrators for Programs.* Checklists, assessments, and EIS's for all actions initiated within their program office.

(6) *Program Support Staff.* Checklists, assessments, and EIS's that the Deputy Administrator for Program Operations requests be done.

(j) *Water resource project.* Includes any type of construction which would result in either impacts on water quality and the beneficial uses that water quality criteria are designed to protect or any change in the free-flowing characteristics of a particular river or stream to include physical, chemical, and biological characteristics of the waterway. This definition encompasses construction projects within and along the banks of rivers or streams, as well as projects involving withdrawals from, and discharges into such rivers or streams. Projects which require Corps of Engineers dredge and fill permits are also water resource projects.

§ 1940.303 General policy.

(a) FmHA will consider environmental quality as equal with economic, social, and other relevant factors in program development and decision-making processes.

(b) In assessing the potential environmental impacts of its actions, FmHA will consult early with appropriate Federal, State, and local agencies and other organizations to provide decision-makers with both the technical and human aspects of environmental planning.

(c) When adverse environmental impacts are identified, either direct or indirect, an examination will be made of alternative courses of action, including their potential environmental impacts. The objective of the environmental review will be to develop a feasible alternative with the least adverse environmental impact. The alternative of not proceeding with the proposal will also be considered particularly with respect to the need for the proposal.

(d) If no feasible alternative exists, including the no-action alternative, measures to mitigate the identified adverse environmental impacts will be included in the proposal.

(e) The performance of environmental reviews and the consideration of alternatives will be initiated as early as possible in the FmHA application review process so that the Agency will be in the most flexible and objective position to deal with these considerations.

§ 1940.304 Special policy.

(a) *Land use.* (1) FmHA recognizes that its specific mission of assisting rural areas, composed of farms and rural towns, goes hand-in-hand with protecting the environmental resources upon which these systems are dependent. Basic resources necessary to

both farm and rural settlements include important farmlands and forestlands, prime rangelands, wetlands, and floodplains. The definitions of these areas are contained in the Appendix to Departmental Regulation 9500–3, Land Use Policy, which is included as Exhibit A of this subpart. For assistance in locating and defining floodplains and wetlands, the locations and telephone numbers of the Federal Emergency Management Administration's regional offices have been included as Exhibit J of this subpart, and similar information for the U.S. Fish and Wildlife Service's Wetland Coordinators has been included as Exhibit K of this subpart. Given the importance of these resources, as emphasized in the Departmental Regulation, Executive Order 11988, "Floodplain Management," and Executive Order 11990, "Protection of Wetlands," it is FmHA's policy not to approve or fund any proposals that, as a result of their identifiable impacts, direct or indirect, would lead to or accommodate either the conversion of these land uses or encroachment upon them. The only exception to this policy is if the approving official determines that

(i) There is no practicable alternative to the proposed action,

(ii) The proposal conforms to the planning criteria identified in paragraph (a)(2) of this section, and

(iii) The proposal includes all practicable measures for reducing the adverse impacts and the amount of conversion/encroachment.

(A) For Farmer Program loans and guarantees, and loans to Indian Tribes and Tribal Corporations, Exhibit M of this subpart imposes additional and more restrictive requirements regarding wetland and highly erodible land conservation.

(B) Unless otherwise exempted by the provisions of Exhibit M, the proceeds of any Farmer Program loan or loan to an Indian Tribe or Tribal Corporation made or guaranteed by FmHA cannot be used

(*1*) For a purpose that will contribute to excessive erosion of highly erodible land (as defined in Exhibit M), or

(*2*) For a purpose that will contribute to conversion of wetlands (as defined in Exhibit M) to produce an agricultural commodity.

(2) It is also recognized that unless carefully reviewed, some proposals designed to serve the needs of rural communities can adversely affect the existing economic base and settlement patterns of the community, as well as create development pressures on land and environmental resources essential to farm economies. An example of such a proposal might be the extension of utilities and other types of infrastructure beyond a community's existing settlement pattern and into important farmlands for the purpose of commercial or residential expansion, even though there is available space within the existing settlement pattern for such expansion. Not only may the loss of important farmlands unnecessarily result, but the community may be faced with the economic costs of providing public services to outlying areas, as well as the deterioration of its central business or commercial area; the latter may not be able to compete with the newer, outlying commercial establishments. These results are undesirable, and to avoid their occurrence, projects designed to meet rural community needs (i.e., residential, industrial, commercial, and public facilities) will not be approved unless the following conditions are met.

(i) The project is planned and sited in a manner consistent with the policies of this section, the Farmland Protection Policy Act, and Departmental Regulation 9500–3 (Exhibit A of this subpart).

(ii) The project is not inconsistent with an existing comprehensive and enforceable plan that guides growth and reflects a realistic strategy for protecting natural resources, and the project is compatible, to the extent practicable, with State, unit of local government, and private programs and policies to protect farmland. (If no such plan or policies exist, there is no FmHA requirement that they either be prepared and adopted, as further specified in paragraph (a)(3) of this section.)

(iii) The project will encourage long-term, economically viable public investment by fostering or promoting development patterns that ensure compact community development, that is, development that is limited to serving existing settlement patterns or is located in existing settlement patterns, e.g., the rehabilitation and renovation of existing structures, systems and neighborhoods; infilling of development; the provision of a range of moderate-to-high residential densities appropriate to local and regional needs. When these development patterns or types are not practicable, the development must be contiguous with the existing settlement pattern and provide for a range of moderate-to-high residential densities appropriate to local and regional needs. It is recognized that some FmHA Community Programs projects are designed to serve rural residents, such as rural water and waste disposal systems and, therefore, cannot be limited in service area to these areas contiguous with existing settlement patterns. These types of projects will be designed to primarily serve existing structures and rural residents in noncontiguous areas. Any additional capacity within the system will be limited to meet reasonable growth needs, and, to the extent practicable, be designed to meet such needs within existing settlements and areas contiguous to them.

(3) The conditions specified in paragraph (a)(2) of this section should not be construed as advocating excessive densities, congestion, or loss of open space amenities within rural communities. Desirable living conditions can be obtained under these objectives, along with economic and social benefits for the community and the surrounding farm operations. Additionally, these conditions should not be construed as requiring localities to develop plans which contain the conditions. In any instance in which these planning conditions or criteria do not exist within the project area, project reviews will not be postponed until the criteria are adopted. Rather, projects will be reviewed and funding decisions made in light of a project's consistency with the contents of this subpart (excluding paragraph (a)(2)(ii) of this section, which would not be applicable).

(b) *Endangered species.* FmHA will not authorize, fund, or carry out any proposal or project that is likely to

(1) Jeopardize the continued existence of any plant or wildlife species listed by the Secretary of the Interior or Commerce as endangered or threatened; or

(2) Destroy or adversely modify the habitats of listed species when such habitats have been determined critical to the species' existence by the Secretary of the Interior or Commerce, unless FmHA has been granted an exemption for such proposal by the Endangered Species Committee pursuant to paragraph (h) of section 7 of the Endangered Species Act.

(c) *Wild and scenic rivers.* FmHA will not provide financial assistance or plan approval for any water resource project that would have a direct and adverse effect on the values for which a river has been either included in the National Wild and Scenic Rivers System or is designated for potential addition. Additionally, FmHA will not approve or assist developments (commercial, industrial, residential, farming or community facilities) located below or above a wild, scenic or recreational river area, or on any stream tributary thereto which will invade the area or unreasonably diminish the scenic,

recreational, and fish and wildlife values present in the area.

(d) *Historic and cultural properties.* As part of the environmental review process, FmHA will identify any properties that are listed in, or may be eligible for, listing in the National Register of Historic Places and are located within the project's area of potential environmental impacts. Consultations will be undertaken with State Historic Preservation Officers and the Advisory Council on Historic Preservation, through the implementation of Subpart F of Part 1901 of this chapter, in order to determine the most appropriate course of action for protecting such identified properties or mitigating potential adverse impacts to them.

(e) *Coastal barriers.* Under the requirements of the Coastal Barrier Resources Act, FmHA will not provide financial assistance for any activity to be located within the Coastal Barrier Resources System unless

(1) Such activity meets the criteria for an exception, as defined in section 6 of the Act, and

(2) Consultation regarding the activity has been completed with the Secretary of the Interior.

(f) *Water and energy conservation.* FmHA will encourage the conservation of water and energy in the development of its programs and policies and will encourage applicants to incorporate all economically feasible water and energy-saving features and designs within their proposals.

(g) *Intergovernmental initiatives on important land resources.* On a broader scale, FmHA will advocate, in cooperation with other USDA agencies (through the USDA State-level committee system), the retention of important farmlands and forestlands, prime rangeland, wetlands and floodplains whenever proposed conversions to other uses

(1) Are caused or encouraged by actions or programs of a Federal Agency, or

(2) Require licensing or approval by a Federal Agency, unless other needs clearly override the benefits derived from retention of such lands.

(h) *Water quality.* FmHA will not provide financial assistance to any activity that would either impair a State water quality standard, including designated and/or existing beneficial uses that water quality criteria are designed to protect, or that would not meet antidegradation requirements.

§ 1940.305 Policy implementation.

(a) *Environmental impact analysis.* The implementation of the environmental impact analysis requirements described in this subpart serves as the primary mechanism for FmHA as follows:

(1) Incorporating environmental quality considerations into FmHA program and decision-making processes,

(2) Obtaining the views of the public and government agencies on potential environmental impacts associated with FmHA projects, and

(3) Using all practicable means to avoid or to minimize any possible adverse environmental effects of FmHA actions.

(b) *Natural resource management.* The State Director will develop a natural resource management guide. This guide will serve as an essential mechanism for implementing § 1940.304 of this subpart; and, therefore, the guide must be consistent with and reflect the objectives and policies contained in § 1940.304 of this subpart. At the same time, however, it must be tailored to take into account important State, regional, and local natural resource management objectives. The guide will be issued as a State Supplement for prior approval. The basic content, purposes, and uses of the guide are enumerated in Exhibit B of this subpart and can be summarized as follows:

(1) The guide will serve as a mechanism for assembling an inventory of the locations within the State of those natural resources, land uses, and environmental factors that have been specified by Federal, State and local authorities as deserving some degree of protection or special consideration;

(2) The guide will summarize the various standards or types of Federal, State, or local protection that apply to the natural resources, land uses, and environmental factors listed in the inventory; and

(3) Applications for individual projects must be reviewed for consistency with the guide.

(c) *Intergovernmental initiatives.* When commenting on proposed Federal actions subject to environmental impact statements, FmHA commentors will focus on the consistency of these actions with the appropriate State natural resource management guide. A similar focus or element will be addressed in FmHA's review of the Environmental Protection Agency's 201 Wastewater Management Plans.

(d) *Farmland Protection Policy Act and Departmental Regulation 9500–3, Land Use Policy.* The natural resource management guide serves as a tool for implementing the requirements of the Act and the Departmental Regulation at the broad level of implementing the Agency's programs at the State level. These requirements must also be followed in the review of applications for financial assistance or subdivision approval, as well as the disposal of real property. FmHA's implementation procedures for the project review process are contained in Exhibit C of this subpart.

(e) *Endangered Species.* FmHA will implement the consultation procedures required under section 7 of the Endangered Species Act as specified in 50 CFR Part 402. It is important to note that these consultation procedures apply to the disposal of real property and all FmHA applications for financial assistance and subdivision approval, including those applicants which are exempt from environmental assessments. FmHA's implementation procedures are contained in Exhibit D of this subpart.

(f) *Wild and scenic rivers.* Each application for financial assistance or subdivision approval and the proposed disposal of real property will be reviewed to determine if it will affect a river or portion of it, which is either included in the National Wild and Scenic Rivers System, designated for potential addition to the system, or identified in the Nationwide Inventory prepared by the National Park Service (NPS) in the Department of the Interior (DOI). FmHA's procedures for completing this review are contained in Exhibit E of this subpart.

(g) *Historic and cultural properties.* (1) As part of the environmental review process, FmHA will identify any properties that are listed in or may be eligible for listing in the National Register of Historic Places, and located within the area of potential environmental impact. Identification will consist of consulting the published lists of the National Register and formally contacting and seeking the comments of the appropriate State Historic Preservation Officer (SHPO). Since it is not always possible from the consultation with the SHPO to determine whether historic and cultural properties are present within the project's area of environmental impact, it may be necessary for FmHA to consult public records and other individuals and organizations, such as university archaeologists, local historical societies, etc. These latter discussions should take place before initiating a detailed site survey since they may provide reliable information that obviates the need for a survey. However, whenever insufficient information exists to document the presence or absence of potentially eligible National Register properties and

where the potential for previously unidentified properties is recognized by FmHA, the SHPO, or other interested parties, FmHA will conduct the necessary investigations to determine if such properties are present within the area of potential environmental impact. FmHA will involve the SHPO in the planning and formulation of any historic, cultural, architectural or archaeological testing, studies or surveys conducted to investigate the presence of such properties and will utilize persons with appropriate knowledge and experience.

(2) If the information obtained, as a result of the consultation and investigations conducted by FmHA, indicates the presence of an historic or cultural property within the area of potential environmental impact that, in the opinion of the SHPO and FmHA, appear to meet the National Register Criteria (36 CFR 60.4), the property will be considered eligible for the National Register of Historic Places. If the SHPO and FmHA do not agree on the property's eligibility for the National Register or if the Secretary of the Interior or the Advisory Council on Historic Preservation so requests, FmHA will request a determination of eligibility from the Keeper of the National Register in accordance with 36 CFR Part 63. Consultations will be initiated with the SHPO and the Advisory Council on Historic Preservation in accordance with 36 CFR Part 800, through the implementation of Subpart F of Part 1901 of this chapter, to determine the most appropriate course of action to protect all National Register and eligible properties within the area of potential environmental impact.

(3) Further instructions detailing the procedures to be followed in considering and protecting historic and cultural properties and the responsible Agency officials are contained in Subpart F of Part 1901 of this chapter. These procedures will be followed whenever a proposal, considered by FmHA, has the potential to affect National Register or eligible properties.

(h) *Coastal barriers.* In those States having coastal barriers within the Coastal Barrier Resources System, each application for financial assistance or subdivision approval, as well as the proposed disposal of real property, will be reviewed to determine if it would be located within the system, and, if so, whether the action must be denied on this basis or meets the Act's criteria for an exception. To accomplish the review, all affected State, District and County Offices will maintain a current set of maps, as issued by DOI, which depict those coastal barriers within their jurisdiction that have been included in the system. FmHA's implementation procedures for accomplishing this review requirement and for consulting as necessary with DOI are contained in Exhibit F of this subpart. The exceptions to the restrictions of the Coastal Barrier Resources Act are contained in Exhibit L of this subpart.

(i) *Water and energy conservation.* Water and energy conservation measures will be considered at both the program and project level in a manner consistent with program regulations.

(j) *Noise abatement.* For purposes of assessing noise impacts and for determining the acceptability of housing sites in terms of their exposure to noise, FmHA has adopted and follows the standards and procedures developed by the U.S. Department of Housing and Urban Development (HUD) and contained in 24 CFR Part 51 of Subpart B entitled, "Noise Abatement and Control."

(k) *Water quality.* Each application for financial assistance or subdivision approval and the proposed disposal of real property will be reviewed to determine if it would impair a State water quality standard or meet antidegradation requirements. When necessary, the proposed activity will be modified to protect water quality standards, including designated and/or existing beneficial uses that water quality criteria are designed to protect, and meet antidegradation requirements.

§ 1940.306 Environmental responsibilities within the National Office.

(a) *Administrator.* The Administrator of FmHA has the direct responsibility for Agency compliance with all environmental laws, Executive orders, and regulations that apply to FmHA's program and administrative actions. As such, the Administrator ensures that this responsibility is adequately delegated to Agency staff and remains informed on the general status of Agency compliance, as well as the need for any necessary improvements. The Administrator is also responsible for ensuring that the Agency's manpower and financial needs for accomplishing adequate compliance with this subpart are reflected and documented in budget requests for departmental consideration.

(b) *Deputy Administrator Program Operations.* (1) The Deputy Administrator for Program Operations has the delegated overall Agency responsibility for developing and implementing environmental policies and compliance procedures, monitoring their effectiveness, and advising the Administrator on the status of compliance, to include recommendations for any necessary changes in this subpart. The incumbent is also responsible for developing and documenting, as part of the Agency's budget formulation process, the manpower and financial needs necessary to implement this subpart.

(2) The specific responsibilities of the Deputy Administrator—Program Operations are as follows:

(i) Provide for the Agency an interdisciplinary approach to environmental impact analysis and problem resolution, as required by the CEQ regulations;

(ii) Provide the leadership and technical expertise for the implementation of the Agency's environmental policies with special emphasis being placed on those policies relating to natural resource management, energy conservation, and orderly community development;

(iii) Coordinate the implementation of this subpart with affected program offices;

(iv) Provide policy direction and advice on the implementation of this subpart to Agency staff, particularly to SECs and technical support personnel within State Offices;

(v) Consult and coordinate, as needed or upon request, with the Department's interagency committees dealing with environmental, land use, and historic preservation matters;

(vi) Monitor the Agency's record in complying with this subpart;

(vii) Provide training programs and materials for the Agency staff assigned the functions identified in this subpart;

(viii) Review, as necessary, applications for funding assistance, proposed policies and regulations, and recommend their approval, disapproval, or modification after analyzing and considering their anticipated adverse environmental impacts, their benefits, and their consistency with the requirements of this subpart;

(ix) Develop and direct Agency procedures for complying with environmental legislation, Executive orders, and regulations, including, but not limited to, those listed in § 1940.301(c) of this subpart;

(x) Maintain a position identified as the Senior Environmental Specialist (hereafter called the Environmental Specialist), who will serve as the responsible Agency official under the National Environmental Policy Act and the National Historic Preservation Act, maintain liaison on environmental matters with interested public groups and Federal agencies, and serve as the focal point for developing and

coordinating the Agency's procedures for the requirements listed in § 1940.301(c) of this subpart; and

(xi) Review and evaluate legislative and administrative proposals in terms of their environmental impact.

(c) *Assistant Administrators for Programs.* The Assistant Administrators for Programs will:

(1) Ensure, as necessary, that environmental assessments and EISs for proposed program regulations are prepared by their staff;

(2) Ensure that all proposed actions that fall under the requirements of this subpart, and that are submitted to the National Office for approval or concurrence, contain adequate analyses and documentation of their potential environmental impacts (Transfer of program funds from National Office to State Office control to enable the State Office to approve an application is not considered to be National Office approval of or concurrence in an application);

(3) Consider and include, in the development of program regulations, feasible policies and mechanisms that promote program goals in a manner that either enhances environmental quality or reduces unnecessary adverse environmental impacts; and

(4) Designate one or more staff members to serve as a program environmental coordinator, having generally the same duties and responsibilities within the program office as the SEC has within the State Office (See § 1940.307(b) of this subpart).

§ 1940.307 Environmental responsibilities within the State Office.

(a) *State Director.* The State Director will:

(1) Serve as the responsible FmHA official at the State Office level for ensuring compliance with the requirements of this subpart; and

(2) Appoint one individual to serve as the SEC. Thereafter, the SEC will report directly to the State Director on the environmental matters contained in this subpart.

(b) *State Environmental Coordinator (SEC).* The SEC will:

(1) Act as advisor to the State Director on environmental matters and coordinate the requirements of this subpart;

(2) Review those Agency actions which are not categorically excluded from this subpart (see § 1940.311 and § 1940.312 of this subpart) and which require the approval and/or clearance of the State Office and recommend to the approving official either project approval, disapproval, or modification after analyzing and considering the—

(i) Anticipated adverse environmental impacts,

(ii) The anticipated benefits, and

(iii) The action's consistency with this subpart's requirements;

(3) Represent the State Director at conferences and meetings dealing with environmental matters of a State Office nature;

(4) Maintain liaison on State Office environmental matters with interested public groups and local, State, and other Federal agencies;

(5) Serve as the State Director's alternate on State-level USDA committees dealing with environmental, land use and historic preservation matters;

(6) Solicit, whenever necessary, the expert advice and assistance of other professional staff members within the State Office in order to adequately implement this subpart;

(7) Provide technical assistance as needed on a project-by-project basis to State, District, and County Office staffs;

(8) Develop controls for avoiding or mitigating adverse environmental impacts and monitor their implementation;

(9) Provide assistance in resolving post-approval environmental matters at the State Office level;

(10) Maintain records for those actions required by this subpart;

(11) Coordinate for the State Director the development of the State Office natural resource management guide;

(12) Provide direction and training to State, District, and County Office staffs on the requirements of this subpart; and

(13) Coordinate for the State Director the monitoring of the State Office's compliance with this subpart and keep the State Director advised of the results of the monitoring process.

(c) *Program Chiefs.* State Office Program Chiefs will:

(1) Be responsible for the adequacy of the environmental impact reviews required by this subpart for all program actions to be approved at the State Office level or concurred in at that level;

(2) Coordinate the above reviews as early as possible with the SEC, so that the latter can assist in addressing the resolution of any unresolved or difficult environmental issues in a timely manner; and

(3) Incorporate into projects and actions measures to avoid or reduce potential adverse environmental impacts identified in environmental reviews.

§ 1940.308 Environmental responsibilities at the District and County Office levels.

(a) The District Director will be responsible for carrying out the actions required by this subpart to be completed at the District Office level.

(b) The County Supervisor will be responsible for carrying out the actions required by this subpart to be completed at the County Office level.

(c) In discussing FmHA assistance programs with potential applicants, District Directors and County Supervisors will inform them of the Agency's environmental requirements, as well as the environmental information needs and responsibilities that FmHA applicants are expected to address. (See § 1940.309 of this subpart.)

§ 1940.309 Responsibilities of the prospective applicant.

(a) FmHA expects applicants and transferees (*and in the case of the loan guarantee programs, borrowers and transferees*) to consider the potential environmental impacts of their requests at the earliest planning stages and to develop proposals that minimize the potential to adversely impact the environment. Prospective applicants should contact County Supervisors or District Directors, as appropriate, to determine FmHA's environmental requirements as soon as possible after they decide to pursue FmHA financial assistance.

(b) As specified in paragraph (c) of this section, applicants for FmHA assistance will be required to provide information necessary to FmHA to evaluate their proposal's potential environmental impacts and alternatives to them. For example, the applicant will be required to provide a complete description of the project elements and the proposed site(s) to include location maps, topographic maps, and photographs when needed. The applicant will also be required to provide data on any expected gaseous, liquid and solid wastes to be produced, including hazardous wastes as defined by the Resource Conservation and Recovery Act or State law, and all permits and/or correspondence issued by the appropriate local, State, and Federal agencies which regulate treatment and disposal practices.

(c) Form FmHA 1940–20, "Request for Environmental Information," will be used for obtaining environmental information from applicants whose proposals require an environmental assessment under the requirements of this subpart. These same applicants must notify the appropriate State Historic Preservation Officer of the filing

of the application and provide a detailed project description as specified in Item 2 of Form FmHA 1940–20 and the FMI. If the applicant's proposal meets the definition of a Class II action as defined in § 1940.312 of this subpart, all of Form FmHA 1940–20 must be completed. If the applicant's proposal meets the definition of a Class I action as defined in § 1940.311 of this subpart, the entire form need not be completed, but just the face of the form and categories (1), (2), (13), (15), (16), and (17) of Item 1b of the FMI. As an exception to the foregoing statement, an applicant for an action that is normally categorically excluded but requires a Class I assessment for any of the reasons stated in § 1940.317(e) of this subpart is not required to complete Form FmHA 1940–20. Additionally, for Class I actions within the Farm Programs, a site visit by the FmHA official completing the environmental assessment obviates the need for the applicant to complete any of the form, and the adoption by FmHA of a Soil Conservation Service (SCS) environmental assessment or evaluation for the action obviates the need to complete the form for either a Class I or Class II action.

(d) Applicants will ensure that all required materials are current, sufficiently detailed and complete, and are submitted directly to the FmHA office processing the application. Incomplete materials or delayed submittals may seriously jeopardize consideration or postponement of a proposed action by FmHA.

(e) During the period of application review and processing, applicants will not take any actions with respect to their proposed undertakings which are the subject of the application and which would have an adverse impact on the environment or limit the range of alternatives. This requirement does not preclude development by applicants of preliminary plans or designs or performance of other work necessary to support an application for Federal, State, or local permits or assistance. However, the development of detailed plans and specifications is discouraged when the costs involved inhibit the realistic consideration of alternative proposals.

(f) Applicants are required to provide public notification and to fully cooperate in holding public information meetings as described in §§ 1940.318(e), 1940.320 (c) and (g), and 1940.331 (b) and (c) of this subpart.

(g) Any applicant that is directly and adversely affected by an administrative decision made by FmHA under this subpart may appeal that decision under the provisions of Subpart B of Part 1900 of this chapter.

§ 1940.310 Categorical exclusions from National Environmental Policy Act (NEPA) reviews.

(a) *General guidelines.* The following actions have been determined not to have a significant impact on the quality of the human environment, either individually or cumulatively. They will not be subject to environmental assessments or impact statements. It must be emphasized that even though these actions are excluded from further environmental reviews under NEPA, they are not excluded from either the policy considerations contained in §§ 1940.303 through 1940.305 of this subpart or from compliance with other applicable local, State, or Federal environmental laws. Also, the actions preceded by an asterisk (*) are not excluded from further review depending upon whether in some cases they would be located within, or in other cases, potentially affect:

(1) A floodplain,

(2) A wetland,

(3) Important farmlands, or prime forestlands or rangelands,

(4) A listed species or critical habitat for an endangered species,

(5) A property that is listed on or may be eligible for listing on the National Register of Historic Places,

(6) An area within an approved State coastal zone management program,

(7) A coastal barrier or a portion of a barrier within the Coastal Barrier Resources System,

(8) A river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System,

(9) A sole source aquifer recharge area, or

(10) A State water quality standard (including designated and/or existing beneficial uses and antidegradation requirements).

(i) Whether location within one of the preceding resource areas is sufficient to require a further review or a potential impact to one of them must also be identified to require a review is determined by FmHA's completion of Form FmHA 1940–22 in accordance with the FMI and § 1940.317 of this subpart.

(ii) When the categorical exclusion classification is lost, as specified in § 1940.317 of this subpart, the action must be reviewed under the requirements of paragraph (g) of that section. This requirement serves to implement § 1508.4 of the CEQ regulations which requires Federal agencies to detect extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

(iii) Further guidance on the use of these exclusions is contained in § 1940.317 of this subpart.

(b) *Housing assistance.* *(1) The provision of financial assistance for the purchase of a single family dwelling or a multi-family project serving no more than four families, i.e. units;

*(2) The approval of an individual building lot that is located on a scattered site and either not part of a subdivision or within a subdivision not requiring FmHA's approval;

*(3) Rehabilitation, replacement, or renovation of any existing housing units, with no expansion in the number of units;

(4) Self-Help Technical Assistance Grants;

*(5) The approval of a subdivision that consists of four or fewer lots and is not part of, or associated with, building lots or subdivisions;

(6) Technical Supervisory Assistance Loans and Grants;

(7) Weatherization of any existing housing unit(s), unless the property is listed in the National Register of Historic Places or may be eligible for listing, or is located either within the Coastal Barrier Resources System or in a listed or potentially eligible historic district, in which case the application will require a Class I assessment as specified in § 1940.317(g) of this subpart;

(8) The financing of housing construction or the approval of lots in a previously approved FmHA subdivision provided that

(i) The action is consistent with all previously adopted stipulations for the multi-family housing project or subdivision, and

(ii) The FmHA environmental impact review that was previously completed for the original application is still current with respect to applicable environmental requirements and conditions present at the site, and it assessed the lots or expansion for which approval is being requested;

(9) The purchase of any existing, non-FmHA owned housing unit(s), unless the property is listed in the National Register of Historic Places or may be eligible for listing, or is located either within a 100-year floodplain, the Coastal Barrier Resources System, or in a listed or potentially eligible historic district, in which case the application will require a Class I assessment as specified in § 1940.317(g) of this subpart; and

(10) Appraisals of nonfarm tracts and small farms for rural housing loans.

(c) *Community and business programs and nonprofit national corporations*

loan and grant program. *(1) Financial assistance directed to existing businesses, facilities, and/or structures that does not involve new construction or large increases in employment; does not involve a facility that presently or previously produced or stored hazardous waste or disposed of hazardous waste on the facility's property; and does not result in the increased production of gaseous, liquid, or solid wastes, or a change in the type or content of such wastes as long as waste production, handling, treatment and disposal practices presently comply with applicable Federal, State and local regulations and there is no history of violations. If any of these waste production, handling, treatment, disposal or compliance criteria cannot be met, a Class I assessment must be initiated to include a narrative discussion of the types and quantities of wastes produced and the adequacy of the treatment, storage, and disposal practices, if the involved wastes meet the criteria for a Class I assessment contained in § 1940.311(b)(3)(iii) of this subpart. If not, a Class II assessment must be completed.

*(2) Projects that solely involve the acquisition, construction, reconstruction, renovation, or installation of facilities, structures or businesses, for replacement or restoration purposes, with minimal change in use, size, capacity, purpose or location from the original facility (e.g., replacement in-kind of utilities such as water or sewer lines and appurtenances, reconstruction of curbs and sidewalks, street repaving, and building modifications, renovations, and improvements);

(3) Project management actions relating to invitation for bids, contract award, and the actual physical commencement of construction activities;

(4) Financial assistance for a technical assistance grant under the nonprofit national corporation loan and grant program;

(5) Projects that solely involve the purchase and installation of office equipment, public safety equipment, or motor vehicles; and

(6) Amendments to approved projects meeting the criteria of paragraph (e)(2) of this section.

(d) *Farm programs.* (1) Financial assistance for the purchase of an existing farm, or an enlargement to one, provided no shifts in land use are proposed beyond the limits stated in paragraphs (d) (10) and (11) of this section;

(2) Financial assistance for the purchase of livestock and essential farm equipment, including crop storing and drying equipment, provided such equipment is not to be used to accommodate shifts in land use beyond the limits stated in paragraphs (d) (10) and (11) of this section;

(3) Financial assistance for:

(i) The payment of annual operating expenses, which does not cover activities specifically addressed in this section or §§ 1940.311 or 1940.312 of this subpart;

(ii) Family living expenses, and

(iii) Refinancing debts;

*(4) Financial assistance for the construction of essential farm dwellings and service buildings of modest design and cost, as well as repairs and improvements to them;

(5) Financial assistance for onsite water supply facilities to serve a farm dwelling, farm buildings, and livestock needs;

(6) Financial assistance for the installation or enlargement of irrigation facilities, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate less than 80 acres, provided that neither a State water quality standard, a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. If a wetland is affected, the application will fall under Class II as defined in § 1940.312 of this subpart. Potential effects to a water quality standard, an historic property or the Wild and Scenic Rivers System require that a review be initiated under a Class I assessment as specified in § 1940.317(g) of this subpart.

(7) Financial assistance that solely involves the replacement or restoration of irrigation facilities, to include those facilities described in paragraph (d)(6) of this section, with minimal change in use, size, capacity, or location from the original facility(s) provided that neither a State water quality standard, a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. If a wetland is affected, the application will fall under Class II as defined in § 1940.312 of this subpart. Potential effects to a water quality standard, an historic property, or the Wild and Scenic Rivers System require that a Class I assessment be completed as specified in § 1940.317(g) of this subpart. Also, to qualify for this exclusion, the facilities to be replaced or restored must have been used for similar irrigation purposes at least two out of the last three consecutive growing seasons. Otherwise, the action will be viewed as an installation of irrigation facilities.

(8) Financial assistance for the development of farm ponds or lakes of no more than 5 acres in size, provided that, neither a State water quality standard, a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. If a wetland is affected, the application will fall under Class II as defined in § 1940.312 of this subpart. Potential effects to a water quality standard, an historic property, or the Wild and Scenic Rivers System require that a review be initiated under a Class I assessment as specified in § 1940.317(g) of this subpart;

*(9) Financial assistance for the conversion of:

(i) Land in agricultural production to pastures or forests, or

(ii) Pastures to forests;

*(10) Financial assistance for land-clearing operations of no more than 15 acres, provided no wetlands are affected, and financial assistance for any amount of land involved in tree harvesting conducted on a sustained yield basis and according to a Federal, State or other governmental unit approved forestry management and marketing plan; and

(11) Financial assistance for the conversion of no more than 160 acres of pasture to agricultural production, provided that in a conversion to agricultural production no State water quality standard or wetlands are affected. If a wetland is affected, the application will fall under Class II as defined in § 1940.312 of this subpart. If a water quality standard would be impaired or antidegradation requirement not met, a Class I assessment is required as specified in § 1940.317(g) of this subpart.

(e) *General exclusions.* (1) The award of financial assistance for planning purposes, management and feasibility studies, or environmental impact analyses;

(2) For actions other than those covered by Exhibit M of this subpart, loan-closing and servicing activities, transfers, assumptions, subordinations, construction management activities and amendments and revisions to approved projects, including the provision of additional financial assistance that do not alter the purpose, operation,

location, or design of the project as originally approved;

(3) The issuance of regulations and instructions, as well as amendments to them, describing administrative and financial procedures for processing, approving, and implementing the Agency's financial assistance programs;

(4) Procurement activities for goods and services, routine facility operations, personnel actions, and other such management activities related to the operation of the Agency;

(5) Reduction in force or employee transfers resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar circumstances; and

*(6) The lease or disposal of real property by FmHA whenever the transaction is either not controversial for environmental reasons or will not result in a change in use of the real property within the reasonably foreseeable future.

§ 1940.311 Environmental assessments for Class I actions.

The Agency's proposals and projects that are not identified in § 1940.310 of this subpart as categorical exclusions require the preparation of an environmental assessment in order to determine if the proposal will have a significant impact on the environment. For purposes of implementing NEPA, the actions listed in this section are presumed to be major Federal actions. If an action has a potential to create a significant environmental impact, an EIS must be prepared. (In situations when there is clearly a potential for a significant impact, the EIS may be initiated directly without the preparation of an assessment.) It is recognized that many of the applications funded annually by FmHA involve small-scale projects having limited environmental impacts. However, because on occasion they have the potential to create a significant impact, each must be assessed to determine the degree of impact. The scope and level of detail of an assessment for a small-scale action, though, need only be sufficient to determine whether the potential impacts are substantial and further analysis is necessary. Therefore, for the purpose of implementing NEPA, FmHA has classified its smaller scale approval actions as Class I actions. The format which will be used for accomplishing the environmental assessment of a Class I action is provided in Form FmHA 1940–21. An important aspect of this classification method is that it allows FmHA's environmental review staff to concentrate most of its time and efforts on those actions having the potential for more serious or complex environmental impacts. Additional guidance on the application of NEPA to Class I actions is provided in § 1940.319 of this subpart.

(a) *Housing assistance.* If either of the following actions is an expansion of a previously approved FmHA housing project, see § 1940.310(b)(8) of this subpart to determine if it meets the requirements for a categorical exclusion. In the case of an expansion for which an environmental assessment was not done for the original FmHA project, the size of the proposal for assessment purposes is determined by adding the number of units in the original project(s) to those presently being requested.

(1) Financial assistance for a multi-family housing project, including labor housing which comprises at least 5 units, but no more than 25 units; and

(2) Financial assistance for or the approval of a subdivision, as well as the expansion of an existing one which involves at least 5 lots but no more than 25 lots; and

(3) Financial assistance for a housing preservation grant.

(b) *Community and business programs and nonprofit national corporations loan and grant program.* Class I assessments will be prepared for the following categories:

(1) Financial assistance for water and waste disposal facilities and natural gas facilities that meet all of the following criteria:

(i) There will not be a substantial increase in the volume of discharge or the loading of pollutants from any existing or expanded sewage treatment facilities, or a substantial increase in an existing withdrawal from surface or ground waters. A substantial increase may be evidenced by an increase in hydraulic capacity or the need to obtain a new or amended discharge or withdrawal permit.

(ii) There will not be either a new discharge to surface or ground waters or a new withdrawal from surface or ground waters such that the design capacity of the discharge or withdrawal facility exceeds 50,000 gallons per day and provided that the potential water quality impacts are documented in a manner required for a Class II assessment and attached as an exhibit to the Class I assessment.

(iii) From the boundaries listed below, there is no extension, enlargement or construction of interceptors, collection, transmission or distribution lines beyond a one-mile limit estimated from the closest point of the boundary most applicable to the proposed service area:

(A) The boundary formed by the corporate limits of the community being served.

(B) If there are developed areas immediately contiguous to the corporate limits of a community, the boundary formed by the limits of these developed areas.

(C) If an unincorporated area is to be served, the boundary formed by the limits of the developed areas.

(iv) The proposal is designed for predominantly residential use with other new or expanded users being small-scale commercial enterprises having limited secondary impacts.

(v) For a proposed expansion of sewage treatment or water supply facilities, such expansions would serve a population that is no more than 20 percent greater than the existing population.

(vi) The proposal is not controversial for environmental reasons, nor have relevant questions been raised regarding its environmental impact which cannot be addressed in a Class I assessment.

(2) Financial assistance for group homes, detention facilities, nursing homes, or hospitals, providing a net increase in beds of not more than 25 percent or 25 beds, whichever is greater; and

(3) Financial assistance for the construction or expansion of facilities, such as fire stations, real stores, libraries outpatient medical facilities, service industries, additions to manufacturing plants, office buildings, and wholesale industries, that:

(i) Are confined to single, small sites; and

(ii) Are not a source of substantial traffic generation; and

(iii) Do not produce either substantial amounts of liquid or solid wastes or any of the following type(s) of wastes:

(A) Gaseous, liquid, or solid waste that is hazardous toxic, radioactive, or odorous;

(B) Either a liquid waste, whether or not disposed of on-site, that cannot be accepted by a publicly owned treatment works without first receiving petreatment, or a liquid waste discharge that is a point source subject to a Federal, or State discharge permit; or

(C) Gaseous waste or air pollutant that will be emitted either from a new source at a rate greater than one hundred tons per year or from an expanded source at a rate greater than twenty-five tons per year.

(4) Financial assistance for a livestock-holding facility or feed-lot meeting the criteria of § 1940.311(c)(8) of this subpart.

(c) *Farm Programs.* In completing environmental assessments for the following Class I actions and the Class II actions listed in § 1940.312(d), special

attention will be given to avoiding a duplication of effort with other Department agencies, particularly SCS. For applications in which the applicant is receiving assistance from other agencies, technical assistance from SCS, for example, FmHA will request from that agency a copy of any applicable environmental review conducted by it and will adopt that review if the requirements of § 1940.324 of this subpart are met. FmHA will work closely with the other Federal Agencies to supplement previous or ongoing reviews whenever they cannot be readily adopted.

(1) Financial assistance for the installation or enlargement of irrigation facilities including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate at least 80 acres, but no more than 160 acres and provided that no wetlands are affected, in which case the application will fall under Class II as defined in § 1940.312 of this subpart:

(2) Financial assistance for the development of farm ponds or lakes of more than 5 acres in size, but no more than 10 acres, provided that no wetlands are affected. If wetlands are affected, the application will fall under Class II as defined in § 1940.312 of this subpart;

(3) Financial assistance for land-clearing operations encompassing over 15 acres, but no more than 35 acres, provided that no wetlands are affected. If wetlands are affected, the application will fall under Class II as defined in § 1940.312 of this subpart;

(4) Financial assistance for the construction of energy producing facilities designed for on-farm needs such as methane digestors and fuel alcohol production facilities;

(5) Financial assistance for the conversion of more than 160 acres of pasture to agricultural production, but no more than 320 acres, provided that in a conversion to agricultural production no wetlands are affected, in which case the application will fall under Class II as defined in § 1940.312 of this subpart;

(6) Financial assistance to grazing associations;

(7) Financial assistance for the use of a farm or portion of a farm for recreational purposes or nonfarm enterprises utilizing no more than 10 acres, provided that no wetlands are affected. If wetlands are affected, the application will fall under Class II as defined in § 1940.312 of this subpart; and

(8) Financial assistance for a livestock-holding facility or feedlot having a capacity of at least one-half of those listed in § 1940.312(c)(9) of this subpart. (If the facility is located near a populated area or could potentially violate a State water quality standard, it will be treated as a Class II action as required by § 1940.312(c)(10) of this subpart.)

(d) *General* (1) Any Federal action which is defined in § 1940.310 of this subpart as a categorical exclusion, but which is controversial for environmental reasons, or which is the subject of an environmental complaint raised by a government agency, interested group, or citizen;

(2) Loan-closing and servicing activities, transfers, assumptions, subordinations, construction management activities, and amendments and revisions to all approved actions listed either in this section or equivalent in size or type to such actions and that alter the purpose, operation, location or design of the project as originally approved;

(3) The lease or disposal of real property by FmHA which meets either the following criteria:

(i) The lease or disposal may result in a change in use of the real property in the reasonably foreseeable future, and such change is equivalent in magnitude or type to either the Class I actions defined in this section or the categorical exclusions defined in § 1940.310 of this subpart; or

(ii) The lease or disposal is controversial for environmental reasons, and the real property is equivalent in size or type to either the Class I actions defined in this section or the categorical exclusions defined in § 1940.310 of this subpart.

§ 1940.312 Environmental assessments for Class II actions.

Class II actions are basically those which exceed the thresholds established for Class I actions and, consequently, have the potential for resulting in more varied and substantial environmental impacts. A more detailed environmental assessment is, therefore, required for Class II actions in order to determine if the action requires an EIS. The format that will be used for completing this assessment is included as Exhibit H of this subpart. Further guidance on Class II actions is contained in § 1940.318 of this subpart. Class II actions are presumed to be major Federal actions and are defined as follows:

(a) *Housing assistance.* If either of the following actions is an expansion of a previously approved FmHA housing project, see § 1940.310(b)(8) of this subpart to determine if it meets the requirements for a categorical exclusion, otherwise it is a Class II action.

(1) Financial assistance for a multi-family housing project, including labor housing, which comprises more than 25 units; and

(2) Financial assistance for, or the approval of, a subdivision as well as the expansion of an existing one, which involves more than 25 lots.

(b) *Community and business programs and nonprofit national corporations loan and grant program.* (1) Class II actions are those which either do not meet the criteria for a categorical exclusion as stated in § 1940.311 of this subpart, or involve a livestock-holding facility or feedlot meeting the criteria for a Class II action as defined in paragraphs (c) (9) and (10) of this section; and

(2) Non-technical assistance grant or loan guarantee under nonprofit national corporation loan and grant program.

(c) *Farm programs.* In completing environmental assessments for the following actions, FmHA will first determine if the applicant has sought technical assistance from the Soil Conservation Service (SCS). If not, the applicant will be requested to do so. Subsequently, an approved loan will be structured so as to be consistent with any conservation plan developed with the application by SCS. However, the FmHA approving official need not include an element of the conservation plan within the loan agreement if that official determines that the element is both nonessential to the accomplishment of the plan's objectives and so costly as to prevent the borrower from being able to repay the loan. The SCS environmental review will be adopted by FmHA if the requirements of § 1940.324 of this subpart are met.

(1) Financial assistance for the installation or enlargement of irrigation facilities including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers either designed to irrigate more than 160 acres or that would serve any amount of acreage and affects a wetland;

(2) Financial assistance for the development of farm ponds or lakes either larger than 10 acres in size or for any smaller size that would affect a wetland;

(3) Financial assistance for land-clearing operations either encompassing more than 35 acres or affecting a wetland, if less than 35 acres is involved;

(4) Financial assistance for the construction or enlargement of aquaculture facilities;

(5) Financial assistance for the conversion of more than 320 acres of pasture to agricultural production or for any smaller conversion of pasture to

agricultural production that affects a wetland;

(6) Financial assistance to an individual farmer or an association of farmers for water control facilities such as dikes, detention reservoirs, stream channels, and ditches;

(7) Financial assistance for the use of a farm or portion of a farm for recreational purposes or nonfarm enterprises either utilizing more than 10 acres or affecting a wetland, if less than 10 acres is involved.

(8) Financial assistance for alteration of a wetland;

(9) Financial assistance for a livestock-holding facility or feedlot located in a sparsely populated farming area having a capacity as large or larger than one of the following capacities; 1,000 slaughter steers and heifers; 700 mature dairy cattle (whether milkers or dry cows); 2,500 swine; 10,000 sheep; 55,000 turkeys; 100,000 laying hens or broilers when facility has unlimited continuous flow watering systems; 30,00 laying hens or broilers when facility has liquid manure handling system; 500 horses; and 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine, and sheep; (The term "animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0) and

(10) Financial assistance for a livestock-holding facility or feedlot which either could potentially violate a State water quality standard or is located near a town or collection of rural homes which could be impacted by the facility, particularly with respect to noise, odor, visual, or transportation impacts and having a capacity of at least one-half of those listed in paragraph (c)(9) of this section.

(d) *General.* (1) Any action which meets the numerical criteria or other restriction for a Class I action contained in § 1940.311 of this subpart, but is controversial for environmental reasons. If the action is the subject of isolated environmental complaints or any questions or concerns that focus on a single impact, air quality, for example, the analysis of such a complaint or questions can be handled under the assessment format for a Class I action, Form FmHA 1940–21, as explained in § 1940.319 of this subpart. When several potential impacts are questioned, however, the assessment format (Exhibit H of this subpart) for a Class II action must be used to address these questions;

(2) Loan-closing and servicing activities, transfers, assumptions, subordinations, construction management activities and amendments and revisions to all approved actions listed either in this section or equivalent in size or type to such actions and that alter the purpose, operation, location, or design of the project as originally approved;

(3) The approval of plans and State Investment Strategies for Energy Impacted Areas, designated under section 601 Energy Impacted Area Development Assistance Program, as well as the applications for financial assistance (excluding the award of planning funds) for Energy Impact Areas;

(4) Proposals for legislation as defined in CEQ's regulations, § 1508.17;

(5) The issuance of regulations and instructions, as well as amendments to these, that described either the entities, proposals and activities eligible for FmHA financial assistance, or the manner in which such proposals and activities must be located, constructed, or implemented; and

(6) The lease or disposal of any real property by FmHA which either does not meet the criteria for a categorical exclusion as stated in § 1940.310(e)(6) of this subpart or a Class I action as stated in § 1940.311(d)(3) of this subpart.

§ 1940.313 Actions that normally require the preparation of an Environmental Impact Statement (EIS).

The environmental assessment process will be used, as defined in this subpart, to identify on a case-by-case basis those actions for which the preparation of an EIS is necessary. Given the variability of the types and locations of actions taken by FmHA, no groups or set of actions can be identified which in almost every case would require the preparation of an EIS.

§ 1940.314 Criteria for determining a significant environmental impact.

(a) EISs will be done for those Class I and Class II actions that are determined to have a significant impact on the quality of the human environment. The criteria for determining significant impacts are contained in § 1508.27 of the CEQ regulations.

(b) In utilizing the criteria for a significant impact, the cumulative impacts of other FmHA actions planned or recently approved in the proposal's area of environmental impact, other related or similarly located Federal actions, and non-federal related actions must be given consideration. This is particularly relevant for frequently recurring FmHA actions that on an individual basis may have relatively few environmental impacts but create a potential for significantly impacts on a cumulative basis. Housing assistance is one such example. Consequently, in reviewing proposals for subdivisions and multi-family housing sites, consideration must be given to the cumulative impacts of other federally assisted housing in the area, including FmHA's. The boundaries of the area to be considered should be based upon such factors as common utility or public service districts, common watersheds, and common commuting patterns to central employment or commercial areas. Additionally, the criteria for significant impacts utilized by the other involved housing agency(s), (VA and HUD, for example) must be reviewed when there is a potential for cumulative impacts. FmHA will consult with HUD for determining a significant impact whenever the total of HUD and FmHA housing units being planned within a common area of environmental impact exceeds the HUD thresholds listed in its NEPA regulations. (See 24 CFR Part 50.)

(c) Because the environmental values and functions of floodplains and wetlands are of critical importance to man, and because these areas are often extremely sensitive to man-induced disturbances, actions which affect wetlands and floodplains will be considered to have a significant environmental impact whenever one or more of the following criteria are met:

(1) The public health and safety are identifiably affected, that is, whenever the proposed action may affect any standards promulgated under the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.) or similar State authorities.

(2) The preservation of natural systems is identifiably affected, that is, whenever the proposed action or related activities may potentially create or induce changes in the existing habitat that may affect species diversity and stability (both flora and fauna and over the short and long term) or affect ecosystem productivity over the long term.

(3) The proposal, if located or carried out within a floodplain, poses a greater than normal risk for flood-caused loss of life or property. Examples of such actions include facilities which produce, use, or store highly volatile, toxic, or water-reactive materials or facilities which contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm

events (i.e., hospitals, nursing homes, schools).

§ 1940.315 Timing of the environmental review process.

(a) The FmHA office to which a potential applicant would go to seek program information and request application materials will notify the applicant of the major environmental requirements applicable to the type of assistance being sought. Emphasis should be placed on describing FmHA's natural resource management policies, the nature and purpose of the environmental impact assessment process, and the permissible actions of the applicant during this process.

(b) When a preapplication is either filed by the applicant or required by FmHA for a project not categorically excluded, the prospective applicant will be requested to complete Form FmHA 1940–20 at the time of the issuance of Form AD–622, "Notice of Preapplication Review Action," or other notice inviting an application. Form AD–622 will clearly inform the applicant that during the period of application review, the applicant is to take no actions or incur any obligations which would either limit the range of alternatives to be considered or which would have an adverse effect on the environment, and that satisfactory completion of the environmental review process must occur prior to the issuance of the letter of conditions for Community Programs and prior to loan approval for all other programs where a preapplication is used. FmHA must make its environmental reviews simultaneously with other loan processing actions so that they are an integral part of the loan process. Whenever the potential for a major adverse environmental impact is recognized, such as issues pertaining to floodplains, wetlands, endangered species, or the need for an EIS, priority consideration will be given to resolving this issue by appropriate FmHA staff. Loan processing need not cease during this resolution period, but loan processing actions will not be taken that might limit alternatives to be considered or whose outcome may be affected by the environmental review. The environmental impact review (whether a categorical exclusion, environmental assessment or EIS) must be completed prior to the issuance of the letter of conditions for Community Programs, prior to issuance of a conditional commitment for the Business and Industry and Farmer Program Guaranteed Loan Programs, and either prior to loan approval or obligation of funds, whichever occurs first, for all other programs where a preapplication is used. As an exception, however, whenever an application must be submitted to the National Office for concurrence or approval, the environmental review must be completed prior to and included in the submission to the National Office. The environmental impact review is not completed by FmHA until all applicable public notices and associated review periods have been completed and FmHA has taken any necessary action(s) to address comments received. The exception to the provisions of this paragraph is contained in § 1940.332 of this subpart.

(c) When a preapplication is not filed, the prospective applicant will be required to complete Form FmHA 1940–20 at the earliest possible time after FmHA is contacted for assistance but no later than when the application is filed with the appropriate FmHA office. (For the exception to this statement as regards Farm Programs' Class I actions, see § 1940.309(c) of this subpart.) FmHA will not consider the application to be complete, until FmHA staff have completed the environmental impact review, whether an assessment or EIS.

(d) For those applications that meet the requirements of a categorical exclusion, Form FmHA 1940–22 will be completed by FmHA as early as possible after receipt of the application. The application will not be considered complete until either the checklist is successfully completed or the need for any further environmental review is identified and completed.

§ 1940.316 Responsible officials for the environmental review process.

(a) *Approving official.* With the exception of paragraph (b)(2) of this section, the FmHA official responsible for executing the environmental impact determination and environmental findings for a Class I or Class II action will be the official having approval authority for the action as specified in Subpart A of Part 1901 of this chapter (available in any FmHA office).

(b) *State Office level.* (1) When the approval official is at the State Office level, the responsible Program Chief will have the responsibility for preparing the appropriate environmental review document. Whenever the Chief delegates this responsibility in accordance with § 1940.302(i) of this subpart, the Chief is responsible for reviewing the environmental document to ensure that it is adequate, that any deficiencies are corrected, and that it is signed by the preparer. When the document is satisfactory to the Chief, the Chief will sign it as the concurring official. When no delegation occurs, the Chief will sign as the preparer. If the environmental review document is either a Class I or Class II assessment, it must be provided to the SEC for review prior to being submitted to the approval official for final determinations. The SEC will review the assessment and provide recommendations to the approval official.

(2) Whenever the preparer and the SEC do not concur on either the adequacy of the assessment or the recommendations reached, the State Director, whether or not the approving official, will make the final decision on the matter or matters in disagreement. The State Director will also make the final decision whenever a State Office approving official disagrees with the joint recommendations of the preparer and the SEC. In either case, should the State Director desire, the matter will be forwarded to the National Office for resolution. The Program Support Staff will coordinate its resolution with the appropriate Assistant Administrator. Failure of these parties to resolve the matter will require a final decision by the Administrator. The State Director should also request the assistance of the National Office on actions that are too difficult to analyze at the State Office level.

(c) *District or County Office level.* The approval official for the action under review will be responsible for preparing the appropriate environmental review document and completing the environmental findings and impact determinations for Class I and Class II assessments, except in the circumstances outlined in paragraph (d) of this section. Whenever the approval official delegates the preparation of the environmental review in accordance with § 1940.302(i) of this subpart, the approval official must, after exercising the same responsibilities assigned to the Program Chief as indicated in paragraph (b)(1) of this section, sign the environmental review document as the concurring official. Both District Directors and County Supervisors will contact, as needed, the SEC for technical assistance in preparing specific environmental review documents.

(d) *Multi-level review.* When the approval official is at the County Office or District Office level but the action must be forwarded to the State Office for concurrence, the responsible Program Chief will perform the responsibilities of the concurring official with respect to the environmental review document and the SEC will review it, if a Class I or Class II assessment, in a similar manner as

indicated in paragraph (b) of this section. Responsibilities similar to those of the Program Chief will exist for the District Director when the County Supervisor forwards an action to the District Office for concurrence.

(e) *Reservation of authority.* The Administrator reserves the right to request a State Director to forward to the National Office for review and approval any action which is highly controversial for environmental reasons, involves the potential for unique or extremely complex environmental impacts or is of national, regional, or great local significance. State Directors have a similar right with respect to District and County Offices.

§ 1940.317 Methods for ensuring proper implementation of categorical exclusions.

(a) The use of categorical exclusions exempts properly defined actions or proposals from the review requirements of NEPA. It does not exempt proposals from the requirements of other environmental laws, regulations or Executive orders. Each proposal must be reviewed to determine the applicability of other environmental requirements. Extraordinary circumstances may cause an application to lose its categorical exclusion and require a Class I environmental assessment, as further specified in paragraph (e) of this section. Section 1508.4 of CEQ's regulations state that "any procedures under this section will provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." For example, an application for approval of a subdivision of four lots is normally excluded from a NEPA review (see § 1940.310(b)(5) of this subpart) but is not exempt from the requirements of Executive Order 11990, "Protection of Wetlands." In the processing of this application, FmHA must determine if a wetland is to be impacted. Assuming that the development of the proposed subdivision site necessitates the filling of 2 acres of wetland, such a potential wetland impact, under the requirements of § 1940.310(a) of this subpart, represents an extraordinary circumstance that causes the application to lose its categorical exclusion. An environmental assessment for a Class I action must then be initiated. This assessment serves the purposes of providing for the extraordinary circumstance by analyzing the degree of potential impact and the need for further study as well as completing and documenting FmHA's compliance with the Executive order. In this particular example, unless an alternative site could not be readily located and the approving official wanted to further pursue consideration of the application, the environmental assessment would determine that there was a significant impact and an EIS would be required. (See § 1940.314 of this subpart.)

(b) The approving official for an action will be responsible for ensuring that no action which requires an environmental assessment is processed as a categorical exclusion. In order to fulfill this responsibility, Form FmHA 1940–22 will be completed for those actions that would normally be categorically excluded and as further defined in paragraph (c) of this section. When Form FmHA 1940–22 must be prepared and the approving official delegates its preparation in accordance with § 1940.302(i) of this subpart, the approving official must sign the form as the concurring official. If that approving official must, prior to approval, forward the action to a District or State Office for review, a second concurrence must be executed by the Program Chief or District Director, as determined by the level of review being conducted. The checklist is filed with the application and serves as FmHA's documentation of compliance with the environmental laws, regulations and Executive Orders listed on the checklist. Whenever the preparer is within the State Office or is in the National Office, the FmHA office where the processing of the application was initiated is responsible for providing sufficient site and project information in order to complete the checklist.

(c) Form FmHA 1940–22 need not be completed for all categorical exclusions as defined in § 1940.310 of this subpart but only for those listed below. This list identifies the exclusions by their subject heading and paragraph number within § 1940.310 of this subpart. Additionally, for the housing assistance exclusion identified in § 1940.310(b)(8), for farm programs exclusions listed in § 1940.310(d)(2) and (3), and for community and business programs exclusions processed under § 1940.310(e)(2) of this subpart, a notation must be made in the docket materials or running record for the action by the processing official that the specific criteria of the applicable exclusion have been met for the action under review.

(1) Housing assistance—(b), (1), (2), (3), (5), (7), and (9);

(2) Community and Business Programs—(c) (1) and (2);

(3) Farm Programs—(d) (1) through (11);

(4) General exclusions—(e)(2), if action covered by Exhibit M of the subpart, and (6).

(d) In applying the definition of a categorical exclusion to a project activity, the preparer must consider the following two elements in addition to the specific project elements for which approval is requested.

(1) If the application represents one of several phases of a larger proposal, the application will undergo the environmental review required for the elements or the size of the total proposal. For example, if approval of a four-lot subdivision is requested and the application evidences or the reviewer knows that additional phases are planned and will culminate in a 16-lot subdivision, the categorical exclusion does not apply and an environmental assessment for a Class I action must be initiated and must address the impact of developing 16 lots. Should the applicant subsequently apply for approval of any of these additional phases, no further environmental assessment will be required as long as the original assessment still accurately reflects the environmental conditions found at the project site and the surrounding areas.

(2) If the application represents one segment of a larger project being funded by private parties or other government agencies, the size and elements of the entire project are used in determining the proper level of environmental assessment to be conducted by FmHA. If an environmental assessment is required, it will address the environmental impacts of the entire project.

(e) Under any one of the following circumstances, an action that is normally categorically excluded loses its classification as an exclusion and must be reviewed in the manner described in paragraph (g) of this section. The following listing corresponds to the list of land uses and environmental resources contained in part 2 of Form FmHA 1940–22.

(1) Wetlands—the proposed action:

(i) Would be located adjacent to a wetland or a wetland is within the project site, and

(ii) The action would affect the values and functions of the wetland by such means as converting, filling, draining, or directly discharging into it;

(2) Floodplains—the proposed action:

(i) Includes or involves an existing structure(s) located within a 100-year floodplain (500-year floodplain if critical action), or

(ii) Would be located within a 100-year floodplain (500-year floodplain if critical action) and would affect the

values and functions of the floodplain by such means as converting, dredging, or filling or clearing the natural vegetation;

(3) Wilderness (designated or proposed)—the proposed action:

(i) Would be located in a wilderness area, or

(ii) Would affect a wilderness area such as by being visible from the wilderness area;

(4) Wild or Scenic River (proposed or designated or identified in the Department of the Interior's nationwide Inventory)—the proposed action:

(i) Would be located within one-quarter mile of the banks of the river,

(ii) Involves withdrawing water from the river or discharging water to the river via a point source, or

(iii) Would be visible from the river;

(5) Historical and Archeological Sites (listed on the National Register of Historic Places or which may be eligible for listing)—the proposed action:

((i) Contains a historical or archeological site within the construction site, or

(ii) Would affect a historical or archeological site;

(6) Critical Habitat or Endangered/Threatened Species (listed or proposed)—the proposed action:

(i) Contain a critical habitat within the project site,

(ii) Is adjacent to a critical habitat, or

(iii) Would affect a critical habitat or endangered/threatened species;

(7) Coastal Barrier Included in Coastal Barrier Resources System—the proposed action would be located within the Coastal Barrier Resources System;

(8) Natural Landmark (listed on National Registry of Natural Landmarks)—the proposed action either:

(i) Contains a natural landmark within the project site, or

(ii) Would affect a natural landmark;

(9) Important Farmlands—the proposed action would convert important farmland to a nonagricultural use(s) except when the conversion would result from the construction of on-farm structures necessary for farm operations;

(10) Prime Forest Lands—the proposed action would convert prime forest land to another use(s), except when the conversion would result from the construction of on-farm structures necessary for farm operations;

(11) Prime Rangelands—the proposed action would convert prime rangeland to another use(s) except when the conversion would result from the construction of on-farm structures necessary for farm operations;

(12) Approved Coastal Zone Management Area—the proposed action would be located within such area and no agreement exists with the responsible State agency obviating the need for a consistency determination for the type of action under consideration;

(13) Sole Source Aquifer Recharge Area—the proposed action would be located within such area and no agreement exists with the Environmental Protection Agency (EPA) obviating the need for EPA's review of the type of action under consideration; and

(14) State Water Quality Standard—the proposed action would impair a water quality standard, including designated and/or existing beneficial uses, or would not meet applicable antidegradation requirements for point or nonpoint sources.

(f) From the above paragraph (e), it should be noted that the location within the project site of any of the land uses and environmental resources identified in paragraphs (e) (1), (2), (9), (10), (11), (12), and (13) of this section is not sufficient for an action to lose its categorical exclusion. Rather, the land use or resource must be affected in the case of paragraphs (e) (1), (2), (9), (10), and (11) of this section. For paragraphs (e) (12), (13) and (14) of this section, further review and consultation can be avoided by written agreement with the responsible agency detailing the types of actions not requiring interagency review.

(g) Whenever a categorical exclusion loses its status as an exclusion for any of the reasons stated in paragraph (e) of this section, the environmental impacts of the action must be reviewed through the preparation of a Class I assessment, Form FmHA 1940–21. Not all of the procedural requirements for a Class I assessment apply in this limited case, however. The following exemptions exists:

(1) No public notice provisions of this subpart apply.

(2) The applicant does not complete Form FmHA 1940–20.

(3) The action does not require a Class II assessment should more than one important land resources be affected.

§1940.318 Completing environmental assessments for Class II actions.

(a) The first step for the preparer (as defined in §§ 1940.302(i) and 1940.316 of this subpart) is to examine Form FmHA 1940–20 submitted by the applicant to determine if it is complete, consistent, fully responsive to the items, signed, and dated. If not, it will be returned to the applicant with a request for necessary clarifications or additional data.

(b) Once adequate data has been obtained, the assessment will be initiated in the format and manner described in Exhibit H of this subpart. In completing the assessment, appropriate experts from State and Federal agencies, universities, local and private groups will be contacted as necessary for their views. In so doing, the preparer should communicate with these agencies or parties in the most appropriate and expeditious manner possible, depending upon the seriousness of the potential impacts and the need for formal documentation. Appropriate experts must be contacted whenever required by a specific provision of this subpart or whenever the preparer does not have sufficient data or expertise available within FmHA to adequately assess the degree of a potential impact or the need for avoidance or mitigation. Comments from an expert must be obtained in writing whenever required by a specific provision of this subpart or the potential environmental impact is either controversial, complex, major, or apparently major. When correspondence is exchanged, it will be appended to the assessment. Oral discussions should be documented in the manner indicated in Exhibit H of this subpart. On the other hand, there is no need for the preparer to seek expert views outside of the Agency when there is no specific requirement to do so and the preparer has sufficient expertise available within FmHA to assess the degree of the potential impact and the need for avoidance or mitigation.

(c) At the earliest possible stage in the assessment process, the preparer will identify the Federal, State, and local parties which are carrying out related activities, either planned or under way. Discussions with the applicant and FmHA staff familiar with the project area should assist in this identification effort. If there is a potential for cumulative impacts, the preparer will consult with the involved agencies to determine the nature, timing and results of their environmental analysis. These consultations will be documented in the assessment and considered or adopted when making the environmental impact determination. (See § 1940.324 of this subpart concerning adoption of assessments.) If it is determined that the cumulative impacts are significant, the preparer will further contact the involved Federal agencies and attempt to determine the lead Federal Agency as discussed in §§ 1940.320(b) and 1940.326 of this subpart.

(d) Consultations similar to those discussed in paragraph (c) of this section will also be undertaken with

those Federal and State agencies which are directly involved in the FmHA action, either through the provision of financial assistance or the review and approval of a necessary plan or permit. For example, a construction permit from the U.S. Army Corps of Engineers may be required for a project. In such an instance, the environmental assessment cannot be completed until the preparer has either reviewed the other Agency's completed environmental analysis or consulted with the other Agency and is reasonably sure of the scope, content, and expected environmental impact determination of the forthcoming analysis and has so documented for the FmHA assessment this understanding. If the other Agency believes that the project will have a significant impact, a joint or lead impact statement will be prepared. If the other Agency does not believe a significant impact will occur, the preparer will consider this finding and its supporting analysis in completing the FmHA environmental impact determination. Guidance in adopting an environmental assessment prepared by another Federal Agency is provided in § 1940.324 of this subpart.

(e) For actions having a variety of complex or interrelated impacts that are difficult for the preparer to assess, consideration should be given to holding a public meeting in the manner described in § 1940.331(c) of this subpart. Such meetings should not be assumed as being limited to projects for which EISs are being prepared. Such a meeting can serve a useful purpose in better defining and identifying complex impacts, as well as locating expertise with respect to them. The results of a public meeting and the follow-up from it can also serve as a valuable tool in reaching an early understanding on the potential need for an EIS. When identified impacts are difficult to quantify (such as odor and visual and community impacts) or controversial, a public information meeting should be held near the project site and the local area's concern about it. Whenever held, it should be announced and organized in the manner described in § 1940.331(c). However, a transcript of the meeting need not be prepared, but the preparer will make detailed notes for incorporation in the assessment. (See § 1940.331(c) of this subpart.)

(f) Throughout this assessment process, the preparer will keep in mind the criteria for determining a significant environmental impact. If at any time in this process it is determined that a significant impact would result, the preparer will so notify the approving official. Those actions specified in § 1940.320 of this subpart will then be initiated, unless the approving official disagrees with the preparer's recommended determination, in which case further review of the determination may be required as explained in § 1940.316 (b), (d) and (e) of this subpart. As soon as possible after the need for an EIS is determined, the applicant will also be advised of this in writing, as well as reinformed of the limitations on its actions during the period that the EIS is being completed. (See § 1940.309(e) of this subpart.) The applicant's failure to comply with these limitations will be considered as grounds for postponement of further consideration of the application until such problem is alleviated.

(g) Similarly, throughout the assessment process, consideration will be given to incorporating mechanisms into the proposed action for reducing, mitigating, or avoiding adverse impacts. Examples of such mechanisms which are commonly referred to as mitigation measures include the deletion, relocation, redesign or other modifications of the project elements; the dedication of environmentally sensitive areas which would otherwise be adversely affected by the action or its indirect impacts; soil erosion and sedimentation plans to control runoff during land-disturbing activities; the establishment of vegetative buffer zones between project sites and adjacent land uses; protective measures recommended by environmental and conservation agencies, including but not limited to interstate, international, Federal, State, area-wide, and local agencies having jurisdiction or special expertise regarding the action's impacts; and zoning. Mitigation measures must be tailored to fit the specific needs of the action, and they must also be practical and enforceable. Mitigation measures which will be taken must be documented in the assessment (Item XIX of Exhibit H of this subpart), and include an analysis of their environmental impacts and potential effectiveness and placed in the offer of financial assistance as special conditions or in the implementation requirements when the action does not involve financial assistance. These measures will be consistent with the basic goal of the proposed action and developed in consultation with the appropriate program office.

(h) As part of the assessment process, the preparer will initiate the consultation and compliance requirements for the environmental laws, regulations, and Executive orders specified in the assessment format. The assessment cannot be completed until compliance with these laws and regulations is appropriately documented. The project's failure to meet the requirements specified in Item 10b of Form FmHA 1940–21 for a Class I action and Item XXIb of Exhibit H of this subpart for a Class II action will result in postponement of further consideration of the application until such problem is alleviated.

(i) When the preparer has completed the assessment, the related materials and correspondence utilized will be attached. The preparer will then either recommend to the approving official that the action has the potential for significantly affecting the quality of the human environment or will recommend that the action does not have this potential and, therefore, the preparation of an EIS is not necessary. (Item 10a of Form FmHA 1940–21 for Class I action and item XXIa of Exhibit H of this subpart for a Class II action.) The recommended environmental findings will also be completed. (Item 10b of Form FmHA 1940–21 for a Class I action and Item XXIb of Exhibit H of this subpart for a Class II action.) In those instances specified in § 1940.316, the assessment will then be forwarded to the concurring official and, as required, to the SEC for review. The concurring official will coordinate, as necessary, with the preparer any questions, concerns or clarifications and complete and document the review prior to the assessment being submitted to the approving official or the SEC. The SEC will coordinate with the concurring official in a similar fashion whenever the latter's review is required.

(j) The approving official will review the environmental file and recommendations. The official will then execute the environmental impact determination and findings. If the conclusions reached are that there is no significant impact and there is compliance with the listed requirements, the format contained in Exhibit I of this subpart will be used. If a significant impact is determined, the steps specified in § 1940.320 of this subpart will be initiated for the preparation of the EIS. If a determination is made that the proposed action does not comply with the environmental requirements that are explained in this subpart and listed in Item 10b of Form FmHA 1940–21 for a Class I action or Item XXIb of Exhibit H of this subpart for a Class II action and there are no feasible alternatives (practicable alternatives when required by specific provisions of this subpart), modifications, or mitigation measures which could comply, the action will be

denied or disapproved. If the approving official's determination or findings differ from the recommendations of the preparer, concurring official or the SEC, this difference will be addressed in the manner specified in § 1940.316 of this subpart.

(k) When there is no need for further review as discussed in paragraph (j) of this section and findings of compliance and a determination of no significant impact are reached, the assessment process is conditionally concluded. To conclude the assessment, the applicant will then be requested to provide public notification of these results as indicated in §1940.331(b)(3) of this subpart. The approving official will not approve the pending application for at least 15 days from the date the notification is last published. If comments are received as a result of the notification, they will be included in the environmental assessment and considered. Any necessary changes resulting from this consideration will be made in the assessment, impact determinations, and findings. If the changes require further implementation steps, such as the preparation of an EIS, they will be undertaken. If there are no changes in the findings and determination steps, such as the preparation of an EIS, they will be undertaken. If there are no changes in the findings and determinations, the approving official may continue to process the application. The environmental documents, i.e., the assessment, related correspondence, Form FmHA 1940–20, and the finding of no significant impact will be included with the approval documents which are assembled for review and clearance within the approving office.

(l) Whenever changes are made to an action or comments or new or changed information relating to the action's potential environmental effects is received after the assessment is completed but prior to the action's approval, such change, comment, or information will be evaluated by the approving official to determine the impact on the completed assessment. Whenever the contents or findings of that assessment are affected, the assessment process for that action will be revised and any other related requirement of this subpart met. Changes to an action in terms of its location(s), design, purpose, or operation will normally require, at a minimum, modification of the original assessment to reflect such change(s) and the associated environmental impacts.

(m) When comments are received after the action has been approved, the approving official will consider the environmental importance of the comments and the necessity and ability to amend both the action, with respect to the issue raised and the action's stage of implementation. The National Office may be consulted to assist in determining whether there are any remaining environmental requirements which need to be met under the specific circumstances. A similar procedure will be followed when new or changed information is received after project approval. Amendments and revisions to actions will be handled as specified in §§1940.310 through 1940.313 of this subpart.

§1940.319 Completing environmental assessments for Class I actions.

(a) As stated in this subpart, a main purpose of Form FmHA 1940–21, is to provide a mechanism for reviewing actions with normally minimal impacts and for documenting a finding of no significant impact, as well as compliance determinations for other applicable environmental laws, regulations and policies. The second major purpose is to serve as a screening tool for identifying those Class I actions which have more than minimal impacts and which, therefore, require a more detailed environmental review.

(b) The approach to reviewing a Class I action under the assessment format of Form FmHA 1940–21 is exactly the same as for a Class II action. The preparer (as defined in §§1940.302(i) and 1940.316 of this subpart) must become familiar with the elements of the action, the nature of the environment to be affected, the relationship to any other Federal actions or related nonfederal actions, and the applicable environmental laws and regulations.

(c) The data submission requirements placed on the applicant for a Class I action are not as extensive as for a Class II action. The requirements are limited to completing the face of Form FmHA 1940–20, as well as categories (1), (2), (13), (15), (16), and (17) of Item 1b of the FMI, whenver a previously completed environmental analysis covering these categories is not available. Should it later be determined that the magnitude of the Class I action's impact warrants a more detailed assessment, the applicant will be required to submit the remaining items of the data request. Additionally, the circumstances under which FmHA does not require the submission of Form FmHA 1940–20 by an applicant whose proposed action requires a Class I assessment are specified in §1940.317(f) of this subpart.

(d) The preparer must ensure that the data received from the applicant is complete, consistent, signed and dated before initiating the assessment. If it is not, the applicant will be required to make the necessary changes and clarifications. The reviewer must also ensure that the application properly meets the definition of a Class I action. Phased or segmented projects, as discussed in §1940.317(d) of this subpart, will be identified and the elements and the size of the entire project used to classify the action.

(e) An important element of this assessment is to determine if the action affects an environmental resource which is the subject of a special Federal consultation or coordination requirement. Such resources are listed in the assessment format, Form FmHA 1940–21, and include wetlands, floodplains, and historic properties, for example. If one of the listed resources is to be affected, the preparer must demonstrate the required compliance by accomplishing the review and coordination requirements for that resource. Documentation of the steps taken and coordination achieved will be attached. However, if more than one listed resource is to be affected, this will be viewed as the action having more than minimal impacts and the environmental assessment format for a Class II action will be initiated except if the action under review is an application for a Housing Preservation Grant.

(f) Similarly in completing item 3, General Impacts of Form FmHA 1940–21, the assessment format for a Class II action must be initiated if more than one category of impacts cannot be checked as minimal. If there is a single category which needs analysis, this can be accomplished by attaching an appropriate exhibit addressing the questions and issues for that impact, as specified in the environmental assessment format for a Class II action. See § 1940.311(b)(1) of this subpart for when an attached discussion of water quality impacts is mandatory.

(g) The comments of State, regional, and local agencies obtained through applicable permit reviews or the implementation of Executive Order 12372, Intergovernmental Review of Federal Programs, will be incorported into the assessment, if this review applies to the action. The receipt of negative comments of an environmental nature will warrant the initiation of a more detailed assessment under the format for a Class II action (Exhibit H of this subpart). Also, the issue of controversy must be addressed, and if the action is controversial for environmental reasons, the

environmental assessment format for a Class II action (Exhibit H of this subpart) will be completed. However, if the action is the subject of isolated environmental complaints or any questions or concerns that focus on a single impact, air quality, for example, the analysis of such complaints or questions can be handled under the assessment format for a Class I action. This analysis will then be provided by the approving official to the party or parties which raised the matter with FmHA. When several potential impacts are questioned, however, the more detailed assessment format will be accomplished to address these questions.

(h) The potential cumulative impacts of this action, particularly as it relates to other FmHA actions recently approved in the area or planned, will be analyzed. If the cumulative impact is not minimal and, for example, cumulatively exceeds the criteria and threshholds discussed in paragraphs (e), (f) and (g) of this section, the environmental assessment format for a Class II action will be completed. The actions of other Federal agencies and related nonfederal actions must also be assessed on this basis. When there is a Federal action involved, the environmental review conducted by that Agency will be requested and, if it sufficiently addresses the cumulative impact, can be utilized by the preparer as the FmHA assessment, assuming the impacts are not significant. (See § 1940.324 of this subpart.) If the other Agency is doing or planning an EIS, the preparer will inform that Agency of our action and request to be a cooperating agency.

(i) The preparer will have the responsibility of initiating the assessment format for a Class II action (Exhibit H of this subpart) whenever the need is identified. This should be done as early as possible in the review process. The preparer should not complete the assessment for a Class I action when it is obvious that the assessment format for a Class II action will be needed. The preparer will simply start the more detailed assessment and inform the applicant of the additional data requirements.

(j) Exhibit I will be completed by the approval official in the same instances for a Class I assessment as for a Class II assessment. However, public notification of FmHA's finding of no significant environmental impact will not be required for a Class I assessment. Also, special provisions for completing a Class I assessment for an action that is normally categorically excluded but loses its classification as an exclusion are contained in § 1940.317(g) of this subpart. With the exception of the two preceding sentences, all other procedural requirements of the assessment process, such as the timing of the assessment and the limitations on the applicant's actions, apply to a Class I assessment.

§ 1940.320 Preparing EISs.

(a) *Responsibility.* Whenever the District Director or County Supervisor determines there is a need to prepare an EIS, the State Director will be notified. The EIS will be prepared at the State Office and the State Director will assume the responsibility for preparing it. The State will in turn notify the Administrator of these EISs, as well as those needed EISs identified by a State Office review. EISs will be prepared according to this section. The State Director will be responsible for actions initiated within the State. However, in so doing, the State Director will consult with the National Office to determine that the document meets the requirements of NEPA. State Directors will be responsible for issuing such EISs. However, unless delegated authority by the Administrator, based upon a demonstrated capability and experience in preparing EISs, the State Director will not issue the EIS until reviewed and approved by the Administrator.

(b) *Organizing the EIS process.* Prior to initiating the scoping process outlined below, the preparer of the EIS will take several organizational steps to ensure that the EIS is properly coordinated and completed as efficiently as possible. To accomplish this, the below-listed parties need to be identified in advance; the list should be expanded as familiarity with the project increases. Those parties falling within the first four groups should be formally requested to serve as cooperating agencies. If any of these agencies appear to be a more appropriate lead agency than FmHA (using the criteria contained in section 1501.5(c) of the CEQ regulations), consultations should be initiated with that agency to determine the lead agency. If difficulties arise in completing this determination, the National Office will be consulted for assistance. All of the parties identified below will be sent a copy of the notice of intent to prepare the EIS and an invitation to the scoping meeting, as discussed in paragraph (c) of this section.

(1) All Federal and State agencies that are being requested to provide financial assistance for the project or related projects;

(2) All Federal agencies that must provide a permit for the project should it be approved;

(3) All Federal agencies that have a specific environmental expertise in major environmental issues identified to date;

(4) The Agency responsible for the implementation of the State's environmental impact analysis requirement, if one has been enacted or promulgated by the State;

(5) All Federal, State, and local agencies that will be requested to comment on the draft EIS;

(6) All individuals and organizations that have expressed an interest in the project; and

(7) National, regional, or local environmental organizations whose particular area of interest corresponds to the major impacts identified to date.

(c) *Scoping process.* As soon as possible after a decision has been made to prepare an EIS, the following process will be initiated by the preparer for identifying the major issues to be addressed in the EIS and for developing a coordinated government approach to the preparation and review of the EIS.

(1) The first step in this process will be the publication of a notice of intent to prepare the EIS. The notice will indicate that an EIS will be prepared and will briefly describe the proposed action and possible alternatives; state the name, address, and phone number of the preparer, indicating that this person can answer questions about the proposed action and the EIS; list any cooperating agencies, and include the date and time of the scoping meeting. If the latter information is not known at the time the notice of intent is prepared, it will be incorporated into a special notice, when available, and published and distributed in the same manner as the notice of intent. It will be the responsibility of the preparer of the EIS to inform the National Office of the need to publish a notice of intent which will coordinate the publication of the notice in the **Federal Register.** For requirements relating to the timing the publication of the notice of intent within the project area, as well as the applicant's responsibilities for the notice, see § 1940.331(b) of this subpart.

(2) A scoping meeting will be held. To the extent possible, the scoping meeting should be integrated with any other early planning meetings of the Agency or other involved agencies. The scoping meeting will be chaired by the preparer of the EIS and will be organized to accomplish the following major purposes (as well as other purposes listed in § 1501.7 of the CEQ regulations).

(i) Invite the participation of affected Federal, State, and local agencies, any

affected Indian Tribe, the proponent of the action, and any interested parties including those who may disagree with the action for environmental reasons;

(ii) Determine the scope and the significant issues to be analyzed in depth in the EIS;

(iii) Identify and eliminate, from detailed study, the issues which are not significant or which have been covered by prior environmental review, narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere;

(iv) Allocate assignments for preparation of the EIS among the lead and cooperating agencies, with the lead Agency retaining responsibility for the statement;

(v) Indicate any public environmental assessments and other EISs which are being or will be prepared that are related to, but are not part of, the scope of the impact statement under consideration;

(vi) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement; and

(vii) Indicate the relationship between the timing of the preparation of environmental analyses and the Agency's tentative planning and decisionmaking schedule;

(3) Minutes of the scoping meeting, including the major points discussed and decisions made, will be prepared and retained by the preparer of the EIS as part of the environmental file. The preparer will offer, during the scoping meeting, to send copies of the minutes to any interested party upon written request.

(d) *Interdisciplinary approach.* The EIS will be prepared using an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts. The disciplines of the preparers will be appropriate to address the potential environmental impact associated with the project. This can be accomplished both in the information collection stage and the analysis stage by communication and coordination with environmental experts at local, State and Federal agencies (particularly cooperating agencies) and universities near the project site. When needed information or expertise is not readily available, these needs should be met through procurement contracts with qualified consulting firms. Consulting firms can be utilized to prepare the entire EIS or portions of it as specified in § 1940.336 of this subpart.

(e) *Content and format of EIS.* The EIS will be prepared in the format and manner described in Part 1502 of the CEQ regulations. There is a great deal of specific guidance in that Part which will not be repeated here.

(f) *Circulation of the EIS.* FmHA will circulate for review and comment the draft and final EIS as broadly as possible. Therefore, it will be necessary for the preparer to have sufficient copies printed or reproduced for this purpose. In identifying the parties to receive a draft EIS, the same process should be utilized as is employed for inviting participants to the scoping meeting. (See paragraph (b) of this section.) Special emphasis should be given to transmitting the draft to those agencies with jurisdiction or expertise on the proposed action's major impacts, as well as those parties who have expressed an interest in the action. The final EIS will be provided to all parties that commented on the draft EIS.

(g) *Filing of the EIS.* The Deputy Administrator for Program Operations or any State Director that has been delegated the authority to prepare an EIS must file the EIS with EPA in accordance with § 1506.9 of the CEQ regulations. The official filing date for an EIS is the day that it is received by EPA's Office of Federal Activities. Filing of the EIS cannot occur until copies of the EIS have been transmitted to commenting agencies and made available to the public. Transmittal of the EIS must, therefore, occur either prior to its being filed with EPA (received by EPA) or no later than close of business of the same day that it is filed.

(h) *Public information meetings.* A public information meeting, as specified in § 1940.331(c)(1) of this subpart, will be held near the project site to discuss and receive comments on the draft EIS.

(i) *Response to comments.* The preparer of the EIS will respond to comments on the draft EIS as required by § 1503.4 of the CEQ regulations. The major and most frequently raised issues during the public information meeting will also be identified and addressed.

(j) *Timing of review.* The preparer of the EIS will be responsible for ensuring that the timing requirements for FmHA actions and the review periods for draft and final EISs are fully met (§ 1506.10 of CEQ regulations). Prescribed review periods are calculated from the date that EPA's Office of Federal activities publishes in the **Federal Register** a notice of availability for the EIS. Any request to reduce a prescribed review period will be made to EPA in accordance with § 1506.10(d) of the CEQ regulations.

§ 1940.321 Use of completed EIS.

(a) The final EIS will be a major factor in the Agency's final decision. Agency staff making recommendations on the action and the approving official will be familiar with the contents of the EIS and its conclusions and will consider these in formulating their respective positions with respect to the action. The final EIS and all comments received on the draft will accompany the proposal through the FmHA final clearance process. The alternatives considered by the approving official will be those addressed in the final EIS.

(b) As part of this review process, the preparer of the EIS will complete the recommendations listed in Item XXIb and c of Exhibit H of this subpart and provide them to the approving official prior to a final decision.

§ 1940.322 Record of decision.

Upon completion of the EIS and its review within FmHA and before any action is taken on the decision reached on the proposal, the approving official will prepare, in consultation with the preparer of the EIS, a concise record of the decision which will be available for public review. The record will:

(a) State the decision reached;

(b) Certify that the timing requirements for the EIS process have been fully met;

(c) Identify all alternatives considered in reaching the decision specifying the alternative or alternatives that were considered to be environmentally preferable and discuss the relevant factors (environmental, economic, technical, statutory mission and, if applicable, national policy) that were considered in the decision;

(d) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why not; and

(e) If any mitigation measures have been adopted, specify the monitoring and enforcement program that will be utilized.

§ 1940.323 Preparing supplements to EIS's.

(a) Either the State Office or the National Office, as appropriate, will prepare supplements to either draft or final EIS's if:

(1) A substantial change or changes occur in the proposed action and such changes are relevant to the

environmental impacts previously presented; and

(2) Significant new circumstances or information arise which are relevant to environmental concerns and bear on the proposed action or its impacts.

(b) If the preparer of the draft or final EIS determines that the changes or new circumstances referenced in paragraph (a) of this section do not require the preparation of a supplemental EIS, the preparer will complete an environmental assessment for a Class II action which will document the reasons for this determination.

(c) The preparer will be responsible for advising the approving official of the need for a supplement. The latter will make the Agency's formal determination in a manner consistent with § 1940.316 of this subpart.

(d) All of the requirements of this subpart that apply to the completion of an initial EIS apply to the completion of a supplement with the exception of the scoping process, which is optional. Additionally, if the approving official believes that there is a need for expedited or special procedures in the completion of a supplement, the approval of CEQ must first be obtained by the Administrator for any alternative procedures. The final supplement will be included in the project file or docket and used in the Agency's decisionmaking process in the same manner as a final EIS. (See § 1940.321 of this subpart and in particular subparagraphs (f), (g), and (j) of that section as well as § 1502.9(c)(4) of the CEQ regulations for associated circulation, filing, and timing requirements.)

§ 1940.324 Adoption of EIS or environmental assessment prepared by other Federal Agency.

(a) FmHA may adopt an EIS or portion thereof prepared by another Federal Agency after completion if:

(1) An independent review of the document is conducted by the preparer of the FmHA environmental review and it is concluded that the document meets the requirements of this subpart; and

(2) If the actions covered in the EIS are substantially the same as those proposed by FmHA and the environmental conditions in the project area have not substantially changed since its publication, FmHA will recirculate the EIS as a "final" and so notify the public as specified in § 1940.331(b) of this subpart. The final EIS will contain an appropriate explanation of the FmHA involvement and will be sent to all parties who would typically receive a draft EIS published by FmHA. If there are differences between the actions or the environmental conditions as discussed in the original EIS, that EIS will be updated to cover these differences and recirculated as a draft EIS with the public so notified. From that point, it will be reviewed and processed in the same manner as any other FmHA EIS. For circulation, filing, and timing requirements, see paragraphs (f), (g), and (j) of § 1940.320 of this subpart as well as §§ 1506.3(c), 1506.9, and 1506.10 of the CEQ regulations.

(b) If the adopted EIS is not final within the agency that prepared it, or if the action it assesses is the subject of a referral under Part 1504 of the CEQ regulations, or if the statement's adequacy is the subject of a judicial action which is not final, FmHA must so specify and provide an explanation in the recirculated EIS.

(c) After recirculation (whether as a draft or final), the EIS will be reviewed and processed in the same manner as any other FmHA EIS.

(d) FmHA may also adopt all or part of environmental assessments or environmental reviews prepared by other Federal agencies. In this case, only paragraph (a)(1) of this section applies. If the requirements of that paragraph can be met except for the fact that the Federal agency whose assessment is to be adopted has no preliminary public notice requirements similar to FmHA's (See § 1940.331(b)(4) of this subpart), the assessment can be adopted without FmHA publishing a preliminary public notice. Additionally, when all of another Federal agency's assessment is adopted, without supplementation, for a Class II action and a finding of no significant environmental impact (Exhibit I of this subpart) is reached by the proper FmHA official, no public notification of FmHA's finding of no significant environmental impact is required if:

(1) The other Federal agency or its designee published a similar finding in a newspaper of general circulation in the vicinity of the proposed action;

(2) The other Federal agency's or its designee's public notice clearly described the action subject to the FmHA environmental review; and

(3) The other Federal agency's or its designee's public notice was published less than eighteen months from the date FmHA adopted the assessment.

§ 1940.325 FmHA as a cooperating Agency.

(a) FmHA will serve as a cooperating Agency when requested to do so by the lead Agency for an action in which FmHA is directly involved or for an action which is directly related to a proposed FmHA action. An example of the latter would be a request from EPA to participate in an EIS covering its sewage treatment plans for a community, as well as the community's water system plans pending before FmHA. A memorandum of understanding or other written correspondence will be developed with the lead agency in order to define FmHA's role as the cooperating agency. The State Director will coordinate FmHA's participation as a cooperating Agency for an action at the State Office level. The Administrator will have the same responsibility at the National Office level.

(b) When requested to be a cooperating Agency on a basis other than that discussed above, the State Director will consider the expertise which FmHA could add to the particular EIS process in question and existing workload commitments. If a decision is made on either of these two bases not to participate as a cooperating Agency, a copy of the letter signed by the State Director or Administrator and so informing the lead Agency will be sent to CEQ.

(c) As a cooperating Agency, FmHA will participate in the development and implementation of the scoping process. If requested by the lead Agency, provide the lead Agency with staff support and descriptive materials with respect to the analyses of the FmHA portion of the action(s) to be covered, review and comment on all preliminary draft materials prior to their circulation for public review and comment, and attend and participate in public meetings called by the lead Agency concerning the EIS.

(d) The State Director will request the lead Agency to fully identify the Agency's involvement in all public documents and notifications.

(e) FmHA will use the EIS as its own as long as FmHA's comments and concerns are adequately addressed by the lead Agency and the final EIS is considered to meet the requirements of this subpart. It will be the responsibility of the preparer of the FmHA environmental review document to formally advise the approving official on these two points. The failure of the lead Agency's EIS to meet either of these stipulations will require FmHA to follow the steps outlined in § 1940.324 of this subpart prior to the approving official's decision on the FmHA action.

§ 1940.326 FmHA as a lead Agency.

(a) When other Federal agencies are involved in an FmHA action or related actions that require the preparation of an EIS, the preparer will consult with these agencies to determine a lead Agency for preparing the EIS. The

criteria for making this determination will be those contained in § 1505.5 of the CEQ regulations. If there is a failure to reach a determination within a reasonably short time after consultation is initiated, the National Office will be contacted. The assistance of CEQ will then be requested by the Administrator in order to conclude the determination of a lead Agency.

(b) When acting as lead Agency, the FmHA preparer will request other Federal and State agencies to serve as cooperating agencies on the basis of the guidance provided in § 1940.320(b) of this subpart. A memorandum of understanding or other written correspondence should be developed with a cooperating agency in order to define that agency's role in the preparation of the EIS.

§ 1940.327 Tiering.

To the extent possible, FmHA may consider the concept of tiering in the preparation of environmental assessments and EISs. Tiering refers to the coverage of general matters in broader environmental impact statements, such as one done for a national program or regulation, with subsequent narrower statements or environmental analyses incorporating by reference the broader matters and concentrating on the issues specific to the action under consideration. Tiering can be used when the sequence of analysis is from the program level to site-specific actions taken under that program or from an initial EIS to a supplement which discusses the issues requiring supplementation.

§ 1940.328 State Environmental Policy Acts.

(a) Numerous States have enacted environmental policy acts or regulations similar to NEPA, hereafter referred to as State NEPA's. It is important that FmHA staff have an understanding of which States have such requirements and how they apply to applicant's proposals. It will be the responsibility of each State Director to determine the applicable State requirements and to establish a working relationship with the State personnel responsible for their implementation.

(b) In processing projects located within States having State NEPA's, the preparer of the FmHA assessment will determine as early as possible in the assessment process whether the project falls under the requirements of the State NEPA. If it does, one of the following cases will exist and the appropriate actions specified will be taken.

(1) The applicant has complied with the State's NEPA, and it was determined under the State's requirements that the proposed project would not result in sufficient potential impacts to warrant the preparation of an impact statement or other detailed environmental report required by the State NEPA. This finding or conclusion by the State will be considered in the FmHA's review, and any supporting information used by the State will be requested. However, the State's finding can never be the total basis for FmHA's environmental impact determination. An independent and thorough review in accordance with the requirements of this subpart must be conducted by the preparer.

(2) The applicant has complied with the State NEPA, and it was determined under its implementing guidelines that a significant impact will result. This fact will be given great weight in the Agency's environmental determination. However, the State's definition of significant environmental impact may encompass a much lower threshold of impacts compared to FmHA's. In such a case, if the preparer does not believe that a significant impact will result under Agency guidelines for determining significant impacts, the environmental assessment will be prepared and include a detailed discussion with supporting information as to why the environmental reviewer's recommendation differs from that of the State's. However, the assessment cannot be completed until the State's impact statement requirements have been fulfilled by the applicant and the resulting impact statement has been reviewed by the preparer. An environmental impact determination will then be executed based upon the assessment and the statement.

(c) It should be emphasized that at no time does the completion of an impact statement under the requirements of a State NEPA obviate the requirement for FmHA to prepare an impact statement. Consequently, as soon as it is clear to the preparer that the Agency will have to prepare a statement, every attempt should be made to accomplish the statement simultaneously with the State's. Coordination with State personnel is necessary so that data and expertise can be shared. In this manner, duplication of effort and the review periods for the separate statements can be minimized. This process clearly requires a close working relationship with the appropriate State personnel.

§ 1940.329 Commenting on other Agencies' EIS's.

(a) State Directors are authorized to comment directly on EIS's prepared by other Federal agencies. In so doing, comments should be as specific as possible. Any recommendations for the development of additional information or analyses should indicate why there is a need for the material.

(b) Comments should concentrate on those matters of primary importance to FmHA and on areas of Agency expertise, such as rural planning and development. Any potential conflicts with FmHA programs, plans, or actions should be clearly identified. Special attention should be given to the relationship of the alternatives under study to the State Office's natural resource management guide and the objectives of the Department's land use regulation (Exhibit A of this subpart). Copies of comments addressing land use questions will be provided to the appropriate chairman of the USDA State-level committee dealing with land use matters.

(c) Whenever a State Director has serious concerns over the acceptability of the anticipated environmental impacts, the State Director will notify the Administrator.

§ 1940.330 Monitoring.

(a) FmHA staff who normally have responsibility for the postapproval inspection and monitoring of approved projects will ensure that those measures which were identified in the preapproval stage and required to be undertaken in order to reduce adverse environmental impacts are effectively implemented.

(b) This staff, as identified in paragraph (a) of this section, will review the action's approval documents and consult with the preparer of the action's environmental review document prior to making site visits or requesting project status reports in order to determine if there are environmental requirements to be monitored.

(c) The preparer will directly monitor actions containing difficult or complex environmental special conditions.

(d) Before certifying that conditions contained within offers of financial assistance have been fully met, the responsible monitoring staff will obtain the position of the preparer for those conditions developed as a result of the environmental review.

(e) Whenever noncompliance with an environmental special condition is detected by FmHA staff, the preparer and the SEC will be immediately informed. The approving official will then take appropriate steps, in consultation with the responsible program office, the SEC and preparer, to bring the action into compliance.

§ 1940.331 Public involvement.

(a) *Objective.* The basic objective of FmHA's public involvement process is threefold. It is to ensure that interested citizens can readily obtain knowledge of the environmental review status of FmHA's funding applications, have the opportunity to input into this review process before decisions are made, and have access to the environmental documents supporting FmHA decisions.

(b) *Public notice requirements.* (1) For projects that undergo the preparation of an environmental impact statement, the first element of formal public participation in the EIS process involves the publication of the notice of intent to prepare an EIS. The content of the notice of intent and its publication by FmHA in the **Federal Register** are explained in § 1940.320 of this subpart. With respect to notification within the project area, the applicant will be requested to publish a copy of the notice of intent and the date of the scoping meeting in the newspaper of general circulation in the vicinity of the proposed action and in any local or community-oriented newspapers within the proposed action's area of environmental impact. The notice will be published in easily readable type in the nonlegal section of the newspaper(s). It will also be bilingual if the affected area is largely non-English speaking or bilingual. Individual copies of the notice will be sent by the applicant to the appropriate regional EPA office, any State and regional review agencies established under Executive Order 12372; the State Historic Preservation Officer; local radio stations and other news media; any State or Federal agencies planning to provide financial assistance to this or related actions or required to review permit applications for this action, any potentially affected Indian Tribe; any individuals, groups, local, State, and Federal agencies known to be interested in the project; affected property owners; and to any other parties that FmHA has identified to be so notified. It will also be posted at a readable location on the project site. The applicant will provide FmHA with a copy of the notice as it appeared in the newspaper(s), the date(s) published, and a list of all parties receiving an individual notice. Publication and individual transmittal of the notice for the scoping meeting will be accomplished at least 14 days prior to the date of the meeting.

(2) Coincident with the distribution of either a draft or final EIS, a notice of the statement's availability will be published within the project area in the same manner as a notice of intent to prepare an EIS. FmHA will request EPA to publish in the **Federal Register** a notice of the statement's availability in accordance with EPA's requirements and pursuant to § 1506.10 of the CEQ regulations.

(3) For Class II actions that are determined not to have a significant environmental impact, the Agency will require the applicant to publish a notification of this determination. This notice will be published in the same manner as a notice of intent to prepare an EIS but will appear for at least 3 consecutive days if published in a daily newspaper or otherwise in two consecutive publications. Individual copies will be sent to the same parties that are required to be sent a notice of intent, as specified in paragraph (b)(1) of this section, with the exception of local radio stations and other news media. Also, there is no requirement to post this notice on the project site. The applicant will provide FmHA with a copy of this notice, the dates the notice was published, and a list of all parties receiving an individual notice. This notification procedure does not apply to actions reviewed solely on the basis of a Class I assessment.

(4) The public notice procedures for actions that will affect floodplains, wetlands, important farmlands, prime rangelands or prime forest lands are contained in Exhibit C of this subpart. These procedures apply to actions that require either an EIS, Class II assessment or Class I assessment. However, whenever an action normally classified as a categorical exclusion requires a Class I assessment because of the potential impact to one of these important land resources, no public notice procedures apply in the course of completing the Class I assessment. When applicable to an action, as specified in Exhibit C of this subpart, these public notice procedures can apply at two distinct stages. The first stage, a preliminary notice, applies to any of the five important land resources. The second stage, a final notice, is followed by a fifteen-day public review period and applies only to actions that will impact floodplains or wetlands. For Class II actions, this final notice procedure must be combined with any applicable finding of no significant environmental impact, which is described in paragraph (b)(3) of this section. Individual copies of the preliminary and final notices will be sent to the same parties that are required to be sent a notice of finding of no significant impact, as specified in paragraph (b)(3) of this section, with the following exception. Whenever property owners affected by proposed mitigation measures, such as proposed hook-up restrictions on portions of water or sewer lines that will traverse floodplains, are advised of these proposed measures in a preliminary notice, these property owners need not be sent copies of the final notice as long as the mitigation measures in the final notice are unchanged from the preliminary notice and no property owners raised objections or concerns over the mitigation measures.

(5) The public notice requirements associated with holding a public information meeting are specified in paragraph (c) of this section.

(c) *Public information meetings.* (1) Public information meetings will be held for an action undergoing an EIS as specified in § 1940.320 of this subpart. As part of the EIS process, a public information meeting will be held near the project site to discuss and receive comments on the draft EIS. It will be scheduled no sooner than 15 days after the release of the draft EIS. It will be announced in the same manner as the scoping meeting, and the list of parties receiving an individual notification will also be developed in the same manner. The meeting will be chaired by the State Director or a designee and will be fully recorded so that a transcript can be produced. The applicant will be requested to assist in obtaining a facility for holding the meeting. To the extent possible, this meeting will be combined with public meetings required by other involved agencies.

(2) Whenever a public information meeting is held as part of the completion of an environmental assessment, it will be scheduled, announced, and held in generally the same manner as a public information meeting for an EIS. However, a minimum of 7 days advance notice of the meeting is sufficient, and a transcript of the meeting will not be required. Rather a summary of the meeting to include the major issues raised will be prepared by the FmHA official who chaired the meeting.

(d) *Distribution of environmental documents.* FmHA officials will promptly provide to interested parties, upon request, copies of environmental documents, including environmental assessments, draft and final environmental impact statements, and records of decision. Interested parties can request these materials from the appropriate State Director or approval official for project activities and from the Administrator on other activities subject to environmental review.

§ 1940.332 Emergencies.

(a) *Action Requiring EIS.* When an emergency circumstance makes it necessary to take an action with significant environmental impact without observing the provisions of this subpart or the CEQ regulations, the Administrator will consult with CEQ about alternative arrangements before the proposed action is taken. It must be recognized that CEQ's regulations limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review. For purposes of this subpart, an emergency circumstance is defined as one involving an immediate or imminent danger to public health or safety.

(b) *Action Not Requiring EIS.* When an emergency circumstance makes it necessary to take an action with apparent non-significant environmental impact without observing the provisions of this subpart or the CEQ regulations, the Administrator will be so notified. The Administrator reserves the authority to waive or amend all procedural aspects of this subpart relating to the preparation of environmental assessments including but not limited to the applicant's submission of Form FmHA 1940–20, public notice requirements and/or their associated comment periods, the timing of the assessment process, and the content of environmental review documents. Alternative arrangements will be established on a case by case basis taking into account the nature of the emergency and the time reasonably available to respond to it. These alternative arrangements will, to the extent possible, attempt to achieve the substantive requirements of this subpart such as avoiding impacts to important land resources, when practicable, and minimizing potential adverse environmental impacts. In all cases, the environmental findings and determinations required for Class I and Class II assessments must be executed by the appropriate FmHA officials prior to approval of the action and be based upon the best information available under the circumstances and the prescribed alternative arrangements. (Refer to paragraph (a) of this section should the approval official for the action determine that an EIS is necessary.) Additionally, all applicable consultation and coordination procedures required by law or regulation will be initiated with the appropriate Federal or State agency(s). Such procedures will be accomplished in the most expeditious manner possible and modified to the extent necessary and mutually agreeable between FmHA and the affected agency(s). The provisions of this paragraph are limited to the same emergency circumstances and scope of action as specified in paragraph (a) of this section.

§ 1940.333 Applicability to planning assistance.

The award of FmHA funds for the purpose of providing technical assistance or planning assistance will not be subject to any environmental review. However, applicants will be expected to consider in the development of their plans and to generally document within their plans:

(a) The existing environmental quality and the important environmental factors within the planning area, and

(b) The potential environmental impacts on the planning area of the plan as well as the alternative planning strategies that were reviewed.

§ 1940.334 Direct participation of State Agencies in the preparation of FmHA EISs.

FmHA may be assisted by a State Agency in the preparation of an EIS subject to the conditions indicated below. At no time, however, is FmHA relieved of its responsibilities for the scope, objectivity, and content of the entire statement of any other responsibility under NEPA.

(a) The FmHA applicant for financial assistance is a State Agency having statewide jurisdiction and responsibility for the proposed action;

(b) FmHA furnishes guidance to the State Agency as to the scope and content of the impact statement and participates in the preparation;

(c) FmHA independently evaluates the statement and rectifies any major deficiencies prior to its circulation by the Agency as an EIS;

(d) FmHA provides, early in the planning stages of the project, notification to and solicits the views of any land management entity (State or Federal Agency responsible for the management or control of public lands) concerning any portion of the project and its alternatives which may have significant impacts upon such land management entities; and

(e) If there is any disagreement on the impacts addressed by the review process outlined in paragraph (d) of this section, FmHA prepares a written assessment of these impacts and the views of the land management entities for incorporation into the draft impact statement.

§ 1940.335 Environmental review of FmHA proposals for legislation.

(a) As stated in § 1940.312(d)(4) of this subpart, all FmHA proposals for legislation will receive an environmental assessment. The definition of such a proposal is contained in § 1508.17 of the CEQ regulations.

(b) The environmental assessment and, when necessary, the EIS will be prepared by the responsible Agency staff that is developing the legislation.

(c) If an EIS is required, it will be prepared according to the requirements of § 1506.8 of the CEQ Regulations.

§ 1940.336 Contracting for professional services.

(a) Assistance from outside experts and professionals can be secured for the purpose of completing EIS, assessments, or portions of them. Such assistance will be secured according to the Federal and Agriculture Procurement Regulations contained in Chapters 1 and 4 of Title 48 of the Code of Federal Regulations.

(b) The contractor will be selected by FmHA in consultation with any cooperating agencies. In order to avoid any conflict of interest, contractors competing for the work will be required to execute a disclosure statement specifying that they have no financial or other interest in the outcome of the project.

(c) The Administrator will provide the State Director with a proposed scope of work for use in securing such professional services.

(d) Applicants will not be required to pay the costs of these professional services.

§ 1940.337–§ 1940.349 [Reserved]

§ 1940.350 Office of Management and Budget (OMB) control number.

The collection of information requirements in this regulation has been approved by the Office of Management and Budget and has been assigned OMB control number 0575–0094.

3. Exhibit C is revised to read as follows:

Exhibit C—Implementation Procedures for the Farmland Protection Policy Act; Executive Order 11988, Floodplain Management; Executive Order 11990, Protection of Wetlands; and Departmental Regulation 9500–3, Land Use Policy

1. *Background.* The Subtitle I of the Agriculture and Food Act of 1981, Pub. L. 97–98, created the Farmland Protection Policy Act. The Act requires the consideration of alternatives when an applicant's proposal would result in the conversion of important farmland to nonagricultural uses. The Act also requires that Federal programs, to the

extent practicable, be compatible with State, local government, and private programs and policies to protect farmland. The Soil Conservation Service (SCS), as required by the Act, has promulgated implementation procedures for the Act at 7 CFR Part 658 which are hereafter referred to as the SCS rule. This rule applies to all federal agencies. The Departmental Regulation 9500-3, Land Use Policy (the Departmental Regulation), also requires the consideration of alternatives but is much broader than the Act in that it addresses the conversion of land resources other than farmland. The Departmental Regulation is included as Exhibit A to this subpart and affects only USDA agencies. For additional requirements that apply to some Farmer Program loans and guarantees and loans to an Indian Tribe or Tribal Corporation and that cover the conservation of wetlands and highly erodible land, see Exhibit M of this subpart.

2. *Implementation.* Each proposed lease or disposal of real property by FmHA and application for financial assistance or subdivision approval will be reviewed to determine if it would result in the conversion of a land resource addressed in the Act, Executive Orders, or Departmental Regulation and as further specified below. Those actions that are determined to result in the lease, disposal or financing of an existing farm, residential, commercial or industrial property with no reasonably foreseeable change in land use and those actions that solely involve the renovation of existing structures or facilities would require no further review.[1] Since these actions have no potential to convert land uses, this finding would simply be made by the preparer in completing the environmental assessment for the action. Also, actions that convert important farmland through the construction of on-farm structures necessary for farm operations are exempt from the farmland protection provisions of this Exhibit. For other actions, the following implementation steps must be taken:

a. Determine whether important land resources are involved. The Act comes into play whenever there is a potential to affect important farmland. The Departmental Regulation covers important farmland as well as the following land resources: prime forest land, prime rangeland, wetlands and floodplains. Hereafter, these land resources are referred to collectively as important land resources. Definitions for these land resources are contained in the Appendix to the Departmental Regulation. The SCS rule also defines important farmland for purposes of the Act. Since the SCS's definition of prime farmland differs from the Departmental Regulation's definition, both definitions must be used and if either or both apply, the provisions of this Exhibit must be implemented. It is important to note the definition of important farmland in both the SCS rule and the Departmental Regulation because it includes not only prime and unique farmland but additional farmland that has been designated by a unit of State or local government to be of statewide or local importance and such designation has been concurred in by the Secretary acting through SCS. In completing the environmental assessment or Form FmHA 1940-22, "Environmental Checklist For Categorical Exclusions," the preparer must determine if the project is either located in or will affect one or more of the land resources covered by the SCS rule or the Departmental Regulation. Methods for determining the location of important land resources on a project-by-project basis are discussed immediately below. As reflected several times in this discussion, SCS personnel can be of great assistance in making agricultural land and natural resource evaluation, particularly when there is no readily available documentation of important land resources within the project's area of environmental impact. It should be remembered that FmHA and SCS have executed a Memorandum of Understanding in order to facilitate site review assistance. (See FmHA Instruction 2000-D, Exhibit A, available in any FmHA office.)

(1) *Important Farmland, Prime Forest Land, Prime Rangeland*—The preparer of the environmental review document will review available SCS important farmland maps to determine if the general area within which the project is located contains important farmland. Because of the large scale of the important farmland maps, the maps should be used for general review purposes only and not to determine if sites of 40 acres or less contain important farmland. If the general area contains important farmland or if no important farmland map exists for the project area, the preparer of the environmental review will request SCS's opinion on the presence of important farmland by completing Form AD-1006, "Farmland Conversion Impact Rating," according to its instructions, and transmitting it to the SCS local field office having jurisdiction over the project area. This request will also indicate that SCS's opinion is needed regarding the application to the project site of both definitions of prime farmland, the one contained within its rule and the one contained within the Departmental Regulation. SCS's opinion is controlling with respect to the former definition and advisory with respect to the latter. No request need be sent to SCS for an action meeting one of the exemptions contained in item number 2 of this exhibit.

(2) *Floodplain*—Review the most current Flood Insurance Rate Map or Flood Insurance Study issued for the project area by the Federal Emergency Management Administration (FEMA). Information on the most current map available or how to obtain a map free of charge is available by calling FEMA's toll free number 800-638-6620. When more specific information is needed on the location of a floodplain, for example, the project site may be near the boundary of a floodplain; or for assistance in analyzing floodplain impacts, it is often helpful to contact FEMA's regional office staff. Exhibit J of this subpart contains a listing of these regional offices and the appropriate telephone numbers.

If a FEMA floodplain map has not been prepared for a project area, detailed assistance is normally available from the following agencies: The U.S. Fish and Wildlife Service (FWS), SCS, Corps of Engineers, U.S. Geological Survey (USGS), or appropriate regional or State agencies established for flood prevention purposes.

(3) *Wetlands*—FWS is presently preparing wetland maps for the nation. Each FWS regional office has a staff member called a Wetland Coordinator. These individuals can provide updated information concerning the status of wetland mapping by FWS and information on State and local wetland surveys. Exhibit K of this subpart contains a listing of Wetland Coordinators arranged by FWS regional office and geographical area of jurisdiction. If the proposed project area has not been inventoried, information can be obtained by using topographic and soils maps or aerial photographs. State-specific lists of wetland soils and wetland vegetation are also available from the FWS Regional Wetland coordinators. A site visit can disclose evidence of vegetation typically associated with wetland areas. Also, the assistance of FWS field staff in reviewing the site can often be the most effective means. Because of the unique wetland definition used in Exhibit M of this subpart, SCS wetland determinations are required for implementing the wetland conservation requirements of that Exhibit.

b. Findings

(1) *Scope*—Although information on the location and the classification of important land resources should be gathered from appropriate expert sources, as well as their views on possible ways to avoid or reduce the adverse effects of a proposed conversion, it must be remembered that it is FmHA's responsibility to weigh and judge the feasibility of alternatives and to determine whether any proposed land use change is in accordance with the implementation requirements of the Act and the Departmental Regulation. Consequently, after reviewing as necessary, the project site, applicable land classification data, or the results of consultations with appropriate expert agenices, the FmHA preparer must determine, as the second implementation step, whether the applicant's proposal:

(a) Is compatible with State, unit or local government, and private programs and policies to protect farmland; and

(b) Either will have no effect on important land resources; or

(c) If there will be a direct or indirect conversion of such a resource, (i) whether practicable alternatives exist to avoid the conversion; and

(d) If there are no alternatives, whether there are practicable measures to reduce the amount of the conversion.

(2) *Determination of No Effect*—If the preparer determines that there is no potential for conversion and that the proposal is compatible, this determination must be so documented in the environmental assessment for a Class II action or the appropriate compliance blocks checked in the Class I assessment or Checklist for Categorical Exclusions based on whichever document is applicable to the action being reviewed.

[1] See special procedures in item 3 of this Exhibit if the existing structure or real property is located in a floodplain or wetland.

(3) *Determination of Effect or Incompatibility*—Whenever the preparer determines that an applicant's proposal may result in the direct or indirect conversion of an important land resource or may be incompatible with State, unit of local government, or private programs and policies to protect farmland, the following further steps must be taken.

(a) *Search for Practicable Alternatives* [2]—In consultation with the applicant and the interested public, the preparer will carefully analyze the availability of practicable alternatives that avoid the conversion or incompatibility Possible alternatives include:

(i) The selection of an alternative site;

(ii) The selection of an alternative means to meet the applicant's objectives; or

(iii) The denial of the application, i.e., the no-action alternative.

When the resource that may be converted is important farmland, the preparer will follow the Land Evaluation and Site Assessment (LESA) point system contained within the SCS rule in order to evaluate the feasibility of alternatives. When the proposed site receives a total score of less than 160 points, no additional sites need to be evaluated. Rather than use the SCS LESA point system, the State Director has the authority to use State or local LESA systems that have been approved by the governing body of such jurisdiction and the SCS state conservationist. After this authority is exercised, it must be used for all applicable FmHA actions within the jurisdiction of that approved LESA system.

(b) *Inform the Public*—The Department Regulation requires us in section 6, Responsibilities, to notify the affected landholders at the earliest time practicable of the proposed action and to provide them an opportunity to review the elements of the action and to comment on the action's feasibility and alternatives to it. This notification requirement only applies to Class I and Class II actions and not to categorical exclusions that lose their status as an exclusion for any of the reasons stated in § 1940.317(e) of this subpart. The notification will be published and documented in the manner specified in § 1940.331 of this subpart and will contain the following information:

(i) A brief description of the application or proposal and its location;

(ii) The type(s) and amount of important land resources to be affected;

(iii) A statement that the application or proposal is available for review at an FmHA field office (specify the one having jurisdiction over the project area); and

(iv) A statement that any person interested in commenting on the application or proposal's feasibility and alternatives to it may do so by providing such comments to FmHA within 30 days following the date of publication. (Specify the FmHA office processing the application or proposal for receipt of comments.)

Further consideration of the application or proposal must be delayed until expiration of the public comment period. Consequently, publication of the notice as early as possible in the review process is both in the public's and the applicant's interest. Any comments received must be considered and addressed in the subsequent Agency analysis of alternatives and mitigation measures. It should be understood that scheduling a public information meeting is not required but may be helpful based on the number of comments received and types of issues raised.

(c) *Determine Whether Practicable Alternative Exists*—(i) Alternative exists—If the preparer concludes that a practicable alternative exists, the preparer will complete step 2b(3)(e)(ii) of this exhibit and transmit the assessment for the approving official's review in the manner specified in § 1940.316 of this subpart. If the findings of this review are similar to the preparer's recommendation, FmHA will inform the applicant of such findings and processing of the application will be discontinued. Should the applicant still desire to pursue the proposal, the applicant is certainly free to do so but not with the further assistance of FmHA. Should the applicant be interested in amending the application to reflect the results of the alternative analysis, the preparer will work closely with the applicant to this end. Upon receipt of the amended application, the preparer must reinstitute this implementation process at that point which avoids the duplication of analysis and data collection undertaken in the original review process.

If the results of the approving official(s) review differs from the preparer's recommendations, the former will ensure that the findings are appropriately documented in step 2b(3)(e)(ii) of this exhibit and any remaining consideration given to mitigation measures, step 2b(3)(d) of this exhibit.

(ii) No Practicable Alternative Exists—On the other hand, if the preparer concludes that there is no practicable alternative to the conversion, the preparer must then continue with step 2b(3)(d) of this exhibit, immediately below.

(d) *Search for Mitigation Measures*—Once the preparer determines that there is no practicable alternative to avoiding the conversion or incompatibility, including the no-action alternative, all practicable measures for reducing the direct and indirect amount of the conversion must be included in the application. Some examples of mitigation measures would include reducing the size of the project which thereby reduces the amount of the important land resource to be converted. This is a particularly effective mitigation measure when the resource is present in a small area, as is often the case with wetlands or floodplains. A corresponding method of mitigation would be to maintain the project size or number of units but decrease the amount of land affected by increasing the density of use. Finally, mitigation can go as far as the selection of an alternative site. For example, in a housing market area composed almost entirely of important farmland, any new proposed subdivision site would result in conversion. However, a proposed site within or contiguous to an existing community has much less conversion potential, especially indirect potential, than a site a mile or two from the community. The LESA system can also be used to identify mitigation measures when the conversion of important farmland cannot be avoided.

(e) *Document Findings*—Upon completion of the above steps, a written summary of the steps taken and the reasons for the recommendations reached shall be included in the environmental assessment along with either one of the following recommendations as applicable. The following example assumes that important farmland is the affected resource and that the inappropriate phrase within the brackets would be deleted.

(i) The application would result in the direct or indirect conversion of important farmland and (is/is not) compatible with State, unit of local government, or private programs and policies to protect farmland. It is recommended that FmHA determine, based upon the attached analysis, that there is no practicable alternative to this and that the application contains all practicable measures for reducing the amount of conversion (or limiting the extent of any identified incompatibility.)

(ii) The application would result in direct or indirect conversion of important farmland and (is/is not) incompatible with State, unit of local government, or private programs and policies to protect farmland. It is recommended that FmHA determine, based upon the attached analysis, that there is a practicable alternative to this action, and the processing of this application be discontinued.

(f) *Implement findings*—The completed environmental assessment and the Agency's determination of compliance with the Act, the Departmental Regulation and Executive orders will be processed and made according to § 1940.316 of this subpart. Whenever this determination is as stated in step 2b(3)(e)(i) above, the action will be so structured as to ensure that any recommended mitigation measures are accomplished. See § 1940.316(g) of this subpart. Whenever the determination is as stated in step 2b(3)(e)(ii) above, the applicant shall be so informed and processing of the application discontinued. Any further FmHA involvement will be as specified in Item 2b(3)(c)(i) of this exhibit.

3. *Special Procedures and Considerations When a Floodplain or Wetland Is The Affected Resource Under Executive Order 11988 and 11990.* a. *Scope.* (1) Geographical Area—The geographical area that must be considered when a floodplain is affected varies with the type of action under consideration. Normally the implementation procedures beginning in Item 2a of this Exhibit are required when the action will impact, directly or indirectly, the 100-year floodplain. However, when the action is determined by the preparer to be a critical action, the minimum floodplain of concern is the 500-year floodplain. A critical action is an action which, if located or carried out within a floodplain, poses a greater than normal risk for flood-caused loss of life or property. Critical actions include but are not limited to actions which create or extend the useful life of the following facilities:

[2] When the action involves the disposal of real property determined not suitable for disposition to persons eligible for FmHA's financial assistance programs, the consideration of alternatives is limited to those that would result in the best price.

(a) Those facilities which produce, use, or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(b) Schools, hospitals, and nursing homes which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events;

(c) Emergency operation centers or data storage centers which contain records or services that any become lost or inoperative during flood and storm events; and

(d) Multi-family housing facilities designed primarily (over 50 percent) for handicapped individuals.

(2) Threshold of Impact—The Executive ordres differ from the Act and the Departmental Regulation in that the Executive orders' requirements apply not only to the conversion of floodplains or wetlands but to any impacts upon them. Impacts are defined as changes in the natural values and functions of a wetland or floodplain. Therefore, there would be an impact to a floodplain whenever either (a) the action or its related activities would be located within a floodplain, or (b) the action through its indirect impacts has the potential to result in development within a floodplain. The only exception to this statement is when the preparer determines that the locational impact is minor to the extent that the floodplain's or wetland's natural values and functions are not affected.

b. *Treatment of Existing Structures.* (1) Non-FmHA-Owned Properties—The Executive orders can apply to actions that are already located in floodplains or wetlands; that is, where the conversion has already occurred. The implementation procedures beginning in item 2a of this exhibit must be accomplished for any action located in a floodplain or wetland and involving either (a) the purchase of an existing structure or facility or (b) the rehabilitation, renovation, or adaptive reuse of an existing structure or facility when the work to be done amounts to a substantial improvement. A substantial improvement means any repair, reconstruction, or improvement of a structure the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. The term does not include (a) any project for improvement of a structure to comply with existing State or local health sanitary or safety code specifications which are solely necessary to assure safe living conditions or (b) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(2) FmHA-Owned Real Property—The requirement in paragraph 3 b (1) immediately above also applies to any substantial improvements made to FmHA-owned real property with the exception of the public notice requirements of this exhibit. Irrespective of any improvements, whenever FmHA real property located in a floodplain or wetland is proposed for lease or sale, the official responsible for the conveyance must determine if the property can be safely used. If not, the property should not be sold or leased. Otherwise, the conveyance must specify those uses that are restricted under identified Federal, State, and local floodplains or wetlands regulations as well as other appropriate restrictions, as determined by the FmHA official responsible for the conveyance, to the uses of the property by the leasee or purchaser and any successors, except where prohibited by law. Appropriate restrictions will be developed in consultation with the U.S. Fish and Wildlife Service (FWS) as specified in the Memorandum of Understanding with FWS contained in Subpart LL of Part 2000 of this chapter. Applicable restrictions will be incorporated into quitclaim deeds with the consent and approval of the Regional Attorney, Office of the General Counsel. Upon application by the owner of any property so affected and upon determination by the appropriate FmHA official that the condition for which a deed restriction was imposed no longer exists, the restriction clause may be released. A listing of any restrictions shall be included in any notices announcing the proposed sale or lease of the property. At the time of first inquiry, prospective purchasers must be informed of the property's location in a floodplain or wetland and the use restrictions that will apply. A written notification to this effect must be provided to the prospective purchaser who must acknowledge the receipt of the notice. See Item 3 d of this exhibit and Subpart C of Part 1955 of this Chapter for guidance on the proper formats to be used with respect to notices and deed restrictions. The steps and analysis conducted to comply with the requirements of this paragraph must be documented in the environmental review document for the proposed lease or sale.

c. *Mitigation measures.* (1) Alternative Sites—As with the Act and the Departmental Regulation, the main focus of the review process must be to locate an alternative that avoids the impact to a floodplain or wetland. When this is not practicable, mitigation measures must be developed to reduce the impact which in the case of a floodplain or wetland can include finding another site, i.e., a safer site. The latter would be a site at a higher elevation within the floodplain and/or exposed to lower velocity floodflows.

(2) Nonstructural Mitigation Measures—Mitigation measures under the Executive orders are intended to serve the following three purposes: reduce the risks to human safety, reduce the possible damage to structures, and reduce the disruption to the natural values and functions of floodplains and wetlands. More traditional structural measures, such as filling in the floodplain, cannot accomplish these three purposes and, in fact, conflict with the third purpose. Nonstructural flood protection methods, consequently, must be given priority consideration. These methods are intended to preserve, restore, or imitate natural hydrologic conditions and, thereby, eliminate or reduce the need for structural alteration of water bodies or their associated floodplains and wetlands. Such methods may be either physical or managerial in character. Nonstructural flood protection methods are measures which:

(a) Control the uses and occupancy of floodplains and wetlands, e.g., floodplain zoning and subdivision regulations;

(b) Preserve floodplain and wetland values and functions through public ownership; e.g., fee title, easements and development rights;

(c) Delay or reduce the amount of runoff from paved surfaces and roofed structures discharged into a floodway, e.g., construction of detention basins and use of flow restricting barriers on roofs;

(d) Maintain natural rates of infiltration in developed or developing areas, e.g., construction of seepage or recharge basins and minimization of paved areas;

(e) Protect streambanks and shorelines with vegetative and other natural cover, e.g., use of aquatic and water-loving woody plants;

(f) Restore and preserve floodplain and wetland values and functions and protect life and property through regulation, e.g., flood-proofing building codes which require all structures and installations to be elevated on stilts above the level of the base flood; and

(g) Control soil erosion and sedimentation, e.g., construction of sediment basins, stabilization of exposed soils with sod and minimization of exposed soil.

(3) Avoid Filling in Floodplains—As indicated above, the Executive orders place a major emphasis on not filling in floodplains in order to protect their natural values and functions. Executive Order 11988 states "agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in the land."

(d) *Additional Notification Requirement.* (1) Final Notice—Where it is not possible to avoid an impact to a floodplain or wetland and after all practicable mitigation measures have been identified and agreed to by the prospective applicant, a final notice of the proposed action must be published. This notice will either be part of the notice required for the completion of a Class II assessment or a separate notice if a Class I assessment or an EIS has been completed for the action. The notice will be published and distributed in the manner specified in § 1940.331 of this subpart and contain the following information.

(a) A description of the proposd action, its location, and the surrounding area;

(b) A description of the floodplain or wetland impacts and the mechanisms to be used to mitigate them;

(c) A statement of why the proposed action must be located in a floodplain or a wetland;

(d) A description of all significant facts considered in making this determination;

(e) A statement indicating whether the actions conform to applicable State or local floodplain protection standards; and

(f) A statement listing other involved agencies and individuals.

(2) Private Party Notification—For all actions to be located in floodplains or wetlands in which a private party is participating as an applicant, purchaser, or financier, it shall be the responsibility of the approving official to inform in writing all such parties of the hazards associated with such locations.

4. *The Relationship of the Executive Orders to the National Flood Insurance Program.* The National Flood Insurance Program establishes the floodplain management criteria for participating communities as well as the performance standards for building in floodplains so that the structure is protected against flood risks. As such, flood insurance should be viewed only as a financial mitigation measure that must be utilized only after FmHA determines that there is no practicable alternative for avoiding construction in the floodplain and that all practicable mitigation measures have been included in the proposal. That is, for a proposal to be located in the floodplain, it is not sufficient simply to require insurance. The Agency's flood insurance requirements are explained in Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2). It should be understood that an applicant proposing to build in the floodplain is not even eligible for FmHA financial assistance unless the project area is participating in the National Flood Insurance Program.

4. Exhibit D is amended by adding a paragraph number 10 to read as follows:

Exhibit D—Implementation Procedures for the Endangered Species Act.

* * * * *

10. In completing the above compliance procedures, particularly when consulting with the referenced agencies, formally or informally, the preparer of the environmental review document will request information on whether any Category I or Category II species may be present within the project area. These are candidate species; they are presently under consideration for listing under section 4 of the Endangered Species Act. Category I species are those for which FWS currently has substantial date on hand to support the biological appropriateness of proposing to list the species as endangered or threatened. Currently data are being gathered concerning essential habitat needs and, for some species, data concerning the precise boundaries of critical habitat designations. Development and publication of proposed rules on such species is anticipated. Category II comprises species for which information now in the possession of the FWS indicates that proposing to list the species as endangered or threatened is possibly appropriate but for which conclusive data on biological vulnerability and threat(s) are not currently available to presently support proposed rules. Whenever a Category I or II species may be affected, the preparer of the environmental review document will determine if the proposed project is likely to jeopardize the continued existence of the species. Whenever this determination is made, the same compliance procedures specified in paragraph 6 of this exhibit for a proposed species will be followed. The purpose of the requirements of this paragraph is to comply with the National Environmental Policy Act as well as Departmental Regulation 9500-4, Fish and Wildlife Policy, which specifies that USDA agencies will avoid actions which may cause a species to become threatened or endangered.

Exhibit G—[Removed and Reserved]

5. Exhibit G is removed and reserved.

6. In Exhibit H the second undesignated paragraph following the title, the second undesignated paragraph of paragraph IV. 2., paragraph IV. 4., the first undersignated paragraph of paragraph VIII, paragraph IX, and paragraph XIX, are revised to read as follows. Additionally, the list of compliance requirements in paragraph XXIb is amended by inserting immediately below the present listing entitled "Archeological and Historic Preservation Act" a listing entitled "Subtitle B, Highly Erodible Land Conservation, and Subtitle C, Wetland Conservation, of the Food Security Act."

Exhibit H—Environmental Assessment For Class II Actions

* * * * *

The preparer will consult as indicated in § 1940.318(b) of this subpart with appropriate experts from Federal, State, and local agencies, universities, and other organizations or groups whose views could be helpful in the assessment of potential impacts. In so doing, each discussion which is utilized in reaching a conclusion with respect to the degree of an impact will be summarized in the assessment as accurately as possible and include the name, title, phone number, and organization of the individual contacted, plus the date of contact. Related correspondence should be attached to the assessment.

* * * * *

IV. Environmental Impact

2. Water Quality. * * *

* * * * *

Discuss the project's consistency with the water quality planning for the area, such as EPA's Section 208 area-wide waste treatment management plan. Discuss the project's consistency with applicable State water quality standards to include a discussion of whether or not the project would either impair any such standard or fail to meet antidegradation requirements for point or nonpoint sources. Describe how surface runoff is to be handled and the effect of erosion on streams.

* * * * *

4. Land Use—Given the description of land uses as previously indicated, evaluate (a) the effect of changing the land use of the project site and (b) how this change in land use will affect the surrounding land uses and those within the project's area of environmental impact. Particularly address the potential impacts to those unique or sensitive areas discussed under Section III, Description of Project Area, which are not covered by the specific analyses required in Sections V–XI. Describe the existing land use plan and zoning restrictions for the project area. Evaluate the consistency of the project and its impacts on these plans. For all actions subject to the requirements of Exhibit M of this subpart indicate (a) whether or not highly erodible land, wetland or converted wetland is present, (b) if any exemption(s) applies to the requirements of Exhibit M, (c) the status of the applicant's eligibility for an FmHA loan under Exhibit M and (d) any steps the applicant must take prior to loan approval to retain or retain its eligibility. Attach a completed copy of Form SCS–CPA–26, "Highly Erodible Land and Wetland Conservation Determination," for the action.

* * * * *

VIII. Compliance with the Endangered Species Act

Indicate whether the project will either (1) affect a listed endangered or threatened species or critical habitat or (2) adversely affect a proposed critical habitat for an endangered or threatened species or jeopardize the continued existence of a proposed endangered or threatened species. This analysis will be conducted in consultation with the Fish and Wildlife Service and the National Marine Fisheries Service, when appropriate. Any formal or informal consultations conducted with these agencies as well as any State wildlife protection agency will also address impacts to Category I and Category II species. See Exhibit D of this subpart for specific implementation instructions.

* * * * *

IX. Compliance with Farmland Protection Policy Act, SCS's Implementation Rule, and Departmental Regulation 9500–3, Land Use Policy

Indicate whether the project will either directly or indirectly convert an important land resource(s) identified in the Act or Departmental Regulation, other than floodplains or wetlands which should be addressed below in Item X of this exhibit. If a conversion may result, determine if there is a practicable alternative to avoiding it. If there is no such alternative, determine whether all practicable mitigation measures are included in the project. Document as an attachment these determinations and the steps taken to inform the public, locate alternatives, and mitigate potential adverse impacts. See Exhibit C of this subpart for specific implementation guidance.

* * * * *

XIX. Mitigation Measures

Describe any measures which will be taken or required by FmHA to avoid or mitigate the identified adverse impacts. Analyze the environmental impacts and potential effectiveness of the mitigation measures. Such measures shall be included as special requirements or provisions to the offer of financial assistance or other appropriate approval document, if this action does not involve financial assistance.

* * * * *

Exhibit I—[Amended]

7. Exhibit I is amended by adding to the end of the exhibit the following

designated line for the date, "_____ (Date)."

PART 1942—ASSOCIATIONS

8. The authority citation for Part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989, 16 U.S.C. 1005, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Community Facility Loans

9. In § 1942.2, paragraph (a)(5) is removed and paragraphs (a)(3) and (b) are revised to read as follows:

§ 1942.2 Processing applications.

(a) * * *

(3) For preapplications eligible for FmHA funding which have the necessary priority to compete with similar preapplications, FmHA will issue Form AD–622 inviting an application containing the following statement:

You are advised against taking any actions or incurring any obligations which would either limit the range of alternatives to be considered, or which would have an adverse effect on the environment. Satisfactory completion of the environmental review process must occur prior to the issuance of the letter of conditions.

* * * * *

(b) *Environmental review.* Environmental requirements will be documented in accordance with Subpart G of Part 1940 of this chapter and submitted to the State Director. Starting with the earliest discussions with prospective applicants or review of preapplications and continuing throughout application processing, environmental issues must be considered. This should provide flexibility to consider alternatives to the project and develop methods to mitigate identified adverse environmental impacts. Documentation of the appropriate environmental review should be completed as soon as possible; however, the State Director will ensure that the appropriate environmental review is completed prior to issuing the letter of conditions.

* * * * *

PART 1944—HOUSING

10. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480, 7 CFR 2.23, 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

11. In § 2.944.3, paragraph (b)(9) is revised to read as follows:

§ 1944.3 Loan purposes.

* * * * *

(b) * * *

(9) Pay incidental expenses such as fees for tax monitoring service, legal, title clearance, loan closing, architectural, surveying, environmental and other technical services and incidental expenses authorized in Exhibit F of this subpart.

* * * * *

12. In § 1944.11, paragraphs (a) and (e) are revised to read as follows:

§ 1944.11 Site requirements.

(a) The property on which the loan is made must be located on a farm, or in a designated rural area as defined in § 1944.10 of this subpart or in an area the designation of which has been changed as provided in § 1944.10(i) of this subpart and must also meet the requirements of Subpart G of Part 1940 of this chapter. A nonfarm tract to be purchased or improved with loan funds must not include or be closely associated with farm service buildings.

* * * * *

(e) Loans made to buy, build, or repair dwellings located in an area having special flood or mudslide hazards are subject to the requirements of Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) and Subpart G of Part 1940 of this chapter. The latter also contains applicable requirements regarding (1) Locating non-farm single family housing sites in or adjacent to established settlement patterns, (2) Avoiding impacts to important land resources when practicable alternatives exist, and (3) Completing environmental review documents for actions taken under this Subpart.

§ 1944.30 [Amended]

13. In § 1944.30, paragraph (a) is amended by adding an insertion between the listed forms FmHA 444–2 and FmHA 440–35 to read as follows:

FmHA 1940–21—Environmental Assessment for Class I Action—1—1–0—, or
FmHA 1940–22—Environmental Checklist Categorical Exclusions—1—1–0—

14. In § 1944.31, paragraph (c) is revised to read as follows:

§ 1944.31 Loan approval.

* * * * *

(c) Prior to loan approval a new verification of employment will be required if more than 90 days have elapsed since the date of the last verification of employment, or if evidence is brought to the attention of the loan approval official that indicates the applicant's financial status has changed. Any applicable environmental review document required by Subpart G of Part 1940 of this chapter will be completed. If an environmental review is not required, for example, because the proposed building site is within a subdivision for which FmHA has previously completed an environmental assessment, a notation must be made in the running record of the loan docket by the processing official briefly stating the reason why no environmental review is required by Subpart G of Part 1940.

15. In § 1944.40, paragraph (b) is revised to read as follows:

§ 1944.40 Rural housing disaster (RHD) loans.

* * * * *

(b) *Repair or replacement of buildings.* Repair or replacement of any damaged or destroyed building must be consistent with the basic Section 502 loan policies and Subpart G of Part 1940 of this chapter. Changes may be made in the building, but in any case the repaired or replaced building should not be significantly larger or more costly than the original building except as necessary to provide which is adequate but modest. Any new dwelling constructed must meet the limitations established by § 1944.16 of this subpart.

* * * * *

16. In § 1944.45, paragraph (f)(3)(ii) is revised to read as follows:

§ 1944.45 Conditional commitments.

* * * * *

(f) * * *

(3) * * *

(ii) Determine whether the dwelling and site meet the requirements of this subpart and Subpart A of Part 1924 of this chapter and will comply with all local codes and ordinances. The use of construction contracts with conditional commitments is optional. The property must also meet the requirements of Subpart C of Part 1924 of this Chapter and Subpart G of Part 1940 of this chapter.

* * * * *

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

17. In § 1944.170, current paragraphs (c)(3), (c)(4) and (c)(5) are redesignated as paragraphs (c)(5), (c)(6), and (c)(7), respectively, and new paragraphs (c)(3) and (c)(4) are added to read as follows:

§ 1944.170 Processing preapplications.

* * * * *

(c) * * *

(3) An original and one copy of the appropriate environmental review document required by Subpart G of Part 1940 of this chapter must be completed prior to submitting the docket to the National Office for review.

(4) In cases not receiving a National Office review, the following statement is to be added to the Form AD–622: "You are advised against taking any actions or incurring any obligations which would either limit the range of alternatives to be considered, or which would have an adverse effect on the environment. Satisfactory completion of the environmental review process in accordance with Subpart G of Part 1940 of this chapter must occur prior to loan approval. The issuance of this review action does not constitute site approval."

* * * * *

18. In Exhibit A–1, paragraph I.C and introductory text of paragraph II.A are revised to read as follows:

Exhibit A–1 [Amended]

I. *Information to be submitted with Form AD–621, "Preapplication For Federal Assistance."*

* * * * *

C. *Environmental Information.*

When a preapplication is to be submitted to the National Office for review, the applicant will complete Form FmHA 1940–20, "Request for Environmental Information," as required by Subpart G of Part 1940 of this Chapter. The applicant shall provide all information requested; the District Office will provide any assistance necessary in completing this form.

* * * * *

II. *Information to be submitted with Form AD–625, "Application for Federal Assistance (Short Form)".*

A. After the applicant has received the signed Form AD–622 authorizing the applicant to proceed to develop a final application, the applicant and the applicant's architect should meet with the FmHA architect/engineer and other officials responsible for loan processing. During this preprocessing meeting, FmHA will discuss the services which the applicant's architect will be expected to provide and will also explain the items needed to complete the final application such as Form FmHA 1940–20, "Request for Environmental Information," if not previously submitted in the preapplication stage.

* * * * *

19. In Exhibit A–2 paragraph I.I. is revised and paragraph II.E is added to read as follows:

Exhibit A–2 [Amended]

I. Information to be submitted by Individuals, Farmowners and Family Farm Corporation or Partnerships for Labor Housing Loans.

* * * * *

I. *Environmental Information.* The District Office will advise the application of the applicability of FmHA's environmental requirements under Subpart G of Part 1940 of this Chapter which are primarily based on the size of the proposed project. If the preapplication must go to the National Office for approval, the applicant will complete Form FmHA 1940–20, "Request for Environmental Information." The District Office will provide assistance and guidance to the applicant in completing this form.

* * * * *

II. *Information to be submitted with Form AD–625, "Application for Federal Assistance (Short Form)".*

* * * * *

E. *Environmental Information.* If not submitted with the preapplication, the applicant will complete Form FmHA 1940–20, "Request for Environmental Information."

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

20. In § 1944.231, paragraphs (a)(1), (a)(9)(ii)(A)(*3*), (b)(4) and (b)(5)(iii) are revised and paragraphs (b)(3)(vi) and (c)(3)(vi) are added to read as follows:

§ 1944.231 Processing preapplications.

(a) * * *

(1) The District Director should handle initial inquiries and provide basic information about the program. He/she should provide the preapplication form (Form AD–621) and Exhibit A–6 to this subpart. The District Director may assist applicants in completing Form AD–621 and the information required in Exhibit A–6. He/she should advise the applicant not to prepare or develop an application until notified by FmHA to proceed.

* * * * *

(9) * * *

(ii) * * *

(A) * * *

(*3*) Original and one copy of Form FmHA 1940–21, "Environmental Assessment for Class I Action" or Exhibit H of Subpart G of Part 1940, dependent on whether the assessment is a Class I or Class II Action in accordance with Subpart G of Part 1940 of this chapter. This is only required at this stage for preapplications that will be submitted to the National Office for concurrence.

* * * * *

(b) * * *

(3) * * *

(vi) Original and one copy of Form FmHA 1940–21, "Environmental Assessment for Class I Action" or Exhibit H of Subpart G of Part 1940, dependent on whether the assessment is a Class I or Class II Action in accordance with Subpart G of Part 1940 of this chapter.

(4) In States that allocate funds to districts, the State Director will notify the District Director of the review results. The State Director will return the preapplication to the District Office with authorization for the District Director to prepare and issued Form AD–622.

(5) * * *

(iii) The State Director will return the preapplication and the review results to the district office. For selected preapplications, the State Director will execute authorization for the District Director to prepare and issue Form AD–622.

(c) * * *

(3) * * *

(vi) In cases not receiving a National Office review, the following statement must be added: "You are advised against taking any actions or incurring any obligations which would either limit the range or alternatives to be considered, or which would have an adverse effect on the environment. Satisfactory completion of the environmental review process in accordance with Subpart G of Part 1940 of this chapter must occur prior to loan approval. The issuance of this review action does not constitute site approval."

21. In § 1944.245, paragraphs (c)(2)(xxv) and (xxvi) are added to read as follows:

§ 1944.245 Preparation of completed loan docket.

(c) * * *

(2) * * *

(xxv) FmHA 1940–20, "Request for Environmental Information," if applicable.

(xxvi) FmHA 1940–21, "Environmental Assessment for Class I Action" or FmHA 1940–22, "Environmental Checklist for Categorical Exclusions," or Exhibit H, Subpart G of Part 1940 of this chapter, as required by Subpart G of Part 1940 of this chapter.

* * * * *

22. In Exhibit A–6, paragraph VI is revised to read as follows:

Exhibit A–6 of Subpart E—Information to be Submitted With Preapplication for Rural Rental Housing (RRH) Loan

* * * * *

VI. For preapplications that will be submitted to the National Office for concurrence, Form FmHA 1940–20, "Request for Environmental Information."

23. In Exhibit A–8, paragraph 14 is added to read as follows:

Exhibit A–8 of Subpart E—Information to be Submitted With Application for a Rural Rental Housing (RRH) Loan

* * * * *

14. Form FmHA 1940–20, "Request For Environmental Information."

Subpart N—Housing Preservation Grants

24. In § 1944.672, paragraph (a) is revised to read as follows:

§ 1940.672 Environmental and administrative requirements.

* * * * *

(a) Subpart G of Part 1940 of this chapter shall be followed regarding environmental requirements. The following is additional information on how to approach HPG projects under those requirements:

(1) The use of HPG funds to rehabilitate specific single family dwellings are generally exempt from an FmHA environmental review. However, if such units are located in a floodplain or wetland or the proposed work is not concurred in by the Advisory Council on Historic Preservation under the requirements of Section 1944.673 of this subpart, an FmHA environmental review is required. Applicants must include in their preapplication a process for identifying units that may receive housing preservation assistance that will require an environmental assessment.

(2) The approval of an HPG grant for the rehabilitation of single family dwellings shall be a Class I action. As part of their application materials, applicants shall submit Form FmHA 1940–20, "Request for Environmental Information," for the geographical area(s) proposed to be served by the program. Guidance on completing the form will be available from the FmHA office servicing the program.

(3) When a unit requiring an environmental assessment is proposed for PG assistance, the grantee will immediately contact the FmHA office designated to service the HPG grant and work with that office in preparing an environmental assessment and otherwise complying with Subpart G of Part 1940.

* * * * *

25. In § 1944.676, paragraph (f) is revised to read as follows:

§ 1944.676 Preapplication procedures.

* * * * *

(f) The applicant must submit a description of its process for determining whether an individual property requires an environmental assessment as required in § 1944.672 of this subpart.

* * * * *

26. In § 1944.681, paragraph (a) is revised to read as follows:

§ 1944.681 Application submission.

(a) Applicants selected by FmHA will be advised to submit a full application in an original and two copies of Form AD–623, "Application for Federal Assistance (Nonconstruction Programs)," and to include any condition or amendments that must be incorporated into the Statement of Activities prior to submitting a full application. The applicant must submit an original and one copy of Form FmHA 1940–20, "Request for Environmental Information." Instructions on submission and timing will be provided by FmHA.

* * * * *

Dated: May 27, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–21243 Filed 9–16–88; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–123–AD; Amdt. 39–6020]

Airworthiness Directives; Canadair Model CL–600–2B16 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Canadair Model CL–600–2B16 series airplanes, which requires certain changes to the Airplane Flight Manual (AFM) procedures during flight director approaches and autopilot coupled approaches without a valid radio altimeter, and the installation of a placard. This amendment is prompted by reports of a software design problem identified in the Sperry/Honeywell SPZ–8000 Flight Guidance Computer (FGC), which can result in unannunciated, hazardously misleading flight director and autopilot commands during instrument landing system (ILS) operations.

EFFECTIVE DATE: October 5, 1988.

ADDRESSES: The applicable service information may be obtained from Canadair, Ltd., Commercial Aircraft Technical Services, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Bradford Chin, Systems and Equipment Branch, ANE–173, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6427.

SUPPLEMENTARY INFORMATION: The FAA has received reports of a software design problem identified in the Sperry/Honeywell SPZ–8000 Flight Guidance Computer (FGC), installed on certain Canadair Model CL–600–2B16 series airplanes, which can result in unannunciated, hazardously misleading flight director and autopilot commands during instrument landing system (ILS) operations. This condition can be caused by a loss of valid radar input to the FGC.

The Canadian Air Transport Administration, which is the airworthiness authority of Canada, has approved Canadair Model CL–600–2B16 Airplane Flight Manual, PSP 601A–1, Temporary Revision No. 601/13, dated April 6, 1988, which describes certain changes to airplane limitations regarding flight director approaches without a valid radio altimeter.

Canadair has issued Service Bulletin 601–0276, dated May 10, 1988, which describes procedures for installation of a modified FGC, Part Number (P/N) 7003974–715, which, if installed, eliminates the need for the operational limitations.

This airplane is manufactured in Canada and type certificated in the U.S. under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this situation is likely to exist or develop on other airplanes of the same type design registered in the U.S., this AD requires a change to the FAA-approved AFM procedures to prohibit all flight director approaches and autopilot coupled approaches without a valid radio altimeter; and installation of a placard in the cockpit stating such operations are prohibited. This amendment also provides for an optional terminating action for these requirements by installing the modified

FGC in accordance with the Canadair service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Canadair: Applies to Model CL–600–2B16 series airplanes, Serial Numbers 5002 through 5027, certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude erroneous autopilot/flight director ILS operations, accomplish the following:

A. Within 48 hours after the effective date of this AD:

1. Insert the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM), under paragraph 8.C., Automatic Flight Control System, and notify all crewmembers: "Flight director approaches and autopilot coupled approaches are not permitted without a valid radio altimeter."

Note.—This may be accomplished by inserting a copy of Canadair, Ltd., Airplane Flight Manual PSP 601A–1, Temporary Revision No. 601/13, dated April 6, 1988, into the AFM.

2. Install a placard in the cockpit, visible to the pilot, stating: "FLIGHT DIRECTOR APPROACHES AND AUTOPILOT COUPLED APPROACHES PROHIBITED WITHOUT A VALID ROAD ALTIMETER."

B. Installation of Sperry/Honeywell Flight Guidance Computer, P/N 7003974–715, in accordance with Paragraph 2 of Canadair, Ltd., Service Bulletin 601–0276, dated May 10, 1988, constitutes terminating action for the requirements of paragraph A., above, and the temporary AFM revision and placard should be removed.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

Note.—The request should be forwarded through an FAA Principal Operations Inspector (POI) or Principal Avionics Inspector (PAI), as appropriate, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Canadair, Ltd., Commercial Aircraft Technical Services, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective October 5, 1988.

Issued in Seattle, Washington, on September 6, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–21245 Filed 9–16–88, 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 85–ASW–10; Amdt. 39–6021]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model SA 365 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires repetitive inspections of the main rotor mast on Aerospatiale Model SA 365 series helicopters. This amendment is needed to limit the AD's applicability to helicopters equipped with masts which need repetitive inspections because some masts are not susceptible to the conditions requiring these inspections.

EFFECTIVE DATE: October 19, 1988.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service information may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, ATTN: Customer Support.

A copy of each of the service bulletins is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: John Varoli, Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667, telephone 513.38.30, or R.T. Weaver, Rotorcraft Standards Staff, ASW–110, Federal Aviation Administration, Fort Worth, Texas 76193–0110, telephone (817) 624–5111.

SUPPLEMENTARY INFORMATION: A proposal to amend Amendment 39–5093 (50 FR 29649; July 22, 1895), AD 85–15–01, as amended by Amendment 39–5679 (52 FR 27787; July 24, 1987), AD 85–15–01, R1, by limiting the AD applicability to certain main rotor masts on certain Aerospatiale Model SA 365 series helicopters was published in the Federal Register on May 9, 1988 (53 FR 16438). The proposal was prompted by availability of new and improved parts

which do not require repetitive inspections.

Interested persons have been afforded the opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation only involves 13 helicopters in operation in the United States and imposes no increase in cost. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending Amendment 39-5093 (50 FR 29649; July 22, 1985), AD 85-15-01, as amended by Amendment 39-5679 (52 FR 27787; July 24, 1987), AD 85-15-01 R1, by removing paragraph (h), and by revising the applicability statement and the compliance statement as follows:

Societe Nationale Industrielle Aerospatiale: Applies to Aerospatiale Model SA 365 series helicopters, certificated in any category, when equipped with main rotor masts with Part Numbers 365A31-1060-23 or -25, or 365A31-1179-03, -20, or -21.

Compliance with this amendment to the AD is required as indicated after the effective date of this amendment, unless already accomplished.

* * * * *

This amendment becomes effective October 19, 1988.

This amendment further amends Amendment 39-5093 (50 FR 29649; July 22, 1985), AD 85-15-01, as amended by Amendment 39-5679 (52 FR 27787; July 24, 1987) AD 85-15-01 R1.

Issued in Fort Worth, Texas, on September 8, 1988.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 88-21244 Filed 9-16-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 375, 379 and 399

[Docket No. 80513-8113]

Editorial Clarifications and Corrections to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule, which neither expands nor limits the provisions of the Export Administration Regulation (15 CFR Parts 368-399), makes editorial corrections and clarifications and, in some cases, inserts material inadvertently omitted from earlier regulatory amendments.

Among these corrections and clarifications, are the following:

(a) An entry to the chart in § 375.1 is amended for consistency and clarity.

(b) Section 379.4(f)(1)(i)(Q), the export of technical data under General License GTDR is amended by inserting language that had been inadvertently omitted.

(c) Country Group S is added to § 379.8(a)(3) for consistency with other provisions in Part 379.

(d) ECCN 1460A of the Commodity Control List is amended by inserting language that was inadvertently omitted from the list of countries requiring a validated license.

(e) ECCN 1757A of the Commodity Control List is amended by adding a technical note.

(f) ECCN 1519A of the Commodity Control List is amended by inserting language that had been inadvertently omitted from the note after Technical Note 2.

EFFECTIVE DATE: September 19, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule mentions collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0625-0001 and 0625-0140.

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)) (EAA), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective data. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

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

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

Accordingly, this rule is issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be

submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 375, 379 and 339

Exports, Computer technology, Reporting requirements, Science and technology.

Accordingly, Parts 375, 379 and 399 of the Export Administration Regulations (15 CFR Parts 368 through 399) are amended as follows:

PART 375—[AMENDED]

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

Authority: Pub. L. 96–72, 93 Stat. (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July, 1985 (50 FR 28757, July 16, 1985).

PARTS 379 and 399—[AMENDED]

2. The authority citation for 15 CFR Parts 379 and 399 continues to read as follows:

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

§ 375.1 [Amended]

3. The chart in § 375.1 is amended by revising the entry under the second column reading "Switzerland" to read "Switzerland and Liechtenstein".

4. Section 379.4(f)(1)(i)(Q) is revised to read as follows:

§ 379.4 General License GTDR: Technical Data Under Restriction.

* * * * *

(Q) Terminal, multiplex or modem equipment designed for or used as components, accessories or sub-assemblies of frequency, time or space division telephone-switching systems employing digital transmission techniques designed at a data signalling rate exceeding 2.1 megabits per second.

* * * * *

§ 379.8 [Amended]

5. Section 379.8(a)(3) is amended by adding the letter "S", after the letter "(Q)".

§ 399.1, Supplement No. 1, Group 4 [Amended]

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1460A is amended by adding the phrase "and the People's Republic of China" after the phrase "Country Groups QSWYZ", in paragraphs (b), (c)(1) and (c)(2).

§ 399.1, Supplement No. 1, Group 5 [Amended]

7. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1519A is amended by revising the note after Technical Note 2 to read as follows:

1519A Single and multi-channel communications transmission equipment, including terminal, intermediate amplifier or repeater equipment and multiplex busses and multiplex equipment used for communications within or between communication or other equipment and systems by line, cable, optical fiber or radio means, and associated modems and multiplex equipment.

* * * * *

Technical Note 2: * * *

Note: See § 379.4(f)(1)(i)(Q) for written assurance requirement for exports of technical data related to equipment described in paragraph (b) or (d) of the List of this ECCN, but having a data signalling rate exceeding 2.1 megabits per second.

* * * * *

§ 399.1, Supplement No. 1, Group 7 [Amended]

8. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1757A is amended by adding a technical note after paragraph (k)(1), as follows:

1757A Compounds and materials as described in this entry.

(k) * * *

(1) * * *

Technical Note: The negative resists controlled by 1757(k)(1) have their maximum absorption peak at a wavelength less than 350 nanometers.

* * * * *

Dated: September 13, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88–21165 Filed 9–16–88; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 292

[Docket No. RM87–13–001]

Implementation of the Electric Consumers Protection Act of 1986; Hydroelectric Applicants With Projects at a New Dam or Diversion Seeking Benefits Under the Public Utility Regulatory Policies Act of 1978; Order Granting Rehearing Solely for the Purpose of Further Consideration

Issued September 9, 1988.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order granting rehearing solely for the purpose of further consideration.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 499) on July 11, 1988, implementing section 8 of the Electric Consumers Protection Act of 1986 (ECPA) (Order No. 499, 53 FR 26,992 (July 18, 1988), III FERC Stats. & Regs. ¶ 30,822 (July 11, 1988).

The Commission received one joint request for rehearing from American Rivers and Friends of the Earth (AR). The Commission is granting rehearing of Order No. 499 solely for the purpose of further consideration, and this order does not constitute a grant or denial of the request on its merits in whole or in part.

EFFECTIVE DATE: September 9, 1988.

FOR FURTHER INFORMATION CONTACT: Roger E. Smith, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400. baud, full duplex, no parity, 8 data bits, and 1

stop bit. The full text of this order on rehearing will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon and Charles A. Trabandt.

On July 11, 1988 the Federal Energy Regulatory Commission (Commission) issued as final rule (Order No. 499) implementing section 8 of the Electric Consumers Protection Act of 1986 (ECPA).[1]

Pursuant to 18 CFR 385.713 (1988), the Commission received one joint request for rehearing from American Rivers and Friends of the Earth (AR). The Commission is granting rehearing of Order No. 499 solely for the purpose of further consideration. This order is effective on the date of issuance. This action does not constitute a grant or denial of the request on its merits in whole or in part.

Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure (18 CFR 385.713(d) (1988)), no answers to the request for rehearing will be entertained by the Commission.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-21311 Filed 9-16-88; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Parts 161, 250, 284, and 389

[Docket No. RM87-5-000; Order No. 497]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines; Order Extending Time for Filing

Issued September 9, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order extending time for filing under order No. 497.

SUMMARY: The Commission, on June 1, 1988, issued a final rule (Order No. 497) in Docket No. RM87-5-000 (53 FR 22,139 (June 14, 1988), FERC Stats. & Regs. [Regulations Preambles] ¶ 30,820). The rule established standards of conduct and reporting requirements to prevent preferential treatment of affiliated marketers by interstate natural gas pipeline companies in providing transportation services. Certain reporting requirements in the rule contained in FERC Form No. 592, were to be filed in written and electronic form by September 12, 1988.

In this order, the Commission is extending the deadline for filing FERC Form No. 592, both in written and electronic format, until September 19, 1988.

DATE: The deadline for filing Form No. 592 is extended to and including September 19, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by he Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon and Charles A. Trabandt.

The Commission, on June 1, 1988, issued a final rule (Order No. 497) in Docket No. RM87-5-000.[1] The rule established standards of conduct and reporting requirements to prevent preferential treatment of affiliated marketers by interstate natural gas pipeline companies in providing transportation services.

The standards of conduct in the final rule became effective July 14, 1988. Certain reporting requirements in the rule were contained in FERC Form No. 592. The form was to be filed in written and electronic format by September 12, 1988.

In response to various questions regarding FERC Form No. 592, several technical changes were made to the form on August 30, 1988.[2] In order to provide interstate pipelines sufficient time to incorporate the changes made in FERC Form No. 592, the Commission is extending the deadline for filing the form, both in written and electronic format, until September 19, 1988.

This order does not affect the September 12, 1988, filing date for the information required in § 161.3(j) of the rule. That section requires pipelines to file with the Commission procedures to enable shippers and the Commission to determine how the pipeline is complying with the standards of conduct established in § 161.3 of the rule.

By the Commission.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-21310 Filed 9-16-88; 8:45 am]

BILLING CODE 6717-01-M

[1] "Implementation of Section 8 of the Electric Consumers Protection Act of 1986; Hydroelectric Applicants with Projects at a New Dam or Diversion Seeking Benefits Under the Public Utility Regulatory Policies Act of 1978." Order No. 499, 53 FR 26,992 (July 18, 1988), III FERC Stats. & Regs. ¶ 30,822 (July 11, 1988).

[1] 53 FR 22,139 (June 14, 1988), FERC Stats. & Regs. [Regulations Preambles] ¶ 30,820. The standards of conduct in the rule are codified at 18 CFR 161.3. The rule's reporting requirements are at 18 CFR 250.16. The rule also contained a restriction on a non-open access pipeline's ability to discount transportation service to its affiliates. *See* 18 CFR 284.7(d)(5)(ii).

[2] 53 FR 34,277 (Sept. 6, 1988).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD11 88-05]

Temporary Drawbridge Operation Regulations; Cerritos Channel, CA

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: At the request of California Department of Transportation, the Coast Guard is issuing temporary drawbridge operation regulations for the Schuyler Heim drawbridge across Cerritos Channel at Long Beach, California. The temporary regulations are being established to facilitate repairs to the bridge electrical and fendering systems and replacement of the bridge deck. The regulations prohibit openings for recreational vessels, require advance notice for commercial vessel passages,

and provide that the draw need not be opened for the passage of vessels for sixty days during the construction period from 1 October 1988 to 31 March 1989. This action will accommodate the reasonable needs of navigation. Small boats and some commercial vessels will be able to pass under the closed bridge, and larger vessels have an alternate channel available. The distance from one side of the bridge, around Terminal Island, to the other side is about 11 miles.

EFFECTIVE DATE: These regulations become effective on October 1, 1988 and terminate on March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Sharol Taylor, Bridge Administrator, Eleventh Coast Guard District at (415) 437–3514.

SUPPLEMENTARY INFORMATION: On June 16, 1988, the Coast Guard published a proposed temporary rule concerning this amendment (53 FR 22506). The Commander, Eleventh Coast Guard District, also published the proposal as a Public Notice 11–64 dated June 17, 1988. In each notice, interested persons were given until August 1, 1988 to submit comments. Good cause exists for making the regulation effective in less than 30 days after **Federal Register** publication. Bridge repairs are necessary and the contract for repairs has been issued with construction commencing 1 October 1988. Delaying the effective date of the regulation would be contrary to the public interest since immediate action is needed to keep the bridge in service.

Drafting Information

The drafters of this rule are Sharol E. Taylor, project officer, and Lieutenant Commander J.J. Jaskot, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments

Three responses were received to the public notice. The Pilot Service for Los Angeles and Long Beach Harbors had no objection. Cabrillo Harbor Cruises, Inc. wanted clarification on the proposed temporary regulation and closure of the channel. The Coast Guard provided clarification and advised them that the channel would not be closed, although construction equipment will occupy a portion of the channel. Crowley Towing and Transportation Co. objected on the basis of: safety; time delays for commercial and emergency vessel transits; and economic impact. They estimated their own expenses would increase $500,000 if a six month bridge closure was authorized. The Coast Guard met with Crowley Towing and Construction and the California Department of Transportation and determined that the bridge need only be completely closed for a period of 60 days, and that one hour advance notice could be given during the remainder of the construction period. The Coast Guard also determined that the regulation provides adequately for vessel safety and emergency response.

Economic Assessment and Certification

These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 CFR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The only impact would be on the larger vessels not able to pass under the closed bridge and they have an alternate channel available. Crowley Towing and Transportation Co. had objected to the original six month closure stating that the alternate channel would increase costs by $500,000. After meeting with Crowley and California Department of Transportation an alternative that included a complete closure of only two months was agreed on. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Final Temporary Regulations

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is revised as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Subpart B—Specific Requirements

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.147 is amended by adding (a)(1) to read as follows:

§ 117.147 Cerritos Channel.

(a) * * *

(1) The draw of the Commodore Schuyler F. Heim Bridge, mile 4.5, at Long Beach may remain completely closed for a period of up to sixty days during the six month construction period from October 1, 1988 to March 31, 1989. The dates for this sixty day closure will be announced in the *Local Notice to Mariners*. During the remainder of the six month construction period the draw need open only for public vessels of the United States, State or local vessels used for public safety, tugs with tows, and commercial vessels, on signal if at least one hour advance notice is given.

* * * * *

Dated: August 29, 1988.

J.W. Kime,

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

[FR Doc. 88–21157 Filed 9–16–88; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[HSQ–130–F]

Medicare Program; Alternative Sanctions for Suppliers of End-Stage Renal Disease (ESRD) Services

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

ACTION: Final rule.

SUMMARY: These amendments specify the sanctions that may be imposed on suppliers of ESRD services in lieu of termination of Medicare coverage of those services, the conditions under which the alternative sanctions may be imposed, and the appeal rights of sanctioned suppliers. The rules are necessary to implement a recent amendment to section 1881 of the Medicare law, to provide information about appeal rights, and to reflect other provisions of section 1881(c)(3).

The purpose is to implement the alternative sanctions provisions and ensure clear understanding of appeal rights and the basis for reinstatement of coverage after termination.

EFFECTIVE DATE: These regulations are effective October 19, 1988.

FOR FURTHER INFORMATION CONTACT: Spencer Colburn (301) 966–6823.

SUPPLEMENTARY INFORMATION:

I. Background

The Social Security Amendments of 1972 (Pub. L. 92–603) made it possible for individuals to become entitled to Medicare on the basis of a diagnosis of end-stage renal disease. The ESRD amendments of 1978 (Pub. L. 95–292) amended the Medicare law to add several provisions applicable to ESRD services and to payment for those

services. As with other providers and suppliers of Medicare services, ESRD suppliers are required to meet certain conditions for coverage of the services they furnish to Medicare beneficiaries. The basic sanction for failure to meet those conditions is termination of the provider agreement in the case of providers, and of coverage of the services in the case of suppliers. Section 2352(a) of the Deficit Reduction Act of 1984 (Pub. L. 98–369) amended section 1881(c) of the Medicare law to provide that if a provider is deficient only in the requirement to cooperate in achieving the goals and plans of the network of ESRD facilities to which it belongs, and that deficiency does not immediately jeopardize patient health and safety, the Secretary may impose other sanctions as an alternative to terminating coverage of the ESRD services furnished by that supplier.

II. Provisions of the Proposed Regulations

On April 9, 1987, at 52 FR 11517, we published a Notice of Proposed Rulemaking and requested comments on the addition of three new sections to Subpart U of Part 405 of the Medicare rules. We proposed that—

- Section 405.2180 would specify the basic sanction, which is termination of Medicare coverage, and the basis for reinstatement of coverage after termination. When termination is based on failure to participate in network activities and pursue network goals, coverage could be reinstated when HCFA finds that the supplier is making a reasonable and appropriate effort to comply with this requirement. When termination is based on failure to meet any of the other conditions specified in Subpart U, coverage would not be reinstated until HCFA found that the reason for the sanction had been removed and there was reasonable assurance that it would not recur.
- Section 405.2181 would describe the alternative sanctions (denial of payment of any patients accepted for care after the effective date of the sanction, and gradual reduction of payments for all patients) and the circumstances under which they might be imposed.
- Section 405.2182 would set forth the notice procedures that HCFA will follow and the appeal rights of sanctioned suppliers. HCFA would give notice to the supplier and the public at least 30 days before the effective date of the sanction. If coverage was terminated, the supplier could appeal under Part 498 of the Medicare rules, which provide for hearing before an Administrative Law Judge (ALJ) and a right to request Appeals Council review of the ALJ's decision. If an alternative sanction was imposed, the supplier would have a right to an informal reconsideration before a HCFA official who had no part in the appealed decision.

III. Response to Comments

Comments were received from two national renal associations, a national dialysis chain, and one interested citizen. All commenters approved of the use of alternative sanctions, but one believed that implementation should be postponed. The specific comments and our responses are discussed below.

Removal of Sanction

Comments: Two of the commenters expressed concern about the criteria and the procedures for reinstatement of full coverage for sanctioned suppliers. One requested that the criteria for determination of "responsible and appropriate efforts to meet the condition" be further defined, and asked whether a plan of correction would be sufficient for removal of a sanction, or an onsite visit would be required. The other requested the inclusion of a procedure that would enable the sanctioned supplier itself to seek reinstatement of full coverage.

Response: An alternative sanction will be removed when the noncompliant supplier demonstrates and documents that the reason for the sanction has been eliminated. The form and substance of the documentation required to remove the sanction will depend on the reasons for applying a sanction. For example, if a facility is sanctioned for failing to submit data forms, the sanction would be removed when the facility submits the delinquent forms. A site visit to verify compliance would not be necessary and a plan of correction would not suffice. On the other hand, if a facility is sanctioned for failure to comply with established criteria and standards relating to quality and appropriateness of care, then a plan of correction in conjunction with a site visit might be necessary to document that the reason for the sanction has been eliminated. In any event, each sanction notice will explain what is required for informing HCFA concerning correction of the particular problem or problems, and the sanctioned supplier will follow that guidance. Given this procedure, we do not understand the thrust of the comment. It is the supplier who seeks reinstatement by following the guidance in the sanction notice.

Relationship With Network Organizations

Comment: Three of the four commenters were concerned with this aspect of the proposal. One considered that "participate in network activities and pursue network goals" is too vague to be useful in application of the alternative sanction. He recommended that the goals and activities be as objective as possible to facilitate unbiased judgment of compliance and that they be clearly stated and widely disseminated by the networks to all facilities.

Response: The statutory provision for alternative sanctions limits those sanctions to suppliers that are "not cooperating in achieving the goals and plans of the network." These implementing regulations reflect that statutory language and allow the flexibility needed to achieve the intent of the law.

As part of the network contracts, each network organization will be required to—

- Identify specific network goals and objectives; and
- Develop procedures for informing each member facility as to the goals and the plans for achieving the goals.

Comment: A second commenter was concerned that the administrative bodies of the networks might be able to harass individual facilities. The following were suggested as means of precluding this:

- Require broad representation and frequent rotation of network committee members.
- Establish review and appeal procedures within the network, available to "recalcitrant" facilities before they are reported to HCFA. These might be similar to the procedures followed when a Utilization and Quality Control Peer Review Organization makes a denial determination, that is, a determination that the services are not medically necessary, not reasonable, or not furnished; at the appropriate level of care.
- Identify, in the rules, the specific circumstances under which alternative sanctions would be imposed.

Response: We do not anticipate that the network organizations will plan activities that would be disruptive to the participating ESRD suppliers. Furthermore, the actual implementation of the alternative sanction provisions will be conducted by the HCFA regional offices. Regional staff considers recommendations from the ESRD network organizations, but those organizations do not make the determination. Regional office staff reviews the documentation submitted by the networks to determine whether the sanction is appropriate. This process will be similar to current regional office

procedures for reviewing State survey agency findings before initiating termination action. If regional staff reports any problems, we will take whatever corrective action is required.

Comment: The third commenter considered that implementation of the alternative sanctions is inappropriate at this time because of the proposed restructuring of the network organizations (notice published April 9, 1987 at 52 FR 11550), and changes in their responsibilities (NPRM published; May 12, 1987 at 52 FR 17777). This commenter believes that the effectiveness of the restructured network organizations is still in question and that they should be given the opportunity to establish themselves before the alternative sanction provisions are implemented.

Response: The final rule on ESRD network responsibilities, published on January 21, 1988 (53 FR 1617) made no changes in the May 1987 proposal.

We believe the alternative sanction provisions should be implemented as soon as possible for two reasons:

- So that suppliers can be encouraged to pursue the network goals without the need to terminate coverage of their services; and
- Because having to do without the services of a terminated supplier would hinder network activities more than having to make recommendations on alternative sanctions.

Withholding of Funds

Comments: Two commenters suggested that withholding of payment be included as an alternative sanction. They considered that withholding of payments without interest would provide an incentive for coming into compliance.

Response: We have accepted the suggestion and included withholding of all payments due the supplier, without interest, as an alternative sanction.

Due Process

Comment: One commenter was concerned about the procedures for appealing the imposition of an alternative sanction. He recommended that—

- The facility have the right to counsel and to all the appeal rights specified in Part 498;
- The informal hearing be provided expeditiously;
- The sanction not be imposed until at least 30 days after the facility receives notice of the hearing officer's decision; and
- The facility have access to the information that served as the basis for the allegation that the facility has failed to participate and pursue network goals.

Response: We have revised proposed § 405.2182 to—

- Limit the content of that section to termination of coverage, which is appealable, after the fact, under Part 498;
- Add a new § 405.2184 for appeals from proposed application of alternative sanctions; and
- Specify additional rights of the appellant (right to counsel and access to the information on which the allegation was based) that are standard practice at informal hearings, but were not set forth in the proposed rule.

The appeal rights that are specified in Part 498 apply only to terminations (of a provider agreement or of coverage of a supplier's services) and not to the alternative sanctions. We believe that the informal hearing process specified in the regulation provides adequate appeal procedures to address a facility's failure to cooperate in the plans and goals of the network.

Technical Clarifications

Comment: One commenter requested clarification of the following points:

- Does "accepted for care" (in connection with the denial of payment sanction) refer to all patients treated in the facility after the effective date of the sanction or only to patients admitted after that date?
- Is the 20 percent reduction of payment for each 30 days of noncompliance constant, or does it increase with each additional 30-day period?

This commenter also noted that the cross references in § 405.2180 should be § 405.2181, and questioned reference to Part 498.

Response: The first alternative sanction, which would deny payment for services furnished to patients accepted for care after the effective date of the sanction, is intended to reduce payment only for new patients in the facility. Therefore, we have revised the regulation to read as follows: "Denial of payment for services furnished to patients first accepted for care after the effective date of sanction, as specified in the sanction notice."

With respect to the second alternative sanction, it applies to all patients and we intend to reduce payment by 20 percent for days 1–30, by 40 percent for days 31–60, by 60 percent for days 61–90, etc. The specific reduction percentages will be specified in the sanction notice.

The § 405.2180 cross-reference has been corrected. The § 405.2182 cross-reference is correct. It reflects the fact that the provider appeals provisions of Subpart O of Part 405 of the Medicare regulations were redesignated as Part 498 by final rules published on June 12, 1987 at 52 FR 22444.

IV. Summary of Changes from Proposed Rule

- We have added a third alternative sanction which is the withholding of all payments due a supplier, without interest, until it has corrected the problems that led to the imposition of the sanction.
- We have revised § 405.2181(b)(1) slightly to make clear that the denial of payment sanction applies only to patients admitted after the effective date of the sanction.
- We have corrected the cross-reference in § 405.2180.
- We have added a new § 405.2184 to set forth in greater detail the rights of suppliers that appeal proposed imposition of an alternative sanction.
- We have added a new § 405.2181(c) on duration of sanctions.

V. Related Legislation

While this final rule was under development, section 12 of the Medicare and Medicaid Patient and Program Protection Act of 1987 (Pub. L. 100–93, enacted August 19, 1987) added to the Act a new section 1881(h). This new section gives the Secretary the option of using a specified alternative sanction (denial of payment for new admissions) instead of termination of coverage of the ESRD facility's services. This sanction could be applied to a facility that is deficient in any of the conditions for coverage of its services, if the deficiency does not immediately jeopardize the health or safety of patients. This new option is under consideration and is not included in this final rule.

VI. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final regulations that are likely to meet criteria for a "major rule," a major rule is one that will result in:

(1) An annual deficit on the economy of $100 million or more;

(2) A major increase in costs on prices for consumers, individual industries, Federal, State, or local government agencies, or any geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, consistent with the Regulatory Flexibility Act (5 U.S.C. 601–

612), we prepare and publish a regulatory flexibility analysis unless the Secretary certifies that the regulations will not have a significant impact on a substantial number of small entities. For this purpose, we consider all suppliers of ESRD services to be small entities.

We anticipate that the alternative sanctions will be applied only in unusual circumstances and only to a few suppliers of ESRD services. Therefore, we have determined that this final rule is not a major rule under Executive Order 12291. We have also determined, and the Secretary certifies, that the rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 405, Subpart U is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

1. The authority citation continues to read as follows:

Authority Sections 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr) unless otherwise noted.

2. New §§ 405.2180 through § 405.2184 are added to read as follows:

§ 405.2180 Termination of Medicare coverage.

(a) Except as provided in § 405.2181, failure of a supplier of ESRD services to meet one or more of the conditions for coverage set forth in this Subpart U will result in termination of Medicare coverage of the services furnished by that supplier.

(b) If termination of coverage is based solely on a supplier's failure to participate in network activities and pursue network goals, as required by § 405.2134, coverage may be reinstated when HCFA determines that the supplier is making reasonable and appropriate efforts to meet that condition.

(c) If termination of coverage is based on failure to meet any of the other conditions specified in this subpart, coverage will not be reinstated until HCFA finds that the reason for termination has been removed and there is reasonable assurance that it will not recur.

§ 405.2181 Alternative sanctions.

(a) *Basis for application of alternative sanctions.* HCFA may, as an alternative to termination of Medicare coverage, impose one of the sanctions specified in paragraph (b) of this section if HCFA finds that—

(1) The supplier fails to participate in the activities and pursue the goals of the ESRD network that is designated to encompass its geographic area; and

(2) This failure does not jeopardize patient health and safety.

(b) *Alternative sanctions.* The alternative sanctions that HCFA may apply in the circumstances specified in paragraph (a) of this section include the following:

(1) Denial of payment for services furnished to patients first accepted for care after the effective date of sanction as specified in the sanction notice.

(2) Reduction of payments, for all ESRD services furnished by the supplier, by 20 percent for each 30-day period after the effective date of sanction.

(3) Withholding of all payments, without interest, for all ESRD services furnished by the supplier to Medicare beneficiaries.

(c) *Duration of sanction.* An alternative sanction remains in effect until HCFA finds that the supplier is in substantial compliance with the requirement to cooperate in the network plans and goals, or terminates coverage of the supplier's services for lack of compliance.

§ 405.2182 Notice of sanction and appeal rights: Termination of coverage.

(a) *Notice of sanction.* HCFA gives the supplier and the general public notice of sanction and of the effective date of the sanction. The effective date of the sanction is at least 30 days after the date of the notice.

(b) *Appeal rights.* Termination of Medicare coverage of a supplier's ESRD services because the supplier no longer meets the conditions for coverage of its services is an initial determination appealable under Part 498 of this chapter.

§ 405.2184 Notice of appeal rights: alternative sanctions.

If HCFA proposes to apply a sanction specified in § 405.2181(b), the following rules apply:

(a) HCFA gives the facility notice of the proposed sanction and 15 days in which to request a hearing;

(b) If the facility requests a hearing, HCFA provides an informal hearing by a HCFA official who was not involved in making the appealed decision.

(c) During the informal hearing, the facility—

(1) May be represented by counsel;

(2) Has access to the information on which the allegation was based; and

(3) May present, orally or in writing, evidence and documentation to refute the finding of failure to participate in network activities and pursue network goals.

(d) If the written decision of the informal hearing supports application of the alternative sanction, HCFA provides the facility and the public, at least 30 days before the effective date of the sanction, with a written notice that specifies the effective date and the reasons for the sanction.

(Catalog of Federal Domestic Assistance Program No. 13.773 Medicare—Hospital Insurance, and No. 13.774—Supplementary Medical Insurance.)

Dated April 21, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: July 19, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-21278 Filed 9-16-88; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Evaluation Determinations; Arkansas et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified evelations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each

community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State/county/location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas / Crawford (FEMA Docket 6931/city of Van Buren.	Mar. 17, 24, 1988; Press Argus Courier.	Hon. Robert E. Bell, mayor of the city of Van Buren, P.O. Box 668, Van Buren, AR 72956.	Mar. 4, 1988.....	050053
Florida/Orange (Docket No. FEMA-6928)/unincorporated areas.	May 26, June 2, 1988; Legal Review.	Hon. Thomas R. Sewell, county administrator, Orange County, County Courthouse, P.O. Box 1393, Orlando, FL 32802-1393.	May 12, 1988.....	120179
South Carolina / Charleston (Docket No. FEMA-6928)/unincorporated areas.	June 2, 9, 1988; The News Courier.	Hon. William Furtwangler, Charleston County Administration, County Courthouse, 2 Courthouse Square, Charleston, SC 29401.	May 12, 1988.....	455412
Tennessee / Shelby (Docket FEMA-6928/unincorporated areas.	June 3, 10, 1988; Commercial Appeal.	Hon. William N. Morris, Jr., mayor, Shelby County, 160 N. Mid America Mall, Suite 850, Memphis, TN 38103.	Apr. 24, 1988.....	470214

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: September 9, 1988.

[FR Doc. 88-21254 Filed 9-16-88; 8:45 am]

BILL CODE 6718-03-M

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44 CFR Part 65

[Docket No. FEMA-6936]

Changes in Flood Elevation Determinations; Florida et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Interim Rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations are appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency

Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies establish by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida, Dade	Unincorporated Areas	Aug. 18, 1988, Aug. 25, 1988, *Miami News.*	The Honorable Joaquin Avion, County Manager, Dade County, Metro Dade Center, 111 NW 1st Street, Suite 2910, Miami, Florida 33128–1971.	Aug. 10, 1988.	125098
Florida, Orange	Unincorporated Areas	Aug. 18, 1988, Aug. 25, 1988, *The Orlando Sentinel.*	The Honorable Thomas R. Sewell, County Administrator, Orange County, P.O. Box 1393, Orlando, Florida 32802–1393.	Aug. 10, 1988.	120179
Massachusetts, Bristol	City of New Bedford	Aug. 26, 1988, Sept. 2, 1988, *New Bedford Standard Times.*	The Honorable John K. Bullard, Mayor of the City of New Bedford, 113 William Street, New Bedford, MA 02740.	Aug. 12, 1988.	255216 B
Texas, Tarrant	City of Arlington	Aug. 30, 1988, Sept. 6, 1988, *The Arlington Daily News.*	The Honorable Richard Greene, Mayor of the City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231.	Aug. 23, 1988.	485454 C

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: September 9, 1988.

[FR Doc. 88–21253 Filed 9–16–88; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

Final Flood Elevation Determinations; Florida, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster

Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood Insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

State, city/town/county, source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
FLORIDA	
Osceola County (unincorporated areas) FEMA Docket No. 6929)	
Lake Kissinmee: Along entire shoreline	*55
Maps available for inspection at the City Hall, 17 South Vernon Avenue, Room 155, Kissimmee, Florida.	
Pasco County (unincorporated areas) (FEMA Docket No. 6929)	
Cypress Creek:	
About 2.1 miles downstream of Interstate 75	*52
Just upstream of Ten Cent Road	*64
Just downstream of State Road 52	*76
Trout Creek:	
About 2.7 miles downstream of Interstate 75	*52
Just upstream of Interstate 75	*53
At Divergence with Cypress Creek	*57
Maps available for inspection at the Planning and Zoning Department, 7530 Little Road, New Port Richey, Florida.	
Pinellas Park (city), Pinellas County (FEMA Docket No. 6929)	
Cross Bayou Canal: Just upstream of Haines Road along Ditch 1	*11
Ditch 1:	
Just upstream of CSX railroad	*11
Just upstream of 58th Street North	*14
Ditch 1A:	
At mouth	*13
Just downstream of Disston Boulevard	*16
Ditch 1–B–5: Just upstream of 82nd Avenue North	*16
Ditch 2A:	
About 1000 feet upstream of confluence with Ditch 2	*11
Just upstream of U.S. Route 19	*14
Ditch 4:	
Just upstream of 62nd Avenue North	*12
Just upstream of 62nd Street North	*15
Just upstream of CSX railroad	*17
Ditch 4A: Northwest corner of the intersection of CSX railroad and 62nd Avenue North	*19
Ditch 4E:	
About 100 feet upstream of mouth	*15
About 400 feet upstream of 62nd Avenue North	*18
Maps available for inspection at the Engineering Department, 6051 78th Avenue North, Pinellas Park, Florida 33565.	
GEORGIA	
Fulton county (unincorporated areas) (FEMA Docket No. 6930)	
Foe Killer Creek:	
Just downstream of Old Roswell Road	*967
About 0.9 mile upstream of Old Roswell Road	*997
Maps available for inspection at the Department of Public Works, 300 Administration Building, 165 Central Avenue, SW, Atlanta, Georgia.	
Statesboro (city), Bulloch County (FEMA Docket No. 6930)	
Little Lotts Creek:	
About 2800 feet downstream of the confluence of Little Lotts Creek Tributary A	*187
About 600 feet downstream of Gentilly Road	*195
Just downstream of West Parrish Street	*235
Little Lotts Creek Tributary A:	
At mouth	*189
About 800 feet upstream of Windsor Way	*191
Little Lotts Creek Tributary B:	
At mouth	*190
About 1500 feet upstream of mouth	*193
Little Lotts Creek Tributary G:	
At mouth	*213
About 350 feet upstream of mouth	*219
Maps available for inspection at the City Hall, Statesboro, Georgia.	
ILLINOIS	
Buffalo Grove (village), Cook and Lake Counties (FEMA Docket No. 6929)	
Aptakisic Creek:	
Just downstream of Weiland Road	*671
Just upstream of Busch Parkway	*675
About 300 feet upstream of Copperwood Drive	*679
Maps available for inspection at the Engineering Department, 51 Raupp Boulevard, Buffalo Grove, Illinois.	
KANSAS	
Winfield (city), Cowley County (FEMA Docket No. 6930)	
Black Crook Creek:	
About 950 feet downstream of Nineteenth Avenue	*1,123
Just upstream of Union Pacific Railroad	*1,132
About 1,400 feet upstream of Simpson Avenue	*1,159
About 1,900 feet upstream of Simpson Avenue	*1,162
Walnut River:	
About 0.91 mile downstream of Main Street	*1,121
About 3,900 feet downstream of Main Street	*1,121
Maps available for inspection at the Planning and Engineering Department, 200 East Ninth, Winfield, Kansas.	
MICHIGAN	
Midland (city), Midland and Bay Counties (FEMA Docket No. 6929)	
Snake Creek:	
Just upstream of Eastman Road	*616
About 600 feet upstream of Sugnet Road	*618
Just upstream of East Wackerly Road	*636
Maps available for inspection at the City Hall, City Clerk's Office, 202 Ashman Street, Midland, Michigan.	
MISSISSIPPI	
Jackson (city), Hinds and Rankin Counties (FEMA Docket No. 6929)	
Purple Creek:	
About 0.4 miles upstream of Sedgewick Road	*281
Just upstream of Woodfield Drive	*296
Just downstream of County Line Road	*303
Maps available for inspection at the Planning Department, 200 South President's Street, Jackson, Mississippi.	
NEW JERSEY	
Greenwich (township), Gloucester County (FEMA Docket No. 6929)	
Delaware River:	
Delaware River at downstream corporate limits	*10
Delaware River at upstream corporate limits	*10
Repaupo Creek at confluence with Pargey Creek	*10
Repaupo Creek at confluence with Delaware River	*10
Pargey Creek, approximately 200 feet downstream of Interstate 295	*10
Pargey Creek at confluence with Repaupo Creek	*10
White Sluice Race at confluence of Still Run	*10
White Sluice Race at confluence with Aunt Debs Ditch	*10
London Branch, approximately 50 feet downstream of Interstate 295	*10
London Branch at confluence with White Sluice Race	*10
Still Run, approximately 50 feet downstream of Interstate 295	*10
Still Run at confluence with White Sluice Race	*10
Nehonsey Creek at confluence of Sand Ditch	*10
Nehonsey Creek at confluence with White Sluice Race	*10
Sand Ditch at confluence of Nehonsey Branch	*10
Sand Ditch at confluence with Aunt Debs Ditch	*10
Nehonsey Brook, approximately 50 feet downstream of Interstate 295	*10
Nehonsey Brook at confluence with Sand Ditch	*10
Clonmell Creek, approximately 50 feet downstream of CONRAIL Railroad	*10
Clonmell Creek, approximately 1,600 feet upstream of confluence with Delaware River	*10

State, city/town/county, source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Maps available for inspection at the Municipal Building, Washington and Walnut Streets, Gibbstown, New Jersey.	
OHIO	
Shaker Heights (city), Cuyahoga County (FEMA Docket No. 6929)	
Kingsbury Run:	
Just downstream of Colwun Road	*945
Just downstream of Scottsdale Boulevard	*1,040
Maps available for inspection at the City Hall, 3400 Lee Road, Shaker Heights, Ohio.	
PENNSYLVANIA	
Athens (borough), Bradford County (FEMA Docket No. 6929)	
Susquehanna River:	
Downstream corporate limits	*753
Upstream corporate limits	*764
Chemung River:	
Downstream corporate limits	*753
Upstream corporate limits	*766
Maps available for inspection at the Borough Manager's Office, 2 South River Street, Athens, Pennsylvania.	
SOUTH CAROLINA	
Lexington County (unincorporated areas) (FEMA Docket No. 6929)	
Congaree Creek:	
Just downstream of Interstate 26	*142
Just downstream of Norfolk Southern Railway	*146
Approximately 3.1 miles upstream of Norfolk Southern Railway	*163
Maps available for inspection at the Department of Planning and Development, 212 South Lake Drive, Lexington, South Carolina.	
Pine Ridge (town), Lexington County (FEMA Docket No. 6929)	
Congaree Creek:	
Approximately 1.6 miles downstream of Norfolk Southern Railroad	*142
Just downstream of Norfolk Southern Railroad	*147
Maps available for inspection at the Town Hall, 1015 Fish Hatchery Road, West Columbia, South Carolina.	
South Congaree (town), Lexington County (FEMA Docket No. 6929)	
Congaree Creek:	
Just downstream of confluence of First Creek	*150
Just upstream of Pine Street	*156
Approximately 1.7 miles upstream of Pine Street	*163
First Creek:	
At mouth	*151
Approximately 1500 feet upstream of mouth	*154
Maps available for inspection at the Town Hall, 1633 Berry Road, South Congaree, South Carolina.	

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: September 9, 1988.

[FR Doc. 88-21252 Filed 9-16-88; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; Arkansas, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARKANSAS	
City of Cabot (Lonoke county) (FEMA Docket No. 6926)	
Bayou Two Prairie:	
At downstream corporate limits	*266
Approximately .21 mile upstream of upstream corporate limits	*269
Drain 1:	
At corporate limits	*265
Approximately .74 mile upstream of corporate limits	*274
Drain 2:	
At corporate limits	*268
Approximately 535 feet upstream of confluence of Drain 2A	*274
Drain 2A:	
At confluence with Drain 2	*273
At Barnwell Street	*279
Drain 3:	
At Kerr Station Road	*275
At upstream side of State Route 89	*286
Drain 3A:	
At Kerr Station Road	*275
At State Route 89	*291
Drain 3B:	
At confluence with Drain 3A	*280
Approximately 90 feet upstream of State Route 89	*288
Drain 3S:	
At confluence with Drain 3	*277
Approximately 50 feet upstream of State Route 89	*287
Drain 4:	
At Kerr Station Road	*277
Approximately 240 feet upstream of upstream corporate limits	*290
Maps available for inspection at the City Hall, Cabot, Arkansas.	
England (city), Lonoke county (FEMA Docket No. 6926)	
Wabbaseka Bayou:	
At downstream corporate limits	*222
Approximately .28 mile upstream of upstream corporate limits	*225

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the City Hall, England, Arkansas.	
CONNECTICUT	
Salisbury (town), Litchfield County (FEMA Docket No. 6923)	
Housatonic River:	
At downstream corporate limits	*542
0.3 mile upstream of Falls Mountain Road	*549
0.3 mile upstream of Great Falls Dam	*643
At upstream corporate limits	*655
Salmon Creek:	
At confluence with Housatonic River	*545
Approximately 200 feet downstream of Lime Rock Road (1st crossing)	*620
Approximately 1.2 miles upstream of U.S. Route 44	*690
At Beaver Dam Road	*719
Factory Brook:	
At confluence with Salmon Creek	*653
Approximately 0.2 mile upstream of Holley Road	*729
Burton Brook:	
At confluence with Factory Brook	*681
Approximately 0.2 mile upstream of U.S. Route 44	*737
Maps available for inspection at the Town Clerk's Vault, Town Hall, Maine Street, Salisbury, Connecticut.	
FLORIDA	
Center Hill (city), Sumter County (FEMA Docket No. 6927)	
Jumper Creek: Within community	*90
Maps available for inspection at the City Building, Center Hill, Florida.	
GEORGIA	
Glynn County (unincorporated areas) (FEMA Docket No. 6923)	
Atlantic Ocean:	
Just above confluence of College Creek with Turtle River	*12
About 1,000 feet north of mouth of Mosquito Creek on the open coast	*21
Maps available for inspection at the Community Development Department, Glynn County Office Building, 1803 Gloucester Street, Brunswick, Georgia.	
IDAHO	
Cascade (city), Valley County (FEMA Docket No. 6927)	
North Fork Payette River:	
At southern-most corporate limit	*4,727
Approximately 859 feet downstream of State Highway 55	*4,730
Approximately 4,370 feet upstream of State Highway 55 (near Cascade Airport)	*4,732
Approximately 140 feet upstream of State Highway 55 (near Cascade dam)	*4,739
Maps are available for review at City Hall, 108 East Market, Cascade, Idaho.	
INDIANA	
DeKalb County (unincorporated areas) (FEMA Docket No. 6926)	
Cedar Creek:	
About 1,450 feet downstream of the CSX railroad	*852
About 0.6 mile upstream of County Route 31	*897
St. Joseph River:	
Just upstream of County Route 59	*795
Just downstream of County Route 64	*798
Maps available for inspection at the Planning Commission Office, County Courthouse, Auburn, Indiana.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
INDIANA	
Marshall County (unincorporated areas) (FEMA Docket No. 6926)	
Yellow River:	
Just upstream of 1200 East Road	*732
Just downstream of East 4th Road	*800
Tippecanoe River:	
Just upstream of East 20th Road	*766
Just downstream of East 18th Road (upstream crossing)	*779
Cook Lake: Entire shoreline	*770
Holem Lake: Entire shoreline	*770
Koontz Lake: Entire shoreline	*715
Kreighbaum Lake: Entire shoreline	*770
Lake of the Woods: Entire shoreline	*805
Lake Latonka: Entire shoreline	*763
Lawrence Lake: Entire shoreline	*770
Myers Lake: Entire shoreline	*770
Mill Pond: Entire shoreline	*770
Maps available for inspection at the County Planning Office, County Building, Room 302, Plymouth, Indiana.	
Roseland (town), St. Joseph County (FEMA Docket No. 6926)	
Judy Creek:	
Just upstream of Cleveland Road	*711
About 750 feet upstream of Myrtle Street	*714
Maps available for inspection at the Building Commission, Town Hall, 200 Independence Drive, South Bend, Indiana.	
Waterloo (town), DeKalb County (FEMA Docket No. 6927)	
Cedar Creek:	
Just upstream of County Route 28	*881
Just downstream of Center Street	*889
Maps available for inspection at the Clerk Treasurer's Office, Town Office, 385 West Walnut, Waterloo, Indiana.	
KENTUCKY	
Carrollton (city), Carroll County (FEMA Docket No. 6927)	
Ohio River:	
At confluence of Kentucky River	*468
About 3.4 miles upstream of confluence of Kentucky River	*469
Kentucky River:	
At mouth	*468
About 1.2 miles above mouth	*468
Maps available for inspection at the City Hall, Carrollton, Kentucky.	
Whitley County (unincorporated areas) (FEMA Docket No. 6926)	
Cumberland River:	
Just upstream of State Route 204	*907
About 7.65 miles upstream of U.S. Route 25W	*944
Brown's Creek:	
At mouth	*924
About 900 feet upstream of private road	*980
Clear Fork:	
At mouth	*932
At state boundary	*976
Meadow Creek:	
At mouth	*978
About 1.22 miles upstream of mouth	*999
Watts Creek:	
At mouth	*924
Just downstream of Gatliffi Dam	*924
Just upstream of Gatliffi Dam	*929
About 3,600 feet upstream of State Route 26	*985
Lynn Camp Creek:	
About 1.10 miles downstream of private road	*1,070
About 0.50 mile upstream of Back Street	*1,089
Maps available for inspection at the County Courthouse, Williamsburg, Kentucky.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Williamsburg (city), Whitley County (FEMA Docket No. 6926)	
Cumberland River:	
About 0.55 mile downstream of CSX railroad	*926
About 0.93 mile upstream of State Route 25W	*932
Maps available for inspection at the City Hall, Williamsburg, Kentucky.	
LOUISIANA	
Varnado (village), Washington Parish (FEMA Docket No. 6927)	
Pushepatapa Creek:	
Approximately 2,900 feet downstream of State Route 460–1	*114
Approximately 4,180 feet upstream of State Route 21	*127
Maps available for inspection at the village Hall, Pearsoll Street, Varnado, Louisiana.	
MAINE	
Lovell (town), Oxford County (FEMA Docket No. 6927)	
Kezar Lake:	
Entire shoreline of Kezar Lake within community	*385
At Lower Bay	*385
At Middle Bay	*385
At Upper Bay	*385
At Saco River	*385
At the Narrows	*385
At Farrington Pond to approximately 50 feet downstream of its confluence with Sucker Brook	*385
At Sucker Brook from its confluence with Kezar Lake to approximately 0.3 mile downstream of Foxboro Road	*385
At Kezar River from corporate limits to approximately 125 feet downstream of State Route 93	*385
At Prays Brook from corporate limits to approximately 0.5 mile upstream of State Route 5	*385
Maps available for inspection at the Town Hall, Lovell, Maine.	
Rockland (city), Knox County (FEMA Docket No. 6926)	
Atlantic Ocean:	
Shoreline at Talbot Avenue (extended)	*11
Shoreline at Atlantic Point	*14
Shoreline at Samoset Road (extended)	*19
Maps available for inspection at the Code Enforcement Office, City Hall, Rockland, Maine.	
Wilton (town), Franklin County (FEMA Docket No. 6927)	
Wilson Stream:	
Approximately 3,300 feet downstream of Butterfield and Route 133 Bridge	*376
Approximately 80 feet upsream of State Route 156 Bridge	*496
Approximately 250 feet upstream of Canal Street Bridge	*576
Maps available for inspection at the Town Manager's Office, Wilton, Maine.	
MICHIGAN	
Grant (township), Cheboygan County (FEMA Docket No. 6927)	
Black River:	
About 1.9 miles downstream of confluence of Section Seven Creek	*612
About 0.8 mile upstream of confluence of Long Lake Creek	*616
Twin Lakes: Along shoreline	*681
Black Lake: Along shoreline	*616
Maps available for inspection at the Township Hall, 1640 North Black River Drive, Cheboygan, Michigan.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Lockport (township), St. Joseph County (FEMA Docket No. 6927)	
St. Joseph River:	
About 1,400 feet downstream of Constantine Road	*790
Just downstream of Sturgis Dam	*808
About 400 feet upstream of Covered Bridge Road	*829
Portage River:	
About 2.4 miles downstream of South Lake Road	*806
About 2,400 feet upstream of Carpenter Road	*812
Maps available for inspection at the Supervisor's Home, 18581 M–86, Three Rivers, Michigan.	
Saint Louis (city), Gratiot County (FEMA Docket No. 6927)	
Pine River:	
About 1.1 miles downstream of Main Street	*713
About 0.6 mile upstream of State Street	*724
Maps available for inspection at the City Hall, 108 Saginaw, Saint Louis, Michigan.	
Victor (township), Clinton County (FEMA Docket No. 6927)	
Looking Glass River:	
Just upstream of Chandler Road	*806
At county boundary	*812
Maps available for inspection at the Township Hall, 6764 East Price Road, St. Johns, Michigan.	
MISSOURI	
Anniston (city), Mississippi County (FEMA Docket No. 6920)	
Shallow Flooding (overflow from Birds Point-New Madrid Levee Ditch): Within community	*311
Shallow Flooding (overflow from Wolf Hole Lateral No. 2):	
About 600 feet west of intersection of Russell Street and Southern Pacific Railroad	*312
About 400 feet northwest of intersection of State Highway 75 and Fourth Street	*313
Maps available for inspection at the City Hall, Anniston, Missouri.	
East Prairie (city), Mississippi County (FEMA Docket No. 6920)	
Shallow Flooding (overflow from St. James Ditch): Within community	*309
Maps available for inspection at the City Administration Building, 219 North Washington, East Prairie, Missouri.	
Wilson City (village) Mississippi County (FEMA Docket No. 6920)	
Shallow Flooding (overflow from Birds Point-New Madrid Levee Ditch): Within community	*317
Maps available for inspection at the Community Building, Wilson City, Missouri.	
Wyatt (city), Mississippi County (FEMA Docket No. 6920)	
Shallow Flooding (overflow from Birds Point-New Madrid Levee Ditch): Within community	*317
Maps available for inspection at the City Hall, Wyatt, Missouri.	
NEW MEXICO	
Rio Arriba County (unincorporated areas) (FEMA Docket No. 6926)	
Embudo Creek:	
Approximately 600 feet upstream of confluence with Rio Grande	*5,846
Approximately 1,200 feet downstream of confluence with Arroyo La Mina	*5,920
Approximately 1.1 miles downstream of State Route 75	*5,995
Approximately 1,750 feet upstream of State Route 75	*6,070
Approximately 1.5 miles upstream of State Route 75	*6,145
Approximately 2,400 feet upstream of confluence with Canada de Los Pino Reales	*6,219
Rio Grande—Below Espanola:	
At downstream County boundary	*5,539
At confluence of Arroyo Seco	*5,565
At upstream County boundary	*5,579
Rio Grande—Above Rio Chama:	
Approximately 0.5 mile downstream confluence of Arroyo de Chinguague	*5,640
At confluence of Arroyo del Palacio	*5,684
Approximately 1.1 miles upstream of confluence of Arroyo del Palacio	*5,696
Maps available for inspection at the County Manager's Office, Espanola, New Mexico.	
Taos County (unincorporated areas) (FEMA Docket No. 6926)	
Rio Pueblo De Taos:	
Approximately 1,600 feet downstream of confluence with Rio Lucero	*6,860
Approximately 100 feet downstream of County Road	*6,916
At upstream County boundary	*6,950
Rio Lucero:	
Approximately 50 feet upstream of confluence with Rio Pueblo De Taos	*6,882
Approximately 1,350 feet downstream of State Route 3	*6,941
Approximately 0.5 mile upstream of State Route 3	*6,996
Maps available for inspection at the Taos County Courthouse, Planning Department, Taos, New Mexico.	
NEW YORK	
Duanesburg (town), Schenectady County (FEMA Docket No. 6927)	
Schoharie Creek:	
Approximately 1.37 miles upstream of the downstream corporate limits	*532
At the upstream corporate limits	*585
Maps available for inspection at the Town Hall, Duanesburg, New York.	
Montebello (village), Rockland County (FEMA Docket No. 6927)	
Mahwah River:	
At downstream corporate limits	*306
At confluence of Golf Course Brook	*324
At Pond View Acres Road	*334
Approximately .60 mile upstream of upstream corporate limits	*354
Spook Rock Brook:	
At downstream corporate limits (Grandview Avenue)	*386
At confluence of Spook Rock Brook Left Channel	*436
At upstream corporate limits	*471
Spook Rock Brook Left Channel:	
At confluence with Spook Rock Brook	*436
At upstream corporate limits	*471
Golf Course Brook:	
At confluence with Mahwah River	*324
At Heather Hill Road	*328
At Pine Tree Farms Drive	*378
At Dam No. 7	*471
Approximately 260 feet upstream of Spook Rock Road	*493
Willow Tree Brook:	
At downstream corporate limits (1st downstream crossing of Grandview Avenue)	*386
Approximately 300 feet upstream of Wesley Chapel Road	*420
Montebello Creek:	
At confluence with Mahwah River	*309
At upstream corporate limits	*319
Maps available for inspection at 67 Haverstraw Road, Suffern, New York.	
Ramapo (town), Rockland County (FEMA Docket No. 6923)	
Brian Brook:	
At confluence with Mahwah River	*400
At downstream side of State Route 306	*456
Hungry Hollow Brook:	
At downstream corporate limits	*477
At upstream side of Interstate Routes 87 & 287 culvert	*483
Mahwah River:	
At downstream corporate limits	*337
At upstream side of Grandview Avenue	*353
At confluence of Willow Tree Brook	*361
Upstream side of Catamount Farm Dam	*398
At upstream side of Mountain Road	*407
At upstream corporate limits	*426
North Branch Pascack Brook:	
At downstream corporate limits	*406
Approximately 20 feet downstream of Pascack Road	*429
At downstream side of Eckerson Road	*446
Approximately 30 feet upstream of Rockland Parkway (1st upstream crossing)	*461
Approximately 20 feet upstream of State Route 45	*489
At the upstream corporate limits	*498
At the upstream side of the Kearsing Parkway	*557
Approximately 50 feet upstream of Viola Road	*587
Pascack Brook:	
Approximately 50 feet downstream of Abandoned Railroad	*465
Approximately 150 feet upstream of Francis Place (2nd upstream crossing)	*477
At the upstream side of the Ida Road Backyard Foot Bridge	*492
Approximately 220 feet upstream of Ralph Boulevard	*529
East Branch Saddle River:	
At the downstream corporate limits	*284
At the downstream side of the Twin Arch Cemetery Driveway	*318
At the upstream side of South Monsey Road	*338
At the downstream side of Regina Road	*390
At the downstream side of Interstate Routes 87 & 287	*447
At the upstream side of Interstate Routes 87 & 287	*468
West Branch Saddle River:	
At corporate limits	*324
Approximately 1,650 feet downstream of Beaver Hollow Lane	*374
Approximately 60 feet downstream of Beaver Hollow Lane	*395
At the upstream side of Christmas Hill Road	*419
At the downstream side of East Blossom Road	*460
At the downstream side of State Route 59	*501
At the downstream side of the Masonic Camp Pond Dam	*525
Tributary to West Branch Saddle River:	
At the downstream corporate limits	*334
At the downstream side of the dam	*383
At the upstream side of Rustic Drive	*415
Approximately 240 feet downstream of Victoria Drive	*439
Spook Rock Brook:	
At the upstream side of the Orchard Hills Dam	*457
At the downstream corporate limits	*471
At the upstream side of Quince Lane	*511
At the upstream side of Viola Road	
Approximately 250 feet upstream of Smolley Drive	*601
Willow Tree Brook:	
At the confluence with the Mahwah River	*361
At U.S. Route 202	*365
Maps available for inspection at the Office of the Town Clerk, Town Hall, Ramapo, New York.	
NORTH CAROLINA	
Cherokee County (unincorporated areas) (FEMA Docket No. 6927)	
Nottely River:	
About 2.0 miles downstream of U.S. Route 64	*1,535
About 3.3 miles upstream of Snowhill Road	*1,600

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Martin Creek:	
About 0.5 mile downstream of Martin Creek Road	*1,561
Just downstream of State Road 1564	*1,660
Slow Creek:	
At mouth	*1,589
About 0.54 mile upstream of Fain Cove Road	*1,678
Peachtree Creek:	
About 0.45 mile downstream of U.S. Route 64	*1,564
About 1.04 miles upstream of Mission Road	*1,753
Hiwassee River:	
About 1.57 miles downstream of confluence of Peachtree Creek	*1,554
About 1.4 miles upstream of confluence of Peachtree Creek	*1,572
Valley River:	
About 0.2 mile downstream of U.S. Route 19	*1,719
Just downstream of U.S. Route 19	*1,724
Just upstream of U.S. Route 19	*1,730
About 100 feet downstream of U.S. Route 19 Bypass	*1,772
Tatham Creek:	
About 0.12 mile downstream of Norfolk Southern Railway	*1,772
Just downstream of U.S. Route 19	*1,797
Maps available for inspection at the County Courthouse, Murphy, North Carolina.	

Lumberton (city), Robeson County (FEMA Docket No. 6927)

Lumber River:	
About 1.8 miles downstream of Chippewa Street	*113
About 2,300 feet downstream of confluence of Bear Swamp	*127
Jacob Swamp:	
About 900 feet upstream of SR 2289	*114
Just upstream of Contempora Drive	*124
Little Jacob Swamp:	
At mouth	*114
Just upstream of SR 2513	*125
Five Mile Branch:	
At mouth	*124
Just downstream of Meadow Road	*138
Meadow Branch:	
At mouth	*124
Just upstream of Fayetteville Road	*133
Pole Cat Branch:	
At mouth	*126
Just upstream of Fayetteville Road	*130
Ivey Branch:	
At mouth	*125
Just upstream of Fayetteville Road	*133
Saddletree Swamp:	
At mouth	*124
About 3,500 feet downstream of SR 1529	*129
Saddletree Swamp Tributary:	
At mouth	*124
Just downstream of SR 1544	*142
Maps available for inspection at the City Hall, Lumberton, North Carolina.	

Orrum (town), Robeson County (FEMA Docket No. 6927)

Lumber River: Within community	*82
Maps available for inspection at the Town Hall, Orrum, North Carolina.	

Robeson County (unincorporated areas) (FEMA Docket No. 6927)

Lumber River:	
About 3.8 miles downstream of State Road 904	*61
About 3.1 miles upstream of SR 1310	*206
Jacob Swamp:	
At mouth	*107
Just upstream of SR 2416	*132
Little Jacob Swamp:	
At mouth	*114
About 1,800 feet upstream of SR 2513	*125
Bear Swamp:	
At mouth	*128
Just downstream of CSX railroad	*163
Just upstream of CSX railroad	*170
Just downstream of State Road 710	*184
Back Swamp:	
At mouth	*129
About 2.1 miles upstream of SR 1188	*176
Saddletree Swamp:	
About 3,500 feet downstream of SR 1529	*129
About 1,300 feet upstream of SR 1758	*156
Maps available for inspection at the County Courthouse, 500 North Elm Street, Lumberton, North Carolina.	

OHIO

Byesville (village), Guernsey County (FEMA Docket No. 6927)

Wills Creek:	
About 700 feet upstream County Route 347	*800
About 4,200 feet upstream Main Street	*802
Maps available for inspection at the Mayor's Home, Byesville, Ohio.	

Cambridge (city), Guernsey County (FEMA Docket No. 6927)

Wills Creek:	
About 3,500 feet downstream of Wills Creek Valley Road	*794
About 600 feet downstream of Interstate 70	*800
Leatherwood Creek:	
At mouth	*800
About 1,300 feet upstream of Vocational Road	*801
Crooked Creek:	
About 1.0 mile upstream of Bloomfield Road	*796
Just downstream of Glenn Highway	*797
Maps available for inspection at the City Hall, 1131 Steubenville Avenue, Cambridge, Ohio.	

Cumberland (village), Guernsey County (FEMA Docket No. 6927)

Buffalo Fork:	
About 600 feet upstream of Perry's Den Road	*831
At CSX railroad	*834
Collins Fork:	
At mouth	*834
About 900 feet upstream of Renrock Rock	*837
Maps available for inspection at the City Hall, 342 Main Street, Cumberland, Ohio.	

Guernsey County (unincorporated areas) (FEMA Docket No. 6927)

Wills Creek:	
About 3,500 feet downstream of Wills Creek Valley Road	*794
About 1.0 mile upstream of Main Street	*802
Hospital Tributary:	
About 2,500 feet downstream of Toland Drive	*790
About 2,200 feet upstream of Eckleberry Road	*797
Leatherwood Creek:	
At mouth	*800
Just upstream of CSX railroad	*802
Crooked Creek:	
At mouth	*796
About 2,900 feet upstream of Phillips Road	*804
Buffalo Fork:	
About 3,200 feet downstream of Perry's Den Road	*827
At confluence of Collins Fork	*834
Collins Fork:	
At mouth	*834
About 930 feet upstream of Renrock Road	*837
Maps available for inspection at the County Courthouse, 836 Steubenville Avenue, Cambridge, Ohio.	

Lore City (village), Guernsey County (FEMA Docket No. 6927)

Leatherwood Creek: Within community	*820
Maps available for inspection at the Mayor's Home, Lore City, Ohio.	

Quaker City (village), Guernsey County (FEMA Docket No. 6927)

Leatherwood Creek:	
About 1,400 feet downstream of Pike Street	*868
Just upstream of Private Drive	*875
Smith Creek:	
At mouth	*869
Just downstream of Crawford Lane	*875
Maps available for inspection at the Village Hall, Quaker City, Ohio.	

OREGON

Mosier (city), Wasco County (FEMA Docket No. 6927)

Rock Creek:	
Approximately 100 feet downstream of U.S. Route 30 (Interstate 84)	*83
Approximately 30 feet downstream of Union Pacific Railroad	*90
Approximately 550 feet upstream of Rock Creek Road	*112
Approximately 1,200 feet upstream of Rock Creek Road (at southwest corporate limits)	*136
Maps are available for review at City Hall, Second and Oregon Streets, Mosier, Oregon.	

PENNSYLVANIA

Brady (township), Huntingdon County (FEMA Docket No. 6927)

Juniata River:	
Approximately .4 mile downstream of State Route 655	*585
Approximately .4 mile upstream of CONRAIL	*591
Saddlers Creek:	
Approximately .4 mile downstream of LR 31040	*660
At upstream side of State Route 655	*763
Approximately .7 mile upstream of State Route 655	*810
Maps available for inspection at the Township Building on State Route 665, Mill Creek, Pennsylvania.	

Burgettstown (borough), Washington County (FEMA Docket No. 6927)

Racoon Creek:	
At downstream corporate limits	*970
At upstream corporate limits	*994
Maps available for inspection at the Borough Building, 113 Main Street, Burgettstown, Pennsylvania.	

Deer Lake (borough), Schuylkill County (FEMA Docket No. 6927)

Pine Creek:	
At downstream corporate limits	*475
At upstream corporate limits	*488
Maps available for inspection at the Fire Hall, Ash Road, Deer Lake, Pennsylvania.	

Fallowfield (township), Washington County (FEMA Docket No. 6927)

Pigeon Creek:	
Approximately 0.5 mile downstream of State Route 581	*823
Approximately 0.7 mile upstream of Monongahela-Bentleyville Road Bridge (most upstream crossing)	*910
Maple Creek:	
Approximately 0.9 mile downstream of State Route 882	*786
Approximately 1.2 miles upstream of State Route 822	*954
Maps available for inspection at the Township Building, R.D. 1, Charleroi, Pennsylvania.	

Fleetwood (borough), Berks County (FEMA Docket No. 6927)

Willow Creek:	
At downstream corporate limits	*404
Approximately 825 feet upstream of the upstream corporate limits	*470
Unnamed Tributary to Willow Creek:	
At downstream corporate limits	*371
Approximately .2 mile downstream of Farm Lane	*394

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Upstream corporate limits	*399
Maps available for inspection at the Borough Building, 15 North Franklin, Fleetwood, Pennsylvania.	
Franklin (township), Greene County (FEMA Docket No. 6927)	
South Fork Tenmile Creek:	
At downstream corporate limits	*901
Approximately 200 feet upstream of the upstream corporate limits	*968
Maps available for inspection at the Township Building, 568 Rolling Meadows Road, Waynesburg, Pennsylvania.	
Franklin (township), Huntingdon County (FEMA Docket No. 6927)	
Spruce Creek:	
At downstream corporate limits	*827
Approximately 2,000 feet upstream of T-549 bridge	*1,039
Maps available for inspection at the Franklin Township Secretary Wayne Harper's house, in the Village of Pennsylvania Furnace, Pennsylvania.	
Greenwich (township), Berks County (FEMA Docket No. 6927)	
Maiden Creek:	
At downstream corporate limits	*327
At upstream corporate limits	*379
Mill Creek:	
Above confluence with Sacony Creek	*377
At upstream corporate limits	*426
Unnamed Tributary to Mill Creek:	
At confluence with Mill Creek	*388
At approximately 50 feet upstream from second crossing of State Route 737	*462
Maps available for inspection at the Township Secretary's Office, R.D. 1, Box MM3, Lenhartsville, Pennsylvania.	
Juniata (township), Huntingdon County (FEMA Docket No. 6927)	
Juniata River:	
Downstream corporate limits	*603
Upstream corporate limits	*614
Raystown Branch Juniata River:	
Confluence with Juniata River	*609
Approximately 25 feet upstream from Township Route 428	*609
Maps available for inspection at the Township Building, Piney Ridge Road, Juniata, Pennsylvania.	
Kidder (township), Carbon County (FEMA Docket No. 6927)	
Black Creek:	
Approximately 370 feet downstream of Meckles Lane	*1,366
Downstream of Interstate 80 Eastbound	*1,742
Dilldown Creek:	
At confluence with Mud Run	*1,538
Approximately 1,100 feet upstream of dam #3	*1,570
Mud Run:	
Approximately 600 feet downstream of confluence with Laurel Run	*1,479
At confluence of Dilldown Creek	*1,536
Maps available for inspection at the Municipal Building, L.R. 13039, Lake Harmony, Pennsylvania.	
Lenhartsville (borough), Berks County (FEMA Docket No. 6927)	
Maiden Creek:	
At approximately 100 feet below downstream corporate limits	*368
At approximately 150 feet above upstream corporate limits	*370
Maps available for inspection at the Borough Building, 18 Willow Street, Lenhartsville, Pennsylvania.	
Penn Forest (township), Carbon County (FEMA Docket No. 6927)	
Dilldown Creek:	
At confluence with Mud Run	*1,538
Approximately 1.3 miles upstream of confluence with Mud Run	*1,570
Mud Run:	
Approximately 1,140 feet downstream of T-516 (North Old Stage Road)	*1,479
Approximately 1.4 miles upstream of State Route 903	*1,585
Maps available for inspection at the Township Building, Star Route 903, Jim Thorpe, Pennsylvania.	
Pleasant (township), Warren County (FEMA Docket No. 6923)	
Allegheny River:	
At downstream corporate limits	*1,141
Downstream side of U.S. Route 62	*1,158
At upstream corporate limits	*1,184
Maps available for inspection at the Township Building, Chari Lane and Mill Street, Warren, Pennsylvania.	
Ruscombmanor (township), Berks County (FEMA Docket No. 6927)	
Willow Creek:	
At downstream corporate limits	*474
Approximately 30 feet upstream of Pumphouse Road	*570
Unnamed Tributary A to Willow Creek:	
At confluence with Willow Creek	*476
Approximately 20 feet upstream of T-897	*548
Unnamed Tributary B to Willow Creek:	
At corporate limits	*479
Approximately 980 feet upstream of corporate limits	*503
Little Manatawny Creek:	
At corporate limits	*486
Approximately 2,370 feet upstream of corporate limits	*515
Unnamed Tributary to Little Manatawny Creek:	
At downstream corporate limits	*483
Approximately 1,590 feet upstream of corporate limits	*525
Maps available for inspection at the Township Secretary Rose Ellen Mull's Office, R.D. 3, Box 3386, Fleetwood, Pennsylvania.	
SOUTH CAROLINA	
Sumter County (unincorporated areas) (FEMA Docket No. 6926)	
Alligator Branch:	
Just upstream of Brewington Road	*124
Just downstream of U.S. Route 378	*143
Beech Creek:	
Just upstream of Claremont Road	*125
Just downstream of Barnwell Road	*161
Just upstream of Barnwell Road	*168
About 1.0 mile upstream of Barnwell Road	*181
Causeway Branch:	
At confluence with Green Swamp	*149
About 0.9 mile upstream of Keels Road	*178
Long Branch:	
At mouth	*159
Just upstream of U.S. Route 378	*173
Mush Swamp:	
At mouth	*154
Just downstream of Loring Mill Road	*164
Robert Branch:	
Just upstream of Claremont Road	*133
Just downstream of Ben Sanders Road	*203
Green Swamp:	
At mouth	*126
Just downstream of Old West Liberty Street	*142
Just upstream of Old West Liberty Street	*149
Just downstream of Mason Road	*170
Shot Pouch Creek:	
About 1.1 miles downstream of Jefferson Road	*169
About 2,400 feet downstream of Jefferson Road	*175
Rocky Bluff Swamp:	
About 1.0 mile downstream of Oswego Road	*126
About 1.2 miles upstream of Oswego Road	*134
Turkey Creek:	
At mouth	*119
About 800 feet downstream of Wanning Avenue	*120
Just upstream of Wanning Avenue	*125
Just downstream of CSX	*142
Pocotaligo River:	
About 1.6 miles downstream of confluence of Turkey Creek	*115
At confluence of Green Swamp	*126
Cane Savannah Creek:	
At mouth	*126
Just upstream of Pineview Avenue	*138
Mile Branch:	
Just upstream of U.S. Route 378	*146
About 1,400 feet upstream of Winkles Road	*150
Shallow flooding (overflow from Mile Branch):	
About 400 feet west of intersection of CSX and Fort Street	*143
At intersection of Colonial Drive and Pinckney Street	*146
Carolina Bay 1: About 1,300 feet southwest of intersection of Berkwood Road and Brewington Road	*184
Carolina Bay 5: About 1,000 feet southwest of intersection of U.S. Route 521 and State Route 120	*177
Carolina Bay 6: About 400 feet east of intersection of Babbit Road and Harwood Drive	*197
Carolina Bay 7: About 2,200 feet southeast of intersection of U.S. Route 378 and State Route 120	*173
Carolina Bay 8: About 1,500 feet southwest of intersection of Brownfield Road and Wilson Hall Road	*173
Carolina Bay 9: About 3,000 feet east of intersection of Loring Mill Road and Wise Drive	*181
Carolina Bay 10: About 3,200 feet east of intersection of Loring Mill Road and Wise Drive	*180
Carolina Bay 11: Just southwest of intersection of St. Pauls Church Road and Folly Road	*192
Carolina Bay 12: About 2,900 feet southeast of intersection of Loring Mill Road and Wise Drive	*175
Carolina Bay 13: About 700 feet southwest of intersection of Loring Mill Road and Keels Road	*178
Carolina Bay 14: About 800 feet southwest of intersection of Loring Mill Road and Keels Road	*174
Carolina Bay 16: About 1.2 miles east of intersection of Pitts Road and CSX	*174
Carolina Bay 18: About 4,000 feet east of intersection of Pitts Road and CSX	*175
Carolina Bay 19: About 1.4 miles east of intersection of Pitts Road and CSX	*162
Carolina Bay 20: About 1,000 feet south of intersection of Pitts Road and CSX	*178
Carolina Bay 21: About 800 feet southeast of intersection of Pitts Road and CSX	*173
Carolina Bay 22: About 600 feet southwest of intersection of Stadium Road and McCray's Mill Road	*174
Carolina Bay 23: About 2,300 feet south of intersection of Pitts Road and CSX	*173
Carolina Bay 24: About 3,000 feet southwest of McCray's Mill Road and Stadium Road	*179
Carolina Bay 25: About 1,600 feet southeast of intersection of McCray's Mill Road and Stadium Road	*164
Carolina Bay 30: About 500 feet southeast of Cains Mill Road and Church Road	*171
Maps available for inspection at the County Courthouse, 141 North Main Street, Sumter, South Carolina.	
TEXAS	
Burleson County (unincorporated areas) (FEMA Docket No. 6927)	
Davidson Creek:	
At confluence with Davidson Creek Tributary 1	*314
Approximately 0.5 mile upstream of confluence with Copperas Hollow Creek	*332
Davidson Creek Tributary 1:	
At confluence with Davidson Creek	*314

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 0.5 mile upstream of Southern Pacific Railroad	*364
Copperas Hollow Creek:	
Approximately 130 feet downstream of most downstream corporate limits	*340
Approximately 0.4 mile upstream of the most upstream corporate limits	*383
Elm Branch:	
Approximately 450 feet downstream of confluence with Elm Branch Tributary 1	*339
Approximately 0.5 mile upstream of County boundary	*396
Elm Branch Tributary 1:	
At confluence with Elm Branch	*341
At County boundary	*371
Old River Tributary 1:	
Approximately 1,240 feet downstream of confluence with Old River Tributary #2	*226
Approximately 1.0 mile upstream of the upstream most County boundary	*246
Maps available for inspection at the Burleson County Judge's Office, Buck Street, Caldwell, Texas.	
Lewisville (city), Dallas and Denton Counties (FEMA Docket No. 6926)	
Elm Fork Trinity River:	
At confluence of Timber Creek	*451
At confluence of Midway Branch	*456
Approximately 400 feet downstream of State Route 121	*461
At confluence of Prairie Creek	*462
Denton Creek:	
Approximately 3.4 miles above confluence with Elm Fork Trinity River	*451
Downstream side of Denton Tap Road	*459
Approximately 8.2 miles above confluence with Elm Fork Trinity River	*470
Approximately 8.5 miles above confluence with Elm Fork Trinity River	*470
Maps available for inspection at the Department of Public Works, 1000 North Kealey, Lewisville, Texas.	
Sonora (city), Sutton County (FEMA Docket No. 6927)	
Dry Devil's River:	
Approximately 135 feet downstream of downstream corporate limits	*2,116
Approximately 0.56 mile upstream of upstream crossing of U.S. Route 277	*2,137
Lowrey Draw:	
At confluence with Dry Devil's River	*2,123
Approximately 0.36 mile upstream of upstream corporate limits	*2,138
Meadow Creek:	
At confluence with Lowrey Draw	*2,131
At upstream corporate limits	*2,144
Maps available for inspection at the City Hall, 201 N.E. Main, Sonora, Texas.	
VERMONT	
Hartford (town), Windsor County (FEMA Docket No. 6927)	
Connecticut River:	
At downstream corporate limits (extended)	*346
At upstream corporate limits (extended)	*387
White River:	
At confluence with the Connecticut River	*355
At upstream corporate limits	*401
Ottauquechee River:	
At Quechee Dam	*574
At upstream corporate limits	*657
Maps available for inspection at the Town Hall, 15 Bridge Street, White River Junction, Vermont.	
VIRGINIA	
Bland County (unincorporated areas) (FEMA Docket No. 6926)	
Hunting Camp Creek:	
At confluence with Wolf Creek	*2,162
At approximately 1,000 feet upstream from State Road 615	*2,218
At approximately 2.5 miles upstream from State Road 615	*2,275
Laurel Creek:	
At confluence with Wolf Creek	*1,992
Approximately 1.2 miles upstream from confluence of Dry Fork	*2,152
Dry Fork:	
At confluence with Laurel Creek	*2,086
At approximately 325 feet upstream of 3rd upstream crossing of State Road 613	*2,149
Wolf Creek (Lower Reach):	
At approximately 1.5 miles downstream of first downstream crossing of U.S. Routes 21 and 52	*2,116
At approximately .87 mile upstream from confluence of Hunting Camp Creek	*2,189
Wolf Creek (Upper Reach):	
At approximately 1.6 miles downstream from State Road 614 (1st crossing)	*2,272
At 100 feet upstream from 2nd crossing of State Route 614	*2,346
At approximately 2 miles upstream from the 2nd crossing of State Road 614	*2,470
Maps available for inspection at the County Clerk's Office, Courthouse Building, Bland, Virginia.	
Middlesex County (unincorporated areas) (FEMA Docket No. 6926)	
Chesapeake Bay:	
Approximately 100 feet southeast of intersection of State Routes 636 & 643	*7
Shoreline at State Route 1107 (extended)	*7
At Stingray Point	*11
Rappahannock River:	
Upstream side of State Route 3 bridge	*7
Shoreline at Parrot Island	*11
Piankatank River:	
At Doctor Point	*7
Maps available for inspection at the Zoning Office, County Courthouse, Saluda, Virginia.	
WASHINGTON	
Moses Lake (city), Grant County (FEMA Docket No. 6917)	
Parker Horn:	
Just upstream of Alder Street	*1,051
Approximately 980 feet upstream of Alder Street	*1,052
At upstream corporate limit	*1,054
Maps are available for review at City Hall, 321 Balsam Street, Moses Lake, Washington.	
WISCONSIN	
Gilman (village), Taylor County (FEMA Docket No. 6926)	
Yellow River:	
About 0.36 mile downstream of Soo Line Railway	*1,205
About 0.58 mile upstream of 5th Street	*1,216
Tributary A:	
At mouth	*1,208
Just upstream of Riverside Drive	*1,214
About 1,200 feet upstream of State Highway 64	*1,216
Maps available for inspection at the Village Hall, 380 East Main Street, Box 157, Gilman, Wisconsin.	
Grantsburg (village), Burnett County (FEMA Docket No. 6926)	
Wood River:	
About 3,500 feet downstream of Grantsburg Lake Dam	*888
About 2,000 feet upstream of Oak Street	*894
Maps available for inspection at the Village Hall, 416 South Pine Street, Grantsburg, Wisconsin.	

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ILLINOIS	
Aurora (city), Kane and Du Page Counties (FEMA Docket No. 6926)	
Indian Creek:	
At mouth	*636
Just downstream of High Street	*652
Just upstream of High Street	*658
About 2,300 feet upstream of Bilter Road	*729
Selmarten Creek:	
At mouth	*716
About 3,400 feet upstream of Selmarten Road	*720
South Tributary:	
About 450 feet upstream of mouth	*687
About 700 feet upstream of mouth	*688
Tributary B:	
At mouth	*710
About 3,850 feet upstream of Farnsworth Avenue	*716
Blackberry Creek:	
About 1,800 feet downstream of Jericho Road	*663
Just upstream of Galena Boulevard	*673
Maps available for inspection at the City Hall, 44 East Downer Place, Aurora, Illinois.	
MAINE	
Skowhegan (town), Somerset County (FEMA Docket No. 6920)	
Kennebec River:	
Downstream corporate limits	*126
Confluence of Wesserunsett Stream	*130
Confluence of Kennebec River and North Channel	*153
Confluence of Whitten Brook	*162
Upstream corporate limits	*166
Wesserunsett Stream:	
At confluence with Kennebec River	*130
Approximately 159 feet downstream of Notch Road	*142
Approximately 100 feet upstream of Notch Road	*159
Currier Brook:	
At confluence with Kennebec River	*153
Approximately 100 feet upstream of U.S. Route 201	*180
Upstream side of Hathaway Street	*191
Upstream side of Fairview Avenue	*198
Confluence of East Branch of Currier Brook	*223
Upstream side of Bigelow Hill Road at most downstream crossing	*225
Approximately 50 feet upstream of most upstream crossing of Bigelow Hill Road	*287
Whitten Brook:	
At confluence with Kennebec River	*162
Approximately 160 feet upstream of Middle Street	*168
Approximately 115 feet upstream of Whitten Road	*181
Approximately 180 feet upstream of Spring Street	*196
Kennebec River, North Channel:	
At confluence with Kennebec River	*153
At divergence from Kennebec River	*162
East Branch of Currier Brook:	
At confluence with Currier Brook	*223
Upstream side of Back Road	*247
Approximately 650 feet downstream of Bloomfield Road	*270
Approximately 500 feet upstream of Bloomfield Road	*319
Maps available for inspection at the Planning Office, Skowhegan, Maine.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
MISSOURI	
Charleston (city), Mississippi County (FEMA Docket No. 6920)	
Shallow Flooding (overflow from Wolf Hole Lateral No. 2): Within community	*320
Shallow Flooding (overflow from Stevenson Bayou):	
About 1,000 feet southwest of intersection of U.S. Highway 60 and County Highway 323	*316
About 2,000 feet west and 600 feet north of intersection of U.S. Highway 60 and County Highway 323	*317
Maps available for inspection at the City Hall, Charleston, Missouri.	
Howard County, unincorporated areas (FEMA Docket No. 6923)	
Missouri River:	
At downstream County boundary	*593
At River Mile 191	*596
At Missouri-Kansas-Texas Railroad	*601
At confluence of Old Channel Salt Creek	*608
At River Mile 210	*612
At River Mile 216	*617
At River Mile 221	*621
Approximately 0.4 mile downstream of State Route 240	*626
Sulphur Creek:	
Approximately 900 feet downstream of Missouri-Kansas-Texas Railroad	*600
Approximately 350 feet upstream of confluence of Cottonwood Creek	*601
Bear Creek: Approximately 1.2 miles upstream of confluence with Missouri River	*628
Greggs Creek:	
Approximately 0.5 mile upstream of confluence with Missouri River	*626
At upstream side of Eighth Street	*633
Approximately 420 feet upstream of confluence of Fifteenth Street	*635
Adams Fork:	
Approximately 200 feet downstream of Missouri-Kansas-Texas Railroad (abandoned)	*636
At upstream side of Shield Street	*649
Approximately 500 feet upstream of County Highway E	*658
Bonne Femme Creek (Upper Reach):	
Approximately 1,550 feet downstream of State Route 240	*629
Approximately 0.7 mile upstream of State Route 240	*635
Bonne Femme Creek (Lower Reach):	
Approximately 1,000 feet downstream of Missouri-Kansas-Texas Railroad	*599
Approximately 1,100 feet upstream of confluence of Bonne Femme Tributary	*600
Maps available for inspection at the County Courthouse, Fayette, Missouri.	
Mississippi County (unincorporated areas) (FEMA Docket No. 6920)	
Mississippi River:	
About 39.3 miles downstream of confluence of Ohio River (at county boundary)	*314
About 27.2 miles upstream of confluence of Ohio River (at county boundary)	*338
Birds Point-New Madrid Floodway:	
At intersection of County Highway 521 and County Highway 524	*309
About 1.0 mile east of intersection of U.S. Highway 60 and County Highway 301	*322
Big Lake Ditch: Within community	*318
Shallow Flooding (overflow from Birds Point-New Madrid Levee Ditch):	
Intersection of County Highway 525 and County Highway 716	*301
Intersection of Highway K and County Highway 205	*317
Shallow Flooding (overflow from North Cut Ditch):	
About 1.5 miles downstream of County Line Road	*305
About 1.2 miles upstream of Highway 0	*318
Shallow Flooding (overflow from Ash Slough Ditch):	
About 1.2 miles downstream of Highway CC	*302
About 800 feet downstream of Missouri Pacific Railroad	*312
Shallow Flooding (overflow from Main Ditch No. 10):	
Just downstream of State Highway 80	*301
Just downstream of County Highway 412	*310
Shallow Flooding (overflow from Maple Slough Ditch):	
About 1.0 mile downstream of County Highway 532	*301
About 1.1 miles upstream of U.S. Route 62	*322
Shallow Flooding (overflow from St. James Ditch):	
Just upstream of County Highway 716	*301
About 1.1 miles upstream of County Highway 406	*317
Shallow Flooding (overflow along Wolf Hole Lateral No. 2):	
At mouth	*303
Just downstream of Interstate 57	*319
Shallow Flooding (overflow from Stevenson Bayou):	
At mouth	*313
Just downstream of Interstate 57	*317
Maps available for inspection at the County Clerk's Office, County Courthouse, Charleston, Missouri.	
PENNSYLVANIA	
Matamoras (borough), Pike County (FEMA Docket 6923)	
Delaware River:	
At downstream corporate limits	*434
At upstream corporate limits	*443
Maps available for inspection at the Borough Hall, Matamoras, Pennsylvania.	
Westfall (township), Pike County (FEMA Docket No. 6923)	
Delaware River:	
1,160 feet downstream of downstream corporate limits	*408
1.5 miles upstream from downstream corporate limits	*414
2.5 miles upstream from downstream corporate limits	*417
Approximately .4 mile downstream from upstream corporate limits	*431
At upstream corporate limits	*434
Maps available for inspection at the Township Office (in the former Pierce Building), Westfall, Pennsylvania.	

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: September 12, 1988.

[FR Doc. 88-21136 Filed 9-16-88; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[General Docket No. 87-14; FCC 88-266]

Amendment of Part 2 of the Commission's Rules regarding the Allocation of the 216-225 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's Rules, Section 2.106 (Table of Frequency Allocations), by reallocating the 220-225 MHz band. Specifically the 220-222 MHz band is allocated to the land mobile service for government and nongovernment use and the 222-225 MHz band is allocated on an exclusive basis to the amateur service. The objective of this action is to provide dedicated spectrum for the development of narrowband spectrum efficient land mobile technologies and to provide adequate spectrum to the amateur service in this portion of the spectrum.

EFFECTIVE DATE: October 1, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Fred Thomas, telephone (202) 653-8112.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Final Rule in General Docket 87-14, FCC 88-266, Adopted August 4, 1988, and Released September 6, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Final Rule

1. By this action the Commission: 1) maintains the existing 216-220 MHz band allocation; 2) allocates the 220-222 MHz band on an exclusive basis to the land mobile service for both government and nongovernment operations; and, 3) allocates the 222-225 MHz band on an exclusive basis to the amateur service.

This proceeding addressed only the allocation of this spectrum. Subsequent proceedings will address the necessary service rules for the new land mobile allocation and modifications to the amateur rules.

2. In taking this acton, the Commission has considered a variety of factors, including the need to provide for narrowband land mobile operations, actions of the 1979 World Administrative Radio Conference (1979 WARC), potential interference to TV broadcasting, the impact on the amateur use of the 220–225 MHz band and other factors. We have concluded that the above allocations are in the public interest. In making this determination we are particularly sensitive to the concerns expressed by amateurs in this proceeding. We continue to support the amateur service as vitally important to promote the development of individuals schooled in the radio art, to advance radio technology and to provide public service, particularly in times of emergencies. As a number of amateurs noted in their comments, use of this band by the amateur service has long been hampered by the cloud of possible reallocation as well as by the shared allocation of this band with the fixed and mobile services. We believe this has discouraged investment and use of the 220 MHz band by the amateur community. We are hopeful, however, that we have now removed that cloud and that amateur operations in this region of the spectrum will be encouraged by the primary exclusive allocation of the 222–225 MHz band to the amateur service.

3. Government and non-government users will not be allowed access to the 220–222 MHz band until final service rules have been adopted by the Commission. Amateur stations may continue to use the 220–222 MHz band until that time. Amateur operations are cautioned, however, to refrain from making any investments in equipment that would only be suitable for operation in this band. Amateur stations should begin an orderly transition of on-going operations in the 220–222 MHz band to other amateur service frequency bands so that an abrupt termination of such activities will not be necessary. Additionally, the amateur community may wish to address any changes to the amateur service rules that if finds desirable in preparation of the removal of the 220–222 MHz band, yet are beyond the scope of this proceeding. For example, the lifting of the prohibition on auxiliary link operation on some or all of the longer wavelength bands and placing a prohibition on repeater operation in a portion of the 222–225 MHz band are two matters the ameteur community may wish to consider and petition for amendment.

Ordering Clauses

4. Accordingly, it is ordered that, pursuant to the authority of section 4(i), 301 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Subsection 4(i), 301, and 303(r), Part 2 of the Commission's Rules, 47 CFR Part 2 are amended as set forth below.

5. It is further ordered that this Order will become effective October 1, 1988.

6. It is ordered that the Secretary shall serve a copy of this Order on the Small Business Administration.

7. It is further ordered that this proceeding is terminated.

List of Subjects in 47 CFR Part 2

Frequency allocations, Radio treaty matters, General rules and regulations, Radio.

Rule Changes

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066 as amended; 47 U.S.C. 154, 303.

2. Section 2.106 is amended by removing 220–225 MHz and adding new 220–222 and 220–225 MHz bands in columns (4)–(7) to read as follows:

§ 2.106 Table of Frequency Allocations

United States Table		FCC Use Designations	
Government allocation, MHz	Nongovernment allocation, MHz	Rule part (s)	Special-use Frequencies
(4)	(5)	(6)	(7)
***	***	***	***

220–222, Land mobile	220–222, Land mobile	Private land mobile (90)
Radiolocation: 627		
US243, G2	627, US243	

222–225	222–225, amateur	Amateur (97)
Radiolocation: 627		
US243, G2	627, US243	
* *	* *	*

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–21122 Filed 9–16–88; 8:45am]

BILLING CODE 6712–01–M

47 CFR Parts 61 and 69

[CC Docket 86–467]

Regulation of Small Telephone Companies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Common Carrier Bureau has corrected the inadvertent publication of an erroneous set of rules in the proceeding concerning small telephone companies.

EFFECTIVE DATE: September 19, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley, Tariff Division, Common Carrier Bureau (202) 632–6917.

SUPPLEMENTARY INFORMATION: This Order editorially amends the Commission's rules to comply with the text of Regulation of Small Telephone Companies, CC Docket No. 86–467, Report and Order, 2 FCC Rcd 3811 (1987). No substantive changes are made which alter the policy decisions adopted in that Report and Order. The attached rule changes will become effective immediately.

Order

By the Chief, Common Carrier Bureau:

1. The Report and Order in the above-captioned proceeding, 2 FCC Rcd 3811 (1987) *(Report and Order)*, amended the Commission's rules to authorize streamlined tariff filing procedures for small telephone companies. An incorrect version of the rules was inadvertently attached to that Order. As a result, we

are editorially amending those rule sections here.[1]

2. No substantive changes are made herein which alter our policy decisions adopted in the *Report and Order* or impose additional burdens on carriers or the public. These amendments, therefore, are implemented pursuant to delegated authority. 47 CFR 0.201.

Ordering Clause

3. Accordingly, it is ordered that Parts 61 and 69 of the Commission's rules are editorially amended as set forth in the Appendix below.

List of Subjects

47 CFR Part 61

Communications common carrier, Tariffs.

47 CFR Part 69

Communications common carrier, Access charges, Reporting and recordkeeping requirements, Telephone.

Parts 61 and 69 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 61—[AMENDED]

1. The authority citation for Part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203

2. Section 61.38(a) is revised to read as follows:

§ 61.38 Supporting information to be submitted with letters of transmittal.

(a) *Scope.* This Section applies to dominant carriers whose gross annual revenue exceed $500,000 for the most recent 12 month period of operations or are estimated to exceed $500,000 for a representative 12 month period. Local exchange carriers serving 50,000 or fewer success lines in a given study area that are described as subset 3 carriers in § 69.602 may submit Access Tariff filings for that study area pursuant to either this Section or § 61.39. However, the Commission may require any carrier to submit such information as may be necessary for a review of a tariff filing.

* * * * *

3. Section 61.39 is amended by revising the heading to read as follows:

§ 61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings effective on or after April 1, 1989, by local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602.

4. Section 61.39(a), (b)(1)(i), (b)(2)(i), (b)(2)(ii), and (c) are revised to read as follows:

(a) *Scope.* This Section provides for an optional method of filing for any local exchange carrier that is described as a subset 3 carrier in § 69.602, which elects to issue its own Access Tariff for a period commencing on or after April 1, 1989, and which serves 50,000 or fewer access lines in a study area as determined under § 36.611(a)(8) of the Commission's Rules. However, the Commission may require any carrier to submit such information as may be necessary for review of a tariff filing.

(b) * * *

(1) * * *

(i) For the first period, a cost of service study for all elements for the most recent 12 month period with related demand for the same period.

* * * * *

(2) * * *

(i) For the first period, the local exchange carrier's most recent annual settlement from the National Exchange Carrier Association pool.

(ii) For subsequent filings, an amount calculated to reflect the average schedule pool settlement the carrier would have received if the carrier had continued to participate, based upon the most recent average schedule formulas developed by the National Exchange Carrier Association.

(c) *Maximum allowable rate of return.* Local exchange carriers filing tariffs under this section are not required to comply with Sections 65.700 through 65.701, inclusive, of the Commission's Rules, except with respect to periods during which tariffs were not subject to this section. The Commission may require any carrier to submit such information if it deems it necessary to monitor the carrier's earnings. However, rates must be calculated based on the local exchange carrier's prescribed rate of return applicable to the period during which the rates are effective.

PART 69—[AMENDED]

5. The authority for Part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

6. Section 69.3(f) is revised to read as follows:

§ 69.3 Filing of access service tariffs.

* * * * *

(f) A tariff for access service provided by a telephone company that may file an access tariff pursuant to § 61.39 may be filed for a biennial period with a minimum of 90 days notice and scheduled effective date of July 1 of any odd numbered year. An eligible telephone company that does not elect to file an access tariff pursuant to the Section 61.39 procedures may elect to file a biennial tariff pursuant to this section. For purposes of computing charges for access elements other than Common Line elements to be effective on July 1 of any even-numbered year, the association may compute rate changes based upon statistical methods which represent a reasonable equivalent to the cost support information otherwise required under Part 61 of this chapter.

Federal Communications Commission.

Gerald Brock,

Chief, Common Carrier Bureau.

[FR Doc. 88-21275 Filed 9-16-88; 8:45 am]

BILLING CODE 6712-01-M

[1] We have also amended these rules to reflect the recent change in the effective date of access tariffs. *See* Access Tariff Filing Schedules, CC Docket No. 88-326, FCC 88-283, Report and Order, adopted Aug. 24, 1988.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

[Docket No. 80630-8130]

High Seas Salmon Fishery off Alaska

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

ACTION: Notice of extension of fishing period.

SUMMARY: NOAA issues this notice to extend the commercial troll salmon fishing period for all but chinook salmon in the U.S. exclusive economic zone (EEZ) off Southeastern Alaska north of Cape Spencer. This action is necessary to allow a controlled harvest of coho salmon by the commercial troll fishery and is intended to ensure that chinook salmon and weak coho salmon stocks are not overharvested.

DATE: Effective September 14, 1988. Public comments are invited until October 11, 1988.

ADDRESS: Send comments to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668. During the 30-day public comment period, the data upon which this notice is based will be available for public inspection from 0800 through 1630 hours

ADT Monday through Friday at the NMFS Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery Management Biologist, NMFS), 907–586–7228.

SUPPLEMENTARY INFORMATION: Salmon fishing in the EEZ off Alaska is managed under the Fishery Management Plan for the High Seas Salmon Fishery Off the Coast of Alaska East of 175 Degrees East Longitude (FMP). This FMP was developed and amended by the North Pacific Fishery Management Council (Council) and is implemented by NOAA through regulations appearing at 50 CFR Part 674.

The FMP also implements provisions of the Pacific Salmon Treaty and the Pacific Salmon Treaty Act (16 U.S.C. 3631 *et seq.*). Article III of the treaty requires that each Party conduct its fisheries to prevent overfishing but provide for optimum production of the salmon stocks subject to the treaty. The salmon stocks being protected or harvested by this action are stocks subject to the treaty.

The troll fishery opened on July 1 for all salmon species (53 FR 25492, July 7, 1988). It was closed for harvesting chinook salmon on July 12 because it had taken its chinook salmon quota (53 FR 26779, July 15, 1988). On July 26, it was closed completely for 10 days to protect coho salmon (53 FR 28403, July 28, 1988). The troll fishery was closed again on August 14 for 10 days (53 FR 31010, August 17, 1988) to provide further protection for coho salmon because all indicators showed that coho salmon in Southeast Alaska were well below average in abundance. The fishery resumed on August 25 and was closed again on August 31 (53 FR 34303, September 6, 1988).

On September 4, the commercial troll fishery in most waters between Cape Spencer and Cape Fairweather was reopened for the harvest of all salmon species, except chinook salmon, until 2359 hours ADT on Wednesday, September 7, and most waters between Cape Fairweather and Cape Suckling were reopened until 2359 hours, Saturday, September 10; certain State and Federal waters were kept closed to protect chinook salmon (53 FR 35080, September 9, 1988). On September 7, the troll fishery between Cape Spencer and Cape Fairweather was extended until 2359 hours ADT on September 10.

Analysis of new information on the abundance of coho salmon from the commercial troll, purse seine, and gillnet fisheries, from the sport fisheries, and from the spawning grounds show that, overall, coho salmon in the central and southern parts of Southeast Alaska continue to be well below average in abundance; however, coho salmon destined for streams along the outer north coast of Southeast Alaska, particularly north of Cape Spencer, appear abundant enough to allow additional harvest.

Regulations implementing the FMP (§ 674.23(a)) authorize the Secretary of Commerce (Secretary) to modify the fishing times and areas whenever he determines that the condition of any salmon species in any part of the management area is subtantially different from the condition anticipated in the FMP. In making such a determination, he may consider the following factors:

(1) The effect of overall fishing effort within any part of the management area;

(2) The catch per unit of effort and the rate of harvest;

(3) The relative abundance of salmon stocks within the management area;

(4) The condition of salmon stocks throughout their ranges;

(5) Any other factors relevant to the conservation of salmon.

The Secretary, therefore, in reviewing the available information on the coho salmon stocks and fisheries, has determined that the effect of overall fishing effort, the catch per unit of effort, and the rate of harvest throughout the management area indicate that the condition of coho salmon stocks is subtantially different from the condition anticipated in the FMP. He has also found that this difference reasonably requires the troll salmon fishery south of Cape Spencer and in the areas of the outer Fairweather Grounds remain closed for the remainder of the 1988 salmon fishing season; however, the fishery for all but chinook salmon should be allowed to continue north of Cape Spencer.

The Secretary, therefore, is extending the troll fishing period for all salmon species, except chinook salmon, in most of the EEZ north of the latitude of the Cape Spencer Light (58°11.9' N. latitude, 136°38.3' W. longitude) until 2400 hours ADT, Tuesday, September 20, 1988, unless new information requires an earlier closure. The Secretary is extending this fishing period in this area in conjunction with similar actions by the Alaska Department of Fish and Game for certain State waters of Southeast Alaska. The extension will become effective when this notice has been filed for public inspection with the Office of the Federal Register and the extension has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game.

The small fishing areas in State and Federal waters closed earlier to protect chinook salmon (e.g., the Outer Fairweather Grounds in the EEZ, 53 FR 26779, July 15, 1988) will remain closed to commercial salmon fishing for all salmon species.

Other Matters

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this extension of the fishing period must be effective immediately so that U.S. fishermen can harvest salmon consistent with the intent of section 9 of the Pacific Salmon Treaty Act of 1985 and the FMP. Giving due regard to the potential adverse economic effects of delaying this extension, the Assistant Administrator finds it would be impracticable and contrary to the public interest to provide advance notice and a prior opportunity for public comment or to delay for 30 days the effective date of this notice under the provisions of 5 U.S.C. 553 (b) and (c). Section 674.23(b)(3), however, requires the Secretary to accept and consider public comments for 30 days after the effective date of notices like this one, which did not provide an opportunity for the public to comment before it became effective. The aggregated data upon which this extension is based are available for public inspection at the address given above. If comments are received, the Secretary will reconsider the necessity of this action and will publish another notice in the **Federal Register** either confirming the notice's continued effect, modifying it, or rescinding it, unless the notice has already expired or been rescinded.

This action is authorized by 50 CFR Part 674 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 674

Fisheries, Fishing, International organizations, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 3631 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: September 14, 1988.

Ann D. Terbush,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–21260 Filed 9–14–88; 12:33 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 181
Monday, September 19, 1988

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 1124 and 1125

[Docket Nos. AO-368-A16 and AO-226-A32; DA-88-108]

Milk in the Oregon-Washington and Puget Sound-Inland Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends a merger of the Oregon-Washington and Puget Sound-Inland milk orders, based on industry proposals considered at a public hearing held November 17–18, 1987. In addition to the presently regulated marketing areas, the proposed "Pacific Northwest" marketing area would include five additional Washington counties, the unregulated portion of another Washington county, and three central Oregon counties. The decision recommends that Class I differentials at Portland, Oregon, and Spokane, Washington, be reduced from $1.95 to $1.90; and that the Class I differential at Seattle, Washington, be increased from $1.85 to $1.90.

The provisions of the proposed single order are patterned largely after those of the present Puget Sound-Inland order, with some modifications to accommodate specific marketing conditions of the Oregon-Washington order area. Provisions that represent significant changes in regulation for handlers and producers currently pooled under the Oregon-Washington order include a single butterfat differential for adjusting order prices for variations in butterfat content, payment to producers on the basis of a uniform price for all production rather than a base-excess plan, and determination of handler obligations to the marketwide pool on an equalization basis (the difference between the use value of producer receipts and the value of those receipts at the uniform price).

The merger is needed to reflect changes in market structure in that the two separately regulated areas have become, in effect, one common market.

DATE: Comments are due on or before October 19, 1988.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

There are 25 regulated handlers that operate 33 pool plants under the orders that receive milk from approximately 2,000 dairy farmers. A substantial majority of the producers are members of eight cooperative associations. Most of these entities would be small businesses under the standards specified in 13 CFR Part 121.

The merged and expanded marketing area reflects the sales areas of currently regulated plants. Consequently, the marketing area issue does not involve substantive economic considerations. Changes in pricing within the merged and expanded marketing area would be minor, and should have little economic impact on handlers or producers.

The merger would promote orderly marketing of milk by producers and regulated handlers.

Prior document in this proceeding: Notice of Hearing: Issued October 26, 1987; published October 29, 1987 (52 FR 41566).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Oregon-Washington and Puget Sound-Inland marketing areas, and of the opportunity to file written exceptions thereto. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

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

The proposed amendments set forth below are based on the record of a public hearing held at Portland, Oregon, on November 17–18, 1987, pursuant to a notice of hearing issued October 26, 1987 (52 FR 41566).

The material issues on the record of hearing relate to:

1. Whether the handling of milk produced for sale in the proposed merged and expanded marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk or its products;
2. Whether the marketing areas of the Oregon-Washington and Puget Sound-Inland orders should be included under one order;
3. Whether the proposed merged marketing area should be expanded to include additional territory;
4. Milk to be priced and pooled;
5. Handler reports;
6. Classification of milk;
7. Class prices, location adjustments and butterfat differential;
8. Handler obligations to the pool;

9. Payments to producers;
10. Administrative provisions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Character of commerce.* The handling of milk in the proposed and expanded marketing area is in the current of interstate commerce and directly burdens, obstructs and affects interstate commerce in milk and milk products.

The marketing area specified in the proposed order, hereinafter referred to as the "Pacific Northwest marketing area", includes 72 contiguous counties, of which 37 are in the State of Washington, 29 in Oregon snd six in Idaho. The principal cities in the marketing area are Eugene and Portland, Oregon; and Seattle and Spokane, Washington. The specific territory included in the marketing area is set forth in the marketing area discussion.

Handlers located in the Oregon-Washington area have route sales in Oregon and Washington, while handlers regulated under the Puget Sound-Inland order distribute milk in the States of Alaska, Idaho, Montana, Oregon and Washington. Handlers located in the States of California, Idaho, Montana, Oregon and Washington distribute milk within the proposed marketing area.

Similarly, milk procurement for the proposed merged area crosses state boundaries. Handlers regulated by the Puget Sound-Inland order procure milk from producers located in Idaho, Oregon and Washington. The milk needed to supply Oregon-Washington distributing plants is procured from California, Idaho, Oregon and Washington.

There are numerous manufacturing plants located within the proposed marketing area that manufacture dairy products. These products are sold in California, Oregon, Washington and other states in competition with manufactured products produced in many other states.

2. *Need for merger of the orders.* Marketing conditions in the two separately regulated marketing areas under consideration justify the issuance of a single order regulating the handling of milk in these areas. This single order would be the most appropriate means of effectuating the declared policy of the Act.

Federal regulation of milk marketing in northwestern Washington State was initiated May l, 1951, when the Puget Sound order became effective. The marketing area was later amended in December 1952 and July 1966 to include Island and San Juan Counties and most of the remaining portions of Grays Harbor, King, Lewis, Skagit, Snohomish and Whatcom Counties. Milk marketing in northeastern Washington State and northern Idaho came under Federal regulation March 1, 1956, when the Inland Empire order became effective. The Inland Empire marketing area was later amended in October 1957 and in March 1962 to add the Idaho Counties of Benewah, Boundary, Latah and Shoshone and the remaining unregulated portions of Bonner and Kootenai Counties; and Whitman County, Washington. The Puget Sound and Inland Empire marketing areas were merged to become the Puget Sound-Inland order effective January 1, 1984. The Washington Counties of Adams, Chelan, Douglas, Ferry, Grant, Kittitas, Lincoln and Okanogan, and the remaining unregulated portions of Pend Oreille and Stevens Counties, were included in the merged Puget Sound-Inland order in addition to the already regulated areas.

Milk marketing in western Oregon and southwestern Washington became federally regulated under the Oregon-Washington order on January 1, 1970. The marketing area of the Oregon-Washington order has not changed since it became effective.

The merger of the Oregon-Washington and Puget Sound-Inland orders was proposed by six cooperative associations representing dairy farmer members whose milk is pooled under the two orders. The merger proponents represent a substantial majority of the producers whose milk would be pooled under the merged order.

The principal proponent witness, a representative of Northwest Dairymen's Association (NDA) stated that the merged order is needed because the proposed marketing area is becoming one competitive market. He stated that NDA, which represents about 60 percent of the producers delivering milk to the two Federal order marketing areas, has producer members located in almost every county in the proposed marketing area and supplies bulk milk to handlers operating plants with distribution in all parts of the proposed marketing area. The witness testified that the existence of two Federal orders in an area that has become one competitive marketing area has required NDA to alter the movement of member milk to plants in order to prevent inequities between the prices paid to NDA members supplying different markets. He also stated that operating within the constraints of two separate orders sometimes causes difficulty and inefficiency in supplying the demands of each order market as those demands vary over time.

The NDA witness concluded that a merger would increase the efficiency of administering marketing order regulations in the Pacific Northwest, and would reduce the complexity of reports which must be filed by regulated handlers. No opposition to a merger of the two orders was expressed at the hearing.

The record indicates that the Oregon-Washington and Puget Sound-Inland marketing areas have become interrelated to such an extent that a merger is the most appropriate means of regulating milk marketing in the area involved. When the two orders were promulgated, they regulated the handling of milk in areas that were clearly distinguishable as separate markets for particular handlers and producer groups. Changes in marketing practice and market structure since that time, however, have caused these separately regulated areas to become substantially interrelated in both distribution and supply arrangements.

In September 1987, a majority of the pooled handlers regulated under the Puget Sound-Inland milk order distributed fluid milk products within the Oregon-Washington marketing area. At the same time, 20 percent of Oregon-Washington pooled handlers distributed milk within the Puget Sound-Inland order. The fact that one-third of the handlers regulated under the two orders distribute milk in competition with handlers regulated under the other order is an indication of the degree of interrelationship that has developed between the two markets. A merger of the two marketing areas under one order will assure that fully regulated handlers competing with each other are subject to the same regulatory provisions and aligned prices.

NDA markets the milk of producers located throughout the proposed merged marketing area, and Darigold, Inc., NDA's marketing agent, distributes fluid milk products throughout the proposed area from its five bottling plants that are currently pooled under the two orders. Many of NDA's member producers are located in production areas from which the milk produced on neighboring farms is delivered to pool plants regulated under the two different Federal orders. The differing provisions of the two orders prevent the cooperative from easily being able to shift the milk of a producer from a plant pooled under one order to a plant regulated by the other order, even when such a shift would be the most efficient means of moving milk to where it is needed. The Oregon-

Washington order's base-excess plan is one such provision that prevents an easy interchange of producer milk between tha two orders. The milk of baseholding producers csnnot be pooled under the Puget Sound-Inland order without those producers losing the benefit of their earned bases. At the same time, producers previously pooled under the Puget Sound-Inland order have not earned Oregon-Washington production bases and thus would receive less for their milk if it were pooled under the Oregon-Washington order. Because of this feature of regulation by the two separate orders, it is not practicable for a handler such as NDA to haul the milk of some neighboring producers in the same loads.

An occasional need to deliver the milk of producers customarily pooled under one order to a plant location normally priced under the other order is another situation in which the existence of the two interconnected orders causes marketing problems for handlers. Problems arise because of the differing location adjustments under the two orders. Milk produced in the Yakima Valley and customarily pooled under the Oregon-Washington order that is surplus to the market's fluid needs is usually hauled to Chehalis, Washington, where there is no location adjustment under the Oregon-Washington order. If the Chehalis facility is already operating at capacity, however, the milk must be moved to manufacturing plants at Issaquah or Lynden, Washington, where the Oregon-Washington location adjustments are minus 25.5 and 40.5 cents, respectively. If the same milk from Yakima Valley were pooled under the Puget Sound-Inland order at Issaquah or Lynden, however, it would be subject to location adjustments of zero or minus six cents.

The differences in Class I and producer prices under the two orders at the same location is also a factor that causes marketing difficulties for Darigold, and for any other handler attempting to market milk under both orders in an efficient manner. Specifically, large amounts of the milk surplus to the fluid needs of each order area are delivered to a Darigold manufacturing plant in Chehalis, Washington. Chehalis is located in the production area of both Federal order markets, and is approximately equidistant from Portland, Oregon, and Seattle, Washington. The Puget Sound-Inland location adjustment at Chehalis is a minus six cents, while there is no price adjustment at Chehalis under the Oregon-Washington order. Because of the 10-cent difference between the two orders' Class I prices, the Class I price difference at Chehalis is actually 16 cents.

However, because the milk received at Chehalis is used for manufactured products rather than for Class I use, the difference in producer pay prices between the two orders at the same location is the primary cause of inequity at Chehalis. The price difference between the two orders extends to producer payments because the orders' minimum uniform prices are subject to the same location adjustments as are the Class I prices.

Although the difference in Class I prices at Chehalis is 16 cents, the difference in order prices due to producers for milk delivered to Chehalis under the Puget Sound-Inland and Oregon-Washington orders is normally less, but nevertheless significant. During 1986 and the months of 1987 preceding the hearing, the Oregon-Washington uniform price to producers exceeded the Puget Sound-Inland uniform price by an average of 6.7 cents, with the difference ranging from two to 13 cents. When the six-cent location adjustment under the Puget Sound-Inland order is taken into account, prices paid to similarly located producers for milk delivered to Chehalis under the two orders differed by an average of 12.7 cents per hundredweight, and by as much as 19 cents. The location adjustment differences at the same location under the two orders, therefore, result in a significant difference in returns to producers whose milk is delivered to the same location.

For the reasons described above, a merger of the Oregon-Washington and Puget Sound orders will represent the most effective means of achieving efficient and orderly handling and marketing of milk in the Pacific Northwest. The merger will permit the minimizing of hauling expenses by allowing surplus milk supplies to be better matched to the nearest plant location without consideration of the regulatory effects of the two orders. Similarly located handlers and producers will be subject to more equitable pooling provisions under a single order than under the two separate orders. Accordingly, the merger should be adopted.

3. *Merged and expanded marketing area.* The marketing area of the proposed merged order should include all of the territory in the presently designated marketing areas of the Oregon-Washington and Puget Sound-Inland orders. Certain additional territory adjacent to the two present marketing areas also should be part of the merged marketing area. The additional territory to be included are the entire Washington counties of Asotin, Columbia, Garfield, Kitsap and Mason, and the portion of Pierce County that is currently unregulated; and the Oregon counties of Crook, Lake and Wheeler. All territory within the boundaries of the designated marketing area which is occupied by government (municipal, State or Federal) reservations, installations, institutions or other establishments, likewise should be part of the marketing area. Where such an establishment is partly within and partly without such territory, the entire establishment should be included in the marketing area.

The merged and expanded marketing area consists of 37 Washington State counties (omitting only Clallam and Jefferson), 29 western and central Oregon counties, and the same six northern Idaho counties that are included in the present Puget Sound-Inland marketing area. The total population of the merged and expanded marketing area, according to the 1980 census, was approximately 6,738,000 people, or about 224,000 more people than the two separate order areas contain. The territory proposed to be added to the merged order, therefore, increases the population of the merged marketing area by less than four percent over that of the separate marketing areas. Data obtained from 1986 population estimates of the proposed merged area give approximately the same results.

The territory to be added to the merged marketing area was proposed for inclusion by Darigold. Proponent witness stated that no additional handlers would become regulated as a result of adding the proposed areas to the merged marketing area. He also testified that all of the route distribution in the areas to be added is by handlers regulated under one or both of the two orders proposed to be merged. The witness stated that incorporating the proposed additional area into the merged order would eliminate much of the recordkeeping currently required of handlers to report out-of-area sales, and would improve the efficiency of order administration by reducing the complexity of handlers' reports.

On the basis of the evidence received and in view of the fact that there was no opposition to the addition of the proposed territory to the marketing areas or contradiction of proponent's characterization of the counties proposed to be added as supplied with fluid milk products entirely by handlers currently regulated under the two

existing orders, the marketing area of the merged orders should be defined as proposed.

4. *Milk to be priced and pooled.* It is necessary to designate clearly what milk and which persons would be subject to the merged order. This is accomplished by providing definitions to describe the persons, plants and milk to which the applicable provisions of the order relate.

The following definitions included in the proposed order will serve to identify the specific types of milk and milk products to be subject to regulation and the persons and facilities involved with the handling of such milk and milk products. Definitions relating to handling and facilities are "route disposition," "plant," "distributing plant," "supply plant," "pool plant" and "nonpool plant". Definitions of persons include "handler," "producer-handler," "cooperative reserve supply unit," "producer" and "cooperative association." Definitions relating to milk and milk products include "producer milk," "other source milk," "fluid milk product," "fluid cream product" and "filled milk." Some of these definitions were of particular issue at the hearing or are substantially different than those presently contained in either the Oregon-Washington or Puget Sound-Inland orders. Such definitions are discussed below.

Plant. The definition of a "plant" included in the proposed merged order should be adopted as proposed. However, due to some contradictory testimony in the hearing record, some clarification is needed. Milk may be considered a receipt for accounting and pricing purposes only at a "plant", and may not be considered a receipt for either purpose at a reload point at which bulk milk is transferred from one tank truck to another.

Pool plant. It is necessary to establish minimum performance requirements to distinguish between plants that serve the fluid milk needs of the regulated market and those that do not serve the market to a degree that warrants their sharing in the Class I utilization of the market by being included in the marketwide pool. The pooling standards for distributing plants and supply plants that are included in the attached order are the most appropriate means of determining which plants should be eligible to share in the marketwide pool under the marketing conditions present in the merged marketing area.

The pool plant definition of the merged order should be based on those contained in the two present orders. Because the pool status of handlers that customarily have been pooled under the two separate orders should not be altered by the provisions of the merged order, the pooling standards adopted for the merged order should reflect the more liberal of the pooling standards contained in the separate orders.

The proposed pool distributing plant definition, based on the definition in the Puget Sound-Inland order, should be adopted with some modification. The proposed pool supply plant definition, based on the definition in the Oregon-Washington order, also should be incorporated in the merged order in a modified form. The proposed definition of a cooperative supply plant should not be adopted. A provision allowing the Director of the Dairy Division to revise temporarily the pooling standards for distributing and supply plants should be included in the merged order.

The Darigold witness testified that the percentage of receipts disposed of as route dispositions within the marketing area required for pool status under the present Puget Sound-Inland Federal order would be an appropriate standard for determining pool qualifications under the proposed merged order. He stated that the Oregon-Washington order's separate requirement that a minimum of 30 percent of a handler's total receipts be distributed on routes is probably not necessary for the merged order, as most of the out-of-area sales by handlers currently regulated under the two separate orders are within the marketing area of the other order. Therefore, he concluded, handlers regulated under the merged order should have a relatively small volume of route dispositions outside the marketing area, and should be subject only to a requirement that 10 percent of their receipts be distributed on routes within the marketing area. The witness also advocated adoption of a provision of the present Oregon-Washington order that allows a handler operating more than one distributing plant to have those plants considered on a combined basis for the purpose of meeting pooling qualifications.

The Darigold witness supported adoption of the same supply plant pooling requirements currently in effect under the Oregon-Washington order. He urged that the pool supply plant definition continue as part of the merged order so that organizations currently operating nonpool plants that receive substantial quantities of Grade A milk by diversion from handlers or cooperative associations may qualify as pool supply plants if they so desire. The percentage of receipts proposed to be required of pool supply plants as shipments to pool distributing plants is the same as that contained in the present Oregon-Washington order. During the months of September through November, a pool supply plant would have to ship to pool distributing plants or distribute on routes in the marketing area at least 40 percent of the producer milk physically received at the plant or diverted directly from producers' farms to another plant. The applicable percentage for other months would be 30 percent. Direct shipments of producer milk could be counted for qualification only to the extent they do not exceed transfers of bulk milk from the supply plant.

The witness explained that at present, there is only one pool supply plant regulated under the Oregon-Washington order, and none under the Puget Sound-Inland order. The witness pointed out that at times in the past more than one supply plant has been regulated under the Oregon-Washington order, and that the possibility that there may be other supply plants in the future would justify inclusion of a provision that would allow two or more supply plant operators to have their plants' pool qualifications determined on a combined basis. Such a provision, he explained, is included in the present Oregon-Washington order.

In addition to the definition for a pool distributing plant and a pool supply plant, the Darigold representative supported adoption of a provision defining a "cooperative supply plant" as a pool plant. The witness explained that cooperative associations generally provide services to the market which are not provided by proprietary plants, such as operating a plant that separates milk and provides skim milk to pool distributing plants as required. He stated that because of seasonal variations in demand for bulk skim milk, a cooperative association operating such a plant may find it difficult to meet the necessary volume of milk shipments required to meet pooling qualifications. For this reason, the witness advocated defining as a pool plant a cooperative association plant that ships at least 30 percent of its receipts of producer milk to pool distributing plants by any combination of direct shipments (from farm to plant) and transfers from the supply plant to distributing plants.

The Darigold witness also supported adoption of a provision not currently contained in either order that would allow the Director of the Dairy Division to make temporary adjustments in the performance standards for the pooling qualification of distributing plants, supply plants, and cooperative supply plants. The witness stated that such a provision would give the order flexibility in dealing with sudden or

marked increases or decreases in supply, demand, or both, without necessitating emergency hearings to amend the pooling standards.

A spokesman for Tillamook County Creamery Association (TCCA) testified that modifications to the proposed "cooperative supply plant" definition would be necessary if the provision is to meet TCCA's needs and current operations. He proposed limiting the months during which such a supply plant would be required to meet the proposed order's 30-percent shipping requirement to the months of September through February, and adding a provision that would allow a "cooperative supply plant" that met the order's shipping requirements for those months to be pooled for the months of March through August without having to meet required shipping percentages. The witness stated that such modifications are necessary to assure the continued pooling of TCCA members' milk without requiring uneconomic and inefficient handling solely for the purpose of maintaining the producers' association with the pool. He observed that TCCA would have failed to qualify for pooling under the proposed standards in three summer months of each of the past two years, and barely would have met the standards in three additional months during that period. According to the witness, a lower percentage of shipping requirement is also necessary to accommodate the pooling of the rapidly increasing volume of milk produced by TCCA members. The witness testified that TCCA currently is pooled under the existing pool supply plant definition of the Oregon-Washington order, and suggested that the proposed "cooperative pool supply plant" definition would better accommodate TCCA's operations if it were modified to more closely resemble the order's present pool supply plant definition.

A witness representing Olympia Cheese Company, a proprietary cheese plant, testified that the small cooperative associations that supply milk to Olympia Cheese are facing increased difficulties in meeting the order's requirements for pooling their members' milk. The witness stated that if the Olympia Cheese operation, which is currently a nonpool plant, were able to qualify as a pool supply plant by separating milk and supplying skim milk to distributing plants, the cooperative associations supplying milk to the cheese plant would be assured of the pool status of their members' milk, and Olympia Cheese would be assured of a continued supply of milk. For Olympia Cheese to achieve pool supply plant status, the witness suggested, the proposed pool supply plant definition should be modified to require only 30 percent of a supply plant's receipts year-round to be shipped to pool distributing plants. He stated that such a modification would eliminate what he characterized as the proposed definition's discrimination against proprietary supply plants and in favor of cooperative-owned supply plants.

The proposed pool distributing plant definition should be adopted with only minor modification. Although the proposed percentage of receipts used in route disposition, in total and within the marketing area (10 percent), is quite low for the purpose of defining a plant primarily engaged in the processing and distributing of fluid milk, the proposed percentage apparently is necessary to ensure the continued pool status of a plant that historically has been pooled under the Puget Sound-Inland order. An exhibit in the hearing record indicates that during at least one month of the 17 months preceding the hearing, the distributing plant in question exceeded the 10-percent requirement by only one percentage point. According to the exhibit, all of the other distributing plants pooled under the two orders during the four months covered in the exhibit disposed of at least 40 percent of their receipts as fluid milk products on routes. Although the proposed standard of route dispositions as a percentage of receipts may not be high enough to avoid pooling plants that are not primarily distributing plants, that level has existed in the Puget Sound-Inland order for some time and there was no testimony that would support increasing it.

Because the total percentage of receipts required to be disposed of on routes to assure pool status is to be set at such a minimal level, there is no reason to incorporate in the merged order the provision of the present Oregon-Washington order that allows a handler operating two or more distributing plants to have their operations considered on a combined basis for the purpose of meeting pooling standards. The Oregon-Washington order requires a pool distributing plant to distribute at least 30 percent of its receipts as route dispositions. Under such a requirement, it is possible that a handler who would find it more economical to concentrate milk by-product processing in one of its distributing plants could still justify having such a plant pooled on the basis of the combined receipts and route dispositions from two or more distributing plants. It would be difficult, however, to consider any plant that distributes less than 10 percent of its receipts on routes as qualifying as a distributing plant regardless of the extent of fluid milk dispositions from any of its operator's other plants.

The two proposed pool supply plant definitions should be combined into one. According to the hearing record, the only plant that either of the two proposed definitions would apply to at the present time is the TCCA plant. Adoption of the "cooperative supply plant" definition would result in the TCCA plant being pooled under that definition only when it failed to meet the shipping standards of the regular "pool supply plant" definition. Such changes in regulation are needlessly confusing. The TCCA witness testified that certain modifications of the proposed "cooperative supply plant" definition would assure the continued pooling of the TCCA supply plant. Application of the suggested modifications and certain features of the proposed "cooperative supply plant" definition to the regular "pool supply plant" definition would eliminate the need for a second "supply plant" definition. It would also allow the order to avoid establishing differing pool standards for cooperative and proprietary pool plants.

The pool supply plant definition should establish a year-round shipping standard of 30 percent, rather than a higher standard for certain fall months. This standard would allow TCCA to maintain the pool status of its members' milk and would accommodate the increasing volume of producer milk handled by the association. In addition, a cooperative's member producer milk which is delivered directly to pool distributing plants should be included as qualifying shipments without any limit on the quantity which may be so included. Such shipments represent as great a commitment by a cooperative to supplying the market's fluid milk needs as do transfers from a supply plant. One of the principal distinctions between the proposed "supply plant" and "cooperative supply plant" definitions is that the "supply plant" definition limits the amount of direct-shipped milk that may be included in a supply plant's qualifying shipments to the amount of milk transferred from the supply plant to pool distributing plants. Maintaining such a limit serves no real purpose under either definition, and therefore should not constitute a reason to define a special category of pool supply plants.

The inclusion of a supply plant's route dispositions of fluid milk products within the marketing area as a qualifying shipment should be continued

under the merged order, as should the provision enabling a supply plant that qualified for pooling during the months of September through February to continue to be pooled in each of the following months of March through August. These are provisions that have been included in the Oregon-Washington order and apparently are necessary to maintain the pool status of the TCCA supply plant and TCCA's member producers.

The proposed provision that would allow the Director of the Dairy Division to revise pool plant performance standards temporarily if such revision is found to be appropriate should be adopted. Such a provision will give the merged order needed flexibility to deal with fluctuations in supply and demand. Without such a provision, the only possible adjustments to rapidly changing marketing conditions are suspensions, which leave an order with no pooling standards at all, or amendatory proceedings, which do not allow timely action. Allowing the Director the discretion to temporarily adjust pooling standards, with appropriate input from the industry, is a means by which timely reaction to changed marketing conditions may be achieved.

Under the paragraph in the "pool plant" definition that describes plants that are not to be considered pool plants is a description of a "portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk products for Grade A disposition." In his testimony, the principal Darigold witness advocated that such a portion of a plant be allowed to be connected by pipeline to the Grade A or pooled portion of the plant for the purpose of easily moving surplus milk and cream from the pool plant to the nonpool plant. Such an arrangement may make it difficult to assure that milk is moving through the pipeline only in the amounts and direction reported by the handler. If milk is to be allowed to move by pipeline from a pool plant to a nonpool plant located on the same premises, each individual arrangement must meet with the market administrator's approval by complying with specific guidelines developed by the market administrator. Only under fairly close scrutiny can it be assured that a pipeline arrangement from a pool plant to a nonpool plant is operated in conformity with the order.

Handler. The impact of regulation under an order is primarily on handlers. The handler definition identifies persons who will have responsibility for filing reports and/or making payments for milk under the merged order. The handler definition proposed by proponents should be adopted. As herein provided, the following persons are defined as handlers under the order:

(1) The operator of one or more pool plants;

(2) A cooperative association with respect to the milk of producers that it causes to be picked up at the farms and delivered to a pool plant unless the cooperative and the pool plant operator agree that the pool plant operator will be the handler on such milk, or diverted for the cooperative's account to a nonpool plant;

(3) The operator of an other order plant from which milk is disposed of in the marketing area;

(4) A producer-handler;

(5) The operator of a partially regulated distributing plant;

(6) The operator of an unregulated supply plant; and

(7) The operator of an exempt plant.

All such persons are now defined as handlers under the Puget Sound-Inland order, and most are so defined under the present Oregon-Washington order. Each person that may incur an obligation (reporting and/or financial) under the order should be designated a handler. This will assure that all information necessary to determine their regulatory status under the order can be readily determined by the market administrator.

Proponent witness testified that the proposed definition is essentially the same as those contained in the separate orders and is intended to serve the same purpose. Specifically, the definition is identical to the one contained in the present Puget Sound-Inland order. Adoption of the handler definition described above should help to assure orderly marketing in the merged marketing area.

A proposal to adopt a "cooperative reserve supply unit" should be adopted, but not as part of the handler definition. The "cooperative reserve supply unit" is discussed below.

Producer-handler. The merged order should continue the exemption now contained in each of the two individual orders of a "producer-handler" from the pooling and pricing provisions of the order. Under the merged order, the definition of a producer-handler should be the same as that now contained in the Puget Sound-Inland order.

Proponent witness stated that retaining the provision of the present Puget Sound-Inland order that requires a producer-handler to distribute a daily average of at least 300 pounds of fluid milk products on routes will eliminate from producer-handler status 5 of the operations that currently have producer-handler status under the Oregon-Washington order.

The witness for proponents observed that the percentages of Class I disposition by producer-handlers in the Puget Sound-Inland and Oregon-Washington marketing areas are, respectively, the highest and third highest of any Federal orders in the United States. He cited such activity as evidence that the producer-handler provisions in these orders are not unduly restrictive. The witness stated that any relaxation of the present and proposed provisions would provide producer-handlers an additional unfair advantage in their competition with regulated handlers for the sale of fluid milk products on routes in the marketing area.

In addition to testimony about the provisions proposed for the actual producer-handler definition, proponent witness testified that the proposed order should include a provision of the present Oregon-Washington order that directs that fluid milk products received or acquired for disposition by a pooled handler from a producer-handler be allocated to the extent possible first to Class III, then to Class II, and finally to Class I use. The witness stated that the provision had been incorporated into the Oregon-Washington order at its promulgation in response to a situation in which a handler wished to receive unlimited quantities of packaged products from a producer-handler at a location outside the handler's plant without accounting to the pool for such receipts.

A primary basis for exempting a producer-handler from the pricing and pooling provisions of the order is that such a person customarily has a relatively small operation and is operating in a self-sufficient manner. The milk that is processed, packaged and distributed by a producer-handler is obtained from the producer-handler's own production. Any fluctuation in a producer-handler's daily and seasonal milk needs is met through his own farm production, and any excess milk supplies are disposed of at his own expense. Under this arrangement, a producer-handler seldom can be a major competitive factor in the market for regulated handlers, nor can such a person have a preferred market for his milk relative to producers who supply the regulated handlers and share in the proceeds of the marketwide pool.

If a producer-handler processes milk from his own farm but also relies on pool plants for substantial supplies, either in bulk or packaged form, his operations are not significantly different than the operations conducted by a pool handler. Since his operation is not fully regulated, the pool does not receive the benefits of the producer-handler's Class I sales. At the same time, the other producers in the market are bearing the cost of balancing his operation by carrying such operator's necessary reserve milk supplies. Such an operator should not have producer-handler status under the merged order, but should be accorded pool status similar to that of any other handler receiving milk directly from dairy farms.

There was no opposition to adoption of the producer-handler definition as proposed. In view of the fact that producer-handlers supply a significant share of the fluid milk dispositions in the marketing area, and yet are not subject to the same pricing and pooling provisions of the order as are regulated handlers, it is appropriate to require producer-handlers to rely almost totally on their own milk production to balance their fluid sales and to find outlets for their surplus production outside the fluid market. Only in this way can there be any reasonable assurance that their exemption would not have an adverse impact on the market.

Therefore, as adopted herein, a producer-handler would be allowed, within the limitations on supplemental purchases, to purchase fluid milk products in bulk or packaged form. This change would not undermine the concept of self-sufficiency, but rather would provide a producer-handler with the flexibility to purchase supplemental fluid milk products in the form that fits his needs. It is appropriate to include handlers who produce and distribute less than 300 pounds of milk per day in the order's "exempt plant" definition. Such handlers represent far too small a share of the total market for fluid milk production to justify the same degree of administrative attention necessary to assure that larger producer-handlers operate within the parameters of the producer-handler definition adopted herein.

The provision of the Oregon-Washington order directing that products acquired from a producer-handler for sale by a regulated handler be reported as receipts and allocated first to Class III, then to Class II, and finally to the handler's Class I use, should be included in the merged order. Adoption of this provision also requires that any such receipts allocated to Class I will be subject to a compensatory payment to the producer-settlement fund at a rate determined by the difference between the Class I and Class III prices.

Without such a provision, a producer-handler would be able to find a fluid outlet for any of its milk production that might exceed demand for its fluid milk products sold through customary channels. In addition, regulated handlers associated with retail outlets would have access to unregulated and potentially lower-cost supplies of fluid milk products, giving them a competitive advantage over other pooled handlers who must pay the order's Class I price for fluid milk products disposed of on routes.

Cooperative reserve supply unit. A proposal to include in the merged order a "cooperative reserve supply unit" should be adopted. Such a provision will assure the continued pooling of the milk of cooperative association members having an historical relationship with the market. In order to qualify as a reserve supply unit, a cooperative association must have been a handler of producer milk under the merged order or one of its two predecessor orders for at least the immediately preceding twelve months. In addition, a cooperative reserve supply unit must supply milk to pool distributing plants located within 125 miles of the majority of its producers as directed by the market administrator when the market administrator has determined that such shipments are necessary to assure consumers an adequate supply of fluid milk products.

The "cooperative reserve supply unit" provision was proposed on behalf of two cooperative associations whose members' milk is pooled under the Oregon-Washington and Puget Sound-Inland orders. A witness representing one of the cooperatives, Northwest Independent Milk Producers Association (NWI), testified that the production of NWI members represents approximately I percent of the milk pooled under the two Northwest orders. He stated that NWI historically has marketed 25–30 percent of its members' production to a pool distributing plant, with the balance diverted to a nonpool cheese plant, and asserted the cooperative's willingness to continue to supply the fluid market. However, the witness testified, NWI's sole pool distributing plant customer signed a full-supply agreement with Darigold in October 1986 for necessary shipments of milk to supplement the plant's nonmember milk supply. He stated that he contacted and met with other pool plant operators in the marketing area in an unsuccessful attempt to arrange for alternative pool outlets for the cooperative's milk. The witness described NWI's position as a participant in the marketwide pool as vulnerable, although the cooperative's pool plant customer has continued to receive enough of NWI's production to assure the pool status of the cooperative's members. He urged adoption of the "cooperative reserve supply unit" provision as a means of correcting the potantial inequity of being excluded from the marketwide pool. The witness stated that failure to qualify the cooperative's member producers' milk for pooling would result in their receiving 65 to 70 cents per hundredweight less for their milk than pooled producers receive.

The NWI witness recommended that the "call area" from which the market administrator could require milk to be shipped by cooperative reserve supply units from members' farms to pool distributing plants be defined as 100 miles. He stated that this would represent a reasonable distance over which milk supplies needed for fluid use might be required to be shipped. The witness observed that adequate supplies of milk for fluid use are produced within 100 miles of both Portland and Seattle, and that expanding a "call area" much beyond 100 miles would result in inefficient and prohibitively expensive hauling.

The witness representing Darigold and NDA testified that those organizations would have no objection to a "cooperative reserve supply unit" provision as long as certain safeguards are included so that producers not actually associated with the market would not be eligible to participate in the marketwide pool. The Darigold representative proposed that a "cooperative reserve supply unit" be required to have qualified for pool status for the 24 consecutive months immediately preceding its reserve supply unit status, and that the headquarters and all of the producer members of the association should be located within the marketing area. The witness based the need for such modifications on the possibility that producer groups having no real historical supply relationship with the market might otherwise attempt to be pooled under the provision.

The provision defining a "cooperative reserve supply unit" should be included in the merged order to assure the continued pooling of the milk of producers historically associated with the market. The provision will protect the member producers of marketing cooperatives who have been associated with the market over a significant period

of time and have demonstrated their willingness and ability to supply milk to the fluid market from losing their association with the pool as a result of forces beyond their control. The order's requirement that such an association supply milk to pool distributing plants as specified by the market administrator in order to retain pool status will assure that the milk supplies of a "cooperative reserve supply unit" would be made available for fluid use whenever needed by the market. The specific order language proposed by proponent should be modified to better reflect the role that a cooperative reserve supply unit would play in the merged order. It is not necessary to define such an entity as a "handler" since the only means it has of marketing its members' milk is by moving it to either pool plants or nonpool plants. Both of those possible movements, when directed by a cooperative, are already included in the handler definition. Therefore, a "cooperative reserve supply unit" has been defined in a separate section, and an exemption from the constraints of diversion limits has been included in the "producer milk" definition.

In addition, the concept of a "call area" to determine the area containing the producers whose milk is required to be shipped and the pool distributing plants to which the milk is to be shipped is not appropriate in the context of this provision. The area encompassing the locations of producers' farms is likely to be more difficult to delineate than the supply plants from which milk supplies are "called" under similar provisions in other orders. The market administrator has the information necessary to determine whether the members of any "cooperative reserve supply units" are within a reasonable distance of pool distributing plants in need of milk supplies and, if so, how much milk should be shipped. The testimony dealing with the distance over which such shipments should be required indicated that some producers in Whatcom County, Washington, are more than 100 miles from Seattle, the nearest likely market for their milk. Therefore, a reserve supply unit should not be "called" upon for milk needed at locations more than 125 miles from the majority of its producers. It would not be reasonable to compel such a unit to move milk several hundred miles if there is an adequate supply nearer to the area experiencing a shortage. It also would not be reasonable to require shipments from a cooperative reserve supply unit at a percentage level of its supply that exceeds the percentage of milk supplied to pool distributing plants by other pooled handlers.

Another change needed in the proposed definition is in the penalty for failure of a unit to comply with any announced shipping requirements. The penalty proposed by proponent, that loss of reserve supply unit status would preclude the unit from qualifying for such status for a period of one year, leaves unclear the status of the cooperative for the next year and the steps that must be taken for such a unit to regain "cooperative reserve supply unit" status. Instead of the proposed language, the merged order should require a cooperative that loses reserve supply unit status to meet the order's pooling requirements for 12 consecutive months before again becoming eligible for "cooperative reserve supply unit" status.

Darigold's proposed modification to the provision, that a cooperative reserve supply unit be required to meet the order's pooling standards for its producers' milk for 24 consecutive months, is not necessary and should not be adopted. A handler whose producers have been pooled for 12 consecutive months has demonstrated a considerable association with the fluid milk market. Extending the period to 24 months would serve no useful purpose beyond delaying for a year a handler's ability to pool milk under the "cooperative reserve supply unit" provision. Darigold's argument that a handler can obtain a 12-month milk supply contract to meet the order's delivery requirements is not sufficient to require a 24-month association with the market. The order cannot erect unreasonable barriers to the entry of producers or producer groups that are not currently included in the marketwide pool.

Another proposed modification, that the headquarters and all of the members of a reserve supply unit be located within the marketing area, is not a reasonable restriction. The market statistics clearly show that milk production for the two orders is not normally limited to the marketing areas of the orders. Production from counties on the Olympic Peninsula and from other counties near the boundaries of the present marketing areas is currently pooled under both of the present orders. There is no basis on which to limit the membership of cooperatives operating reserve supply units to the marketing area when other cooperatives are not so limited. However, because a reserve supply unit will be required to ship milk only to pool distributing plants located within 125 miles of the majority of its producers, only those units having a majority of their member producers located within 125 miles of a pool distributing plant should qualify for reserve supply unit status.

Changes in other order provisions that will accommodate the pooling of milk handled by a "cooperative reserve supply unit" should be made where necessary.

Producer milk. For the most part, the producer milk definition should be very similar to the one proposed by proponents, which is the same as the current Puget Sound-Inland definition, and similar to the present Oregon-Washington definition. However, some changes in the producer milk definition of the merged order will be necessary to accommodate the continued pooling of the milk currently pooled under the two orders, and to conform with other features of the merged order. As in the case of pool provisions for handlers, the pool status of producers that customarily have been pooled under the two separate orders should not be altered by the provisions of the merged order. Therefore, the pooling standards adopted for producers and producer milk under the merged order should reflect the more liberal of the pooling standards contained in the separate orders.

Adoption of the "cooperative reserve supply unit" provision will necessitate omission of references to "diversion from" particular kinds of plants. By definition, milk pooled by a reserve supply unit will have no attachment to any particular pool plant, and therefore cannot be considered as being "diverted from" a pool plant. Milk delivered directly to manufacturing plants can be considered to be "diverted from" the fluid market rather than from a pool distributing plant or a pool supply plant. This change in the terminology relating to diverted milk will result in non-substantive changes in the wording of some of the paragraphs of the "producer milk" definition. Additionally, it will require that the proposed distinction between the percentages of allowable diversions from pool distributing plants and pool supply plants be omitted.

The language requiring different levels of allowable diversions from pool distributing and pool supply plants is contained in the present Puget Sound-Inland order. The only supply plant expected to be pooled under the merged order is operated by Tillamook County Creamery Association. The plant is currently a supply plant under the Oregon-Washington order, which applies the same diversion limits to all

producer milk, regardless of the type of pool plant from which it is diverted.

The limits on diversions of producer milk proposed for the merged order are taken from the Puget Sound-Inland order, and are slightly more liberal than those in the present Oregon-Washington order. Allowances for the movement of producer milk direct from producers' farms to nonpool plants enable handlers to move milk more economically and efficiently than if all producer milk were required to be received first at pool plants. The proposed 80-percent limit on diversions of producer milk during the months of September through April, with no limit during May through August, will permit handlers the same degree of flexibility and efficiency in handling milk that they now enjoy under the Puget Sound-Inland order.

Also as proposed by proponents, the merged order should contain no restriction on the amount of an individual producer's milk that may be diverted to nonpool plants (commonly referred to as "touch-base" requirements). Proponent witness testified that a large portion of the milk pooled under the Puget Sound-Inland order is produced in Whatcom County, Washington, located 110–120 miles from Seattle and from most of the order's pool plants. According to the witness, most of the Whatcom County milk is delivered directly to a nearby manufacturing plant. The Darigold witness stated that milk produced in such locations, much closer to manufacturing outlets than to any pool plants, should not be required to be delivered to a pool plant simply to demonstrate an association with the market.

The present Puget Sound-Inland order has no requirement that any particular percentage or amount of each producer's milk be received at pool plants, and there is no basis in the record of this proceeding on which more demanding delivery requirements could be adopted. Therefore, in accordance with the approach of adopting the more liberal pooling requirements of the two present orders, the merged order should contain no "touch-base" requirement.

5. *Handler reports.* Reports required to be submitted by handlers should be the same as those currently required under the Puget Sound-Inland order, and similar to those proposed by proponents. Exempt plants and unregulated supply plants should not be required to report in the same detail as pooled handlers are required to do. Instead, any requirements of such handlers to file reports would be at the discretion of the market administrator.

The adopted requirements for handler reports, payroll reports and other reports are identical to those currently contained in the Puget Sound-Inland order and very similar to those of the present Oregon-Washington order. Proponent failed to establish sufficient reason for requiring exempt and unregulated supply plants to be subject to the same reporting requirements as regulated handlers. There was no testimony that any current difficulties exist in evaluating the status of such plants. Therefore, such handlers should be required to file no more reports, nor in any greater detail, than prescribed by the market administrator.

6. *Classification of milk.* The merged order should use essentially the same uniform classification plan that is commonly provided in most other Federal milk orders. However, the plan should be modified in several respects to conform to local market conditions. Basically, the plan adopted herein provides, as is the case under the individual orders, for the classification of milk according to use, including rules for determining the classification of milk moved from one plant to another and the classification of shrinkage. The plan also sets forth a procedure for allocating a handler's receipts of milk and milk products from various sources to his utilization in each class in order to determine the classification of producer milk.

Under the classification plan here adopted, Class I milk would include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, milkshakes and ice milk mixes containing less than 20 percent total solids and mixtures of cream and milk or skim milk containing less than 15 percent butterfat. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content. The remaining volume of the product, which represents the skim milk equivalent of added nonfat milk solids, would be classified as Class III.

Each product designated herein as a Class I product would be considered a "fluid milk product" as defined in the order. In addition to these fluid milk products, Class I milk would include any skim milk and butterfat not specifically accounted for in Class II or III, other than shrinkage permitted as Class III classification.

Class III milk should include products which are made from surplus Grade A milk and which compete in a national market with similar products made from manufacturing grade milk. These products include cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese), butter, any milk product in dry form (such as nonfat dry milk), any concentrated milk product in bulk, fluid form that is used to produce a Class III product, and evaporated or condensed milk (plain or sweetened) in a consumer-type package. Additionally, Class III milk should include any product not specified in Class I or Class II.

An intermediate class, Class II, should apply to certain products which can command a higher value than Class III products but which must be competitively priced below Class I in order to compete with non-dairy substitute products or manufactured dairy products that can be used in making Class II products. Class II milk should include skim milk and butterfat disposed of in the form of a "fluid cream product," eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles one of these products. As defined in the order, "fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 15 percent or more butterfat, with or without the addition of other ingredients.

Class II milk would also include bulk fluid milk products and bulk cream products disposed of to any commercial food processing establishment at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages. In addition, it would include milk used to produce cottage cheese, lowfat cottage chease, dry curd cottage cheese, milkshake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, milk or milk products sterilized and packaged in hermetically sealed metal or glass containers, and certain other products as specified in the order.

The classification plan adopted herein was proposed by the merger proponent and embraces the basic features of the

uniform clsssification plan contained in many other Federal orders. This plan was developed from exhaustive hearings held on the broad issue of classification in 1971 for 39 markets. A full discussion and appropriate order language on the uniform classification plan is contained in a final decision issued February 19, 1974 (34 FR 8202, 8452, 8712, 9012). This decision was duly noted on the record of this proceeding. Proponent testified that this classification system, with certain minor revisions, would be fully appropriate for the merged order and would comport with the need for greater uniformity among those essential provisions of marketing orders that should be uniform.

The minor revisions to the uniform classification plan applicable to most orders, which were proposed by the merger proponent and adopted herein, concern the classification of certain fluid cream products and ending inventories of packaged fluid milk products. Under the adopted classification plan, any mixtures of cream and milk or skim milk containing less than 15 percent butterfat would continue to be Class I. Such products are Class II under the 39-market uniform classification plan. Although inventories of fluid milk products in packaged form on hand at the end of the month are included in Class III in most other Federal orders, they should be classified in Class I under the merged order. Such inventories in bulk form, however, should be classified in Class III. This procedure for handling fluid milk product inventories is identical with that provided under both the present Puget Sound-Inland and Oregon-Washington orders.

Such revisions to the 39-market uniform classification plan that are herein adopted make allowance for the provisions under which Northwest handlers are accustomed to operating. On the basis of the hearing record, there is no reason to change the classification of cream and milk mixtures containing less than 15 percent butterfat (half-and-half) from Class I to Class II. Proponent witness supported retaining such products in Class I on the basis that they are customarily used in coffee as a beverage and as an alternative to whole milk for many purposes. The witness explained that the limit on the butterfat content of fluid milk products should be reduced from 18 percent to 15 percent in order to eliminate any possibility of sour cream being classified as a fluid milk product instead of a fluid cream product.

A brief filed on behalf of Carnation Company, a proprietary handler operating three pool distributing plants in the proposed merged marketing area, proposed lowering the limit on butterfat content of fluid milk products from the current level of 18 percent to 9 percent. The handler supported such a change by stating that half-and-half and related by-products are classified in Class II by Federal orders in surrounding States, and that such products are moving greater distances than before from processing plants through grocery chain warehouse deliveries. The Carnation brief also advocated Class II classification for "biscuit mix" a skim milk formula with added stabilizer, salt and biscuit flour. The handler observed that such a product has been classified as Class II in the Ohio Valley Federal order.

Although the uniform classification plan does classify a milk and cream mixture containing 9 percent or more butterfat in Class II, there is no evidence that the proposed merged order should do so. The only Federal order in a state adjoining the proposed marketing area is the Southwest Idaho-Eastern Oregon order. The nearest distributing plant in that market is in Boise, Idaho, located nearly 400 miles from distributing plants in Spokane, Washington, and over 400 miles from distributing plants in Eugene or Portland, Oregon. Although milk products such as half-and-half may be moving greater distances than before, there is no testimony or data in the hearing record that would support a conclusion that handlers in the proposed merged marketing area are competing for sales of half-and-half with handlers from other areas who are subject to a lower price. Similarly, there is nothing in the hearing record that would support a Class II classification for "biscuit mix".

At the hearing, proponents' principal witness testified that certain diversion provisions in each of the two orders should not be included in the merged order. The merged order proposed by proponents would omit the Oregon-Washington order provision allowing pooled handlers to divert milk from producers' farms to other pool plants at Class III use if so requested by both handlers. The witness suggested that the Puget Sound-Inland order provision allowing producer milk to be diverted to a commercial food processor located in Pacific County, Washington, and classified as Class II not be included in the merged order because the commercial food processor affected by the provision has moved its operation to Seattle and no longer receives diverted producer milk.

The ability of handlers to divert milk from producers' farms to other pool plants and to commercial food processing plants should be retained in the merged order, with diversions between pool plants accommodated in all three classes of use. Direct shipments of producer milk are the most efficient and economical means of moving milk from farms to the plants in which it ultimately will be used. Such efficiencies should not be prohibited by order provisions. Although the food processing plant that previously received such shipments apparently has ceased to do so, such a means of disposing efficiently of producer milk surplus to the fluid needs of the market should continue to be available to other milk handlers and commercial food processors. The order should continue to assure that the records of a commercial food processing plant receiving Class II milk by transfers or diversions from regulated handlers will be available to the market administrator for audit and verification purposes.

7. *Class prices, location adjustments and butterfat differential.* The Class I price for tha merged Pacific Northwest market should be the basic formula price for the second preceding month plus a Class I differential of $1.90. This price should apply to plants located within zones established to approximate distances of 90 miles from Spokane and Seattle, Washington; and Eugene and Portland, Oregon. For the purpose of applying location adjustments, the marketing area should be divided into four pricing zones. Zone 1, which would be the base zone and would have no price adjustment, should include northern Idaho and most of eastern Washington; western Washington, except for the counties of Clallam, Jefferson, San Juan and Whatcom; and western Oregon north of, and including, Douglas County. Zone 2, with a location adjustment of minus 6 cents, should consist of Whatcom County, Washington. Zone 3 would have a location adjustment of minus 8 cents, and would include three southern Oregon counties. Zone 4 would have a minus 15-cent location adjustment, and would include the Idaho counties of Lewis and Nez Perce, twelve central and northeastern Oregon counties, fourteen central and southeastern Washington counties, and three northwestern Washington counties. The Class II and Class III prices to be effective under the merged order should be adopted as proposed.

The location adjustment for each zone, the resulting Class I differential (shown parenthetically), and the territory that should be included in each zone are as follows:

Zone 1—No Adjustment ($1.90)

Idaho Counties

Benewah	Boundary	Latah
Bonner	Kootenai	Shoshone

Oregon Counties

Benton	Hood River	Multnomah
Clackamas	Lane	Polk
Clatsop	Lincoln	Tillamook
Columbia	Linn	Washington
Douglas	Marion	Yamhill

Washington Counties

Clark	Lewis	Snohomish
Cowlitz	Lincoln	Skamania
Ferry	Mason	Spokane
Grays Harbor	Pacific	Stevens
Island	Pend Oreille	Thurston
King	Pierce	Wahkiakum
Kitsap	Skagit	Whitman

Zone 2—Minus 6 cents ($1.84)

Whatcom County, Washington

Zone 3—Minus 8 cents ($1.82)

Oregon Counties

Coos	Jackson	Josephine

Zone 4—Minus 15 cents ($1.75)

Idaho Counties

Lewis	Nez Perce

Oregon Counties

Crook	Klamath	Umatilla
Deschutes	Lake	Wallowa
Gilliam	Morrow	Wasco
Jefferson	Sherman	Wheeler

Washington Counties

Adams	Douglas	Klickitat
Asotin	Franklin	Okanogan
Benton	Garfield	San Juan
Chelan	Grant	Walla Walla
Clallam	Jefferson	Yakima
Columbia	Kittitas	

At plant locations outside the zones specified above, the Class I price and the uniform price to producers should be reduced by 1.5 cents for each 10 miles that the plant is from the nearer of the county courthouse in Spokane, Washington; the Multnomah County Courthouse in Portland, Oregon; or the city hall in Eugene, Oregon.

The single butterfat differential currently in use under the Puget Sound-Inland order should be adopted for the merged order, rather than the provisions of the Oregon-Washington order under which the price of milk used by handlers in Class I is adjusted by a different butterfat differential than the price of milk used in Classes II and III.

Class I price. The Class I price differentials effective at the primary population centers of the merged marketing area should be changed to $1.90. Currently, the Class I price differential at Portland, Oregon, and Spokane, Washington, is $1.95, while the corresponding differential at Seattle, Washington, is $1.85.

The Darigold witness testified that adequate supplies of milk are produced within short distances of each of the Pacific Northwest cities in which population and distributing plants are concentrated. He also observed that packaged Class I milk products move freely between the population centers without being impeded by the price differences. The witness stated that the proposed reduction in the Class I price level at Portland and Spokane would more than offset the effect of the proposed increase at Seattle on prices to producers.

A producer from the Spokane area opposed the proposed 5-cent reduction of the Class I differential at Spokane. Instead, he suggested, the differential should be increased to $2.00. The witness expressed his concern that the proposed 5-cent increase in the Class I differential at Seattle would cause dairy farmers to move their operations to the Seattle area for the benefits of a higher Class I price and lower hauling costs. He also stated that the proposed change would cost him 5 cents per hundredweight.

Adoption of the $1.90 Class I differential for all of the marketing area's population centers will bring the prices for fluid milk at those locations into line without significantly changing total returns to producers. In view of the volume of milk supplies produced in the vicinity of all the market's population centers, there is no reason to maintain a higher price level at some of the metropolitan areas than at others. The hearing record provides no support for the Spokane-area producer's concerns about a reduction in his returns for milk or a migration of dairy farmers from eastern Washington State to the Seattle area. The effect of the decrease in the Class I differential at Spokane and Portland will be largely offset by the increase in the Class I differential at Seattle. As a result, little change in the uniform price paid to producers should be attributable to the changes in Class I differentials. As a result of the merger of the two orders, however, the uniform price paid to producers currently pooled under the Puget Sound-Inland order should increase by several cents. Such an increase would result from the relatively higher percentage of milk used in Class I in the Oregon-Washington market.

As for the possibility of eastern Washington producers moving to the Seattle area because of the increase in the Class I price there, in combination with lower hauling rates, such a shift in production area is unlikely. For one thing, producers in both parts of the marketing area will be receiving the same uniform price, regardless of the class in which their milk is used. For another, the Washington area that appears to be experiencing marked increases in milk production is Yakima County. Milk received at plants located in central Washington is subject to significant location adjustments under both of the two separate orders, reducing prices to producers by 15 or 20 cents below the uniform price. Milk produced in Yakima County that is surplus to the fluid milk needs of central Washington handlers must be hauled over 150 miles to the nearest plants in Spokane, Portland or the Seattle area, at substantial hauling costs to producers. In spite of these disadvantages in price and hauling cost, Yakima County appears to be one of the fastest-growing areas of milk production in the merged marketing area. It is apparent that there are factors beyond the local Class I differential and effective hauling rates that influence milk production trends in any given area.

Location adjustments. A system of establishing location adjustments by the zone in which a plant is located is appropriate for the merged order, since location pricing under the separate orders is determined largely by zones. The amounts of most of the proposed adjustments are also appropriate, and should be adopted. The Darigold witness testified that location adjustments should be reduced at all locations in the marketing area that are subject to adjustments to the Class I and uniform prices. He supported proponents' proposal that location adjustments be reduced from 10 cents to 8 cents in southern Oregon; from 18 and 20 cents to 15 cents in central Oregon; and from 20 cents under the Oregon-Washington order to 15 cents in central Washington. The 15-cent adjustment for this latter area, however, would mean a 5-cent greater adjustment than now exists under the Puget Sound-Inland order. The witness also supported the elimination of location adjustments at locations between Seattle and Portland, and the reduction of the present 6-cent adjustment at locations in Whatcom County, Washington, to 3 cents.

The Darigold witness based his support of a reduction in the adjustments to be made in Class I and uniform prices on two principal arguments. First, he stated, location adjustments to producer prices under the Oregon-Washington order have been applied only to the amount of each producer's base production, and not to producers' total production. With the elimination of the base-excess plan, he said, location adjustments will be

applied to the uniform price for all of each producer's milk, and will have a greater impact on producer returns. According to the witness, another reason for reducing the amounts of location adjustments is to "modernize" the merged order. He cited recent Federal order decisions in which location adjustments were reduced, eliminated or not adopted as evidence of such a trend.

Opposition to the proposal to reduce the location adjustment at Darigold's Lynden, Washington, manufacturing plant in Whatcom County from 6 to 3 cents was expressed in two briefs received by the Department. Both Northwest Independent Milk Producers Association and Carnation Company protested that the current 6-cent location adjustment rate is too low when compared to the cost of hauling milk from Whatcom County to Seattle. The handlers stated that Darigold's ability to charge its producers a very low hauling rate because of their proximity to Darigold's manufacturing plant makes it very difficult for other handlers to procure milk supplies in that area for the Seattle fluid milk market. The handlers argued that the location adjustment for Whatcom County should, if changed at all, be increased to more closely reflect the actual cost of hauling milk from Whatcom County to Seattle.

The location adjustments in most parts of the marketing area should be changed as proposed. Most of the locations affected by such price adjustments obtain milk supplies from producers currently pooled under the Oregon-Washington order. The location adjustments deducted from the prices paid for these producers' milk are calculated on the basis of the producers' base production. According to the Darigold witness, base production under the Oregon-Washington base-excess plan generally represents about 80 percent of producers' total production. Under the proposed merged order, each producer's entire production will be subject to the full price adjustment at the location of the plant at which it is received. Accordingly, a slight (approximately 20 percent) reduction in the location adjustment rates at those locations will result in a minimal impact on producer returns when considered with the elimination of the base-excess plan.

The proposed changes in location adjustments at locations in the Oregon-Washington marketing area should have little or no effect on the handlers at those locations. Most of the southern and central Oregon and central Washington handlers have, according to the Darigold witness, more than adequate supplies of milk available nearby and no nearby competition for producer milk supplies from manufacturing plants. The handlers in these areas are located at great enough distance from each other and from handlers in the zero location adjustment zone that changes of 2 to 5 cents in location adjustment rates should not affect their competitive relationships with other distributing plants.

The location adjustments effective at locations between Portland and Seattle under the two separate orders should be eliminated. Areas within 90 miles of Eugene, Portland, Seattle and Spokane should be free of location adjustments. The record indicates that ample milk supplies for the market's population centers are available within 90 miles of those centers. The distance between Portland and Seattle is less than 180 miles, so any plant located between the two cities must be less than 90 miles from either Portland or Seattle.

Location adjustments for the northern Olympic Peninsula and San Juan County, Washington, should be reduced by 1 cent, from 16 cents to 15 cents, as proposed. It appears that there are no pool plants in this area to which location adjustments could be applied. Therefore, the 1-cent change is unlikely to make any real difference.

Proponents' arguments for reducing the present 6-cent location adjustment at locations in Whatcom County, Washington, are less persuasive. The location adjustment should not be reduced. One reason given for such a reduction was that the nearby manufacturing plant in Lynden provides an outlet for milk surplus to the market's fluid needs, while location adjustments are still needed at locations in southern and central Oregon and central Washington precisely because no nearby manufacturing plants exist to provide an outlet for surplus milk produced in those areas. In fact, the situation thus described by the Darigold witness should result in a greater location adjustment for Whatcom County than, for instance, Jackson County, Oregon. The receipt of milk at a manufacturing plant located in an area of heavy milk production at some distance from the market's center is the classic situation to which location adjustments were designed to apply. Prices paid for such milk are adjusted downward for location to compensate for the fact that the milk has not had to be hauled to distant bottling plants but instead has been shipped a relatively short distance at a significantly lower hauling cost.

Another reason advanced by the Darigold witness for a reduction in the location adjustment rate at Whatcom County was the need to "modernize" the order. According to the witness, reduction and elimination of location adjustments in Federal orders generally has become a trend that should be followed in the merged order. The witness cited 3 relatively recent decisions relating to the Southwestern Idaho-Eastern Oregon, Eastern Ohio-Western Pennsylvania and Greater Kansas City orders in which location adjustments had been, respectively, not adopted, eliminated and reduced.

None of the reasons given in the cited decisions for the actions taken are relevant to marketing conditions in the Pacific Northwest. The Southwestern Idaho-Eastern Oregon decision found that no location adjustments were necessary for that marketing area because all of the distributing plants that were expected to be regulated by the order were located in counties in which enough milk was produced to satisfy the local distributing plant's demand for fluid milk. Also, the distributing plants were found to be distributed throughout the marketing area, not concentrated in one or two large population centers.

In the Eastern Ohio-Western Pennsylvania decision, location adjustments at locations in the marketing area were eliminated because most of the distributing plants had moved out of the population centers nearer to the production areas, leaving the leading population centers as no longer significant fluid milk processing centers. The decision reiterated the traditional rationale for location adjustments, but determined that the conditions for which location adjustments were designed no longer existed in the Eastern Ohio-Western Pennsylvania marketing area.

The Greater Kansas City decision referred to by proponent expanded the order's location adjustment-free area to assure that prices at a pool supply plant located south of Kansas City and closer to a higher-priced order would not be subject to a negative adjustment. The decision was part of a 6-market proceeding held to consider location adjustment changes for the purpose of assuring inter-market price alignment after Class I prices were legislatively amended in many Federal orders. In the six orders affected by the decision, location adjustments were increased in 3, reduced in 1, and unchanged in 2.

The decisions cited by the Darigold witness address marketing conditions that differ markedly from those in the

proposed merged marketing area. However, the witness failed to cite decisions affecting the New England and New York-New Jersey orders in which location adjustments were increased to reflect increases in hauling costs. These markets, with manufacturing plants located in the heavy production areas distant from most distributing plant locations, are more comparable to the situation of Whatcom County. Such increases, that update location adjustments to correspond to the significant increases in hauling costs that have been experienced since most location adjustment provisions were written, are actually the only means of "modernizing" location adjustments. It is very possible that it would be appropriate to "modernize," or increase, the location adjustment at Whatcom County, as urged by Northwest Independent Milk Producers Association and Carnation Company. However, there is inadequate data and testimony in the record of this proceeding to determine an appropriate change in the level of location adjustment for Whatcom County. Therefore, there should be no change in the present 6-cent adjustment.

Butterfat differential. The merged order should provide for a single butterfat differential for adjusting order prices to the butterfat content of the milk being priced. The differential should be the Chicago 92-score butter price for the month multiplied by a factor of 0.115, rounded to the nearest 0.1 cent. Such differential should be announced on the fifth day after the end of the month to which it applies.

This differential is now used under the present Puget Sound-Inland order. However, the Oregon-Washington order provides for three separate butterfat differentials. The Class I butterfat differential for handlers is determined by multiplying the Chicago butter price for the preceding month by 0.12, while the handler Class II and III differentials are determined by multiplying the butter price for the current month by 0.115. The butterfat differential applicable in adjusting the uniform price to producers is the average of the Class I, Class II and Class III butterfat differentials weighted by the proportion of butterfat in producer milk in each class.

Presently, the Class I, Class II, and Class III differentials for the Oregon-Washington order are announced on the fifth day of the month. The Class I differential applies to the month in which announced, while the Class II and Class III differentials apply to the preceding month. The producer butterfat differential is announced on the 14th day of each month and applies to milk received during the preceding month.

The merger proponents proposed that all class prices and uniform prices under the merged order be subject to an adjustment by a butterfat differential based on the Chicago butter price times the factor of 0.115. No opposition to the use of this single factor was presented at the hearing.

As proposed and as herein adopted, using a single factor of 0.115 for computing class butterfat differentials will change the relationship of Class I skim milk and butterfat values of those handlers that are presently regulated by the Oregon-Washington order. The impact of this change will increase such handlers' cost of skim milk since less value will be assigned to the butterfat component of Class I milk. However, the absolute effect on a handler's cost for Class I milk is dependent on the average test of his Class I products.

Nevertheless, adopting a lower Class I butterfat differential for the Oregon-Washington portion of the proposed merged marketing area gives recognition to the reduced demand and the relatad lower market value of butterfat in fluid milk products in Class I. This lower value for Class I butterfat will be reflected in returns to producers which, in turn, should provide less incentive to produce high-test milk that consumers do not want.

8. *Handler obligations to the pool.* The value of producer milk to handlers should continue to be determined on the basis of its use in the three classes of utilization, and the prices associated with each class. As proposed by proponents, each handler's obligation to the producer-settlement fund should be determined by "equalization", as is currently the case under the Puget Sound-Inland order. In an "equalization" pool, a handler pays to the producer-settlement fund the amount by which the handler's use value of producer milk exceeds the value of the producer milk at the uniform price. If the value of the producer milk at the uniform price exceeds the handler's use value, the handler receives the difference from the producer-settlement fund in order to pay the producers the uniform price. In this way, each handler pays the total use value of producer milk received and each handler is left with a sum great enough to pay all of the handler's producers for their milk at the uniform price.

Under the Oregon-Washington order, handlers are required to pay the full class use value of their producer milk to the producer-settlement fund. The market administrator then pays nonmember producers, handlers, cooperative associations and the Oregon State Division of Milk Stabilization for the milk supplied by them or by the producers for whose milk they are responsible for paying. With the cessation of payments to the State of Oregon (see below), it is no longer necessary to require handlers to pay the full use value of their milk to the producer-settlement fund. Operation of the Pacific Northwest pool as an "equalization" pool will reduce the amount of money paid into and out of the producer-settlement fund, and should improve handlers' cash flow.

Late payment charge. The merged order should include a late payment charge to be applied to handlers' payments to the producer-settlement fund, as a result of audit adjustments, and for administrative and marketing service assessments that are received after the date such payments are due under the order. The charge should be 1 percent of the amount due, and should be applied on the first day after the due date. The late payment charge should also be applied to any unpaid balance (including any previously unpaid overdue charges) on the due date for such obligation in each following month.

Proponent proposed the late payment charge on the basis that such a provision had been found necessary in the Oregon-Washington order to assure timely payment of handlers' obligations to the producer-settlement fund and for administrative and marketing service assessments. The Darigold witness testified that the late payment charge provision, as proposed, should be modified to remove a requirement that late payment charges be assessed under the order on late payments for milk purchased from cooperative association plants by other handlers. He explained that agreements between cooperatives and their customers may enable cooperatives to impose such a charge outside the order.

Two briefs opposing adoption of a late payment charge were received. Carnation Company, a proprietary handler operating distributing plants under both of the two orders, objected to the imposition of a late payment charge in months when billings from cooperatives or the market administrator arrive after the date payments are due. The Carnation brief stated that the company does accept billing information by telephone so that payments can be made on time, but considers a late payment charge unreasonable unless the billings arrive on time. Carnation also stated that the 1 percent charge for a payment one day

late is unreasonable. Olympia Cheese Company, a nonpool cheese plant operator, also objected to adoption of a late payment charge for the merged order. The brief filed by the handler stated that cooperatives and other handlers are able to charge late payment fees on overdue accounts outside the Federal order. Olympia Cheese's brief also stated that the proposed provision would disrupt the operation of the order, goes beyond the intent of the Act, and violates usury laws.

The late payment charge, modified as suggested by the Darigold witness, is necessary to assure that payments to the funds maintained by the market administrator will be made promptly. Prompt payment is essential in order for the market administrator to make payments to handlers on the dates specified in the order so that those handlers, in turn, may pay producers according to the timetable required by the order. Failure on the part of a handler to meet the order's due dates unnecessarily delays payments to producers and gives the late-paying handler a financial advantage over handlers who comply with the order's payment dates. Allowing a period after the due date when no late payment charge would be imposed would only encourage handlers to put off payment until the day before the charge is effective. A charge for late payments will enable the order to operate smoothly, and will assure that producers will receive payment for their milk, some of which was used by handlers over a month earlier, in a timely manner. Elimination of the proposed provision subjecting handlers' late payments to cooperative associations for milk received from cooperatives' plants will enable the market administrator to avoid unnecessary involvement in business dealings between regulated handlers.

A charge of one percent of the amount overdue should not be considered excessive. A lesser rate would constitute little deterrent to late payments. Furthermore, since handler obligations under the merged order will reflect only their equalization value (the difference between the class use value of the milk and its value at the uniform price), the amount of late payment charge imposed should not be unduly burdensome. The late payment charge is not considered interest, and is not subject to usury laws. The late payment charge assures that timely payment of a handler's obligations to the pool will represent the most economic use of the handler's financial resources.

9. *Payments to producers.* Marketwide pooling of producer returns should be provided under the merged order as the basis of distributing among producers the proceeds from the sale of their milk. This type of pooling is now being used in each of the individual markets to be merged and was the only alternative proposed or supported for use under the merged order.

A single marketwide uniform price, adjusted for butterfat content and for location of the plant to which the milk is delivered, should be the basis of distributing total pool proceeds from producer milk in making payments to individual producers. Under this payment arrangement, each producer would share equally in the higher-valued Class I milk of the market as well as in the lower-valued Class II and Class III uses of milk. A single uniform price to producers is now applicable under the Puget Sound-Inland order.

The present Oregon-Washington order provides for a 12-month operating base plan, which is another method of distributing the total proceeds from handlers to producers. This plan provides for producers to earn daily bases that represent the producer's daily average production during the market's four lowest months of production for the previous year. For deliveries within a producer's base, the producer receives a "base" price that includes a share of the value of the market's Class I sales. For marketings in excess of his base, the producer receives an "excess" price which is comparable to the lower manufacturing, or Class III, price. In addition to the "base-excess" plan, the Oregon-Washington order includes authorization for the market administrator to pay pool proceeds to the Oregon State Milk Audit and Stabilization Division at the base and excess values for producers and cooperative associations participating in the "Oregon Base Plan".

Proponents proposed that both the Oregon-Washington Federal order base plan and provisions facilitating operation of the Oregon State Base Plan be omitted from the proposed order. The Darigold witness testified that participation by Oregon-Washington producers in the Oregon Base Plan had declined from nearly 100 percent at the time the Oregon-Washington order was promulgated to approximately 18 percent at the time of the hearing in this proceeding. He stated further that the State of Oregon was expected to discontinue operation of its base plan at the end of 1987. There was no opposition, at the hearing or in briefs, to the omission of both the Federal order base plan and the Oregon base plan from the merged order. Because no support was expressed for retention of the Federal order base plan or provisions facilitating operation of the Oregon State Base Plan in the merged order, the provisions associated with those plans should not be included.

Adoption of the equalization method of pooling the value of producers' milk will necessitate adoption of the proposed procedure for paying producers. The Oregon-Washington order currently requires the market administrator to pay the full amounts due to producers directly to nonmember producers, cooperative associations, the Oregon State Department of Agriculture or, upon request, to the handler of nonmember producer milk. Such a payment scheme would not be possible with an equalization system under which only the differences between the values of milk at class prices and at the uniform price are paid to and from the producer-settlement fund. The market administrator would not have the necessary funds to pay for all of the milk production of individual producers. Therefore, the producer payment provisions of the present Puget Sound-Inland order should be adopted.

In testimony, the Darigold witness proposed two corrections to the proposed order language relating to payments to producers. He requested that the date by which handlers are required to pay cooperative associations for milk received from cooperatives' plants be changed from the 17th to the 15th day after the end of the month in which the milk is moved. The change should be adopted. Under the merged order, the cooperative association, as the handler of the milk, must account to the pool for such milk on the 16th day after the end of the month. The cooperative should have access to the money needed to pay for the milk before such payment is due to the producer-settlement fund.

The other proposed modification to the proposed order was to change a reference in the provision dealing with the application of location adjustments to payments for milk delivered by a cooperative association from producers' farms directly to the plant of another handler. The requested change would cause the provision to be applied instead to transfers from a cooperative association's plant to another handler's plant. Application of location adjustments to such milk movements are already covered in the order. A change of the provision referred to would result in no location adjustment being applied to a cooperative's milk received directly

at another handler's plant. The proposed modification should not be adopted.

10. *Administrative provisions—administrative assessment.* The maximum rate of payments by handlers for the cost of administering the merged order should be 4 cents per hundredweight. Such payments are required if the market administrator is to perform the necessary function of administering the merged order. The 4-cent per hundredweight rate is the same as under the two separate orders, and was proposed at the hearing without objection. Continuation of the 4-cent rate should enable the market administrator to administer the merged order effectively. If experience indicates that the merged order can be administered at a lesser rate, the order provides that the Secretary may adjust the rate downward without the necessity of a hearing.

Deduction for marketing services. The maximum rate of deduction from payments to nonmember producers for the cost of providing marketing services such as butterfat testing and market information should be 5 cents per hundredweight. The marketing service deduction is necessary to reimburse the market administrator for providing such services to producers to whom the services are not provided by a cooperative association.

Currently, the maximum rates under the separate orders are 6 cents under the Oregon-Washington order, and 5 cents under the Puget Sound-Inland order. A 5-cent rate, which was proposed at the hearing without objection, should enable the market administrator to provide adequate testing and information services to nonmember producers. The marketing service deduction rate, like the administrative assessment, may be adjusted downward if the maximum rate is higher than necessary.

Merger of the administrative expense, marketing service and producer-settlement funds. To accomplish the merger of the two orders effectively and equitably, the reserves in the administrative expense funds that have accumulated under the individual orders should be combined. Similar procedures should be followed with respect to the marketing service and producer-settlement fund reserves of the individual orders. Any liabilities of such funds under the individual orders should be paid from the appropriate new funds established under the merged order. Similarly, obligations that are due the several funds under the individual orders should be paid from the appropriate combined fund under the merged order.

The money paid to the administrative expense fund is each handler's proportionate share of the cost of administering the order. It is anticipated that all handlers currently regulated under the two orders will continue to be regulated under the merged order. In view of this, it would be an unnecessary administrative and financial burden to allocate back to handlers the reserve funds under the individual orders and then accumulate an adequate reserve for the merged order. It is equally equitable and more efficient to combine the administrative monies accumulated under the individual orders and to pay any liabilities against such funds from the consolidated fund of the merged order.

The money accumulated in the marketing service funds of the individual orders is that which has been paid by producers for whom the market administrator is performing services. The producers who have contributed to the marketing service fund of each order are expected to continue to supply milk for the merged Pacific Northwest market. The consolidation of the reserves in the individual marketing service funds is therefore appropriate in view of the continuation of the marketing service program for these producers under the merged order.

The producer-settlement fund balances in the two orders should be combined so that the producer-settlement fund under tha merged order may be continued without interruption. The producers currently supplying the individual markets are expected to continue to supply milk for the merged Pacific Northwest market. Thus, monies now in the producer-settlement funds of the individual orders would be reflected in the uniform prices of the producers who will benefit from the merged order. The combined fund would also serve as a contingency fund from which money would be available to meet obligations [resulting from audit adjustments and otherwise] accruing under one or the other of the separate funds.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Oregon-Washington and Puget Sound-Inland orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the Pacific Northwest order which amends and merges the present Oregon-Washington and Puget Sound-Inland orders, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the Pacific Northwest marketing area and the minimum prices specified in the tentative marketing agreement and the merged Pacific Northwest order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the Pacific Northwest order will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in marketing agreements upon which a hearing has been held;

(d) All milk and milk products handled by handlers as defined in the tentative marketing agreement and the merged Pacific Northwest order are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his prorata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to milk specified in § 1124.85 of the tentative marketing agreement and the Pacific Northwest order.

Recommended Marketing Agreement and Order Amending the Orders

The recommended marketing agreement is not included in this

decision because the regulatory provisions thereof would be the same as those contained in the Pacific Northwest order. The following order regulating the handling of milk in the Pacific Northwest marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1124 and 1125

Milk marketing orders, Milk, Dairy products.

In Title 7 of the Code of Federal Regulations, it is proposed that Part 1125 be removed, and that Part 1124 be revised to read as follows:

PART 1125—[REMOVED]

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1124.1 General provisions.

Definitions

1124.2 Pacific Northwest marketing area.
1124.3 Route disposition.
1124.4 Plant.
1124.5 Distributing plant.
1124.6 Supply plant.
1124.7 Pool plant.
1124.8 Nonpool plant.
1124.9 Handler.
1124.10 Producer-handler.
1124.11 Cooperative reserve supply unit.
1124.12 Producer.
1124.13 Producer milk.
1124.14 Other source milk.
1124.15 Fluid milk product.
1124.16 Fluid cream product.
1124.17 Filled milk.
1124.18 Cooperative association.
1124.19 Product prices.

Handler Reports

1124.30 Reports of receipts and utilization.
1124.31 Payroll reports.
1124.32 Other reports.

Classification of Milk

1124.40 Classes of utilization.
1124.41 Shrinkage.
1124.42 Classification of transfers and diversions.
1124.43 General classification rules.
1124.44 Classification of producer milk.
1124.45 Market administrator's reports and announcements concerning classification.

Class Prices

1124.50 Class prices.
1124.51 Basic formula price.
1124.51a Basic Class II formula price.
1124.52 Plant location adjustments for handlers.
1124.53 Announcement of class prices.
1124.54 Equivalent price.

Uniform Price

1124.60 Handler's value of milk for computing uniform price.
1124.61 Computation of uniform price.
1124.62 Announcement of uniform price and butterfat differential.

Payments for Milk

1124.70 Producer-settlement fund.
1124.71 Payments to the producer-settlement fund.
1124.72 Payments from the producer-settlement fund.
1124.73 Payments to producers and to cooperative associations.
1124.74 Butterfat differential.
1124.75 Plant location adjustments for producers and on nonpool milk.
1124.76 Payments by a handler operating a partially regulated distributing plant.
1124.77 Adjustment of accounts.
1124.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1124.85 Assessment for order administration.
1124.86 Deduction for marketing services.

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

Subpart—Order Regulating Handling

General Provisions

§ 1124.1 General Provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby referenced and made a part of this order.

Definitions

§ 1124.2 Pacific Northwest marketing area.

"Pacific Northwest Marketing Area" (hereinafter called the "Marketing Area") means all territory geographically within the places listed below, including all territory fully or partly therein occupied by government (municipal, state or federal) reservations, facilities, installations, or institutions: Idaho Counties:

Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone. Washington Counties:

Adams, Asotin, Benton, Chelan, Clark, Columbia, Cowlitz, Douglas, Ferry, Franklin, Garfield, Grant, Grays Harbor, Island, King, Kitsap, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, Pierce, San Juan, Skagit, Skamania, Snohomish, Spokane, Stevens, Thurston, Wahkiakum, Walla Walla, Whatcom, Whitman and Yakima. Oregon Counties:

Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Deschutes, Douglas, Gilliam, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, Washington, Wheeler, and Yamhill.

§ 1124.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product classified as Class I milk from a plant to a retail or wholesale outlet (including any delivery through a distribution point as provided by this section, by a vendor, from a plant store or through a vending machine). The term "route disposition" does not include:

(a) A delivery to a plant. However, packaged fluid milk products that are transferred to a pool distributing plant from another pool distributing plant, and classified as Class I under § 1124.42(a), shall be considered route disposition from the transferor-plant for the sole purpose of qualifying it as a pool distributing plant under § 1124.7(a), and the transferor-plant shall be assigned in-area dispositions but not in excess of the in-area dispositions of the transferee plant;

(b) A delivery in bulk to a commercial food processing establishment pursuant to § 1124.40(b)(3); or

(c) A delivery to a military or other ocean transport vessel leaving the marketing area, of fluid milk products which originated at a plant located outside the marketing area and were not received or processed at any pool plant.

§ 1124.4 Plant.

"Plant" means the buildings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment, which is maintained and operated primarily for the receiving, handling and/or processing of milk or milk products (including filled milk). Separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition or separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a "plant" under this definition.

§ 1124.5 Distributing plant.

"Distributing plant" means a plant in which a fluid milk product approved by a duly constituted regulatory agency for fluid consumption, or filled milk, is processed or packaged and that has route disposition in the marketing area during the month.

§ 1124.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product approved by

a duly constituted regulatory agency for fluid consumption, or filled milk, is transferred during the month to a pool distributing plant.

§ 1124.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which there is route disposition (except filled milk) in the marketing area during the month equal to not less than 10 percent of receipts of Grade A milk at such plant (exclusive of transfers of packaged fluid milk products from plants qualifying as pool plants pursuant to this paragraph, filled milk, and milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted therefrom pursuant to § 1124.13;

(b) A supply plant from which during any month not less than 30 percent of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.12 (excluding milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product (except as filled milk) to a pool distributing plant or is a route disposition in the marketing area of fluid milk products (except filled milk) processed and packaged at such plant; *Provided,* That:

(1) With respect to a supply plant operatad by a cooperative association, the producer milk of its members which it caused to be delivered directly from their farms to pool distributing plants, shall for the purpose of this paragraph, be considered as a receipt at the cooperative's supply plant and a shipment from the supply plant to pool distributing plants;

(2) A plant which qualified as a pool plant pursuant to this paragraph in each month of Septamber through February shall be a pool plant in each of the following months of March through August unless a written application is filed with the Market Administrator prior to the first day of any such month requesting that the plant be designated a nonpool plant for such month and each subsequent month through August during which it would not otherwise qualify as a pool plant; and

(3) For the purpose of this paragraph, the operations of two or more supply plants may be combined and considered as the operation of one plant if so requested in writing to the Market Administrator by the handler(s) operating such plants prior to the first day of the month for which such consideration is requested.

(c) The Director of the Dairy Division may reduce or increase up to 10 percentage points from the levels set forth therein the pool plant performance standards in paragraphs (a) or (b) of this section, if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal Order and from which, the Secretary determines, there is a greater quantity of route disposition during the month in such other Federal Order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month it shall continue to be subject to all the provisions of this part until the fourth consecutive month in which a greater proportion of its route disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition in this marketing area than in such other marketing area but which plant maintains pooling status for the month under such other Federal order;

(4) A plant qualified pursuant to paragraph (b) of this section which also meets the pool plant requirements of another Federal order and from which greater shipments are made during the month to plants regulated under such other order than are made to plants regulated under this order;

(5) A distributing plant from which total route disposition (except filled milk) in the marketing area during the month averages 300 pounds or less per day; or

(6) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk products for Grade A disposition.

§ 1124.8 Nonpool plant.

"Nonpool plant" means any plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which during the month an average of more than 300 pounds daily of fluid milk products is disposed of as route disposition in the marketing area.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products are moved to a pool plant during the month.

(e) "Exempt distributing plant" means a plant, other than a pool supply plant or a regulated plant under another Federal order that meets all the requirements for status as a pool distributing plant except that its route disposition (exclusive of filled milk) in the marketing area in the month does not exceed an average of 300 pounds daily. For purposes of this paragraph, route disposition shall not include receipts from a transferor-plant pursuant to the proviso of § 1124.3(a).

§ 1124.9 Handler.

"Handler" means:

(a) The operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it caused to be diverted for the account of such cooperative association to a nonpool plant or pursuant to § 1124.40(b)(3);

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer 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, unless both the cooperative association and the

operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person who operates a plant defined in § 1124.8 (a) through (e).

§ 1124.10 Producer-handler.

"Producer-handler" means a person who is engaged in the production of milk and also operates a plant from which during the month an average of more than 300 pounds daily of fluid milk products, except filled milk, is disposed of as route disposition within the marketing area and who has been so designated by the market administrator upon determination that all of the requirements of this section have been met, and that none of the conditions therein for cancellation of such designation exists. All designations shall remain in effect until canceled pursuant to paragraph (c) of this section. Any state institution shall be a producer-handler exempt from the provisions of this section and §§ 1124.30 and 1124.32 with respect to milk of its own production and receipts from pool plants processed or received for consumption in State institutions and with respect to movements of milk to or from a pool plant.

(a) *Requirements for designation.* (1) The producer-handler has and exercises (in its capacity as a handler) complete and exclusive control over the operation and management of a plant at which it handles and processes milk received from its milk production resources and facilities (designated as such pursuant to paragraph (b)(1) of this section), the operation and management of which are under the complete and exclusive control of the producer-handler (in its capacity as a dairy farmer).

(2) The producer-handler neither receives at its designated milk production resources and facilities nor receives, handles, processes or distributes at or through any of its milk handling, processing or distributing resources and facilities (designated as such pursuant to paragraph (b)(2) of this section) milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than (i) its designated milk production resources and facilities, (ii) pool plants within the limitation specified in paragraph (c)(2) of this section, or (iii) nonfat milk solids which are used to fortify fluid milk products.

(3) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(4) Designation of any person as a producer-handler following a cancellation of its prior designation shall be preceded by performance in accordance with paragraph (a) (1), (2), and (3) of this section for a period of 1 month.

(b) *Resources and facilities.* Designation of a person as a producer-handler shall include the determination and designation of the milk production, handling, processing and distributing resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(1) As milk production resources and facilities: All resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler;

(ii) In which the producer-handler in any way has an interest including any contractual arrangement; and

(iii) Which are directly, indirectly or partially owned, operated or controlled by any partner or stockholder of the producer-handler. However, for purposes of this paragraph any such milk production resources and facilities which the producer-handler proves to the satisfaction of the market administrator do not constitute an actual or potential source of milk supply for the producer-handler's operation as such shall not be considered a part of the producer-handler's milk production resources and facilities; and

(2) As milk handling, processing and distributing resources and facilities: All resources and facilities (including store outlets) used for handling, processing and distributing any fluid milk product:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler; or

(ii) In which the producer-handler in any way has an interest, including any contractual arrangement, or with respect to which the producer-handler directly or indirectly exercises any degree of management or control.

(c) *Cancellation.* The designation as a producer-handler shall be canceled under any of the conditions set forth in paragraph (c)(1) and (2) of this section or upon determination by the market administrator that any of the requirements of paragraph (a) (1), (2), and (3) of this section are not continuing to be met, such cancellation to be effective on the first day of the month following the month in which the requirements were not met, or the conditions for cancellation occurred.

(1) Milk from the designated milk production resources and facilities of the producer-handler is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the designated milk production facilities and resources, with the exception of purchases from pool plants in the form of fluid milk products which do not exceed in the aggregate a daily average during the month of 100 pounds.

(d) *Public announcement.* The market administrator shall publicly announce the name, plant location and farm location(s) of persons designated as producer-handlers, of those whose designations have been canceled and the effective dates of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1000.5 of this chapter that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of designation do not exist.

§ 1124.11 Cooperative reserve supply unit.

"Cooperative reserve supply unit" means any cooperative association or its agent that is a handler pursuant to § 1124.9 (b) or (c) that does not own or operate a plant, if such cooperative has been qualified to receive payments pursuant to § 1124.73 and has been a handler of producer milk under this or its predecessor order(s) during each of the 12 previous months, and if a majority of the cooperative's member producers are located within 125 miles of a pool distributing plant. A cooperative reserve supply unit shall be subject to the following conditions:

(a) The cooperative shall file a request with the market administrator for cooperative reserve supply unit status at least 15 days prior to the first day of the month in which such status is desired to be effective. Once qualified as a cooperative reserve supply unit pursuant to this paragraph, such status shall continue to be effective unless the cooperative requests termination prior to the first day of the month that change of status is requested, or the cooperative fails to meet all of the conditions of this section;

(b) The cooperative reserve supply unit supplies fluid milk products to pool distributing plants located within 125 miles of a majority of the cooperative's member producers in compliance with any announcement by the market administrator requesting a minimum level of shipments as further provided below:

(1) The market administrator may require such supplies of bulk fluid milk from cooperative reserve supply units whenever the market administrator finds that milk supplies for Class I use at pool distributing plants are needed for plants defined in § 1124.7(a). Before making such a finding, the market administrator shall investigate the need for such shipments either on the market administrator's own initiative or at the request of interested persons. If the market administrator's investigation shows that such shipments might be appropriate, the market administrator shall issue a notice stating that a shipping announcement is being considered and inviting data, views and arguments with respect to the proposed shipping announcement.

(2) Failure of a cooperative reserve supply unit to comply with any announced shipping requirements, including making any significant change in the unit's marketing operation that the market administrator determines has the impact of evading or forcing such an announcement, shall result in immediate loss of cooperative reserve supply unit status until such time as the unit has been a handler pursuant to § 1124.9 (b) and (c) for at least 12 consecutive months.

§ 1124.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved by a duly constituted regulatory agency for disposition as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1124.9(c); or

(3) Diverted in accordance with § 1124.13;

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by such person that is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1124.44(a)(9)(iii) and the corresponding step of § 1124.44(b);

(3) Any person with respect to milk produced by such person that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such order;

(4) Any person who during the month has disposed of as route disposition or to consumers at the farm an average of more than 110 pounds daily of fluid milk or fluid cream products; and

(5) Any person (known as a dairy farmer for other markets) whose milk was received at a nonpool plant or a commercial food processing establishment during the month as other than producer milk under this or any other Federal milk order.

§ 1124.13 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 § 1124.9(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 plant from a handler defined in § 1124.9(c) for all purposes other than those specified in paragraph (b)(2)(i) of this section; and

(3) Diverted for the account of the operator of the pool plant, subject to the conditions set forth in paragraph (c) of this section.

(b) Received or diverted by a cooperative defined in § 1124.9(b) or (c) under one of the following conditions:

(1) Milk diverted for the account of the cooperative association. Except for milk moved by a cooperative reserve supply unit defined in § 1124.11, such diversions shall be subject to the conditions set forth in paragraph (c) of this section;

(2) Milk for which the cooperative association is a handler pursuant to § 1124.9(c) to the following extent:

(i) For purposes of reporting pursuant to §§ 1124.30(c) and 1124.31(a) and making payments to producers pursuant to § 1124.73(a); and

(ii) For all purposes, with respect to any such milk which is not delivered to the pool plant of another handler;

(c) The following conditions shall apply to diverted producer milk:

(1) A cooperative association or its agent may divert for its account the milk of any producer. The total quantity of milk diverted may not exceed 80 percent during the months of September through April of the producer milk which the association or its agent causes to be delivered to pool distributing plants or diverted to nonpool plants. No percentage limit shall apply during the months of May through August. The percentage limits on diversions specified in this paragraph shall not apply to a cooperative reserve supply unit defined in § 1124.11;

(2) A handler other than a cooperative association that operates a pool plant may divert milk for its account to other plants or pursuant to § 1124.40(b)(3). The total quantity of milk so diverted may not exceed 80 percent during the months of September through April of the milk received at such handler's pool plant or diverted by such handler from any producer other than a member of a cooperative association which which markets milk under paragraph (c)(2) of this section and for which the operator of such plant is the handler during the month. No percentage limit shall apply during the months of May through August;

(3) Milk diverted in excess of the limits specified shall not be considered producer milk, except for milk diverted by a cooperative reserve supply unit. The diverting handler shall specify the producers whose milk is ineligible as producer milk. If a handler fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by the handler during the month;

(4) Two or more cooperative associations may have their allowable diversions computed on the basis of their combined deliveries of producer milk which the associations cause to be delivered to pool plants or diverted during the month if each association has filed a request in writing with the market administrator on or before the first day of the month the agreement is to be effective. This request shall specify the basis for assigning overdiverted milk to the producer deliveries of each cooperative according to a method approved by the market administrator;

(5) Diverted milk shall be priced at the location of the plant or commercial food processing establishment to which diverted; and

(d) In the case of any bulk tank load of milk originating at farms and subsequently divided among plants, the proportion of the load received at each plant shall be prorated among the individual producers involved on the basis of their respective percentage of the total load.

§ 1124.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1124.40(b)(1) from any source other than producers, handlers described in § 1124.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1124.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1124.40(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 § 1124.40(b)(1)) for which the handler fails to establish a disposition.

§ 1124.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: milk, skim milk, lowfat milk, milk drinks, buttermilk, mixtures of cream and milk or skim milk containing less than 15 percent butterfat (including those which are sterilized or aseptically packaged), filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use and milk or milk products (including filled milk) that are sterilized and packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1124.16 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 15 percent or more butterfat, with or without the addition of other ingredients.

§ 1124.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

§ 1124.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers, which the Secretary determines, after application by the cooperative association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, 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.

§ 1124.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1124.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday, except national holidays.

Handler Reports

§ 1124.30 Reports of receipts and utilization.

On or before the 9th day of each month each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for the preceding month:

(a) Each handler operating a pool plant(s) shall report separately for each pool plant:

(1) The quantities of skim milk and butterfat contained in:

(i) Milk received directly from producers, showing separately any milk of own-farm production;

(ii) Milk received from a cooperative association pursuant to § 1124.9(c);

(iii) Fluid milk products and bulk fluid cream products received from other pool plants showing filled milk separately;

(iv) Other source milk showing filled milk separately; and

(v) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1124.40(b)(1).

(2) The utilization of all skim milk and butterfat required to be reported, including separate statements of quantities in route disposition inside and outside the marketing area.

(b) Each producer-handler shall report:

(1) The quantities of skim milk and butterfat contained in:

(i) Milk of own-farm production;

(ii) Receipts of fluid milk products and fluid cream products from pool plants, showing separately receipts in packaged form and in bulk; and

(iii) Other source milk, showing separately any receipts from another dairy farmer.

(2) As specified in paragraph (a)(2) of this section.

(c) Each cooperative association shall report with respect to milk for which it is the handler pursuant to either § 1124.9 (b) or (c):

(1) The quantities of skim milk and butterfat received from producers;

(2) The utilization of skim milk and butterfat for which it is the handler pursuant to § 1124.9(b); and

(3) The quantities of skim milk and butterfat delivered to each pool plant pursuant to § 1124.9(c).

(d) Each handler who operates a partially regulated distributing plant shall report as specified in paragraph (a) (1) and (2) of this section except that receipts from dairy farmers in Grade A milk shall be reported in lieu of those in producer milk. Such report shall include separate statements, respectively, showing the respective amounts of skim milk and butterfat disposed of as route disposition in the marketing area as Class I milk and the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area.

(e) Each handler who operates an other order plant with route disposition of fluid milk products in the marketing area shall report the quantities of skim milk and butterfat in such disposition.

(f) Each handler who operates an exempt plant or an unregulated supply plant shall report as specified in paragraph (a) (1) and (2) of this section except that receipts from dairy farmers in Grade A milk shall be reported in lieu of those in producer milk.

§ 1124.31 Payroll reports.

On or before the 22nd day of each month handlers shall report to the market administrator as follows:

(a) Each handler with respect to each of its pool plants and each cooperative association which is a handler pursuant to § 1124.9 (b) or (c) shall submit its producer payroll for deliveries (other than own-farm production) in the preceding month which shall show:

(1) The total pounds of milk received from each producer, the pounds of butterfat contained in such milk, and the number of days on which milk was delivered by such producer in such month;

(2) The amount of payment to each producer and cooperative association; and

(3) The nature and amount of any deductions or charges involved in such payments; and

(b) Each handler operating a partially regulated distributing plant who wishes computations pursuant to § 1124.76(a) to be considered in the computation of its obligation pursuant to § 1124.76 shall submit its payroll for deliveries of Grade A milk by dairy farmers which shall show:

(1) The total pounds of milk and the butterfat content thereof received from each dairy farmer;

(2) The amount of payment to each dairy farmer (or to a cooperative association on behalf of such dairy farmer); and

(3) The nature and amount of any deductions or charges involved in such payments.

§ 1124.32 Other reports.

At such time and in such manner as the market administrator may prescribe, each handler shall report to the market administrator such information in addition to that required under §§ 1124.30 and 1124.31 as may be requested by the market administrator with respect to milk and milk products (including filled milk) handled by the handler.

Classification of Milk

§ 1124.40 Classes of utilization.

Except as provided in § 1124.42 all skim milk and butterfat required to be reported by a handler pursuant to § 1124.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section;

(2) In packaged inventory of fluid milk products at the end of the month; and

(3) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more non-milk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In all bulk fluid milk products and bulk fluid cream products disposed of or diverted to any commercial food processing establishment, subject to the conditions of § 1124.42(e), at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk fluid form other than that specified in paragraph (c)(1)(iv) of this section.

(iv) Plastic cream, frozen cream and anhydrous milkfat.

(v) Custards, puddings, and pancake mixes;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers; and

(vii) Any milk or milk products sterilized and packaged in hermetically sealed metal or glass containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1124.15; and

(6) In shrinkage assignad pursuant to § 1125.41(a) to the receipts specified in § 1124.41(a)(2) and in shrinkage specified in § 1124.41 (b) and (c).

§ 1124.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1124.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant or pursuant to § 1124.40(b)(3) and milk received from a handler described in § 1124.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1124.9(c) and in milk diverted to such plant by the operator of another pool plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted by the plant operator to another plant or pursuant to § 1124.40(b)(3), except that if the operator of the plant or establishment to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section.

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1124.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of a plant or a commercial food processing establishment pursuant to § 1124.40(b)(3) to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1124.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. The classification of such transfers and diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the receiving handler's plant after the computation pursuant to § 1124.44(a)(13) and the corresponding step of § 1124.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1124.44(a)(8) or the corresponding step of § 1124.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1124.44(a) (12) or (13) or the corresponding steps of § 1124.44(b), the skim milk or butterfat so transferred or diverted up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1),(2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in

the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to 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 part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1124.40.

(c) *Transfers and diversions to producer-handlers.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk if transferred or diverted in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to the transferee's receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not another order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i)(A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(A) The transferor-handler or divertor-handler claims such classification in its report of receipts and utilization filed pursuant to § 1124.30 for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(B) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned pro rata among such plants, to the extent possible, first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible, first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this 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 at the second plant that are set forth in this paragraph.

(e) *Transfers and diversions to a commercial food processing establishment.* Skim milk and butterfat transferred or diverted to a commercial food processing establishment shall be classified:

(1) Subject to the provisions of § 1124.13(c) and, except as provided in paragraph (e)(2) of this section, as Class II milk; or

(2) Transfers or diversions shall be classified as Class I milk unless the market administrator is permitted to audit the records of the commercial food processing establishment for the purpose of verification.

§ 1124.43 General classification rules.

In determining the classification of producer milk pursuant to § 1124.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1124.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1124.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1124.40, 1124.41, and 1124.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1124.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association; and

(d) For classification purposes, pursuant to §§ 1124.40 through 1124.45, butterfat in skim milk, either disposed of to others or used in the manufacture of milk products shall be accounted for at a butterfat content of 0.060 percent unless the handler has adequate records of the actual butterfat content of such skim milk.

§ 1124.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1124.9(a) for each of the handler's pool plants separately and of each handler described in § 1124.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to its utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1124.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(8)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month. 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;

(5) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1124.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1124.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(7) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to any product specified in § 1124.40(b) but not in excess of the pounds of skim milk remaining in Class II;

(8) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(6) of this section applies, packaged inventory at the beginning of the month of products specified in § 1124.40(b)(1) that was not subtracted pursuant to paragraph (a) (5), (6), and (7) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products received or acquired for distribution from a producer-handler as defined under this or any other Federal Order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant; and

(vii) Receipts of fluid milk products from a person described in § 1124.12(b)(5);

(9) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (8)(v) of this section for which the handler requests a classification other than Class I, but not in excess of pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (8)(v), and (9)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(9)(ii) (A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(A) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any

duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(B) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(8)(vi) of this section; and

(C) Multiply any plus quantity resulting above by the percentages that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant are of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(8)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(10) Subtract from the pounds of skim milk remaining in each class, in series, beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1124.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a) (4), (6), and (8)(i) of this section;

(11) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(12) Subject to the provisions of paragraph (a)(12) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity pro rated, to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (8)(v), (9) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this paragraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(13) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (8)(vi) and (9)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(13) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(A) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1124.45(a); or

(B) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(13)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(13)(ii) of this section, should the computations pursuant to paragraphs (a)(13) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plant(s) shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(13)(ii) of this section, should the computations pursuant to paragraphs (a)(13) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(14) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1124.42(a); and

(15) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(15) of this section and the corresponding step of paragraph (b) of this section.

§ 1124.45 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 § 1124.44(a)(13) and the corresponding step of § 1124.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1124.44 on the basis of such report, and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 14th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of producer milk delivered by members of such 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 handler.

Class Prices

§ 1124.50 Class prices.

Subject to the provisions of § 1124.52, the class prices for the month, per hundredweight of milk, shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.90.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the Class III price. If the class III price for the month is computed pursuant to paragraph (c) (1) through (3) of this section, the final Class II price shall be reduced by the amount that the Class III price is less than the basic formula price to the extent such reduction does not cause the Class II price to be less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1124.51 and add 25 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1124.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month but not to exceed the price computed as follows:

(1) Multiply the Chicago butter price pursuant to § 1124.51 by 4.2;

(2) Multiply by 8.2 the weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under paragraph (c) (1) and (2) of this section subtract the make allowance for butter-powder currently used by the Commodity Credit Corporation, United States Department of Agriculture, in computing purchase prices of butter and powder for the dairy price support program.

§ 1124.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to 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.

§ 1124.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1124.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar chease and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1124.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

§ 1124.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) Zone 1 shall include:

(i) The Idaho counties of Benewah, Bonner, Boundary, Kootenai, Latah and Shoshone;

(ii) The Oregon counties of Benton, Clackamas, Clatsop, Columbia, Douglas, Hood River, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington and Yamhill;

(iii) The Washington counties of Clark, Cowlitz, Ferry, Grays Harbor, Island, King, Kitsap, Lewis, Lincoln, Mason, Pacific, Pend Oreille, Pierce, Skagit, Snohomish, Skamania, Spokane, Stevens, Thurston, Wahkiakum, and Whitman.

(2) Zone 2 shall include: The Washington county of Whatcom

(3) Zone 3 shall include: The Oregon counties of Coos, Jackson, and Josephine;

(4) Zone 4 shall include:

(i) The Idaho counties of Lewis and Nez Perce;

(ii) The Oregon counties of Crook, Deschutes, Gilliam, Jefferson, Klamath, Lake, Morrow, Sherman, Umatilla, Wallowa, Wasco and Wheeler;

(iii) The Washington counties of Adams, Asotin, Benton, Chelan, Clallam, Columbia, Douglas, Franklin, Garfield, Grant, Jefferson, Kittitas, Klickitat, Okanogan, San Juan, Walla Walla and Yakima.

(b) For milk received at a plant from producers and which is classified as Class I milk, the price specified in § 1124.50(a) shall be adjusted by the amount stated in paragraphs (b) (1) and (2) of this section for the location of such plant:

(1) For a plant located within one of the zones described in paragraphs (a) (1) through (4) of this section, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone 1	No adjustment.
Zone 2	Minus 6 cents.
Zone 3	Minus 8 cents.
Zone 4	Minus 15 cents.

(2) For a plant located outside of one of the zones described in paragraphs (a) (1) through (4) of this section, the adjustment shall be minus 1.5 cents per hundredweight for each 10 miles or fraction thereof by shortest hard-surfaced highway distance that the plant is located from the nearer of the county courthouse in Spokane, Washington, the Multnomah County Courthouse in Portland, Oregon, or the city hall in Eugene, Oregon;

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (b) of this section, except that the price when adjusted for location shall not be less than the Class III price.

(d) For fluid milk products transferred in bulk from a pool plant to another pool plant at which a higher Class I price applies and which is classified as Class I, the price shall be the Class I price applicable at the location of the transferee-plant subject to a location adjustment credit for the transferor-plant determined by the market administrator as follows:

(1) Subtract from the pounds of Class I remaining at the transferee-plant after the computations pursuant to § 1124.44(a)(13) and

(b) the pounds of packaged fluid milk products from other pool plants;

(2) Subtract the pounds of bulk fluid milk products received at the transferee-plant from the following sources:

(i) Producers;

(ii) Handlers described in § 1124.9(c); and

(iii) Pool plants at which the same or a higher Class I price applies.

(3) Assign any pounds remaining to transferor-plants in sequence beginning with the plant at which the least adjustment would apply; and

(4) Multiply the pounds so computed for each transferor-plant by the difference in the Class I prices applicable at the transferee-plant and transferor-plant.

§ 1124.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

§ 1124.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the pricing constituent that is required.

Uniform Price

§ 1124.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of its pool plants and of each handler described in § 1124.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1124.44(c), by the applicable class prices (adjusted pursuant to § 1124.52) and add together the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage deducted from each class pursuant to § 1124.44(a)(15) and the corresponding step of § 1124.44(b) by the class prices

applicable at the location of the pool plant, as adjusted by the butterfat differential specified in § 1124.74. In case overage occurs in a nonpool plant located on the same premises as a pool plant, such overage shall be prorated between the quantity transferred from the pool plant and other source milk in such nonpool plant. In such case, add an amount equal to the value of overage prorated to the quantity transferred to the nonpool plant at the class price applicable at the pool plant;

(c) Add an amount equal to the difference between the value at the Class I price applicable at the pool plant and the value at the Class III price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1124.44(a)(8) (i) through (iv) and (vii) and the corresponding step of § 1124.44(b) excluding receipts of bulk fluid cream products from an other order plant;

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(8) (v) and (vi) and the corresponding step of § 1124.44(b);

(e) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price adjusted pursuant to § 1124.52, or the Class II price as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1124.44(a)(10) and the corresponding step of § 1124.44(b);

(f) Add an amount equal to the value at the Class I price, adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received, with respect to skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(12) and the corresponding step of § 1124.44(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by a handler fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any payment obligation under this or any other order; and

(g) Add or subtract as the case may be, the amount necessary to correct errors as disclosed by the verification of reports of such handler of the handler's receipts and utilization of skim milk and butterfat in previous months for which payment has not been made.

§ 1124.61 Computation of uniform price.

For each month the market administrator shall compute the "uniform price" per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1124.60 for all handlers who filed the reports prescribed by § 1124.30 for the month and who made the payments pursuant to § 1124.71 for the preceding month;

(b) Add the aggregate of all minus location adjustments computed pursuant to § 1124.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1124.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1124.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 14th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1124.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which shall be deposited all payments made by handlers pursuant to §§ 1124.71 and 1124.76 and out of which shall be made all payments to handlers pursuant to § 1124.72. However, the market administrator shall offset the payment due to a handler from such fund against payments due from such handler.

§ 1124.71 Payments to the producer-settlement fund.

(a) On or before the 16th day after the end of the month during which the skim milk and butterfat were received each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a)(1) of this section exceeds the total amount specified in paragraph (a)(2) of this section:

(1) The sum of:

(i) The total value of milk of the handler for such month as determined pursuant to § 1124.60; and

(ii) For a cooperative association handler, the amount due from other handlers pursuant to § 1124.73(d) but without adjustment for butterfat;

(2) The sum of:

(i) The value of milk received by such handler from producers at the applicable uniform price pursuant to § 1124.73(a)(2) but without adjustments for butterfat;

(ii) The amount to be paid to cooperative associations pursuant to § 1124.73(d) but without adjustment for butterfat; and

(iii) The value at the uniform price for all skim milk and butterfat applicable at the location of the plant(s) from which received (not to be less than the value at the Class III price) with respect to other source milk for which a value is computed pursuant to § 1124.60(f); and

(b) On or before the 25th day after the end of the month, each handler operating a plant specified in § 1124.7(d) (2) and (3), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant as route disposition in the marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in paragraph (b)(1) of this section to Class I disposition in this area, at the Class I price under this part applicable at the location of the other order plant (but not to be less than the Class III price) and subtract its value at the Class III price.

§ 1124.72 Payments from the producer-settlement fund.

On or before the 18th day after the end of the month during which the skim milk and butterfat were received, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1124.71(a)(2) exceeds the amount computed pursuant to § 1124.71(a)(1), and less any unpaid obligations of such handler to the market administrator pursuant to §§ 1124.71(a), 1124.77,

1124.85, and 1124.86. However, if 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 paymants as soon as the necessary funds are available.

§ 1124.73 Payments to producers and to cooperative associations.

(a) Each handler shall make payments to each producer for milk received from such producer during the month:

(1) On or before the last day of the month to each producer who had not discontinued shipping milk to such handler before the 18th day of the month, at not less than the Class III price for the preceding month per hundredweight of milk received during the first 15 days of the month, less proper deductions authorized in writing by such producer; and

(2) On or before the 19th day after the end of each month for milk received from such producers during such month:

(i) At not less than the uniform price for the quantity of milk received, adjusted by the butterfat differential pursuant to § 1124.74 and by any location adjustments applicable under § 1124.75;

(ii) Minus payments made pursuant to paragraph (a)(1) of this section. However, if by such date such handler has not received full payment for such month pursuant to § 1124.72, the handler shall not be deemed to be in violation of this paragraph if the handler reduced uniformly for all producers the payments per hundredweight pursuant to this paragraph by a total amount not in excess of the reduction in payment from the Market Administrator; however, the handler shall make such balance of payment uniformly to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payments is received from the market administrator.

(b) The payments required in paragraph (a) of this section shall be made, upon request, to a cooperative association qualified under § 1124.18, or its duly authorized agent, with respect to milk received from each producer who has given such association authorization by contract or by other written instrument to collect the proceeds from the sale of the producer's milk, and any payment made pursuant to this paragraph shall be made on or before 2 days prior to the dates specified in paragraph (a) of this section.

(c) Each handler shall pay to each cooperative association or its duly authorized agent which operates a pool plant for skim milk and butterfat received from such plant:

(1) On or before the 2nd day prior to the date specified in paragraph (a)(1) of this section for skim milk and butterfat received during the first 15 days of that month at not less than the Class III price for the preceding month; and

(2) On or before the 15th day after the end of such month, an amount of money computed by multiplying the total pounds of such skim milk and butterfat in each class pursuant to § 1124.42(a) by the class price adjusted by the butterfat differential and taking into account any location adjustments as provided by § 1124.52 applicable at the pool plant of the cooperative association or its agent, minus payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler who received milk for which a cooperstive association is the handler pursuant to § 1124.9(c) shall pay such cooperative association for such milk received:

(1) On or before the 2nd day prior to the date specified in paragraph (a)(1) of this section for such milk received during the first 15 days of that month at not less than the Class III price for the preceding month; and

(2) On or before the 18th day after the end of each month, for the milk received at not less than the uniform price for all milk adjusted pursuant to §§ 1124.74 and 1124.75(b), minus payments made pursuant to paragraph (d)(1) of this section.

(e) None of the provisions of this section shall be construed to restrict any cooperative association qualified under section 8c(5)(F) of the Act from making payment for milk to its producers in accordance with such provision of the Act.

(f) In making payments to producers pursuant to this section, each handler, on or before the 19th day of each month shall furnish each producer with a supporting statement in such form that it may be retained by the producer, which shall show for the preceding month:

(1) The identity of the handler and the producer;

(2) The total pounds of milk delivered by the producer and the average butterfat test thereof and the pounds per shipment if such information is not furnished to the producer each day of delivery;

(3) The minimum rate at which payment to the producer is required under the provisions of this section;

(4) The rate per hundredweight and amount of any premiums or payments above the minimum price provided by the order;

(5) The amount or rate per hundredweight of each deduction claimed by the handler, together with a description of the respective deductions; and

(6) The net amount of payment to the producer.

(g) In making payments to a cooperative association in aggregate pursuant to this section, each handler upon request shall furnish to the cooperative association, with respect to each producer for whom such payment is made, any or all of the above information specified in paragraph (f) of this section.

§ 1124.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago as reported by the Department for the month.

§ 1124.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payment to producers pursuant to § 1124.73(a) subject to the application of § 1124.13(c)(5) appropriate adjustments shall be made per hundredweight of milk received from producers at respective plant locations at the same rate as specified for Class I milk set forth in § 1124.52.

(b) In making payments to a cooperative association pursuant to § 1124.73(d) appropriate adjustments shall be made at the rates specified for Class I milk in § 1124.52 for the location of the plant at which the milk was received from the cooperative association.

(c) For purposes of computations pursuant to §§ 1124.71 (a) and 1124.72 the uniform price for all milk shall be adjusted at the rates set forth in § 1124.52 for Class I milk applicable at the location of the nonpool plant from which the milk or filled milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1124.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to

paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1124.30(d) and 1124.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, the handler shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1)(i) The obligation that would have been computed pursuant to § 1124.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. No obligation shall apply to Class I milk transferred to a pool plant or an other order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which an equivalent amount of milk was classifiad and priced as Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1124.60(f) and a credit in the amount specified in § 1124.71(a)(2)(iii) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified in paragraph (a)(1)(ii) of this section; and

(ii) If the operator of the partially regulated distributing plant so requests, and provides with reports filed pursuant to §§ 1124.30(d) and 1124.31(b) similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1124.7(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of:

(i) the gross payments made by such handler for Grade A milk received during the month from dairy farmers at such plant adjusted to a 3.5 percent butterfat basis by the butterfat differential pursuant to § 1124.74, and like payments made by the operator of a supply plant(s) included in the computations pursuant to paragraph (a)(1) of this section; and

(ii) any payments to the producer-settlement fund of an other order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as route disposition of Class I milk within the marketing area;

(2) Deduct the respective amount of skim milk and butterfat received at the plant:

(i) As Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) From a nonpool plant that is not another order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any payment obligation under this or any other order;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area;

(4) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in paragraph (b)(3) of this section its value computed at the Class I price applicable at the location of the nonpool plant (but not to be less than the Class III price) less the value of such skim milk at the Class III price.

§ 1124.77 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due:

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred following the 5th day after such notice.

§ 1124.78 Charges on overdue accounts.

(a) Any unpaid obligation of a handler pursuant to § 1124.71, 1124.76, 1124.77, 1124.85 or 1124.86 shall be increased 1 percent beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due, subject to the following conditions:

(1) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid overdue charges previously computed pursuant to this section; and

(2) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(b) All charges on overdue accounts shall be paid to the fund or to the person to whom the account was due immediately after the charge has been collected.

Administrative Assessment and Marketing Service Deduction

§ 1124.85 Assessment for order administration.

A pro rata share of the expense of administration of the order shall be paid to the market administrator by each handler on or before the 16th 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 such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1124.44(a) (8) and (12) and the corresponding steps of § 1124.44(b), except such other source milk on which no handler obligation applies pursuant to § 1124.60(f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the Class I milk:

(1) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(2) Specified in § 1124.76(b)(2)(ii).

§ 1124.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than with respect to milk of such handler's own production) pursuant to § 1124.73(a)(2), shall make a deduction of 5 cents per hundredweight of milk or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe, with respect to the following:

(1) All milk received from producers at a plant not operated by a cooperative association.

(2) All milk received at a plant operated by a cooperative association from producers for whom the marketing services set forth below in this paragraph are not being performed by the cooperative association as determined by the market administrator. Such deduction shall be paid by the handler to the market administrator on or before the 16th day after the end of the month. Such moneys shall be expended by the market administrator for the verification of weights, sampling and testing of milk received from producers, and in providing for market information to producers. Such services are to be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of each producer;

(1) Who is a member of, or who has given written authorization for the rendering of marketing services and the taking of deductions therefor to, a cooperative association;

(2) Whose milk is received at a plant not operated by such association; and

(3) For whom the market administrator determines that such association is performing the services described in paragraph (a) of this section, each handler shall deduct, in lieu of the deduction specified under paragraph (a) of this section, from the payments made pursuant to § 1124.73(a)(2) the amount per hundredweight on milk authorized by such producer and shall pay, on or before the 18th day after the end of the month, such deduction to the association entitled to receive it under this paragraph.

Signed at Washington, DC, on September 7, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-21147 Filed 9-16-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1126

[Docket No. AO-231-A55; DA-88-109]

Milk in the Texas Marketing Area; Final Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This final decision would provide transportation credits to handlers for hauling excess producer milk to nonpool plants located outside the State of Texas. The credits would represent a partial reimbursement of hauling costs from the order's marketwide pool. Such credits would apply during the months of March–June and the last half of December and would be limited to milk going into Class II and Class III uses. The credits would be computed at a rate of 2.4 cents per 10 miles. Credits would be limited to handlers who transfer milk from plants located in Zone 1 of the marketing area while credits on milk that is moved directly from farms to nonpool plants would be limited to milk produced in northern Texas and southern Oklahoma. Handlers would also receive a credit to recognize costs associated with hauling milk from higher- to lower-priced areas. The amount of milk to which transportation credits apply would be reduced to the extent that a handler or affiliate of the handler caused milk from outside the State of Texas to be received at plants in the marketing area.

The changes to the order, which are based on proposals considered at a public hearing held on February 2–3, 1988, in Irving, Texas are necessary to partially compensate handlers for transportation costs incurred in clearing the market of surplus milk production that exceeds local manufacturing capacity.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089. .

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote orderly marketing of milk by producers and regulated handlers and partially compensated handlers for costs incurred in providing a service of marketwide benefit.

Prior document in this proceeding:

Notice of Hearing: Issued December 30, 1987; published January 6, 1988 (53 FR 256).

Tentative Decision: Issued June 6, 1988; published June 13, 1988 (53 FR 22003).

Interim Amendments: Issued July 6, 1988; published July 12, 1988 (53 FR 26226).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Texas marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) ("the Act"), and the applicable rules of practice (7 CFR Part 900), at Irving, Texas on February 2–3, 1988. Notice of such hearing was issued on December 30, 1987 and published January 6, 1988 (53 FR 256).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Assistant Secretary for Marketing and Inspection Services, on June 6, 1988 filed with the Hearing Clerk, United States Department of Agriculture, his tenative decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the tentative decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under issue number one, six paragraphs are added after the 51st paragraph and seven paragraphs are added at the end.

2. Issue number two is rewritten.

The material issues on the record of hearing relate to:

1. Credits to handlers for transporting surplus producer milk; and

2. Whether emergency marketing conditions exist with respect to issue number 1.

Findings and Conclusions

The following findings and conclusions on the material issues are

based on evidence presented at the hearing and the record thereof:

1. *Credits to handlers for transporting surplus producer milk.* The Texas order should be amended to provide transportation credits to handlers for hauling (transferring or diverting) surplus producer milk to nonpool plants located outside the State of Texas for Class II and Class III use during the months of March-June and the last half of December. The credits would represent a partial reimbursement of hauling costs from the order's marketwide pool. Such credits should be computed at a rate of 2.4 cents per hundredweight for each 10-miles, or fraction thereof, for the shortest hard-surfaced highway distance to nonpool plants, as determined by the market administrator, from the nearer of several locations. A transfer credit should apply to bulk fluid milk products transferred by a handler from a pool plant located in Zone 1 of the maketing area for the distance between the transferor pool plant and the transferee nonpool plant. A credit for diverted milk should apply to milk produced in Zones 1, 1–A, or 3 of the marketing area or 19 southern Oklahoma counties that is diverted from a pool plant to a nonpool plant that is in excess of 100 miles from the nearer of the city hall in Dallas, Texas, the pool plant of last receipt for the major portion of the milk on the load, or the courthosue of the county where the major portion of the milk on the load was produced. In addition, a credit for diverted milk should also include an amount per hundredweight equal to the difference between the location adjustment (excluding any plus adjustments) applicable in the area where the milk was produced and any greater minus location adjustment applicable at the location of the nonpool plant where the milk was received. No credit should apply to the total quantity of milk moved to a given nonpool plant by a handler during the month if any portion of the milk is assigned to Class I. Also, the amount of milk to which a credit would be applicable during the month should be reduced by the amount of milk that the handler or any affiliate of the handler causes to be received at plants in the marketing area from outside the State of Texas during the month. Such offset should be applied in sequence beginning with the nonpool plant at which the greatest credit would have applied.

The order provisions contained herein to provide transportation credits to handlers are patterned after the proposals that were contained in the hearing notice with modifications that were supported at the hearing to limit the application of any such credits. The modifications are necessary so that Texas order producers would not be inordinately burdened with the cost of disposing of surplus milk associated with other markets, or costs associated with inefficient marketing practices that might be encouraged by the implementation of such credits. The provisions are contained in a new section of the Texas order and carry out the major objectives of the proposals to partially compensate handlers for costs incurred in performing a service of marketwide benefit for producers, namely, the additional cost of hauling surplus milk to distant nonpool plants that is in excess of local manufacturing capacity.

Associated Milk Producers, Inc. (AMPI), a cooperative association that represents about two-thirds of the producers who supply the Texas market, proposed that the order be amended to provide for a change in the location at which diverted milk is priced and to reimburse handlers from the producer-settlement fund for costs incurred in transporting surplus milk supplies to alternative outlets during certain months. Specifically, AMPI produced that milk diverted from farms of producers located in Zone 1 or 3 of the marketing area to nonpool plants located outside the State of Texas be priced as if such milk were received at Dallas, Texas (Zone 1). For milk diverted from farms of producers located in Zone 1–A of the marketing area or in any of 19 southern Oklahoma counties to nonpool plants located outside Texas and southern Oklahoma, AMPI proposed that such milk be priced as if such milk were received at a plant in southern Oklahoma (28 cents less than Class I and blend prices announced in Zone 1 of the Texas order.) The proposed change in the point of pricing for diverted milk would apply during all months of the year.

AMPI also proposed that transportation credits be provided to handlers from the producer-settlement fund for hauling excess milk to nonpool plants outside Texas for Class II and Class III uses during the months of March-June and December of each year. Under the proposals, a transportation credit would apply to the pounds of bulk fluid milk products transferred from a pool plant or diverted from farms of producers located in Zone 1 or 3 of the marketing area to nonpool plants outside Texas at the rate of 3.3 cents per hundredweight for each 10 miles that the nonpool plant is located more than 90 miles from Dallas. AMPI also proposed that such credit apply to the pounds of producer milk diverted from farms located in Zone 1–A of the marketing area or 19 southern Oklahoma counties to nonpool plants located outside Texas and southern Oklahoma that are in excess of 110 miles from the nearer of Burkburnett, Texas or Sulphur, Oklahoma.

AMPI testified that the purpose of the proposed amendments is to provide for a greater degree of equity among all producers in the sharing of the high costs associated with handling surplus milk under the Texas order. AMPI testified that, under current provisions, its producer members bear a disproportionate share of the costs of balancing the fluid milk needs of the market in that its members represent two-thirds of the producer milk while AMPI handles over 80 percent of the Class III producer milk on the market. AMPI testified that of the 30 distributing plants on the market, 14 are totally supplied by the cooperative, 13 are partially supplied by it and three are not supplied by AMPI. In some cases AMPI is a partial supplier on a year-round basis while in other instances AMPI supplies supplemental milk only during the fall months of the year. In total AMPI claims that it balances, to various degrees, the milk supplies of all pool distributing plants on the Texas market.

AMPI also testified that substantial increases in production during the last half of 1987 have resulted in supplies far in excess of the capacity of all plants in the marketing area, which has increased the cost of handling surplus milk. For example, AMPI referred to data released by the market administrator concerning production increases for the State of Texas. For the months of July through December 1987, Texas production (about 94 percent of which is pooled on the Texas market) averaged 10.1 percent above a year earlier. For December 1987, Texas production was up 14.8 percent while milk production in the top ten milk producing counties was up by 20.5 percent. AMPI noted that such counties represented 58 percent of total state production and 62 percent of the Texas production pooled under the order and that all of these counties are located in Zone 1, 1–A or 3 of the marketing area.

In addition to including the major milk producing areas in the marketing area, AMPI testified that 19 southern Oklahoma counties also should be included within the scope of its proposals. AMPI testified that milk produced in such area has historically been associated with the Texas market. For example, AMPI testified that for 1985, 71 percent of the 115 million

pounds of milk originating in such area was received at pool plants while 29 percent was diverted to nonpool plants outside Texas. The monthly proportion delivered to pool plants ranged from a high of 96 percent to a low of 47 percent during the year. In 1986, 58 percent of 112 million pounds from this area was received at pool plants, ranging from a high of 90 percent to a low of 35 percent on a monthly basis. In 1987, 48 percent of 113 million pounds was received at pool plants, ranging from 79 percent to 20 percent monthly during the year. AMPI testified that when milk must be diverted off the market, usually milk produced in southern Oklahoma would be the first to be moved and that the producers would receive either a Dallas (Zone 1) or Burkburnett (Zone 1–A) location blend price for their milk.

AMPI testified that its balancing functions and the increases in production have resulted in an increasing volume of surplus milk to be handled by AMPI. For example, AMPI testified that for 1985, it handled 503 million pounds of surplus milk produced in southern Oklahoma and Zones 1, 1–A and 3 of the marketing area. Of this total, 92 percent was processed at AMPI's pooled manufacturing plants located in Zone 1 at Muenster and Sulphur Springs, Texas (Zone 1), while the remaining 39 million pounds was diverted to nonpool plants outside Texas, mainly to other AMPI plants at Oklahoma City and Tulsa, Oklahoma. AMPI testified that during 1986 the amount of surplus milk increased to 576 million pounds (14 percent increase) with 488 million pounds being processed at Muenster and Sulphur Springs (85 percent) and the remainder being diverted or transferred from the manufacturing plants to nonpool plants outside Texas. For 1987, the amount of the surplus increased to 775 million pounds (a 35 percent increase) with 75 percent being processed at its two Texas manufacturing plants and 155 million pounds being diverted (double that of the previous year) and 35 million pounds (a fourfold increase) being transferred to nonpool plants outside Texas. AMPI testified that large increases in production during the spring are normal, but, that the substantial increase during the fall months of 1987 is of major importance in the volume processed at Muenster and Sulphur Springs and in milk diverted and transferred off the market during such period when the Texas market is usually deficit.

AMPI testified that the increasing volume of milk handled by the cooperative has resulted in substantial increases in the cost of surplus disposal that is borne by the producer members of the association. AMPI testified that the increased costs are a result of the pricing of surplus milk at the plant to which it is diverted and the additional transportation costs of hauling milk to distant outlets. For example, AMPI testified that losses on milk diverted from southern Oklahoma averaged just over 45 cents per hundredweight for 1986 and just over 49 cents per hundredweight during 1987. About two-thirds of such losses were a result of the minus location adjustments that applied at the nonpool plants to which the milk was diverted and one-third from additional hauling costs to such outlets. Losses on milk diverted from the three zones in the Texas marketing area averaged $1.44 per hundredweight in 1986 and just under $1.45 per hundredweight during 1987 with about one-half of such losses being attributed to location adjustments and one-half to extra hauling costs. In total, AMPI testified that its losses on diverted milk were about $254 thousand in 1985, $677 thousand in 1986, and over $1.6 million for 1987. In addition, AMPI testified that it lost an additional $108 thousand in 1986 on milk transferred from its Zone 1 pooled manufacturing plants to nonpool plants outside Texas and about $503 thousand for 1987. AMPI testified that such losses were borne exclusively by its producer members while the benefits of such market clearing activities accrued to all producers and handlers.

AMPI testified that the proposed revision of the producer milk definition to change the pricing point on diverted milk during all months of the year would partially restore equity among all producers who supply the market. AMPI indicated that the value of negative location adjustments (which currently apply at the nonpool plants to which AMPI diverts milk) on producer milk is added to the total pool value of milk in computing the Zone 1 announced uniform price. AMPI testified that the uniform price is thus enhanced because of the minus location adjustments and nonmember producers receive a higher value for their milk. AMPI noted that its member producers also benefit from such higher price, but that they carry the total losses and therefore receive a lower than average return for their milk.

AMPI also testified that the underlying assumptions that provide the basis for pricing milk at the plant to which it is diverted are no longer applicable. According to AMPI, the basis for the lower value of milk at distant manufacturing plants in the production area is that the producers whose milk is shipped to such plants would incur a lesser hauling cost than if their milk were shipped further to distributing plants. AMPI contends that such situation no longer exists since there are no savings in hauling costs when milk must be diverted from Texas and southern Oklahoma to manufacturing plants outside the State of Texas. AMPI contends that the cost of hauling milk that must be diverted to distant nonpool plants is greater than the cost of hauling milk from farms to Texas distributing plants. AMPI also testified that it makes every effort to minimize transportation losses by utilizing the milk of producers located nearest to distributing plants to fulfill the needs of such plants while diverting the milk of more distant producers to manufacturing plants. However, AMPI testified that it is prevented from doing this in certain instances by the terms of other order provisions. In particular, AMPI noted that during the months of September through January at least 15 percent of each producers milk must be delivered to pool plants during the month in order to qualify milk diverted to nonpool plants as producer milk.

AMPI testified that during the months of March-June and December the production of milk within the Texas marketing area exceeds the requirements of distributing plants and that the resulting surplus is beyond the capacity of surplus processing plants in the marketing area. Thus, AMPI testified that during such months handlers should receive a reimbursement out of the producer-settlement fund for costs incurred in transporting such surplus production to nonpool plants outside Texas. AMPI further testified that the Food Security Act of 1985, which amended the Agricultural Marketing Agreement Act of 1937, as amended, provides specific authority for such action. AMPI further testified that the proposal would result in a more equitable sharing among all producers of the costs of handling excess milk supplies. AMPI testified that it would be unfair to make only those producers whose milk must be moved, or those producers whose milk must be moved greater distances because of a lack of nearby plant capacity, to bear the entire additional hauling cost when all producers contribute to the amount of surplus milk. Thus, AMPI concludes that the proposal would be an extension of marketwide pooling whereby all producers share in the proceeds from the sale of milk for fluid uses and the burden of maintaining the reserve supply of milk that is necessary to meet fluid milk needs. Under current

conditions of excess supply, AMPI maintains that marketwide pooling does not achieve equity among producers and that therefore disorderly marketing conditions exist.

In support of its proposed rate for determining the amount of the credit to handlers, AMPI introduced the actual hauling costs incurred during 1986 and 1987. Such costs ranged from $1.50 to $1.80 per loaded mile which reflects rates from 3.2 to 3.9 cents per hundredweight per 10 miles. AMPI testified that the lower rates were for hauls with its own equipment while the higher rates were for contract haulers. AMPI testified that it is expected that the use of contract haulers would increase because of the greater amount of surplus milk that must be handled. Nevertheless, AMPI reviewed its originally proposed 3.6-cent per hundredweight rate to 3.3 cents.

AMPI testified that the credit be calculated on the mileage involved that exceeds the normal farm-to-market distance when supplying the Class I outlets. In this regard, AMPI referred to statistics provided by the market administrator concerning the weighted average distances of milk movements to fluid milk plants located in the pricing zones of the marketing area during two months of 1987. AMPI testified that since milk was moved an average of about 84 miles to supply Zone 1 distributing plants, handlers should receive a credit for milk produced in Zones 1 and 3 to the extent that such milk is transported to nonpool plants located more than 90 miles from Dallas. For milk produced in Zone 1–A or southern Oklahoma, AMPI revised its original 75-mile limitation upward to 110 miles for credit purposes because the weighted average distance of milk shipments to the distributing plant in Zone 1–A (Burkburnett) exceeded 116 miles. Also, AMPI testified that most of the supply for the distributing plant in Zone 1–A originates in Oklahoma at distances from 101 to 150 miles away from the plant and that milk originating in southeastern Oklahoma (Sulphur) is about 110 miles from Dallas. By incorporating such mileage limitations in the proposal AMPI testified that handlers would be reimbursed only for costs incurred in hauling milk in excess of the costs normally paid by producers to haul milk to their Class I outlet.

AMPI testified that credits should apply to handlers for bulk fluid milk products transferred or diverted to nonpool plant located outside the normal delivery area for Class II or Class III use, rather than only Class III use as would be provided by an alternative proposal. AMPI testified that some of the nonpool plants available have both Class II and Class III operations and that if the alternative proposal was adopted a credit could apply to part of the milk on a load and not to the rest, depending on the classification at the receiving plant. AMPI testified that the cost of hauling the milk would be the same, regardless of the classification. AMPI further testified that the order permits milk diverted to an other order plant to remain pooled under the Texas order so long as all of the milk is classified as Class II or Class III and, thus, the same criteria should apply in determining the amount to hauling credit allowed.

AMPI's proposals were supported by Mid-America Dairymen, Inc., a cooperative association that represents about 15 percent of the producers who supply the Texas market. Southern Milk Sales, Inc., another cooperative association that represents producers who supply the market, testified that if hauling credits are adopted they should apply to milk moved to any location outside Texas. Such testimony was directed to a proposal by handlers that would limit the credit to only northward movements of milk. One proprietary fluid milk handler also supported the proposals in its brief so long as any amendment would assure that sufficient supplies of milk would first be made available to distributing plants.

A group of 10 handlers (Southland Corporation; Baker and Sons Dairy, Inc.; Borden, Inc.; Blue Bell Creameries, Inc.; Dairy Fresh, Inc.; Dean Foods Company; Hygeia Dairy Company; Kinnett Dairies, Inc.; Malone & Hyde Dairy; and Southern Belle Dairy, Inc.) who operate plants in Texas and in various southeastern markets proposed alternatives to the AMPI proposals. The handler's proposals would provide for a lesser hauling credit rate (2.0 to 2.2 cents per 10 miles), a greater distance that milk would have to move before a credit would apply along with the use of more northern basing points to determine such distance, and the application of such credits to only milk that is moved in a northern direction to plants outside Texas. The handlers also proposed that credits should not apply during the first half of December, that credits should not apply to milk produced in Oklahoma and that credits should not apply to milk moved out of Texas if milk was being received in Texas from outside areas during the same month.

The handlers testified that the purpose of the more restrictive proposals is to lessen potential abuses of a transportation credit and to address equity considerations between Texas producers and producers under other orders. They testified that the lower credit rate is intended to assure that there would be no hauling profits that would encourage the hauling of milk further than necessary and to provide no greater hauling incentive for surplus milk than what is provided for hauling milk for fluid use within the Texas marketing area. They also testified that the greater mileage before a credit applies, and the use of more northern basing points to determine such mileage, is intended to prevent a hauling credit for a greater distance than the actual hauling distance. The handlers also testified that a credit should apply only to northward movements of milk to prevent Texas surplus milk from utilizing scarce manufacturing capacity in the Southeast, with the result that displaced surplus milk in the Southeast would then have to be shipped greater distances for disposal, and without a transportation credit. The handlers further testified that a transportation credit for only the last half of December is intended to recognize that milk production normally exceeds the fluid requirements of distributors only during the latter part of the month, while additional supplies are normally needed by distributors during the beginning of the month in preparation for the holiday sales period. The handlers also testified that transportation credits should not apply to milk produced in Oklahoma or to milk shipped out of Texas while milk is being received from outside Texas to prevent Texas producers from bearing the cost of disposing of surplus milk associated with other states and markets. The handlers are particularly concerned that the implementation of any transportation credits for the Texas order could encourage uneconomic movements of milk from other areas to Texas thereby utilizing Texas manufacturing capacity and forcing Texas milk to be hauled to distant manufacturing plants. Handlers content that Texas producers should not be required to bear the cost of such uneconomic movements of milk.

Handlers also proposed that the change in the point of pricing on diverted milk be limited to those months for which a transportation credit was proposed (rather than year-round as proposed by AMPI), although there was little testimony on this aspect of the proposal. Also, there was virtually no testimony on the handlers' proposal to apply transportation credits to only Class III uses, rather than Class II and Class III uses as proposed by AMPI.

Although handlers presented an alternative to AMPI's proposal, their primary position (expressed both in testimony and in post-hearing briefs) is that no change should be made to the Texas order to accommodate the hauling of surplus milk. Handlers contend that the Texas order carries the reserve milk supplies for other Federal order markets and, as a result, the proposals should be denied for essentially the same reasons that marketwide service payment proposals were denied for several Federal order markets in the Southeast. In this regard, official notice is taken of the Assistant Secretary's final decision concerning the Georgia and certain other marketing areas issued on April 28, 1987 and published on May 1, 1987 (52 FR 15951).

Also, in briefs filed by a number of parties, it is argued that AMPI has been able to recover its seasonal balancing costs through over-order prices and that AMPI does not carry a disproportionate share of the Class III use on the market considering the amount of surplus associated with other markets that is pooled under the Texas order. Such parties argue that AMPI is transporting its own surplus to nonpool plants outside Texas and that such activity is not a service of marketwide benefit to all producers and, therefore, it would not be appropriate to implement a transportation credit that would require all producers to subsidize AMPI's marketing problem. Furthermore, a brief filed on behalf of three handlers argues that previous Department policy set forth in a previous decision to implement transportation credits establishes that a demonstrated service of marketwide benefit is a prerequisite to implementing a transportation credit. In this regard, official notice is taken of the Assistant Secretary's final decision for the Georgia and certain other marketing areas issued on March 30, 1983 and published April 5, 1983 (48 FR 14604).

Also, in their briefs, a number of parties argued that the proposed pricing change on diverted milk would distort the location value of milk and result in non-uniform prices to handlers. They further contend that such pricing is not consistent with the requirements of the Agricultural Marketing Agreement Act of 1937, as amended, since milk would be priced on the basis of where it is produced or normally received rather than at the location where it is physically received.

Two cooperative associations (the National Farmers Organization and the Farmers Union) that do not represent any producers under the Texas order testified in opposition to the adoption of any transportation credits. They contend that if the transportation of surplus milk is subsidized, such milk would displace other milk at northern manufacturing plants, would undercut prices at such plants, and would place downward pressure on manufacturing milk values to the detriment of all producers. The cooperatives contend that it would be inequitable for all producers to have to bear the cost of disposing of Texas surplus milk while Texas producers are benefitting from a Congressionally-mandated higher Class I differential. They contend that the increased returns from the significantly higher differential (which they also contend has encouraged excess milk production in Texas) should be used by AMPI to offset its surplus disposal costs. In addition, in a brief filed on behalf of the National Farmers Organization it is argued that prior decisions of the Department establish that a regional view must be taken when evaluating the equity of proposals intended to compensate handler expenses. In this regard, the brief refers to the previously officially noticed 1987 decision that denied credits for the performance of marketwide services and a 1984 decision that denied a proposed credit for milk in Class III uses under the Texas order. Consequently, official notice is taken of the Assistant Secretary's final decision for the Texas market issued on May 14, 1984 and published on May 17, 1984 (49 FR 20825).

A brief was also filed on behalf of a number of producers under the Texas order who market their milk independently to handlers who operate plants under the Texas order. The producers oppose the implementation of transportation credits. They contend that they are already receiving a reduced blend price because AMPI pools the surplus of other markets under the Texas order, that AMPI is already recovering its balancing costs, and that AMPI has a cost advantage in disposing of surplus milk because its manufacturing pool plants are located near to the source of heavy milk production.

There is no dispute on the record of the proceeding that the dramatic increases in Texas production testified to by AMPI will mean market surpluses in excess of the capacity of manufacturing plants located in the marketing area, particularly during the months of March–June and December. These months have traditionally represented the period of the greatest Class III use of producer milk under the order. During the month of December 1987, the most recent month for which data is included in the record that illustrates the magnitude of the surplus problem, over 60 million pounds of milk produced in the major production areas of the Texas marketing area and southern Oklahoma was processed at AMPI's two pooled manufacturing plants. During the same month, more than 28 million pounds of producer milk was transferred or diverted to nonpool plants outside Texas for surplus disposal. With normal seasonal increases in production, it is likely that the amount of milk in excess of local plant capacity will exceed 45 million pounds per month during the current flush production season.

When milk production exceeds all available nearby plant capacity, such excess production must either be dumped or transported at handler expense to alternative outlets. There is little way that AMPI, or any other handler, can recover the additional cost of hauling such milk to distant plants for surplus disposal. The Act authorizes a transportation credit to handlers from pool funds who perform this service if it is of marketwide benefit. Such service is of marketwide benefit to all producers on the Texas market since the amount of milk produced by all such producers contributes to the amount of surplus milk that cannot be accommodated at existing plants. Thus, the implementation of the transportation credits included herein will result in all producers bearing a portion of the additional hauling costs incurred by handlers in marketing surplus milk. The issuance of such credits is an extension of the marketwide pooling concept wherein all producers share the benefits of the fluid milk sales and the costs of maintaining reserve milk supplies.

As previously stated, a number of parties opposed the issuance of any transportation credits, regardless of the marketing problems confronting Texas handlers as a result of the increases in production by producers. The contend that the proposals should be denied because: (1) The Texas market carries the reserve supplies for other markets; (2) AMPI is not performing a service of marketwide benefit; (3) issues of equity require that a broader, regional view be considered and there is insufficient evidence in the record to address such issue; and (4) the issuance of transportation credits would, inequitably, depress returns to dairy farmers in other areas of the country.

With respect to the first major issue of opposition, it is clear that the Texas market carries reserve supplies of milk for the Texas Panhandle, Lubbock-

Plainview, and Rio Grande Valley Federal order markets, where virtually all the milk producers are AMPI members. Consequently, some of the costs of maintaining the reserve supplies for these other markets are being borne by Texas order producers who are not members of AMPI. Opponents thus contend that the proposals should be denied for essentially the same reasons as set forth in the officially noticed 1987 decision. With respect to transportation credits, opponents quote the following from such decision: "Since reserve milk supplies are unevenly distributed among the seven orders, the producers in a market that carries more than its share of the reserve supply burden would be paying for balancing one or more other orders. At the same time, the producers in a market that carries less than its share of the reserve supplies would not pay their share of the necessary balancing costs."

The fact that the Texas market may carry some of the reserve supplies for other markets does not provide a basis for denying the implementation of transportation credits to handlers under the Texas order. There are a number of significant differences that distinguish the Texas situation from that described in the decision denying the issuance of such credits for the several southeastern markets. The primary differences are the geographical limitation of the proposal and the fact that the reserve milk supplies for other markets are generally processed at El Paso, Texas, and do not displace Texas order producer milk at plants in the major production areas of northern Texas and southern Oklahoma. As previously indicated, the proposal for the Texas order would limit transportation credits to milk shipped out of the major northern Texas and southern Oklahoma production areas. The excess surplus milk pooled on the Texas market that is associated with the other markets is produced primarily in New Mexico and does not utilize the manufacturing capacity that is available in the heavy milk-producing areas of the Texas market. Such milk is essentially New Mexico milk that is pooled on the Texas market but diverted to AMPI's manufacturing plant at El Paso. The El Paso plant is pooled under the Rio Grande Valley order and the milk normally transferred or diverted to such plant would not be eligible for a transportation credit under the Texas order. Consequently, Texas order producers would incur a blend price reduction only for transportation costs that result from the hauling of milk produced in the major production areas that is in excess of local plant capacity. At the same time, producers supplying the Rio Grande Valley order would incur all of the transportation costs that would result if such milk would have to be shipped to distant outlets for surplus disposal. Consequently, the implementation of transportation credits under the Texas order is not directly linked to the surplus of other markets that is pooled under the Texas order.

Opponents of transportation credits are concerned that New Mexico production could be received and processed at AMPI's Texas balancing plants, with milk produced in the major Texas production areas then being shifted to nonpool plants outside Texas and qualifying for a transportation credit. The distances that such milk would have to be shipped would tend to limit such activity. However, additional provisions are included in the regulatory provisions to deal with these and other similar movements of milk to prevent Texas order producers from incurring a blend price reduction from unnecessary movements of milk to nonpool plants outside Texas.

On the second major point of opposition, opponents argue that AMPI is marketing its own surplus and, thus, is not performing a service of marketwide benefit that warrants compensation from producers under the Texas order. They also contend that AMPI is not bearing a disproportionate share of balancing costs since AMPI does not handle a disproporitionate share of the market's Class III use if the amount of other order surplus milk is excluded from the Texas pool. They also contend that AMPI has been able to recover the cost of balancing the needs of distributing plants through its over-order pricing structure.

With respect to this later point, AMPI has been able to recover at least some of the costs of balancing the needs of some distributing plants through its seasonal over-order pricing program. Under such plan, higher prices are charged to handlers who purchase less milk during the flush production months than was purchased during the previous fall months. However, such pricing plan has not been geared to the recovery of costs associated with marketing or hauling milk to distant outlets that is in excess of all the capacity available at plants in the marketing area. Instead, such over-order pricing is geared to recover costs associated with balancing the increased demand of fluid milk handlers for additional milk in the fall of each year.

Contrary to opponents' views, AMPI does perform a balancing function and carries a disproportionate share of the Class III use under the Texas order. The Texas order pools more than six times the amount of milk that is pooled under the Rio Grande Valley, Texas Panhandle and Lubbock-Plainview orders combined. Thus, only a relatively small amount of Class III use and producer milk would have to be removed from the Texas pool (10 to 13 million pounds per month) for the Texas market to reflect the four-market Class III use of 19 percent during 1987. Consequently, AMPI would still carry a disproportionate share of the Class III use under the Texas order and, as a result, would bear a disproportionate share of the cost of handling such milk. This supports a more equitable sharing of such costs among all producers on the market through the implementation of transportation credits, as authorized by the Act. In addition, even if there was not a substantial disproportionate sharing of Class III use among handlers, the Act provides the authority to implement transportation credits to handlers who provide a service to producers under marketing conditions where production exceeds all available nearby plant capacity.

With respect to the third major point of opposition to the implementation of transportation credits, opponents contend that regional equity considerations require the denial of the proposal since prior decisions establish a Department policy that a regional view must be taken in evaluating issues of equity among producers. Opponents cite the 1987 decision that denied the issuance of transportation credits for several southeastern markets and a 1983 decision concerning the denial of a proposed reduction to the Class III price (in the form of a credit to handlers) for certain months under the Texas order.

The distinctions between the 1987 decision and the present circumstances were set forth under the first major point of opposition to the implementation of transportation credits under the Texas order. With respect to the 1983 decision, AMPI claimed that it was experiencing losses in operating its two manufacturing plants because of the excessive quantities of milk that had to be processed during certain months of the year. Thus, the issue centered on the profitability or losses associated with operating two manufacturing plants that perform a balancing function for the market.

The proposal was denied for a number of reasons, including the uncertainties over the extent of the claimed losses and because substantial quantities of milk to which the credit would apply were diverted to other

plants. There were no claimed manufacturing losses on such milk. Thus, it could not be concluded that the claimed losses at the two plants were a sufficient basis for determining the extent of manufacturing losses in handling the surplus milk associated with the Texas market.

The present case involves transportation costs incurred by handlers on milk that exceeds the capacity of plants in the market that must be hauled to distant outlets. There is no dispute over the costs that are incurred by AMPI, or any handler who hauls milk to distant outlets. The Act specifically authorizes the use of producer funds to compensate handlers for transportation expenses incurred in performing a market-clearing service.

The previous decision also indicated that it has been a longstanding policy that the costs of providing a balancing service should be recovered from the fluid milk handlers that benefit directly from the balancing function and that over-order prices were a mechanism for such recovery of costs. However, the Act has been amended since that decision was written to specifically provide that handlers may be reimbursed by producers for costs incurred in performing a number of services, including the cost of hauling milk to outlets for surplus disposal.

The last major point of opposition concerns the potential impact that surplus Texas production could have on dairy farmers in other areas of the country. Opponents contend that it would be inequitable for such dairy farmers to bear the cost of disposing of Texas surplus production.

The basic impact of pool transportation credits under the Texas order will be on producers who supply the Texas market. This will be through a lowering of their returns from the sale of milk to partially compensate handlers for performing a marketing service of marketwide benefit. It is recognized, however, that surplus milk on the Texas market may result in a lowering of returns to dairy farmers in other areas as well. Surplus production in Texas, or anywhere in the country, places a downward pressure on all milk prices since such milk must be processed into manufactured dairy products that compete for sales in a national market. National supply/demand conditions that establish lower milk values would exist with or without the application of transportation credits to handlers in the Texas market or in other markets. Any resulting decline in the "Minnesota-Wisconsin price," which is an indicator of overall supply/demand conditions for milk in manufacturing uses, would have an impact on returns to all dairy farmers associated with Federal order markets, including those who supply the Texas market. As previously stated, returns to Texas producers would also reflect the credits provided to handlers.

The primary concern is that any transportation credits should not overcompensate handlers for hauling costs. To do so would represent a charge to Texas producers in excess of the value of the service and possibly create incentives for needless movements of milk to generate hauling profits. Consequently, the transportation credits established herein are intended to reimburse handlers only for a portion of the costs incurred so as to discourage any unnecessary movements of milk.

Transportation credits should be applicable only to milk that is produced in the major production areas of northern Texas and southern Oklahoma, as proposed by AMPI. This territory represents the primary production area for the Texas market. This northern milk supply is in excess of the fluid milk needs of the northern population centers and moves as needed to supply the fluid milk requirements of southern population centers located in deficit milk producing areas. When the northern milk supply is not needed for fluid use in either the northern or southern population centers, it is normally processed at manufacturing plants located in Zone 1 of the marketing area.

Zone 1, which contains the major Dallas-Ft. Worth population center, is the heaviest milk producing area. The zone includes eight distributing plants, one supply plant, the two pooled, balancing, manufacturing plants operated by AMPI and a number of nonpool plants at which pooled milk is processed into Class II products Zone 3 (Waco) is south of Zone 1 and is the second largest milk producing area. It contains only one distributing plant. Milk production in this area is located between the major Zone 1 consumption center and other major consumption areas to the south in Zone 8 (Houston) and Zone 9 (San Antonio). Zone 1–A (Burkburnett) is the third largest milk producing ara and is northwest of the population center in Zone 1. There is also only one distributing plant in Zone 1–A. Combined, these three zones represent about 75 percent of the milk produced in Texas that is pooled under the Texas order and more than 60 percent of all the milk pooled under the order. The three zones also include the top 10 milk producing counties in Texas, which represented 58 percent of the total Texas production and 62 percent of the Texas pooled milk during December 1987. These counties experienced more than a 20 percent increase in production from December 1986 to December 1987.

The amount of Oklahoma production pooled on the Texas market decreased from about 16 million pounds per month in 1986 to 15 million pounds per month in 1987. Of the 15 million pounds, about 9.4 million pounds, or 63 percent, was produced in the 19 southern Oklahoma counties located immediately to the north of Zones 1 and 1–A of the Texas marketing area. There is one nonpool plant in this area, located at Lawton, Oklahoma, and that plant is expected to be closed in the near future.

During 1986, AMPI delivered about 90 percent of the southern Oklahoma milk production to Texas pool plants in July, 35 percent in March and an average of 58 percent for the entire year. During 1987, AMPI delivered 79 percent of such milk to Texas pool plants in August, 20 percent in April and an average of 48 percent for the entire year. The remaining proportions were diverted to nonpool plants located outside Texas. As a result, it is apparent that the southern Oklahoma produciton is an integral part of the supply source for the Texas market and also would be the first milk to be moved to nonpool plants outisde Texas when production exceeds local plant capacity. Such milk is moved on a direct-shipped basis from farms to plants in Zones 1 and 1–A of the markting area or is diverted to nonpool plants outside Texas when it is not needed or when supplies of milk exceed the capacity of plants in Texas. As a result, transportation credits should be applicable to milk produced in southern Oklahoma as well as to milk produced in the three pricing zones of the Texas marketing area that also represent the primary production areas for the Texas market.

The pricing structure of the Texas market reflects the relationship between the production and consumption centers of the market. Zone 1 is the basing point at which Class I prices to handlers and blend prices to producers are announced under the order. Location adjustments are applied to the Zone 1 Class I and blend prices for other pricing zones in the marketing area and for locations outside the marketing area. The order provides for plus adjustments to the south of Zone 1 and minus adjustments to the north of Zone 1. For example, Class I and blend prices for Zone 3 are increased by 15 cents while such prices are reduced by 25 cents and 28 cents, respectively, for milk received at plants in Zone 1–A of the marketing area and the 19 southern Oklahoma counties. The increasing prices from north to south

reflect the need for milk produced in the northern major production areas to move greater distances to supply the milk requirements of plants located in the southern deficit production areas of the market. Thus, location adjustments compensate producers for the greater value of the economic service producers provide to handlers in shipping milk greater distances to supply fluid milk needs. Conversely, when handlers incur greater transportation costs in marketing milk of producers that is in excess of plant capacity, they are providing a service of economic value to producers.

A transportation credit for handlers should be provided for surplus milk that is either transferred or diverted to nonpool plants outside Texas. In either case the credit should be computed at the rate of 2.4 cents per hundredweight per 10 miles for the distances that milk is hauled. Such rate represents 80 percent of the 3-cent per hundredweight hauling cost used to establish location adjustments in the Texas and other Federal order marketing areas to conform with Congressionally-mandated Class I differentials established May 1, 1986. Official notice is taken of the Assistant Secretary's final decision concerning the Texas and certain other marketing areas issued on October 30, 1986 and published November 5, 1986 (51 FR 40176). Such 2.4-cent rate also represents a reasonable alignment of Class I differentials between Dallas and major cities in other Federal orders located in Arkansas, Oklahoma, Kansas and Missouri.

The credit rate proposed by AMPI is based on actual hauling costs incurred in shipping milk to nonpool plants outside Texas. However, such rate is excessive in that actual hauling costs are not reflected in location adjustments under the Texas and other nearby orders. As indicated in the officially noticed 1986 decision, location adjustments reflect at most a conservative estimate of hauling costs to avoid hauling profits and to promote hauling efficiencies and encourage milk to move to the nearest alternative outlets. Such precautions for hauling milk for Class I use are even more necessary for hauling milk that is surplus to plant capacity. Incentives are necessary to promote the use of the nearest available outlets for surplus disposal to ensure that returns to producers are not reduced for shipments of milk over greater distances than necessary. Also, the use of such lower rate for transportation credits insures that the hauling incentive for surplus milk is less than what is provided for milk for fluid use.

The handlers' proposed rate is overly conservative and is based on various alignment rates between locations in the Texas marketing area. However, such rates reflected between certain cities disregard the fact that the location adjustments for the major consumption centers of the Texas market are based on a three-cent hauling rate for the additional distances between such consumption centers and the nearest major production area. For example, as set forth in the officially noticed 1986 decision, the plus location adjustment for Zone 9 (San Antonio) is 42 cents per hundredweight. Such adjustment is based on the additional distance that milk must move from Stephenville (Erath County) to San Antonio versus the distance between Stephenville and Ft. Worth. The additional distance of 140 miles at three cents per 10 miles establishes the 42-cent location adjustment. However, such adjustment reflects an alignment rate of considerably less than three cents between Dallas and San Antonio. Consequently, the various alignment rates that result between cities within the Texas marketing area do not necessarily reflect the hauling incentives provided under the Texas order for movements of milk from production areas to alternative consumption centers. In addition, such alignment rates within the Texas marketing area do not reflect the alignment of Class I differentials between Dallas and other Federal order markets to the north.

The transportation credits should apply to milk that is transferred or diverted to any nonpool plant located outside the State of Texas for Class II or Class III use. There was no testimony presented at the hearing or arguments presented in briefs to limit such credits to only Class III uses. In addition, there should be no limitation of credits to only northward movements of milk. Such a limitation would be inconsistent with the implementation of a low credit rate to encourage the use of the nearest available outlets for surplus disposal to minimize the impact of transportation credits on Texas order producers.

The transportation credit to handlers should apply to bulk fluid milk products transferred by handlers from pool plants located in Zone 1 of the marketing area to nonpool plants located outside Texas. The credit should apply to the total distance of the transfer.

The AMPI proposal would have applied a credit to milk that is transferred or diverted from farms of producers in Zones 1 and 3 for the distance in excess of 90 miles between Dallas and the nonpool plants receiving the milk. The basis for the mileage limitation is that producers on the average pay the cost of hauling milk for 90 miles to supply the fluid milk plants in Zone 1 of the marketing area. However, with respect to transfers of milk from pool plants, producers would pay the cost of hauling milk to the plant of first receipt. To the extent that milk is in excess of plant capacity, the transferor handler would incur the cost of hauling milk from the pool plant to the nonpool plant for surplus disposal. Thus, the handler transferring the milk should be reimbursed for the total distance between the pool plant and the nonpool plant for performing such marketing service for producers.

Exceptions filed on behalf of five handlers requested that the transportation credit to handlers should not apply to the first 100 miles for milk that is transferred to nonpool plants outside Texas. The handlers indicate that the failure to exclude the first 100 miles results in a different treatment for transferred milk than for diverted milk and, as a result, provides a greater incentive for hauling surplus milk than for hauling milk to plants for fluid use.

The reasons for the different treatment for diverted and transferred milk are set forth in the decision. As indicated, it would be inappropriate to provide a transportation credit to a handler for the total distance that milk is diverted to a nonpool plant since the value of the service provided by handlers for producers includes only the distance beyond that which is normally paid for by producers. However, with respect to the transfer of milk, producers would have paid the cost of hauling milk to the transferor pool plant. To the extent that such milk is in excess of all available plant processing capacity, a handler who receives such milk would then incur the total transportation cost involved in transferring milk to a distant nonpool plant for surplus disposal. Thus, the treatment of transferred and diverted milk is different because the value of the service provided by handlers for producers varies between the two different types of milk shipments.

The handlers also presented a number of examples to attempt to illustrate that the failure to exclude 100 miles from the transfer distance for credit purposes would provide a greater incentive to haul milk for surplus disposal than to haul milk to supply the Class I market. The examples include shipments of milk from Sulphur Springs to San Antonio and Houston versus shipments for the same mileages to unspecified locations outside Texas. The examples compare

the location adjustments provided under the order (42 cents at San Antonio and 54 cents at Houston) with the transportation credits that would be provided for the same hauling distance. The calculations indicate a transportation credit of 81.6 cents for 335 miles (Sulphur Springs to San Antonio) and 62.4 cents for 253 miles (Sulphur Springs to Houston). The handlers conclude that the transportation credit for hauling surplus milk would be closer to the location adjustments provided under the order for the same distances if the first 100 miles were excluded for credit purposes.

The completion of the order location adjustments and the transportation credit amounts misrepresents the intent of the provisions and confuses the producer and handler incentives to deliver milk to any location for fluid or surplus use. First of all, the plus location adjustments are an additional cost to handlers for milk in Class I use that reflects the additional service provided by producers for supplying milk to handlers located in some consumption area versus handlers located in alternative consumption centers. The application of the location adjustments to the blend price payable to producers provides the incentive for producers to deliver milk for all uses directly from the farm to plants at alternative locations. Thus, the location adjustments at San Antonio and Houston reflect only the additional cost of hauling milk from the farm to such locations (at three cents per hundredweight per 10 miles) relative to the cost of hauling milk to plants in the Dallas-Fort Worth area (Zone 1). However, the Class I differential applicable in Zone 1, which sets the overall Class I price level for the market, reflects the Zone 1 location value. Thus, among other things, the Class I differential in Zone 1 is intended to reflect the cost of hauling milk to plants in Zone 1. Consequently, a comparison of the location adjustments, which reflect only additional costs, with a calculated total handler cost from point to point is not appropriate. Furthermore, the location adjustments are based on the additional cost of hauling milk from the nearest available procurement area (Stephenville or Sulphur Springs) rather than only the Sulphur Springs location used in the exceptions.

In addition to the above, it is noted that there are no direct handler incentives to ship milk for surplus use to any location. Furthermore, there is no incentive for handlers to market, or even receive, milk that is in excess of plant capacity. To the extent that handlers market such milk, a service of value is being provided to producers by handlers who are incurring substantial costs in the handling of such milk. The transportation credit is intended to reflect a portion of the cost incurred by handlers which includes the total distance that milk must be hauled to available outlets outside Texas.

For the previous reasons it cannot be concluded that the transportation credit on transferred milk provides a greater incentive for hauling surplus milk than for hauling milk to plants for fliud use. Thus, the request to exclude the first 100 miles for transportation credit purposes is denied.

Since the use of Dallas as a basing point and the mileage limitations would not apply for establishing a transportation credit for transfers of milk, it is not necessary to include Zone 3 of the marketing area as an area from which a credit would apply to transfers of milk. Such zone is the southern-most area to which transportation credits would apply and there is only one pool distributing plant located in the area. Any transfer of milk to nonpool plants outside Texas would be expected to originate from the pool plants that are located in Zone 1 of the marketing area. Also a transportation credit would not apply to transfers of milk from plants located in Zone 1–A of the marketing area or southern Oklahoma. There are no pool plants in southern Oklahoma and only one pool distributing plant in Zone 1–A and there was no proposal to provide credits on transfers of milk from such areas.

It is noted that the intent of the credit proposals is to limit such credits primarily to the major surplus production areas of the market. However, as pointed out at the hearing, milk that originates outside such production areas may be received at pool plants that subsequently transfer milk to nonpool plants outside Texas. Once such milk is commingled in a plant with milk that originated in the major production areas its identity is lost. Thus, any milk that is received at Zone 1 pool plants should be eligible for a transportation credit. However, as set forth later in this decision, the amount of milk eligible for a transportation credit would be reduced to the extent that milk is received from outside the State of Texas. Such offset, in conjunction with the restriction to Zone 1 plants for transportation credits on milk transfers, will tend to limit the application of the such credits to milk produced inside the major production areas of the market.

Transportation credits should also be provided to handlers who move milk directly from the farms of producers to nonpool plants located outside the State of Texas. Handlers may divert producer milk from pool plants where the milk is normally received regardless of the location of the pool plant. However, only producer milk that is produced on dairy farms located in Zones 1, 1–A or 3 of the marketing areas or in any of 19 specified southern Oklahoma counties would be eligible for a transportation credit. As previously stated, such areas represent the primary production areas that are relied upon to meet the fluid milk needs of the market. Also, milk in these northern production areas would be expected to be the first milk to be moved to nonpool plants outside Texas when production exceeds plant capacity.

The credit should be based on the distance that milk is hauled minus 100 miles. The 100-mile exclusion is basically intended to recognize an approximation of the average hauling distance to distributing plants that is paid for by producers.

AMPI proposed that milk delivered from Zones 1 and 3 should receive a transportation credit on the distance between Dallas and the nonpool plant minus 90 miles. On the other hand, handlers proposed that the credit distance should be based on the distance between the nonpool plant and the nearer of Gainesville, Sherman, Paris or Mt. Pleasant, Texas, minus 100 miles. With respect to milk produced in Zone 1–A or southern Oklahoma, AMPI proposed that the credit be based on the distance between the nonpool plant and the nearer of Burkburnett, Texas or Sulphur, Oklahoma, minus 110 miles. The handler proposal for Zone 1–A would have used the Burkburnett basing plant and the 100-mile exclusion.

It is obvious from data in the record that shipping distances to distributing plants vary significantly. For example, during May 1987, the weighted average distance of milk movements to distributing plants in Dallas was 83 miles, while the weighted average distance of shipments to Ft. Worth and Burkburnett were about 50 miles and 134 miles, respectively. Consequently, a precise distance that milk from the major production areas is shipped to distributing plants, for which the cost of the haul is paid by producers, is not ascertainable. However, it is necessary that some initial distance be excluded. Otherwise, handlers would receive a transportation credit for a hauling distance that is normally paid for by producers. A distance of 100 miles is an approximation of such distance for the four production areas to which a credit would apply. Also, such distance is in

excess of the shipping distance observed in Zone 1 of the marketing area, which contains the greatest amount of production and where most of the distributing plants are located. A mileage in excess of the Zone 1 average shipping distance is consistent with the need to insure that handlers are not overcompensated for hauling costs incurred in clearing the market of surplus milk.

In order to insure that handlers are not overcompensated, the distance to which a credit applies should not be based exclusively on the basing points that were proposed by either AMPI or handlers. Rather, one basing point and various other locations should be used to determine the transportation distance for which a credit would apply. The credit should apply to milk that is diverted to a nonpool plant that is in excess of 100 miles from the nearer of the city hall in Dallas, Texas, the pool plant of last receipt for the major portion of the milk on the load, or the courhouse of the county where the major portion of the milk on the load was produced. The use of these various locations to determine the distance to which a credit would apply will assure that handlers will not receive a credit for a greater distance than milk was hauled. Such procedure will carry out the objectives of the handlers' proposal, but with a greater degree of precision than would be accomplished by the use of the northern basing points as handlers proposed.

In addition to a transportation credit for diverted milk, AMPI also proposed that such milk that originates in the primary production areas should no longer be priced at the location of the plant to which it is diverted if the milk is diverted to a nonpool plant located outside the State of Texas. Such change to the point of pricing on diverted milk was proposed for all months of the year by AMPI and for the flush production months by handlers.

As previously stated, the Texas order provides for both plus and minus location adjustments that reflect the value of the economic service provided by producers in shipping milk alternative distances from production areas to handlers' plants at various locations for fluid uses. Handlers pay for the value of the economic service provided by producers by the application of location adjustments to the Class I price. There are no location adjustments to handlers for milk in Class II or Class III uses since the basic principle is to cover the costs associated with hauling milk to distributing plants for fluid use. Also, there is no pricing incentive provided for hauling milk for manufacturing uses, which compete in a market that is more regional or national in scope than that for fluid milk, since it is more economical for milk to be processed into manufactured products at plants in production areas. Such concentrated products can be transported at a lesser cost than bulk fluid milk products.

Producers are compensated for the transportation service provided to fluid milk handlers by the application of the handler Class I location adjustments to the blend price. Consequently, the producers location adjustments apply to all milk delivered to a plant, regardless of its use, while handlers pay the location adjustment for milk in Class I use. The same location adjustment is applicable to the blend price since the hauling cost is the same for all milk delivered to a handler by a producer regardless of the ultimate use of the milk by the handler.

The concept of pricing diverted milk at the plant where it is received is based on the fact that milk that is in excess of fluid milk needs is normally processed at manufacturing plants that are located near or in the major production areas. Thus, producers whose milk is delivered to such plants normally incur a lesser hauling cost than if their milk is shipped further distances to supply fluid milk plants that are located near or in the major consumption areas of the market. Within the Texas market, the major balancing manufacturing plants, as well as distributing plants, are located in Zone 1 of the marketing area where no location adjustments apply. The distributing plants are located around the Dallas/Ft. Worth consumption centers while the manufacturing plants are located in the major production areas. When the milk supply exceeds fluid milk needs, it is processed at such manufacturing plants and the producers receive the Zone 1 blend price. Also, to the extent that milk in more northern areas (Zone 1-A and southern Oklahoma) where minus location adjustments apply is shipped to such plants in Zone 1, producers are compensated for the hauling costs incurred in shipping milk from the north to the south.

When there is an excessive supply of milk that cannot be processed at plants located wtihin the marketing area, particularly in Zone 1 or the marketing area where the balancing plants are located, it must be processed at alternative outlets, principally nonpool plants that are lcoated outside Texas. When milk is diverted to such distant plants, it is obvious that greater, rather than lesser, hauling costs are incurred. Thus, the underlying assumption that provides a basis for pricing milk at the location of the plant to which it is diverted is not applicable when supplies of milk exceed the capacity of those plants that are located in the primary production areas of the Texas market.

Regardless of the above, no change should be made to the point of pricing on diverted milk, as was proposed, to deal with this transportation problem. Such problem is primarily associated with additional costs incurred by handlers in diverting milk to distant, alternative outlets. Handlers who divert milk to a distant plant account to the pool at a Class II or Class III price, depending on the use of the milk, that is not adjusted for location. Under current provisions, handlers then receive a credit at the blend price payable to producers that is adjusted for the location of the plant to which the milk is diverted. Thus, when milk is diverted to a nonpool plant where a minus location adjustment applies, the handler credit is reduced by such location adjustment.

A reduction in the blend price credit to a handler results in establishing a penalty to a handler for diverting milk to a distant plant for suplus disposal. As a result, a transportation credit for a handler should include an additional credit that is equal to the difference between the location adjustment that is applicable in the area where the milk is produced and any greater minus location adjustment that is applicable at the nonpool plant outside Texas where the milk is received.

The application of this additional credit on diverted milk basically carries out the intent of the AMPI proposal to change the point of pricing on diverted milk. As previously indicated, a number of parties opposed any such changes as being inconsistent with the location pricing criteria under the Act. They also contend that the point of pricing is not directly related to the authority to provide for credits to handlers for performing a service of marketwide benefit to producers.

Contrary to opponents' views, the problem associated with the cost of diverting surplus milk to distant outlets is a direct result of the excess milk production that is being produced by dairy farmers who supply the Texas market. Handlers who market and provide an outlet for such excess milk provide a service that benefits producers. Consequently, it is precisely the type of service for which the Act specifies that handlers may be compensated by producers. A failure to provide the additional credit on diverted

milk would result in penalizing a handler for a cost that is incurred in clearing the market of excess supplies of milk.

Furthermore, the additional transportation credit would not distort the location value of milk or result in non-uniform costs to handlers. As previously stated, there are no location adjustments to handlers for milk in Class II or Class III uses. Consequently, there would be no change in the class price value of milk to handlers as a result of the credit to remove the penalty on handlers that results from blend price location adjustments under marketing conditions that exist when supplies of milk exceed plant capacity. In addition, the application of the additional credit will promote the use of the most efficient and economical marketing practices available to dispose of surplus milk. Most of the milk that is surplus to the needs of the Texas market is diverted to nonpool plants while limited quantities are transferred from pool plants to nonpool plants. It is often more efficient to move milk from farms in certain areas directly to nonpool plants rather than for such milk to be hauled to pool plants, be unloaded and then reloaded for transfer to a nonpool plant. In the absence of the additional diversion credit, a pricing incentive would be provided to handlers to engage in such uneconomic transferring practices to qualify for a transportation credit. Consequently, the application of the additional credit on diverted milk will allow handlers the flexibility to use the most efficient method of disposing of surplus milk.

A brief in opposition to the proposed pricing point change argued that such a change would amount to the compensation of producers based upon their location. Consequently, the brief argues that the proposal would amount to a "nearby" differential that was invalidated in the case of *Zuber vs. Allen* (396 U.S. 168, 1969).

Contrary to the arguments presented in the brief, the issue of a transportation credit for surplus milk (which is now specifically authorized by the Act) is totally different from the differential invalidated by *Zuber*. In *Zuber*, the nearby differential was a payment to dairy farmers who were located in certain areas. The court concluded that the location of farms was not a basis for higher returns since location alone does not establish that producers provided a service of economic value to handlers. The present circumstance concerns a credit from the pool to handlers for providing a service of economic value to producers. Furthermore, the credit from the pool (which lowers returns to producers) does not change the value of milk to handlers at class prices at any location. The credit is necessary so that the handler who diverts the milk is not penalized by blend price locaton adjustments for providing a service of value for producers, namely, clearing the market of excess milk supplies.

The additional credit on diverted milk should be applicable only during the months of March-June and December. It is during these months, when supplies of milk exceed plant capacity, that handlers provide an economic service of value to producers, for which handlers should be compensated.

Milk is diverted to nonpool plants outside Texas during most months of the year by AMPI, even during those periods when there is obviously capacity available to process additional supplies of milk at the Muenster and Sulphur Springs balancing plants. Consequently, the decision to divert milk to distant plants when there is capacity at plants in the marketing area is a business decision by AMPI. Such movements of milk are not related to the movements of milk to nonpool plants outside Texas that are necessitated by a lack of plant capacity in the marketing area to handle the amount of production available during the flush production months of the year. Consequently, it would be inappropriate to reduce returns to Texas producers to compensate handlers for such movements of milk.

The implementation of the transportation credits to handlers could provide a pricing incentive for inefficient and unnecessary movements of milk. As previously stated, milk that is produced in New Mexico is currently associated with the Texas market, although such milk does not currently displace significant quantities of milk that is produced in the major production area of the Texas market from the plant capacity that is available in the Texas marketing area. However, the existence of a transportation credit under the Texas order would create an economic incentive for such milk to be received at plants in the marketing area, thereby displacing Texas milk that could be hauled to alternative outlets with a transportation credit. Although hauling distances would tend to discourage such movements, the transportation credit would provide some additional incentive for such movements.

With respect to milk produced in other areas transportation credits would provide a significant incentive for uneconomic movements of milk. For example, there is currently an incentive for milk produced in southern Oklahoma to be received at plants in Texas marketing area because current location adjustments increase the value of milk from north to south to encourage movements of milk to the south. Thus, a portion of the cost of hauling milk southward is currently covered under the order pricing structure. Such pricing, coupled with a transportation credit to move milk to plants outside Texas, would encourage southern Oklahoma milk to be received at plants in the marketing area and encourage Texas milk to be shipped to plants outside the State. Such movements of milk would not be representative of an efficient and economical marketing system since the most northern located milk would be the first milk that would be expected to be moved to nonpool plants outside Texas when plant capacity in the Texas marketing area is inadequate. Texas order producers should not be required to reimburse handlers for such uneconomic movements of milk.

In order to prevent Texas order producers from bearing unnecessary hauling costs, the amount of milk to which a transportation credit would apply should be reduced by the amount of milk from outside the State of Texas that a handler, or any affiliate of the handler, causes to be received at plants in the Texzas marketing area. An affilitate of a handler would include a multi-plant handler or cooperative associations operating under a joint marketing agreement. To the extent that milk is received at plants from outside Texas, the lowest possible transportation credit shall be assigned to a handler for any remaining volume of milk shipped to nonpool plants outside Texas. This is accomplished by assigning the offset pounds of milk (the volume of milk received from outside Texas) in sequence beginning with the nonpool plant at which the greatest credit would apply. In addition, no transportation credit should apply to milk shipped to any given nonpool plant during the month if any of such milk is assigned to Class I use. Texas producers should not be required to reimburse handlers for costs incurred in shipping milk to other plants outside Texas for Class I use.

With the implementation of the offset provisions to assure that producers do not reimburse handlers for inefficient movements of milk, it is also necessary to limit transportation credits to handlers for only the last half of December as proposed by handlers. As indicated, the historical supply/demand situation during December is somewhat different than the situation that exists

during March-June. To the extent that supplies are in excess of plant capacity during the latter part of the month, shipments of milk to nonpool plants outside Texas during the latter part of the month should not be offset to the extent that milk may be imported from outside Texas during the beginning of the month to meet additional fluid milk needs. By limiting the application of transportation credits to only the December 16–31 period, handlers would not be penalized for market-clearing activities during such period because of the need to obtain additional milk supplies during the first part of the month.

A number of parties raised concerns over the extent to which transportation credits for the Texas market could lead to abuses. In particular, they contended that if transportation credits are implemented, safeguards should be provided to assure that Texas order producers do not bear the cost of transporting surplus milk associated with other markets, that credits do not overcompensate handlers, thus encouraging excessive hauling of milk, and that assurances be provided that milk is first made available to fluid milk plants. The provisions contained herein are designed to specifically minimize any adverse impact of transportation credits on Texas producers, as well as other order producers and fluid milk handlers. The safeguards include a credit rate below transportation costs, a substantial distance that milk must be diverted before a credit applies, and the offset to the amount of milk to which a credit would apply. In addition, the nonpool plants outside Texas that receive milk subject to a credit and the total value of credits will be made available on a monthly basis by the market administrator. Such market information will provide a basis for the continued monitoring of the effectiveness and impact of these provisions by the industry. Other potential safeguards, such as a maximum shipping distance or a notification process to identify the nearest available nonpool plants or the fluid milk needs of distributing plants, do not appear to be necessary. To the extent that additional modifications may be necessary, the amendatory process is available to refine, or eliminate, order provisions as the need may arise through experience with the issue of transportation credits.

Four exceptions were filed to the offset to the amount of milk to which a transportation credit would apply. Each of the exceptions requested some modification to the manner by which the amount of milk shipped out of Texas would be reduced, for credit purposes, by the amount of milk received at plants in the marketing area. Three of the exceptions requested a relaxation of the provisions while one exception requested that the provisions be tightened to prevent a reduction of returns to Texas order producers because of the receipt of surplus milk from other order markets. None of the exceptions, which are set forth in greater detail hereafter, provide a sufficient basis for a modification of the offset provisions on the basis of information contained in the record of this proceeding.

One handler suggested that all milk of producers who were associated with the market during the previous September through January should be eligible for a transportation credit, regardless of location. The handler expressed the concern that it might be difficult to procure supplies of milk during the fall and winter months if such milk would not be eligible for a transportation credit during the following spring months.

Such modification is in direct conflict with the intent of the provision and the conclusion to limit transportation credits to the specific geographic areas that constitute the major production areas of the market that have experienced significant production increases. Such a modification would also be in conflict with the concerns of a large number of parties who opposed the implementation of any transportation credits for reasons previously set forth.

AMPI and SMS also requested that provisions be modified to prevent certain perceived efficient movements of milk that are made by the cooperatives from reducing or eliminating the application of transportation credits to milk that is shipped to nonpool plants outside Texas. AMPI contends that shipments of milk from 10 of the 19 southern Oklahoma counties should not be used to reduce, for credit purposes, the amount of milk shipped out of Texas. Similarly, SMS contends that no transportation credits would apply to its shipments of milk to nonpool plants outside Texas because of New Mexico milk that the cooperative believes is efficiently shipped to supply distributing plants located in deficient parts of the Texas marketing area. In addition SMS contends that the evidence in the record is insufficient to justify the broadness of the offset provision and suggested that if such provision is necessary it should be limited to movements to and from the same state as was proposed at the hearing.

There is not information in the record from which it can be concluded that 10 of the 19 southern Oklahoma counties should be treated differently than the other nine counties. Evidence establishes that all 19 counties are a significant source of supply for Texas plants and should be included within the geographical area to which transportation credits should apply. However, the decision also sets forth the economic incentives created by the location adjustment provisions and the transportation credit provisions that require that milk received from southern Oklahoma be used to reduce the amount of milk to which a credit should apply. In a broad sense it does not appear to be reasonable to provide a pricing incentive for milk to move into Texas at the same time that a credit is provided to move surplus milk to nonpool plants outside Texas. Also, the contention that it is more efficient to move certain milk from southern Oklahoma to Texas at the same time that other Texas milk must be moved to nonpool plants is in conflict with the testimony that the most northern milk supplies would be the first milk to be moved to nonpool plants when milk supplies exceed all plant capacity.

The milk movements indicated by SMS are not contained in the record of the proceeding. Thus, such information is not evidence upon which a decision can be based. In addition, the offset provisions contained herein are specifically designed to deal with a number of valid concerns expressed by a number of parties in opposition to the implementation of any transportation credits. As previously stated in this decision, opponents contended that Texas producers should not have to bear the cost of surplus milk supplies associated with other markets. Opponents were primarily concerned with milk production in New Mexico, Oklahoma, Missouri and, to a lesser extent, Louisiana that is associated with the Texas market that could displace Texas milk that would then be eligible for a transportation credit. In view of the various alternative production areas from which milk is received, an offset provision restricted to milk movements to and from the same state would be ineffective. Consequently, the overall testimony and evidence in the record supports the use of the receipt of milk at plants in the marketing area from outside the State of Texas to reduce the amount of milk to which a transportation credit would apply. Such provision is far less restrictive than the option to deny the implementation of any transportation credit if abuses from

circular milk movements could not otherwise be minimized.

Exceptions filed by five handlers requested that the offset provisions should be expanded to inlcude milk received from any area in Texas that is within the boundaries of another Federal order marketing area. Although such suggestion would appear to be reasonable, the primary production areas of concern were other states. In addition, most of the west Texas areas which are included in the Texas Panhandle and Lubbock-Plainview marketing areas are not portrayed as primary production areas. The amount of milk pooled under the combined orders for the year 1987 was considerably less than the amount of milk pooled under the Texas order in a single month. Consequently, it would not appear that a further restriction to the offset provisions is necessary at this time.

2. *The need for emergency action with respect to issue no. 1.* A recommended decision was omitted and a tentative decision and interim rule were issued to implement the provisions withing the statutory deadline required by the Food Security Improvements Act of 1986 with respect to issues concerning services of marketwide benefit. In addition, such procedure provided all interested parties with the opportunity to file exceptions to the tentative decision.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Texas order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed by amended, are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order Amending the Order regulating the handling of milk in the Texas marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision and the two documents annexed hereto be published in the **Federal Register.**

Determination of Producer Approval and Representative Period

April 1988 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Texas marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1126

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on September 12, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Milk in the Texas Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations herinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Texas marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Texas marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows.

The provisions of the tentative marketing agreement and order amending the order on an interim basis as contained in the tentative decision issued by the Assistant Secretary for Marketing and Inspection Services on June 6, 1988 and published in the **Federal Register** on June 13, 1988 (53 FR 22003), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. The authority citation for 7 CFR part 1126 continues to read as follows:

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

2. Section 1126.55 is revised to read as follows:

§ 1126.55 Credits to handlers for transporting surplus milk.

For each of the months of March through June and December 16–31, a transportation credit shall be computed for each handler on the amount of producer milk that is classified as Class II or Class III pursuant to § 1126.42(b)(3) or (d)(2) that such handler transfers or diverts to nonpool plants located outside the State of Texas. Credits established pursuant to paragraphs (a) and (b) of this section shall be computed at the rate of 2.4 cents per hundredweight for each 10 miles, or fraction thereof, for the shortest hard-surfaced highway distance, as determined by the market administrator. The amount of milk eligible for a transportation credit and the amount of such credit shall be established in accordance with paragraphs (a), (b), and (c) of this section subject to the limitations specified in paragraph (d) of this section.

(a) A transfer credit shall apply to bulk fluid milk products transferred by a handler from a pool plant located in Zone 1 of the marketing area for the distance between the transferor pool plant and the transferee nonpool plant.

(b) A credit for diverted milk shall apply to milk produced in Zone 1, 1–A, or 3 of the marketing area or the Oklahoma counties of Atoka, Bryan, Carter, Choctaw, Comanche, Cotton, Greer, Harmon, Jackson, Jefferson, Johnston, Kiowa, Love, Marshall, McCurtain, Murray, Pushmataha, Stephens, or Tillman that is diverted to a nonpool plant for the distance in excess of 100 miles between the nonpool plant and the nearer of the city hall in Dallas, Texas, the pool plant of last receipt for the major portion of the milk on the route, or the courthouse of the county where the major portion of the milk on the load was produced.

(c) A credit for diverted milk produced in the area specified in paragraph (b) of this section shall also include an amount per hundredweight equal to the difference between the location adjustment (excluding any plus adjustment) applicable in the area where the milk was produced and any greater minus location adjustment applicable at the location of the nonpool plant where the milk was received.

(d) No credit shall apply to the total quantity of milk moved to a given nonpool plant by a handler during each of the credit periods if any portion of the milk is assigned to Class I. Also, the amount of milk to which a credit would be applicable during each of the credit periods pursuant to paragraphs (a), (b), and (c) of this section shall be offset by the amount of milk that a handler or any affiliate of the handler causes to be received at plants located in the marketing area from outside the State of Texas during each of the credit periods, with such offset to be applied in sequence beginning with the nonpool plant at which the greatest credit would apply.

3. In § 1126.60, paragraph (h) is revised to read as follows:

§ 1126.60 Handler's value for computing uniform price.

* * * * *

(h) Deduct any credit applicable pursuant to § 1126.55.

Marketing Agreement Regulating the Handling of Milk in the Texas Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determination, order relative to handling, and the provisions of §§ 1126.1 to 1126.86, all inclusive, of the order regulating the handling of milk in the Texas marketing area 7 CFR Part 1126 which is annexed hereto; and

II. The following provisions:

§ 1126.87. Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of April 1988 ____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1126.88. Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Seal)

Attest _____

Date _____

(Signature)

By _____

(Name)

(Title)

(Address)

[FR Doc. 88–21221 Filed 9–16–88; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Parts 303 and 381

[Docket No. 87–029E]

Review of Retail Store Inspection Exemptions; Extension of Comment Period

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking (ANPR); extension of comment period.

SUMMARY: On July 21, 1988, the Food Safety and Inspection Service (FSIS) published an advance notice of proposed rulemaking (ANPR) announcing a review of the retail store exemption provisions of the Federal Meat and Poultry Products Inspection Acts, and the regulations promulgated thereunder, that govern exemptions from Federal inspection requirements for traditional and usual operations of retail stores which produce meat or poultry products for sale in normal retail quantities to consumers at such establishments. This review also includes an examination of FSIS's long-standing "two-store" policy which

allows an exemption from Federal inspection requirements for any retail operator that owns only two retail stores and prepares meat and/or poultry products at one of its retail stores for sale to consumers in normal retail quantities at both stores. The comment period for the ANPR will close September 19, 1988. FSIS has received requests to extend the comment period so that additional information may be provided. FSIS is granting these requests and is extending the comment period for an additional 60 days.

DATE: Comments must be received on or before: November 18, 1988.

ADDRESS: Comments may be mailed to the Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, Room 3171 South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments, as provided by the Poultry Products Inspection Act, should be directed to Mr. Robert Gonter at (202) 447–7745.

FOR FURTHER INFORMATION CONTACT: Robert Gonter, Assistant Deputy Administrator, Compliance Program, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7745.

SUPPLEMENTARY INFORMATION: On July 21, 1988, FSIS published an advance notice of proposed rulemaking (53 FR 27525) to announce a review of retail store exemption provisions and FSIS's "two-store" policy. This action resulted from a court of appeals decision, *D&W Food Center, Inc., v. Block*, 786 F.2d 751 (6th Cir. 1986), and from requests of the regulated industry, that bring into question FSIS's application of its long-standing retail exemption regulations and policies in today's dynamic, ever-changing marketplace. Consequently, FSIS has invited public comment on all aspects of the Agency's retail store exemption regulations, and where appropriate, the underlying statutory provisions set forth in 21 U.S.C. sections 454(c)(2), 661(c)(2), as well as the Agency's two-store policy for retail stores.

The Agency is particularly interested in receiving substantive comments, including data, which would enable it to identify: (1) operations which were traditional and usual for retail stores prior to 1967 for meat and meat products and before 1968 in the case of poultry and poultry products, but have not been adequately reflected in FSIS regulations, and (2) other types of operations that are currently subject to the inspection requirements of the FMIA and PPIA for which the public feels it would be appropriate to revise the law to permit retail stores to engage in such operations without being subject to the inspection requirements of the FMIA and the PPIA.

Additionally, the Agency wants public comment on the Agency's long-standing "two-store" exemption policy for retail stores. This policy was adopted because many retail store meat/poultry operations were traditionally and usually selling their products prepared at one store to consumers at that store, as well as to consumers at an off-premises retail outlet under the same ownership, such as a local farmers' market. However, changes in how meat and poultry products are produced and marketed, as well as a court decision ruling against application of that policy (see, *D&W v. Block, Id.* requires that FSIS reassess this policy.

The Agency also requests comments, from persons recommending regulatory or statutory changes, regarding any potential public health ramification of the options they recommend. In addition, the Agency requests information about the potential economic impact of the options recommended upon consumers, upon each class of business that would be affected by the change, and upon the economy in general. This information is necessary in order for the Agency to assess whether any potential recommended regulatory change might be a "major rule" under Executive Order 12291, or a rule requiring regulatory analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

For these reasons, and because FSIS has received requests to extend the comment period so that additional information can be gathered and submitted, FSIS is extending the comment period for an additional 60 days beyond September 19, 1988, the date previously set for the close of the comment period. Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent to the Policy Office and should refer to the docket number that appears in the heading of this document. Any person desiring opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such request to Robert Gonter, Assistant Deputy Administrator, Compliance Program, at (202) 447–7745, so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this action will be made available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Done at Washington, DC on September 16, 1988.

Ronald J. Prucha,

Associate Administrator, Food Safety and Inspection Service.

[FR Doc. 88–21478 Filed 9–16–88; 9:23 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–51, PRM–50–51A, and PRM–50–51B]

American Nuclear Insurers and MAERP Reinsurance Association, et al.; Filing of Petitions for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petitions for rulemaking.

SUMMARY: The Commission is publishing for public comment this notice of receipt of petitions for rulemaking that were filed with the Commission. The first petition, dated June 3, 1988, was submitted by Steptoe and Johnson on behalf of American Nuclear Insurer and MAERP Reinsurance Association and has been assigned Docket No. PRM–50–51. The second petition, dated June 21, 1988, was submitted by Bishop, Cook, Purcell, and Reynolds on behalf of the Edison Electric Institute and the Nuclear Utility Management and Resource Council and has been assigned Docket No. PRM–50–51A. The third petition (undated) docketed by the NRC on July 7, 1988, was submitted by Baker and McKenzie on behalf of Nuclear Mutual Limited and Nuclear Electric Insurance Limited and has been assigned Docket No. PRM–50–51B. The petitions, which are similar, request that the Commission amend, after notice and opportunity for comment, certain insurance requirements in 10 CFR 50.54(w) as such requirements relate to special trustees established to receive and disburse property damage insurance proceeds after an accident.

DATE: Submit comments by November 18, 1988. 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: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch. For a copy of the petition, write: Rules Review and Editorial Section, Regulatory Publications Branch,

Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Juanita Beeson, Chief, Rules Review and Editorial Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, Washington, DC 20555, Telephone (301) 492–8926.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1987 (52 FR 28963), the NRC issued a final rule entitled "Changes in Property Insurance Requirements for NRC Licensed Nuclear Power Plants." The rule required that each nuclear reactor licensee, as a condition of its license, meet certain onsite property damage insurance requirements for each of its nuclear reactor station sites. Utilities licensed by the NRC to operate nuclear power plants are currently subject to § 50.54(w) that requires them to maintain $1.06 billion in property insurance.

As insurers of nuclear power plants, the petitioners are concerned with those provisions of the final rule which require that (1) any insurance claims be paid first for the stabilization of the reactor facility and secondly, for decontamination of the facility, and (2) any insurance proceeds be paid to a trustee who would disburse the proceeds according to the priorities.

Basis for Request

1. Priority Provisions

The petitioners state that they will be unable to include the priority provision in their insurance policies by the mandated date of October 4, 1988, and that implementing this provision is complex and will result in substantial administrative expense. Furthermore, the petitioner, American Nuclear Insurers and MAERP Reinsurance Association, is concerned that the new priorities for the proceeds of the required insurance will increase the demand for higher amounts of nuclear property insurance in order to cover physical damage loss.

2. Special Trust Provision

The petitioners, all of whom request NRC to temporarily suspend and eventually delete the provision in the final rule that requires insurance proceeds for decontamination loss to be paid to a separate trust, argue that the special trust provision was not included in the proposed rule issued on November 8, 1984 (49 FR 44645), but was introduced in the final rule issued on August 5, 1987. The petitioners state that NRC issued the special trust provision without notice to interested parties, thus denying them opportunity to comment. The petitioners believe the special trust provision is a significant matter and that NRC should have allowed discussion that would have afforded them and others the opportunity to address this provision. Therefore, the petitioners request the provisions contained in § 50.54(w) of the final rule be suspended until this petition for rulemaking is completed.

American Nuclear Insurers and MAERP Reinsurance Association (ANI/MAERP) PRM–50–51

Petitioners (ANI/MAERP) are an organized association of insurance companies whose members have been engaged in providing on-site property coverage for nuclear facilities since 1957. ANI/MAERP state that the Commission's commercial reactor licensees, as a group, purchase the largest share of this form of coverage.

ANI/MAERP believe that the current provisions in the final rule will result in uncertainty, delay, and substantial administrative expense in the process of proving loss and prompt payment of valid claims. ANI/MAERP claim that these provisions will also hinder the ability of private sources to meet the need for large amounts of nuclear property insurance. Therefore, ANI/MAERP request that the Commission suspend those provisions of the current rule that require:

(1) Insurance proceeds for decontamination loss be paid to a separate trust, and

(2) The priorities for stabilization loss and decontamination loss (including the related trust provision) be incorporated in property insurance policies not later than October 4, 1988.

ANI/MAERLP also request that the Commission amend the current rule, after notice and comment:

(1) To define more clearly the nature and extent of the obligations and priorities set forth in § 50.54(w) (3) and (4),

(2) To clarify the rights and obligations of insurers with respect to securing appropriate proofs of loss for the coverages affected by the rule and making timely and proper payments in accordance with insurance practice and policy provisions,

(3) To delete the provision requiring payment of decontamination loss proceeds to a separate trust, and

(4) To provide insurers a more definite method for paying promptly reasonable amounts of loss encumbered by the priorities estalished by the current rule when there is more than enough insurance in force.

Edison Electric Institute (EEI) and the Nuclear Utility Management and Resources Council (NUMARC) PRM–50–51A

EEI is the association of investor-owned electric companies whose members operate 96 nuclear plants and have five additional units under construction. NUMARC is an organization that represents all electric utilities licensed by the NRC to construct or operate nuclear power plants. NUMARC is responsible for coordinating the combined efforts of its members in addressing generic operational and technical regulatory issues and to work with the NRC to obtain solutions to regulatory issues affecting nuclear plant construction and operation.

The petitioners, EEI and NUMARC, share concerns similar to those of the petitioners in PRM–50–51. They contend that the independent trustee arrangement is neither effective nor even needed to address either the bond trustee problem or the bankruptcy situation and could lead to unwarranted delays in funding post-accident cleanup.

Therefore, the petitioners request that the NRC:

(1) Initially suspend the independent trustee provision or relieve licensees from compliance with the independent trust requirement and ultimately delete it,

(2) Amend the rule to require that licensees purchase insurance that provides coverage against *liability* (which would be explicitly established in the rule) for stabilization and decontamination expense (the form along the lines of the Nuclear Electric Insurance Limited (NEIL II) hybrid policies would be acceptable), to avoid needlessly invoking the duty of trustees for bondholders to assert their interest in *property* insurance proceeds,

(3) Clarify the rule (or at least the statement of considerations) by defining or at least giving examples of stabilization and by subjecting stabilization expenditures to the automatic priority only when a reasonable threshold, such as $100 million, is exceeded for a reasonable period of time such as thirty days, subject to extension, and

(4) Provide a mechanism for releasing from the priorities insurance proceeds

as will not be needed for stabilization and decontamination.

Nuclear Mutual Limited (NML) and Nuclear Electric Insurance Limited (NEIL) PRM–50–51B

As insurers of nuclear property risks, NML provides $500 million of primary property insurance to about 50 percent of the nation's nuclear reactor stations sites in the country. NEIL states that a licensee cannot meet the $1.06 billion minimum amount required by the current rule without purchasing insurance from their company.

The petitioners, NML and NEIL, state that the current rule does not achieve the commission's ojective, i.e., to provide assurance in the event of an accident that the licensee would have sufficient funds to stabilize and decontaminate a nuclear reactor station site. NML and NEIL indicate that the special trust provisions do not protect insurance proceeds against potential claims by the indenture trustee and may further complicate an already difficult situation. Therefore, the petitioners urge the issuance of the proposed amendments submitted by EEI and NUMARC.

Petitioners' Proposal

The petitioners request that § 50.54(w) be revised to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(w) Each electric utility licensee under this part for a production or utilization facility of the type described in § 50.21(b) or § 50.22 shall, by June 29, 1982, take reasonable steps to obtain insurance, available at reasonable costs and on reasonable terms from private sources or to demonstrate to the satisfaction of the Commission that it possesses an equivalent amount of protection covering the licensee's obligation, in the event of a significant contamination event at the licensee's reactor, to stabilize and decontaminate the reactor station site at which the unit experiencing such event is located as provided in this subsection, provided that:

(1) The insurance required by this subsection must have a minimum coverage limit with respect to each reactor station site of either $1.06 billion or whatever amount of insurance is generally available from private sources, whichever is less. The required insurance may, at the option of the licensee, be included within policies that also provide coverage for other risks, including, but not limited to, the risk of direct physical damage. In such cases, all such policies shall clearly state that any proceeds shall be payable first for stabilization and next for decontamination of the reactor station site as and to the extent provided herein, and that any such optional coverage or coverages are subject thereto. If a licensee's coverage falls below the required minimum, the licensee shall within 60 days take all reasonable steps to restore its coverage to the required minimum.

(2) Effective _____, _____, [a date which allows sufficient time for development and approval of changes in policies of insurance after the effective date of a final rule adopted in accordance with this petition] with respect to policies issued or annually renewed thereafter, the proceeds of such required insurance shall be dedicated, as and to the extent provided herein, to reimbursement or payment on behalf of the insured of reasonable expenses incurred by the licensee in taking action to fulfill the licensee's obligation, in the event of a significant contamination event at the licensee's reactor, unless otherwise ordered or approved by the Director of the Office of Nuclear Reactor Regulation, to ensure that the reactor is in, or is returned to, and maintained in, a safe and stable condition and that radioactive contamination is removed or controlled such that personnel exposures are consistent with the occupational exposure limits in 10 CFR Part 20. Such actions shall be consistent with any other obligation the licensee may have under this chapter and shall be subject to paragraphs (4) and (5) hereof. As used in this paragraph, a "significant contamination event" means an event that involves the release of radioactive material from its intended place of confinement within the plant or on the reactor station site such that there is a present danger of release offsite in amounts that would pose a threat to public health and safety if stabilization and decontamination expenses or expenses for other appropriate remedial action in an amount equal to or greater than the threshold level set forth in subparagraph (4) were not taken.

(3) The licensee shall report to the NRC on April 1 of each year the current levels of this insurance or financial security it maintains and the sources of this insurance or financial security.

(4) The proceeds of the insurance required by paragraph (2) hereof, if and to the extent applicable, shall be used first to ensure that the licensed reactor is in a safe and stable condition and can be maintained in that condition so as to prevent any significant risk to the public health and safety. The licensee shall inform the Director of the Office of Nuclear Reactor Regulation in writing when that condition is attained. This priority on insurance proceeds for such stabilization of the reactor shall attach where expenditures for stabilization and decontamination with respect to a significant contamination event appear likely to exceed $100 million, and shall remain in effect for 30 days or, upon order of the Director, for such longer period, in increments not to exceed 30 days, as the Director may find is necessary to protect the public health and safety. The actions appropriate to bring the reactor to a safe and stable condition and maintain it in that condition generally include those:

(A) To shut down the reactor;

(B) To establish long-term cooling;

(C) To control radioactive releases; and

(D) To secure structures, systems, or components to minimize exposure to onsite personnel or the offsite public to radiation or to facilitate later decontamination or both.

(ii) Within thirty (30) days after the licensee informs the Director of the Office of Nuclear Reactor Regulation that the reactor is and can be maintained in a safe and stable condition, or at such earlier time as the licensee may elect or the Director may for good cause direct, the licensee shall prepare and submit a cleanup plan for the Director's approval. The plan shall identify all cleanup operations that will be required to decontaminate the reactor sufficiently to permit the licensee either to resume operation or to undertake measures leading to decommissioning of the reactor in a manner that is consistent with the Commission's occupational exposure limits in 10 CFR Part 20, and shall provide the estimated expenditures for each such operation. If applicable, such operations shall include:

(A) Processing any contaminated water generated by the accident and by decontamination operations to remove radioactive materials;

(B) Decontamination of surfaces inside the auxiliary and fuel handling buildings and the reactor building to levels consistent with the Commission's occupational exposure limits in 10 CFR Part 20, and decontamination or disposal of equipment;

(C) Decontamination or removal and disposal of internal parts and damaged fuel from the reactor vessel; and

(D) Cleanup of the reactor coolant system.

(iii) Following review of the licensee's plan, the Director will order that the licensee complete all operations that the Director finds are necessary to

decontaminate the reactor sufficiently to permit the licensee either to resume operation or to undertake measures leading to decommissioning of the reactor, in a manner that is consistent with the Commission's occupational exposure limits in 10 CFR Part 20. The Director shall approve or disapprove, for stated reasons, the licensee's estimate of expenditures for such operations. Such order may not be effective for more than one year, at which time it may be renewed. Each subsequent renewal order, if imposed, may be effective for not more than six months.

(iv) Of the balance of the proceeds of the required insurance not already expended to place the reactor in a safe and stable condition pursuant to paragraph (w)(4)(i) of this subsection, an amount sufficient to cover the expenses of completion of those decontamination operations that are the subject of the Director's order shall be dedicated to such use, provided that, upon certification to the Director of the amounts expended previously and from time to time for stablization and decontamination and upon further certification to the Director as to the sufficiency of the dedicated amount remaining, policies of insurance may provide for payment to the licensee or other loss payees of amounts not so dedicated, and the licensee may proceed to use in parallel (and not in preference thereto) any insurance proceeds not so dedicated for other purposes.

(5) The stabilization and decontamination requirements set forth in paragraph (w)(4) of this section must apply uniformly to all insurance policies required under paragraph (w)(2) of this section.

* * * * *

Dated at Rockville, MD, this 14th day of September 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-21287 Filed 9-16-88; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Part 50

Extension of Time for the Implementation of the Decontamination Priority and Trusteeship Provisions of Property Insurance Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend the implementation schedule for the stabilization and decontamination priority and trusteeship provisions of its property insurance regulations contained in 10 CFR 50.54(w)(5)(i) to change the effective date from October 4, 1988 to April 4, 1990. This delay in implementation is necessary because the insurers that offer property insurance for power reactors have informed the Commission that they will be unable to include the stabilization and decontamination priority and trusteeship provisions in their insurance policies within the time currently provided by 10 CFR 50.54(w). Concurrently, the extension of the effective date of the rule will allow the NRC to consider recently submitted petitions for rulemaking that propose changes to improve the efficacy of the NRC's stabilization and decontamination priority and trusteeship provisions.

DATES: The comment period expires October 19, 1988. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch.

Hand delivered comments to: 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. (Telephone (301) 492-1960)

Copies of comments received may be examined at the NRC Public Document Room 2120 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert S. Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-1280.

SUPPLEMENTARY INFORMATION:

I. Background

On August 5, 1987, the Commission published in the **Federal Register** (52 FR 28963) a final rule which amended 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance that commercial power reactor licensees are required to carry for their facilities. The purpose of the rule was to provide an assured source of funds for one-site decontamination and cleanup of a power reactor facility after an accident. In that regard, the August 1987 amendments required licensees to obtain insurance policies in which any proceeds from such policies are to be used for stabilization of a reactor after an accident and then for decontamination of the facility before any other purpose. The rule also required that any insurance proceeds be paid to a trustee, who would be required to disburse funds according to the decontamination priority. The Commission believed that these provisions would effectively protect insurance proceeds from claims by bondholders or their representatives or, in the event of licensee default or bankruptcy, by other creditors. The Commission based this belief on comments submitted by the Association of the Bar of the City of New York (Comment number 12 in response to the 1984 proposed rule (49 FR 44645)).

Subsequent to publication of the final rule, the NRC has been informed, both orally and in writing, that the trusteeship provisions and, to a lesser extent, the stabilization and decontamination priority provisions of the rule are sufficiently complex and problematic that the insurers will be unable to incorporate these provisions in their policies within the time mandated by the rule. See the following: (1) The letter dated January 27, 1988 to Dr. Thomas E. Murley from Peter D. Lederer, Baker & McKenzie, counsel to Nuclear Mutual Limited (NML) and Nuclear Electric Insurance Limited II (NEIL-II); (2) the letter dated January 29, 1988 to Robert S. Wood from Peter D. Lederer, Baker & McKenzie at p. 5; (3) Petition for Rulemaking (PRM-50-51) dated June 3, 1988 from Linda S. Stein, Steptoe & Johnson, counsel to American Nuclear Insurers and MAERP Reinsurance Association (ANI/MAERP), at p. 7; (4) Petition for Rulemaking (PRM-50-51A) dated June 21, 1988 from J.B. Knotts, Jr., Bishop, Cook, Purcell & Reynolds, counsel to the Edison Electric Institute, the Nuclear Utility Management and Resources Council and several power plant licensees, at pp. 10-11; and (5) Petition for Rulemaking (PRM-50-51B) undated, from Peter D. Lederer, Baker & McKenzie, counsel to NML and NEIL-II. Interested persons may examine and copy for a fee the above letters and petitions for rulemaking at the NRC Public Document Room, 1717 H Streets NW., Washington, DC. Single copies of the letters may be obtained from Robert S. Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-1280.

The insurers and their counsel provide two reasons why they are unable to comply with the date specified in the final rule for adding the stabilization and decontamination priority and

trusteeship provisions. First, with respect to the trusteeship provision, counsel for insurers have assured the NRC staff that they have made a good-faith effort to obtain trustees but have been unsuccessful. They believe the reason for their lack of success is the potential trustees' conflicts of interest and reluctance to assume, on the one hand, responsibility for disbursing potentially over $1 billion in insurance proceeds and the resulting exposure to possible litigation for wrongful disbursement, while, on the other hand, being eligible for only modest fees for this service. The petition for rulemaking submitted by Mr. Knotts indicates that:

> Any institution that serves as bond trustee for the securities of any licensee as to which it might be asked to serve as independent trustee under the rule would have a conflict of interest. Such a conflict would undoubtedly be unacceptable to insurers, licensees and trustees alike. More broadly, utilities and potential trustees may well conclude that such a trustee would have an institutional conflict if it serves as bond trustee with respect to the indenture of *any* utility. Thus, though it obviously would be desirable to have a single form of trust and a single trustee, no major corporate trustee has been identified that does not also serve as bondholders' trustee under at least one nuclear utility's indenture.
>
> Just as importantly, any major corporate trustee would want to minimize its exposure to claims. Thus, several such companies have advised. . . that, even if they were otherwise interested, they would insist on having only ministerial functions, as in the case under some state environmental laws that employ prefunded trusts for environmental cleanup (and the trustee makes payments only upon certification by the state agency having jurisdiction).
>
> Even with very limited discretion, potential trustees may well perceive a residual liability. Therefore, such a trustee would seek indemnification, and probably would not be satisfied with indemnification by the licensees that had the accident. In addition, such a trustee would want to have applicable insurance to provide defense and indemnity for claims arising out of its duties as trustee, as well as directors' and officers' liability and indemnity insurance coverage, which may well be unavailable.
>
> Finally, there is little incentive for trustees to seek the special trustee role. In addition to the disincentive of having to forego more attractive business because of conflicts of interest, we have been informed that the traditional financial incentives for trust management would be lacking. Normally, the trustee grains an opportunity to earn a fee for managing the trust assets, a fee often measured by the value of those assets. There would be no such opportunity under the arrangement envisioned by the rule. The trust would be "dry", that is, an unfunded standby arrangement that may never be used. Moreover, even when funded, there would be only a short time when the funds are actually under management—in other words, it would be merely a conduit.

A second reason insurers give for being unable to comply with the effective date of the rule is essentially logistical. As a contract, an insurance policy can only be modified with the consent of all affected parties. Because the Commission's mandated stabilization and decontamination priority and trusteeship provisions adversely affect the current rights under the policy of the bondholders' trustee, it is unlikely that policies could be legally changed until the end of the policy year. NEIL policies renew every November 15, NML policies every April 1, and ANI/MAERP policies throughout the year.

II. NRC Response

When the NRC selected the effective date of October 4, 1988, it believed that one year plus 60 days from publication of the rule would give insurers sufficient time to incorporate appropriate implementing language in their policies. However, given the complexity of the changes, the unexpected (by the insurers) addition of the trusteeship provisions of the rule, and the timing of the rule's publication shortly after the NEIL and NML annual meetings at which changes must be approved, insurers cannot make changes within the time required. Moreover, insurers have informally told staff that the process of getting approvals from state insurance regulators for policy language changes for both decontamination and trusteeship provisions will also cause delay.

The NRC acknowledges that there appear to be serious practical difficulties in implementing the decontamination priority and trusteeship provisions of the rule by the date mandated in the rule. The NRC also recognizes that it has no regulatory authority over insurers and therefore cannot require that insurance having specific terms and conditions be made available if insurers choose not to offer it. Apart from the practical problems in the implementing schedule, the Commission also notes the underlying substantive questions concerning the efficacy of the trusteeship provisions of 10 CFR 50.54(w) in accomplishing its stated objective—namely, safeguarding insurance proceeds so that they will be used to clean up and decontaminate after a reactor accident and thus protect the health and safety of the public. A sufficient extension of time allowed for implementing these provisions not only would give insurers adequate time to amend their policies, if it ultimately proves necessary to do so, but would also allow the Commission to consider on their merits the issues raised in the petitions for rulemaking.

The NRC believes for several reasons that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, the licensee still will be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and cleanup after an accident even without prioritization and trusteeship provisions. Second, to obtain this level and more, most licensees carry the full $750 million coverage offered by NEIL–II. Thus, a significant percentage of the required insurance already is prioritized under the decontamination liability and excess property insurance language of the NEIL–II policies. Finally, there is only an extremely small probability of a serious accident occurring during the period of delay. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety.

For the foregoing reasons, the Commission concludes that an 18-month delay (from October 4, 1988 to April 4, 1990) in the implementation schedule of the decontamination priority and trusteeships provisions is justified and proposes to amend 10 CFR 50.54(w)(5)(i) accordingly.

III. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule constitutes a minor corrective amendment that does not substantially modify existing regulations and, therefore, is the type of action eligible for categorical exclusion under 10 CFR 51.22(c)(2). Accordingly, neither an environmental impact statement nor an environmental assessment is required.

IV. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

V. Regulatory Analysis

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54 (w). The rule increased the amount of on-site property damage insurance required to be carried

by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that the decontamination priority and trusteeship provisions will not be able to be incorporated into the policies by the time required in the rule. In petitions for rulemaking, insurers' representatives further state that the trusteeship provisions may actually have an effect counter to their intended purpose by delaying the claims payment and thus possibly the cleanup process. By deferring implementation of these provisions of the rule by eighteen months, the Commission is allowing sufficient time either to secure the required coverage or to reconsider the mechanism by which accident cleanup funds may be assured to be used for their intended purpose. Even without formal stabilization and decontamination priority and trusteeship provisions, NRC has authority to take appropriate enforcement action to order cleanup in the unlikely event of an accident. Thus, the proposed rule will not have a significant impact on public health and safety. Furthermore, the proposed rule will not have significant impacts on state and local governments and geographical regions; on the environment; or, create substantial costs to licensees, the NRC, or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this proposed rule.

VI. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant impact upon a substantial number of small entities. The proposed rule affects 112 power reactor licenses. None of the holders of these licenses could be considered small entities.

VII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule because the proposed rule, if adopted, would not impose a backfit as defined in § 50.109(a)(1). Therefore, a backfit analysis is not required for this proposed rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear powerplants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1224, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332).

Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54 and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c), and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.54, paragraph (w)(5)(i) is revised to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(w) * * *

(5) The decontamination priority and trust requirements set forth in paragraphs (w)(3) and (w)(4) of this section must:

(i) Be incorporated in onsite property damage insurance policies for nuclear powerplants not later than April 4, 1990 and

* * * * *

Dated at Rockville, Maryland, this 7th day of September 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88–21288 Filed 9–16–88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–57–AD]

Airworthiness Directives; Boeing Models 747–100, 747–200, 747–300, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require replacement of certain underwing fuel tank access doors with stronger, fire-resistant doors. This action is prompted by several incidents of door penetration by debris. This condition, if not corrected, could result in a fire.

DATE: Comments must be received no later than November 10, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–57–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kanji K. Patel, Propulsion Branch, ANM–140S; telephone (206) 431–1973. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway

South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-57-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been several incidents where debris from an uncontained engine failure or tire failure has penetrated fuel tank access doors on Boeing Model 747 series airplanes, causing a fuel leak and/or fire. These doors are located on the lower wing surface and are of a type of construction which is susceptible to fracture from impact of foreign objects, such as engine and tire debris. A massive fuel spillage could lead to a catastrophic fire. Although it is difficult to stop penetration from high energy engine debris, it is possible to minimize fuel spillage by replacing the presently-configured access doors with improved doors that are less susceptible to fracture.

Since this condition is likely to occur on other Boeing Model 747 series airplanes, an AD is proposed to require replacement of a total of 18 fuel tank access doors, 9 on each side of the airplane, with doors less susceptible to fracture. The four inboard access doors, two on each side of the airplane, which are located between the fuselage and the inboard engines, and in close proximity to the main landing gears, are the most susceptible to damage. Therefore, the FAA has determined that these doors must be replaced as soon as practicable. Replacement of the remaining 14 access doors can be delayed until the airplane is out of service for scheduled major maintenance.

It is estimated that 208 airplanes of U.S. registry would be affected by this AD, that it would take approximately 60 manhours per airplane to replace the affected doors, and that the average labor cost would be $40 per manhour. Replacement costs are estimated to be $600 per door (18 doors per airplane). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,747,600.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. This in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 747 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Acordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive.

Boeing: Applies to Model 747-100, 747-200, 747-300, and 747SP series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To minimize the fire hazard as a result of lower wing surface fuel tank access door penetration due to impact from low energy engine and tire debris, accomplish the following:

A. Within the next four months after the effective date of this AD, replace four lower wing surface fuel tank access doors, two Nos. 544AB and 545AB on the left wing and two Nos. 644AB and 645AB on the right wing, with doors having impact resistance equivalent to that of 2024-T3 aluminum 0.140-inch thick, as approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region. The replacement doors must also be fire resistant, as defined in the Federal Aviation Regulations, Part 1.

B. Within the next 30 months after the effective date of this AD, replace the following 14 lower wing surface fuel tank access doors, seven Nos. 546AB, 546BB, 552AB, 552BB, 552CB, 552DB, and 552Eb on the left wing, and seven Nos. 646AB, 646BB, 652AB, 652BB, 652CB, 652DB, and 652EB, on the right wing, with doors having impact resistance equivalent to that of 2024-T3 aluminum 0.140-inch thick, as approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region. The replacement doors must also be fire resistant, as defined in the Federal Aviation Regulations, Part 1.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when appoved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest

Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 2, 1988.

Leroy A. Keith

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-21247 Filed 9-16-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-ANE-25]

Airworthiness Directives; Garrett Engine Division, Allied-Signal, Inc., TPE331-25AA, -25AB, -25DA, -25DB, -25FA, -43A, -43BL, -47A, -55B, -61A, -1, -2, -2UA, -3U, -3UW, -5, -6, -6A, -8, -10, -10R, -10U, -10UA, -10UF, -10UG, -10UGR, -10UR, -11U Turboprop and TSE331-3U Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD) which requires spectrographic analysis of oil samples or the replacement/rework of the turbine oil scavenge pump.

The proposed AD would supersede AD 86-12-02 by requiring the replacement or the rework and re-identification of the oil scavenge pump assembly, by eliminating the requirement for the Spectrometric Oil Analysis Program (SOAP), and by retaining the inspection of the spur gearshaft assembly which drives the oil scavenge pump. The proposed AD is needed to prevent the blockage of the oil scavenge pump outlet port by the spur gearshaft assembly. Blockage of the outlet port has caused erosion and failure of the Beryllium/Copper main shaft nut, major turbine damage, and inflight engine shutdowns.

DATES: Comments must be received on or before November 20, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, *Attn:* Rules Docket No. 86-ANE-25, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket No. 86-ANE-25".

Comments must be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable documents may be obtained from Garrett General Aviation Services Division, Distribution Center, 2340 East University, Phoenix, Arizona 85034; telephone (602) 225-2548.

A copy of the service document is contained in Rules Docket Number 86-ANE-25, in the Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Propulsion Branch, ANM-140L, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5246.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, enviromental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 86-ANE-25". The postcard will be date/time stamped and returned to the commenter.

This notice proposes to supersede Amendment 39-5371 (51 FR 31607; September 4, 1986), AD 86-12-02, effective September 5, 1986, which requires SOAP at the specified compliance intervals or the replacing or reworking of the oil scavange pump assembly. Prior to issuing AD 86-12-02, the FAA determined that failures of the Beryllium/Copper nut on the turbine end of the tiebolt shouldered shaft would result in major damage to the engine. Also, the FAA determined that the spur gearshaft assembly may move and disengage the drive gear of the oil scavenge pump assembly. Therefore, an inspection was required to ensure proper positioning of the spur gearshaft assembly. After issuing AD 86-12-02, incidents were discovered indicating that SOAP was not effective in detecting Beryllium/Copper nut erosion and that this erosion was not limited to infant mortality cases. Since this condition is likely to exist or develop on other Garrett TPE/TSE331 series engines of the same type design, the proposed AD would supersede Amendment 39-5371, AD 86-12-02, by requiring the formerly optional replacement/rework of the oil scavenge pump assembly and by eliminating SOAP. If this proposal is adopted, requirements set forth in paragraph (a) thru (f) of AD 86-12-02, Amendment 39-5371, will be superseded.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this proposed regulation involves 8000 engines and the approximate cost would be $160 per engine. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD) which supersedes AD 86-12-02, Amendment 39-5371 (51 FR 31607), as follows:

Garrett Engine Division, Allied-Signal, Inc. (formerly Garrett Turbine Engine Co., GTEC, formerly AiResearch Manufacturing Company of Arizona): Applies to Garrett Models TPE331-25AA, -25AB, -25DA, -25DB, -25FA, -43A, -43BL, -47A, -55B, -61A, -1, -2, -2UA, -3U, -3UW, -5, -6, -6A, -8, -10, -10R, -10U, -10UA, -10UF, -10UG, -10UGR, -10UR, -11U turboprop and TSE331-3U turboshaft engines.

Compliance is required as indicated, unless already accomplished.

To prevent turbine failure, accomplish the following: (a) Modify applicable engines in accordance with the Accomplishment Instructions of Garrett Service Bulletin (SB) TPE331-72-0533, Revision 2, dated March 11, 1988, at first access to the affected parts, or within 1,800 operating hours after the effective date of this AD, or within 18 months after the effective date of this AD, whichever occurs first.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 3229 East Spring Street, Long Beach, California 90806-2425.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certifiation Service, may adjust the compliance time specified in this AD.

The FAA will request the approval of the Federal Register to incorporate by reference the manufacturer's service bulletin identified and described in this document.

This proposed AD will supersede AD 86-12-02, Amendment 39-5371 (51 FR 31607; September 4, 1986).

Issued in Burlington, Massachusetts, on September 2, 1988.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 88-21248 Filed 9-16-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-ANE-3]

Airworthiness Directives; Pratt and Whitney (PW) JT9D-3A, -7, -7A, -7AH, -7H, -7F -7J and -20 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would require incorporation of a strut insert assembly into Number 4 and Number 7 diffuser case struts in accordance with the Accomplishment Instructions of PW Service Bulletin (SB) 5730. The strut inserts are needed to reinforce the strut wall and prevent hot air from entering the Number 3 bearing compartment in the event of a strut wall failure. The proposed AD is needed to prevent Number 3 bearing compartment fire and a subsequent nacelle fire.

DATE: Comments must be received on or before November 20, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket Number 87-ANE-3, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 87-ANE-3".

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable SB may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the SB is contained in Rules Docket Number 87-ANE-3, in the Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7084.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 87-ANE-3". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that a total of 16 failures resulting from cracking on either Number 4 or Number 7 diffuser case strut have occurred. Five of these failures were of sufficient severity to cause a Number 3 bearing compartment fire. The Bill-of-Material strut can develop low cycle fatigue cracks, due to thermal and mechanical loads, which can lead to loss of capability to sustain the differential pressure across the strut If cracks are not detected, the strut wall collapses and allows 15th stage compressor air to enter the bearing compartment and may result in a

Number 3 bearing compartment fire and a subsequent nacelle fire.

Since this condition is likely to exist or develop on other engines of the same type design the proposed AD would require the incorporation of a strut insert assembly in both the Number 4 and Number 7 struts. This strut insert assembly has been designed to sustain the load due to the differential pressure, in the event of a strut failure, and prohibit the 15th stage compressor air from entering the Number 3 bearing compartment and starting a fire.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this proposed regulation involves approximately 1,050 engines at an approximate total cost of $382,000. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the proposed rule affects only operators using Boeing 747 and McDonnell Douglas DC–10–40 aircraft in which the JT9D engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtaind by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

PRATT AND WHITNEY: Applies to Pratt and Whitney (PW) JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, and –20 turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent a diffuser case Number 4 or Number 7 strut failure that can cause a Number 3 bearing compartment fire and subsequent nacelle fire, accomplish the following:

(a) Install strut insert assembly Part Number 804698–01 into both the Number 4 and Number 7 diffuser case struts, in accordance with the Accomplishment Instructions of PW Service Bulletin (SB) 5730, dated February 4, 1987, at the next engine shop visit after the effective date of this AD, but not later than August 31, 1991.

Note: For the purpose of this AD, engine shop visit is defined as a separation of the high pressure compressor and diffuser "K" flange.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, may adjust the compliance times specified in this AD.

Should this proposed rule be adopted, the FAA will request the approval of the office of the **Federal Register** to incorporate by reference the manufacturer's SB identified and described in this document.

Issued in Burlington, Massachusetts, on September 1, 1988.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 88–21246 Filed 9–16–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 50

Announcement of Development of Regulations Protecting Against Scientific Fraud or Misconduct; Request for Comments

AGENCY: Public Health Service, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Public Health Service (PHS) seeks comments from the public on developing regulations to protect against scientific misconduct. The PHS is particularly interested in receiving comments on issues presented below from individual researchers, scientific societies and associations, independent science advisory bodies, members of Congress, other Federal agencies that support or conduct research and institutions that receive PHS funds to conduct or support biomedical or behavioral research. Interested individuals and parties are requested to submit their comments by [60 days from publication].

DATES: To assure consideration, comments must be mailed and delivered to the address provided below by November 18, 1988.

ADDRESS: Address comments in writing to: John Gallivan, PHS Regulations Officer, Room 740G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

If you prefer, you may deliver your comments to John Gallivan, PHS Regulations Officer, Room 740G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Comments will be available for public inspection beginning approximately two weeks after publication of this notice in Room 740G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201 on Monday through Friday of each week from 9:00 a.m. to 5:00 p.m. (202) 755–4884.

FOR FURTHER INFORMATION CONTACT: John Gallivan, PHS Regulations Officer, Room 740G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, (202) 755–4884.

SUPPLEMENTARY INFORMATION: Section 493 of the Public Health Service Act provides that the Secretary, by regulation, require that entities receiving Federal funds for the conduct of biomedical and behavioral research

submit assurances that: (1) These entities have established (based upon regulations prescribed by the Secretary), an administative process to review reports of scientific misconduct in biomedical or behavioral research, and they will (2) report to the Secretary any investigation of alleged scientific misconduct that appears substantial. The Secretary also has authority to respond to information received respecting scientific misconduct involving projects funded under the Public Health Service Act and to take appropriate action in response to such misconduct.

Before 1980, instances of reported misconduct in PHS funded research programs were infrequent. In recent years, however, there has been a small number of highly publicized instances of scientific misconduct. These cases have served to renew the concern of the public, the government and the scientific community in the issue of misconduct in science. Such concerns make it appropriate to consider further policies and procedures for dealing with cases of alleged or apparent misconduct. It would appear, however, that this renewed concern has less to do with any documented increase in the frequency of misconduct than it does with a heightened awareness of the potential problem and its ramifications. Indeed, it is unclear whether the actual number of cases of scientific misconduct is increasing. In fact, since 1980 the frequency of allegations of misconduct reported to the National Institutes of Health (NIH) has remained relatively constant. It should be emphasized, though, that one of most enigmatic features of the problem is that there is little reliable evidence concerning the extent of scientific misconduct. However, from what little we do know, it would appear that reported instances of scientific misconduct represent only a small fraction of the total number of research and research training awards funded by PHS. Nevertheless, even a small number of instances of scientific misconduct is considered a threat to the continued public confidence in the integrity of the scientific process and in the stewardship of Federal funds. The traditional safeguards such as peer review and guidance from professional organizations must be supplemented by explicit instiutional commitment to high ethical standards in research.

PHS has adopted policies to provide guidance to agency staff responsible for dealing with allegations and investigations, based on experience with a number of cases. These were published, for the information of the public, as interim procedures in the July 18, 1986, issue of the *NIH GUIDE FOR GRANTS AND CONTRACTS*.

As noted above, the provisions of section 493 contemplate that there will be a close working relationship between the awardee institutions and the Department in resolving allegations of scientific misconduct. Significantly, section 493 envisions that the primary responsibility for detecting, investigating, reporting and resolving allegations of scientific misconduct rests with the awardee institutions. The Department, however, retains the ultimate responsibility and authority for monitoring such investigations, and becoming involved in those investigations as soon as there is reasonable evidence supporting an allegation of scientific misconduct. Accordingly, the Department, acting either through the Director of the NIH or the Administrator of ADAMHA, is required to establish a process for promptly and appropriately responding to allegations of scientific misconduct which are reported by the awardee institutions and imposing sanctions on researchers where appropriate.

As a first step in carrying out his formal responsibilities under section 493, the Secretary has published elsewhere in this issue of the **Federal Register** a notice of proposed rulemaking. These proposed rules, which are general in nature, are intended simply to secure institutional commitments to comply with the basic terms of section 493. It may well be that more detailed regulations are needed in this area and, if so, the Secretary has significant discretion regarding the form and substance of any such regulations. As a second step in the process, the Secretary is contemplating (1) formalizing and centralizing the procedures that the Department uses in responding to allegations of misconduct, (2) adopting policies to deter misconduct, (3) implementing procedures that would better enable the institutions and the Department to detect misconduct, and (4) imposing sanctions on those awardee institutions that fail to discharge their responsibilities under section 493.

The complex and controversial issues surrounding the area of scientific misconduct warrant a carefully considered, open dialogue with all affected parties. Consequently, in addition to publishing the aforementioned notice of proposed rulemaking, the Secretary invites public comments on all aspects of potential federal regulation in this area (including possible Department procedures, policies and sanctions), and particularly on the following topics:

A. Definition of Scientific Misconduct

What is an appropriate definition of scientific misconduct? The scope of any regulatory initiative will be largely dependent on the definition that is adopted for the term "scientific misconduct." Throughout this advanced notice of proposed rulemaking, we have used the term "scientific misconduct" as opposed to the term "scientific fraud" which is used in section 493. The reader, however, should not infer any intent on the part of the Department to broaden the coverage of section 493 beyond that intended by the Congress. Rather, the term "scientific misconduct" is being used because it has become widely accepted in the scientific community and there is no indication that the Congress meant anything different when it enacted section 493. In fact, both the conference report and the bill report accompanying Pub. L. 99–158 which enacted section 493, use the terms "scientific fraud" and "scientific misconduct" interchangeably. In addition, given the rather unique characteristics of common law fraud, it is unlikely that the Congress intended to equate "scientific fraud" with common law fraud. Specifally, in order to establish common law fraud, one must prove, among other things, that the defendant not only knowingly made a false representation to the plaintiff with the intent to induce the plaintiff to rely on that misrepresentation, but also that the plaintiff justifiably relied on the misrepresentation and as a result of that reliance sustained damage. In a commercial setting, where common law fraud normally operates, there is little difficulty in identifying either the defendant's victim or the damages. However, in cases of scientific misconduct, it is frequently difficult, if not impossible, to ascertain who the defendant intended to deceive. In many instances, the transgressor's victim is a scholarly journal to which the fabricated research has been submitted for possible publication. If such is the case, it is the journal, and not the government, that would be the aggrieved party. Moreover, it may be equally difficult to establish justifiable reliance, because as a general rule the audience of the false research consists of other scientists and scientists are trained to be skeptical. Finally, in many cases it may be equally difficult to establish discernible damages. In short, it is unlikely that the Congress intended to limit the federal response to only those cases involving common law fraud and hence, continued

use of the term "scientific fraud" engenders needless confusion. While it would appear that any definition is likely to encompass fabrication, falsification and plagiarism, what other behaviors (if any) should be included? Should the concept be expanded beyond fabrication, falsification and plagiarism, and if so, what are appropriate concepts for inclusion. For instance, should the definition encompass (1) inappropriate treatment of human subjects or (2) inappropriate expenditure of federal funds? In addition, should scientific misconduct be limited to only intentional transgressions, and if so, how should the requisite intent be defined? Or rather, should scientific misconduct encompass negligent conduct? Commenters may wish to examine the definition of scientific misconduct contained in existing rules of the National Science Foundation (45 CFR Part 689), as well as the definition of scientific misconduct contained in the notice of proposed rulemaking referenced above and appearing elsewhere in this issue of the **Federal Register.**

B. Responsibilities of Awardee Institutions

1. What are appropriate responsibilities of institutions receiving Federal funds in indentifying, reporting and taking actions in cases of alleged or apparent scientific misconduct? Should all charges of misconduct automatically be investigated by the institution and reported to the Department? If not, what criteria should be used to determine when a given charge should be investigated?

Should institutions receiving Federal research funds maintain a passive posture until allegations of scientific misconduct are brought to their attention, or should they adopt a more active role in auditing and overseeing scientific practices to identify scientific misconduct?

What criteria should be used to determine whether a conflict of interest exists for a potential member of a review panel?

Specifically, should the Department require that investigations conducted by institutions be undertaken by panels which are composed either in whole or in part of persons not affiliated with the institution?

2. Should an institution in which alleged fraud occurred have the primary responsibility for conducting the subsequent investigation? What sorts of outside resources (e.g., within the funding agency) should the institution be able to draw upon in conducting an investigation? What should be the role of any outside investigative or monitoring group (e.g., one associated with the funding agency)?

3. Should the PHS permit institutions to develop and adopt whatever procedures they deem appropriate and sufficient in identifying and investigating cases of scientific fraud, or should PHS mandate a set of standard procedures that all PHS funded institutions must adopt? Since mandatory common procedures for indentifying alleged cases would be predicated on some notion of the effectiveness of such procedures, we are especially interested in data or information pointing to the effectiveness of particular procedures or policies.

4. At what point should an institution be required to notify the funding component and/or the HHS Office of Inspector General? Should all allegations be reported, only those which an inquiry determines merit further investigation, or only those which the institution concludes were cases of scientific misconduct following an investigation? What information should be reported concerning ongoing inquiries and investigations if the existence of the matter is reported?

In responding to the issues raised in this Section B, commenters may also wish to examine the institutional reporting and investigating requirements delineated in the notice of proposed rulemaking appearing elsewhere is this issue of the **Federal Register.**

C. Responsibilities of the Department

1. What should be the responsibilities of Public Health Service funding agencies or other Departmental officers in this area? Should the Department's actions be confined to assessing institutional practices and imposing sanctions when scientific misconduct is found,or do its responsibilities to ensure proper stewardship of Federal funds dictate a more rigorous monitoring program?'

2. One approach on which the Department solicits comment would involve the creation within the Department of an office of scientific integrity, consisting of an investigative branch and an adjudicative branch. The investigative branch would be responsible for receiving all allegations of scientific misconduct, reviewing and discussing each at the outset with the Office of Inspector General, monitoring investigations being conducted by awardee institutions, conducting investigations where necessary, either on its own or through the Office of Inspector General, and determining which allegations appear potentially to have merit. Nothing contained in this option is intended to restrict in anyway the existing statutory or regulatory authority of the Office of Inspector General to investigate on its own allegations of fraud, waste, abuse or wrongdoing in cases involving allegations or scientific misconduct. The adjudicative branch would consist of a pool of scientists from which panels would be convened to review in depth and adjudicate those allegations thought to have merit by the investigative branch. In order to protect the rights of both the accused and the accuser, formal hearings would normally be conducted and appropriate procedural safeguards adopted (e.g., hearings to be conducted in accordance with the Administrative Procedure Act). In addition, the adjudicative branch would be empowered to impose such sanctions as it deems appropriate in any case where scientific misconduct has been established by the evidence.

3. The Department is also considering, as a variation on the procedures outlined in paragraph 2, above, vesting in the Officer of Inspector General complete and exclusive authority to investigate allegations of scientific misconduct, and to monitor those investigations or inquiries being conducted by awardee investigations or inquiries being conducted by awardee institutions.

4. If the Department were to undertake a rigorous and active program to detect and deter scientific misconduct, which policies and procedures should the Department consider adopting? Such policies and procedures might include the following:

(a) Conducting either routine or random on-site audits of the research data collected under a PHS funded research project.

These data audits could be conducted either (1) by Department staff or (2) by independent entities under contract with the Department (e.g., peer review type organizations).

(b) Requiring institutions or principal investigators to archive raw data for a specific period of time and to make such data, or limited subset thereof, available to other researchers who may request the data. The obligation to make data available would only apply if (1) a reasonable length of time has elapsed following the end of the funded project and (2) the data do not contain proprietary information.

(c) Imposing sanctions on those institutions that (1) fail to conduct an adequate investigation under the applcieble regulations of alleged scientific misconduct or (2) fail to take reasonable precautions to detect and

deter scientific misconduct. Possible sanctions might include, by way of example, payment of the costs incurred by the Department to investigate and adjudicate the alleged scientific misconduct.

(d) Requiring awardee institutions to repay to the Department the amount of any award which funded in whole or in part any researcher found to have engaged in scientific misconduct in carrying out the funded research.

(e) Establishing an advisory commission under the Federal Advisory Committee Act to review and evaluate, on an ongoing basis, the efficacy of the policies and procedures of the Department and institutions in detecting, deterring, investigating and resolving allegations of misconduct and to make recommenations to the Secretary on improving those policies and procedures.

(f) Requiring or encouraging institutions receiving PHS research funds to educate their faculties and science students on the ethics of science.

D. Joint Responsibilities of the Department and Awardee Institutions

1. What measures could institutions, funding agencies or others take to encourage (or remove disincentives for) individuals to come forth with information on scientific misconduct? Recent publicity surrounding instances of alleged misconduct have pointed to alleged instances of accusers becoming the accused. What measures might be taken to protect the anonymity and the professional interests of accusers? Is the guarantee of anonymity sufficient protection for an accuser?

2. How can policies and procedures to prevent scientific misconduct best avoid the risks of inappropriate pressures for scientific conformity?

3. What research methods can be used to determine if the amount of wrongdoing in science is greater today than in earlier times? What are the best methods available for determining the extent of misconduct in the PHS-funded science community?

E. Government-wide Policy on Scientific Misconduct

Finally, is a government-wide policy on scientific misconduct desirable, or should rules in this area be promulgated based upon unique agency needs and requirements?

The National Science Foundation (NSF) has already promulgated rules on Misconduct in Science (45 CFR Part 689). We could base, within our statutory limitations, any rules we issue on the the NSF model, use another agency's rules or requirements as a model, or develop our own requirements tailored to meet the statutory amendments under section 493 of the PHS act. As another alternative, we could engage in discussions with NSF and other agencies to determine whether a common rulemaking is desirable, or, following the recent example of regulations designed to protect human research subjects (see the **Federal Register** of June 3, 1986) request that the President's Science Advisor take the lead in developing an interagency consensus on a common rule that would apply to all agencies that conduct or support research.

Dated: May 27, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: August 15, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-21257 Filed 9-16-88; 8:45 am]

BILLING CODE 4160-17-M

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42 CFR Part 50

Responsibilities of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science

AGENCY: Public Health Service, DHHS.

ACTION: Proposed rule.

SUMMARY: To implement section 493 of the Public Health Service (PHS) Act, it is proposed to add a new Subpart A to 42 CFR Part 50. The new Subpart A sets forth the responsibilities of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science involving research, research training, or related activities for which PHS funds have been provided or requested.

DATE: To be assured of consideration, comments must be received or postmarked on or before November 18, 1988.

ADDRESS: Comments should be sent to: Dr. Katherine L. Bick, Office of Extramural Research, Office of the Director, National Institutes of Health, Shannon Building—Room 115, 9000 Rockville, Pike, Bethesda, Maryland 20892.

FOR FURTHER INFORMATION CONTACT: Dr. Katherine L. Bick, (301) 496-5366.

SUPPLEMENTARY INFORMATION: Section 493(a) of the PHS Act provides that the Secretary, by regulation, require that entities receiving Federal funds for the conduct of biomedical and behaviorial research submit assurances that:

(1) These entities have established (based upon regulations prescribed by the Secretary) an administrative process to review reports of scientific misconduct in biomedical or behavioral research, and (2) they will report to the Secretary any investigation of alleged scientific misconduct that appears substantial. The Secretary also has authority to respond to information received respecting scientific misconduct involving projects under the PHS Act and to take appropriate action in response to such misconduct.

Before 1980, instances of reported misconduct in PHS-funded research programs were infrequent. In recent years, however, there has been a small number of highly publicized instances of scientific misconduct. These cases have served to renew the concern of the public, the government and the scientific community in the issue of misconduct in science. Such concerns make it appropriate to consider further policies and procedures for dealing with cases of alleged or apparent misconduct. It would appear, however, that this renewed concern has less to do with any documented increase in the frequency of misconduct than it does with a heightened awareness of the potential problem and its ramifications. Indeed, it is unclear whether the actual number of cases of scientific misconduct is increasing. In fact, since 1980, the frequency of allegations of misconduct reported to the National Institutes of Health (NIH) has remained relatively constant. It should be emphasized, though, that one of the most enigmatic features of the problem is that there is little reliable evidence concerning the extent of scientific misconduct. However, from what little we do know, it would appear that reported instances of scientific misconduct represent only a small fraction of the total number of research and research training awards funded by PHS. Nevertheless, even a small number of instances of scientific misconduct is considered a threat to the continued public confidence in the integrity of the scientific process and in the stewardship of Federal funds. The traditional safeguards such as peer review and guidance from professional organizations must be supplemented by explicit institutional commitment to high ethical standards in research.

PHS has adopted policies to provide guidance to agency staff responsible for dealing with allegations and investigations, based on experience with a number of cases. These policies were published, for the information of the public, as interim procedures in the July

18, 1986, issue of the NIH GUIDE FOR GRANTS AND CONTRACTS.

As noted above, the provisions of section 493 contemplate that there will be a close working relationship between the awardee institutions and the Department in resolving allegations of scientific minsconduct. Significantly, section 493 envisions that the primary responsibility for detecting, investigating, reporting and resolving allegations of scientific misconduct rests with the awardee institutions. The Department, however, retains the ultimate responsibility and authority for monitoring such investigations, and becoming involved in those investigations as soon as there is reasonable evidence supporting an allegation of scientific misconduct.

As a first step in carrying out his formal responsibilities under section 493, the Secretary is publishing this notice of proposed rulemaking. These proposed rules, which are general in nature, outline the responsibilities of PHS applicant and awardee institutions and require them to adopt policies and procedures for investigating and reporting allegations of scientific minsconduct involving research, research training, or related activities for which PHS funds have been awarded or requested. As a second step in carrying out his responsibilities under section 493, the Secretary is publishing elsewhere in this issue of the **Federal Register** an advance notice of proposed rulemaking that is intended to solicit comments on possbile approaches for developing regulations concerning the responsibilities of the Department; the joint responsibilities of the Department and applicant and awardee institutions; and government-wide policies on scientific misconduct. Specifically, this proposed rule outlines a definition of scientific misconduct to provide a basis for setting forth the specific requirements of the applicant and awardee institutions for investigating and reporting scienfific misconduct. In contrast, the advance notice of proposed rulemaking acknowledges that there are broader questions relating to the components of the definition which must be addressed. There is also some overlap between the two documents regarding issues relating to the responsibilities of the applicant and awardee institutions. The advance notice recognizes there may be issues that in the context of a comprehensive regulatory scheme would elicit more public comment than if those same issues were raised in the context of a narrow rule, such as this proposed regulation. Some duplication of discussion in this proposed rule and the advance notice of proposed rulemaking is necessary to secure institutional commitments to comply with the basic terms of section 493 prior to the award of PHS funds.

Section 50.104 of the proposed regulation specifies the appropriate time and method for notifying the funding component of instances of possible misconduct. The recipient must report the initiation of an investigation in writing to the director of the program in the funding component on or before the date the investigation is initiated. However, the institution is responsible for notifying the funding component prior to the institution's decision to initiate an investigation if (1) an immediate health hazard is involved; (2) there is an immediate need to protect (i) Federal funds or equipment, (ii) the human or animal subjects of the research, (iii) the interest(s) of the persons making the allegations; or (3) if the institution knows that the alleged incident is going to be reported publicly. In addition, if there is a possibility of a criminal violation, the Department's Office of Inspector General must be notified immediately. Notification of the funding component or OIG prior to the institution's decision to initiate an investigation is necessary in these instances to protect the interests of all concerned and will not unduly burden the institution or compromise any subsequent investigation.

PHS is particularly interested in receiving suggestions as to the appropriate time frames for conducting an inquiry or investigation and reporting to the awarding component. The deadlines suggested in the prposed rule reflect what appears reasonable in the light of PHS experience with such investigations and inquiries during the past several years. The goal is to provide adequate time for a thorough and fair inquiry or investigation but not to allow unnecessary delays.

This regulation applies only to institutions applying for financial assistance from the PHS. A separate proposed rule amending 48 CFR Chapter 3 will be published in the **Federal Register** to cover entities applying for contracts.

"Misconduct" or "misconduct in science" as used herein is defined as (1) fabrication, falsification, plagiarism, deception or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting or reporting research; or (2) material failure to comply with federal requirements that uniquely related to the conduct of research.

The first element of the definition is not intended to stifle creativity nor to impede the development of new empirical techniques. Nor is it intended to bring within the definition of scientific misconduct those aspects of research that may form the basis for legitimate scientific disagreement. In short, the definition is not intended, nor should it read, as an attempt to institutionalize scientific conformity. Rather, it is aimed at those practices that are antithetical to science itself.

The second element of the definition of scientific misconduct is not intended to incorporate all federal requirements, but only those that uniquely relate to the conduct of research. Consequently, the definition should not be read as encompassing improper conduct which might occur in any federally assisted program. For example, since fiscal impropriety or financial fraud can occur in any federally assisted program, it is not uniquely associated with the conduct of research, and therefore, would not fall within the proposed definition of "scientific misconduct." It should be emphasized that the Public Health Service is particularly interested in receiving comments concerning the proposed definition of "scientific misconduct." In that regard, as noted above, we have published elsewhere in this issue of the **Federal Register** an advance notice of proposed rulemaking which seeks public comment on a full array of issues associated with scientific misconduct, including the appropriate definition for the term "scientific misconduct."

When this proposed amendment of 42 CFR Part 50 is published as a final regulation it will be necessary to make minor, technical amendments to existing regulations on grants and fellowships. These technical amendments will consist of adding a reference to 42 CFR Part 50, Subpart A in: 42 CFR Parts 52—Grants for Research Projects; 52a—National Heart, Lung, and Blood Institute Grants For National Research and Demonstration Centers; 52b—National Cancer Institute Construction Grants; 52c—Minority Biomedical Support Program; 52d—National Cancer Institute Clinical Cancer Education Program; 52e—National Heart, Lung, and Blood Institute Grants For Prevention and Control Projects; and 66—National Research Service Awards. 42 CFR Part 61, Fellowships, will be amended to add a new § 61.23, "Other HHS Regulations That Apply" and this new section would refer to 42 CFR Part 50, Part A.

Institutions are urged to start developing their policies and procedures for dealing with and reporting possible misconduct in science within their institution. After the regulations are published in final form, PHS will not accept grant applications without the assurances required by this regulation. Based upon comments on this proposed rule, the ANPRM, and other input from the scientific community, in the final rulemaking the Secretary may wish to include a detailed administrative process for reviewing reports of scientific misconduct. The goal of these procedures would be to achieve consistency in resolving allegations of misconduct by awardee institutions. We particularly invite public comment in this area.

Environmental Impact

The agency has determined that these proposed actions do not individually or collectively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

The PHS has examined the economic consequences of this proposed regulation in accordance with the criteria in Executive Order 12291 and determined that the proposed rule would not be classified as a "major rule" based on the three criteria identified under the Executive Order. Therefore, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

Sections 50.103 and 50.104 of this proposed rule contain information collection requirements. As required by section 304(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of those information and collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, ATTN: Desk Officer for HHS.

Catalog of Federal Domestic Assistance

The OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally, PHS lists in its announcements the number and title of the affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every PHS program, it has been determined to be not cost effective or in the public interest to attempt to list these programs individually. Such a list would likely require several additional pages. In lieu of the individual listing, PHS invites readers to direct questions to the information address above where individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

List of Subects in 42 CFR Part 50

Administration practice and procedure, American Samoa, Drugs, Family Planning, Grant programs in health, Guam, Northern Mariana Island, Pacific Islands Territory, Virgin Islands.

Accordingly, it is proposed to add Part 50, Subpart A, consisting of §§ 50.101 through 50.104, to read as set forth below.

Dated: February 5, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: April 14, 1988.

Otis R. Bowen,

Secretary.

PART 50—POLICIES OF GENERAL APPLICABILITY

Subpart A—Responsibility of PHS Awardee and Applicant Institutions for Dealing with and Reporting Possible Misconduct in Science

Sec.

Subpart A—Responsibility of PHS Awardee and Applicant Institutions for Dealing with and Reporting Possible Misconduct in Science

Authority: Sec. 493, Public Health Service Act, as amended, 99 Stat. 874–875 (42 U.S.C. 289b).

§ 50.101 Applicability.

This subpart establishes uniform requirements for each entity which applies for a grant or cooperative agreement under the Public Health Service (PHS) Act to investigate and report instances of alleged or apparent misconduct involving research, research training, and related research activities. This Subpart does not change established procedures for resolving fiscal improprieties or criminal matters.

§ 50.102 Definitions.

As used in this Subpart:

"Act" means the Public Health Service Act, as amended, 42 U.S.C. 201, *et seq.*

"Component" means an organizational unit within the Public Health Service of the United States Department of Health and Human Services that has the delegated authority to award financial assistance to support scientific activities, e.g., Bureaus, Institutes, Divisions, or Offices.

"Inquiry" means information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

"Institution" means the public or private entity or organization (including fedeal, state, and other agencies) that is applying for financial assistance from the PHS, e.g., grant or cooperative agreements, including continuation awards whether competing or noncompeting. The organization assumes legal and financial accountability for the awarded funds and for the performance of the supported activities.

"Investigation" means the formal examination and evaluation of all relevant facts to determine if misconduct has occurred.

"Misconduct" or "Misconduct in Science" means (1) fabrication, falsification, plagiarism, deception or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting or reporting research; or (2) material failure to comply with federal requirements that uniquely relate to the conduct of research.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved may be delegated.

§ 50.103 Assurance—Responsibilities of PHS Awardee and Applicant Institutions.

(a) *Assurances.* Each application for assistance under the Act for any project or program which involves the conduct of biomedical or behavioral research must contain an assurance satisfactory to the Secretary that the applicant:

(1) Has estabisihed an administrative process, which meets the requirements of this Subpart, to review reports of misconduct in science in connection with biomedical and behavioral research conducted at the applicant institution or sponsored by the applicant; and

(2) Will apply with its own administrative process and the requirements of this Subpart.

(b) *General Criteria.* In general, an applicant institution will be considered to be in compliance with its assurance if it:

(1) Establishes and keeps current the policies and procedures required by this Subpart.

(2) Informs its scientific and administrative staff of the policies and procedures and the importance of compliance with those policies and procedures.

(3) Take immediate and appropriate action as soon as misconduct on the part of employees or persons within the organization's control is suspected or alleged.

(4) Informs, in accordance with this Subpart, and cooperates with the funding component with regard to each investigation of possible misconduct.

(c) *Investigations and Reporting—Specific Requirements.* Each applicant's policies and procedures must provide for:

(1) Inquiring immediately into an allegation or other evidence of possible misconduct. An inquiry must be completed within 60 calendar days of its initiation unless circumstances clearly warrant a longer period; the record of the inquiry should include documentation of the reasons for exceeding the 60-day period.

(2) Protecting, to the maximum extent possible, the privacy of those who in good faith report apparent misconduct.

(3) Affording the affected individual(s) confidential treatment to the maximum extent possible, a prompt and thorough investigation, and an opportunity to comment on allegations and/or findings of the inquiry and the investigation.

(4) Notifying the appropriate funding component in accordance with § 50.104(a) when, on the basis of the initial inquiry, the institution determines that an investigation is warranted, or prior to the decision to initiate an investigation if the conditions listed in § 50.104(b) exist.

(5) Notifying the HHS Office of Inspector General directly within 24 hours if an inquiry indicates possible criminal violations.

(6) Maintaining sufficiently detailed documentation of inquiries to permit a later assessment of the reasons for determining that an investigation was not warranted, if necessary. Such records should be maintained in a secure manner.

(7) Undertaking an investigation within 30 days if findings from the inquiry provide sufficient basis for doing so.

(8) Securing necessary and appropriate expertise to carry out a thorough and authoritative evaluation of the relevant evidence in any inquiry or investigation.

(9) Taking precautions against real or apparent conflicts of interest on the part of those involved in the inquiry or investigation.

(10) Preparing and maintaining the documentation to substantiate the investigation's findings. This documentation is to be made available to the funding component in cases where the funding component has determined that it will either proceed with its own investigation or will act on the institution's findings.

(11) Taking interim administrative actions, as appropriate, to protect Federal funds and insure that the purposes of the Federal financial assistance are carried out.

(12) Keeping the funding agency apprised of any developments during the course of the investigation which disclose facts that may affect current or potential PHS funding for the individual(s) under investigation or that the funding agency needs to know to ensure appropriate use of Federal funds and otherwise protect the public interest.

(13) Undertaking diligent efforts, as appropriate, to restore the reputations of persons alleged to have engaged in misconduct when allegations are not confirmed.

(14) Imposing appropriate sanctions (the funding component may impose sanctions of its own) on individuals when the allegation of misconduct has been substantiated.

(15) Notifying the funding agency of the final outcome of the investigation.

§ 50.104 Procedures for reporting to the funding component.

(a) An institution's decision to initiate an investigation must be reported in writing to the Director of the funding component on or before the date the investigation begins. An investigation should ordinarily be completed within 120 days of its initiation. This includes conducting the investigation, preparing the report of findings, and obtaining comments from the subject(s) of the investigation. If the institution determines that it will not be able to complete the investigation in 120 days, it must submit to the funding component a request for an extension, including an interim report on the progress to date and an estimate for the date of completion of the report and other necessary steps. Any request for extension must balance the need for a thorough and rigorous examination of the facts and the interests of the subject(s) of the investigation and the funding agency in a timely resolution of the matter. The institution must file periodic progress reports as requested by the agency. The final report must describe the policies and procedures under which the investigation was conducted and must include the actual text or an accurate summary of the views of any individual(s) found to have engaged in misconduct.

(b) The institution is responsible for notifying the funding component as soon as it ascertains from the inquiry or otherwise that any of the following conditions exist:

(1) There is an immediate health hazard involved;

(2) There is an immediate need to protect Federal funds or equipment;

(3) There is an immediate need to protect the human or animal subjects of the research;

(4) There is an immediate need to protect the interests of the person(s) making the allegations or of the individual(s) who is the subject of the allegations as well as his/her co-investigators and associates, if any;

(5) It is probable that the alleged incident is going to be reported publicly.

(c) If the inquiry indicates possible criminal violation, the OIG must be notified within 24 hours.

(d) Institutions must foster a research environment that discourages misconduct in all research and deal forthrightly with possible misconduct associated with research for which PHS funds have been provided or requested. An institution's failure to comply with its assurance and the requirements of this subpart may result in enforcement action against the institution, including loss of funding.

[FR Doc. 88-21258, Filed 9-16-88; 8:45 am]
BILING CODE 4140-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6935]

Proposed Flood Elevation Determinations; Arizona et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-

year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Arizona	Cochise County (unincorporated areas).	San Pedro River in vicinity of Palominas.	Approximately 4,160 feet above confluence with Green Brush Wash Draw.	**None	*4,201
			At State Highway 92	**None	*4,200
		Miracle Valley	Approximately 16,800 feet above confluence with Green Brush Wash Draw.	**None	*4,232
		School House Wash	Approximately 680 feet above confluence with San Pedro River.	**None	*4,219
			At Palominas Road	**None	*4,245
			Approximately 8,080 feet above confluence with San Pedro River.	**None	*4,284
			Approximately 15,560 feet above confluence with San Pedro River.	**None	*4,365
		Stream J	At confluence with Stream K	*4,464	*4,462
			Approximately 3,520 feet above confluence with Stream K.	*4,521	*4,520
			At State Highway 92	*4,599	*4,596
			At confluence with Stream J Tributary	*4,687	*4,688
			At Fort Huachuca Military reservation boundary Limit of Detailed Study.	*4,721	*4,741
		Stream J Tributary	At confluence with Stream J	*4,687	*4,688
			At Fort Huachuca Military Reservation	*4,742	*4,718
		North Fork of Unnamed Wash	At confluence with Unnamed Wash	**None	*4,498
			Approximately 1,050 feet above confluence Unnamed Wash.	**None	*4,510
			Approximately 2,180 feet above confluence with Unnamed Wash.	**None	*4,526

**Approximate Zone A.

Maps are available for review at the Cochise County Department of Public Works, Flood Control Division, Ledge Street, Bisbee, Arizona. Send comments to the Honorable V.L. Thompson, Chairman, Cochise County Board of Supervisors, P.O. Box 225, Bisbee, Arizona 85605.

California	City of Anaheim Orange County.	East Richfield Channel	Approximately 150 feet west of the intersection of Burbach Street and Larkspur Circle.	*None	*259
		East Richfield Channel	Approximately 600 feet north of the intersection of Meadowhill Avenue and Azure Street.	*None	*259

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for inspection at the City of Anaheim Planning Department, 200 South Anaheim Boulevard, Anaheim, California 92805. Send comments to Mr. William D. Talley, City Manager, City of Anaheim, 200 South Anaheim Boulevard, P.O. Box 3222, Anaheim, California 92803.					
California	City of Costa Mesa, Orange County.	Santa Ana River	Approximately 1,200 feet west of the intersection of Starfish Court and Walkabout Circle.	*9	*10
Maps are available for inspection at the Planning Department, 77 Fair Drive, Second Floor, Costa Mesa, California 92626. Send comments to The Honorable Donn Hall, Mayor, City of Costa Mesa, P.O. Box 1200, Costa Mesa, California 92628-1200.					
California	City of Fullerton, Orange County.	Brea Canyon Channel	Approximately 250 feet south of intersection of Hermosa Drive and Greenmeadow Drive.	None	*298
			Approximately 200 feet northeast of intersection of Puente Street and Rosarita Drive.	None	*298
			Approximately 300 feet northeast of intersection of Puente Street and Rosarita Drive.	None	*300
Maps are available for inspection at the Engineering Department, 303 West Commonwealth Avenue, Fullerton, California 92632. Send comments to The Honorable William Winters, City Manager, City of Fullerton, 303 West Commonwealth Avenue, Fullerton, California 92632.					
California	City of Huntington Beach Orange County.	Pacific Ocean	Approximately 1,300 feet southwest of the intersection of Weatherly Lane and Warner Avenue.	*6	*12
			Approximately 4,500 feet south of the intersection of Davenport Drive and Edgewater Lane.	None	*10
			Approximately 1,500 feet south of the intersection of Cherryhill Drive and Palm Avenue.	None	*15
			Approximately 300 feet south of the intersection of Pacific Coast Highway and Lake Street.	None	*12
			Approximately 2,000 feet south of the intersection of Surfrider Lane and Christine Drive.	None	*11
Maps are available for inspection at the Planning Department, 2000 Main Street, Third Floor, Huntington Beach, California 92648. Send comments to The Honorable Charles Thompson, City Manager, City of Huntington Beach, 200 Main Street, Huntington Beach, California 92648.					
California	City of Laguna Beach, Orange County.	Pacific Ocean	The Laguna Beach corporate limit in the vicinity of Emerald Point Drive extended to the shoreline.	*12	*11
Maps are available for inspection at the Community Development Office, City Hall, 505 Forest Avenue, Laguna Beach, California 92651. Send comments to The Honorable Neil Fitzpatrick, Major, City of Laguna Beach, City Hall, 505 Forest Avenue, Laguna Beach, California 92651.					
California	City of Newport Beach, Orange County.	Pacific Ocean	Orange Street extended to the shoreline	None	*10
			19th Street extended to the shoreline	None	*11
			Larkspur Avenue extended to the shoreline	None	*12
			Poppy Avenue extended to the shoreline	None	*20
		Lower Newport Bay	Approximately 900 feet south to the intersection of Riverside Avenue and Pacific Coast Highway.	None	*6
			Approximately 2,000 feet south of the intersection of Pacific Coast Highway and Bayshore Drive.	None	*6
			Approximately 1,000 feet south of the intersection of Park Avenue and Abalone Avenue.	None	*6
		Upper Newport Bay	Approximately 1,200 feet east of the intersection of Galaxy Drive and Rigel Circle.	None	*6
			Approximately 2,000 feet east of the intersection of 23rd Street and Irvine Avenue.	None	*6
			Approximately 1,400 feet south of the intersection Bayview Avenue and Mesa Drive.	None	*6
Maps are available for inspection at the Building Department, 3300 Newport Boulevard, Newport Beach, California 92663. Send comments to The Honorable John C. Cox, Jr., Mayor, City of Newport Beach, City Hall, 3300 Newport Boulevard, Newport Beach, California 92663.					
California	Unincorporated areas, Orange County.	Pacific Ocean	22nd Street extended approximately 400 feet towards the shore.	None	*12
			15th Street extended approximately 350 feet towards the shore.	None	*14
			Approximately 300 feet south of the intersection of Brighton Road and Cameo Shores Road.	None	*16
			Approximately 700 feet south of the intersection of Emerald Point Drive and Bay Crest Drive.	None	*11
			Approximately 600 feet west of the intersection of Island View Drive and Aliso Drive.	None	*25
			Approximately 800 feet west of the intersection of Sea Bluff Lane and Pacific Coast Highway.	None	*11

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 400 feet west of the intersection of Vista Del Sol and South La Senda Drive.	None	*13
			Approximately 800 feet west of the intersection of Cabrillo Isle and Seaward Isle.	None	*13
			Approximately 500 feet south of the intersection of Cove Road and Street of the Green Lantern.	None	*20
			Approximately 800 feet south of the intersection of Dana Point Harbor Drive and Island Way.	None	*6
			Approximately 750 feet south of the westernmost intersection of Pacific Coast Highway and Camino Las Ramblas.	None	*9
			Approximately 700 feet south of the intersection of Camino Capistrano and Camino De Estrella.	None	*10
		San Juan Creek	Approximately 2,200 feet east of the intersection of Dana Point Harbor Drive and Puerto Place.	*9	#1
			Approximately 400 feet west of the intersection of Doheny Park Road and Domingo Avenue.	None	#1
			Approximately 600 feet north of the intersection of Atchison, Topeka and Santa Fe Railway and Victoria Boulevard.	*25	#1
			Approximately 1,400 feet east of the intersection of Seaside Drive and Stonehill Drive.	*32	#1
			Approximately 300 feet east of the intersection of the Coral Reach Street and Admiral Way.	*35	#3
			Approximately 200 feet south of the intersection of Bougainvillaea and Mimbrera.	*36	#1
		Santa Ana River	Approximately 100 feet west of the intersection of Avalon Avenue and Fairview Street.	None	*104
			Approximately 3,000 feet west of the intersection of Whittier Avenue and 18th Street.	None	*10
			Approximately 400 feet south of the intersection of Summer View Circle and Edinger Avenue.	None	#3
			Approximately 700 feet feet east of the intersection of Hutchings Street and Galena Avenue.	None	#3
			Approximately 1,000 feet south of the intersection of Katella Avenue and Douglass Street.	*None	#1
			100 feet northeast of westernmost intersection of Sugar Avenue and Van Buren Street.	None	#3
			County area in the vicinity of Peters Avenue, Flight Avenue, and Jefferson Street.	None	#3
			Approximately 300 feet west of the intersection of Los Reyes Street and Lehnhardt Avenue.	*None	#3
		East Garden Grove Wintersburg Channel.	Approximately 3,500 feet south of the intersection of Beck Circle and Gainsford Lane.	None	#1
			2,100 feet south of the intersection of Los Patos Avenue and Lynn Street.	None	*1
		Upper Newport	Approximately 2,500 feet south of the intersection of Zenith Avenue and Spruce Street.	None	*6
		Houston Storm	Approximately 400 feet south of Page Avenue and 400 feet west of Brookhurst Street.	None	#2
			Approximately 550 feet south of Page Avenue and 1,250 feet west of Brookhurst Street.	None	#2
		Carbon Canyon	Upsteam Face of Carbon Canyon Dam	None	*470
			Approximately 700 feet south of Telegraph Canyon Road Crossing.	None	*471

Maps are available for inspection at the County of Orange Flood Program Office, 400 W. Civic Center Drive, Room 322, Santa Ana, California 92702-4048.
Send comments to the Honorable Roger R. Stanton, Chairman, Orange County Board of Supervisors, 10 Civic Center Plaza, Santa Ana, California 92701.

California	City of Perris, Riverside County.	San Jacinto River	Approximately 1,600 feet upstream of Ethanac Road.	None	*1,418
			At the confluence of Mountain Avenue Wash	None	*1,419
			Approximately 2,000 feet upsteam of Goetz Road.	None	*1,419
			At Case Road and the Atchison, Topeka and Santa Fe Railway.	None	*1,420
			Approximately 2,400 feet upsteam of the confluence with Perris Valley Storm Drain.	None	*1,420

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for inspection at Civic Center, 101 North D Street, Perris, California 92370. Send comments to The Honorable Reuben B. Jenkins, Mayor, City of Perris, 101 North D Street, Perris, California 92370.					
California	City of San Clemente, Orange County.	Pacific Ocean	Approximately 500 feet west of the intersection of Avenue Del Poiente and Buena Vista.	None	*11
			Approximately 900 feet west of the intersection of Calle Serena and Calle de Los Alamos.	None	*10
			Avenue de Las Palmeras extended to the shoreline.	None	*11
Maps are available for inspection at the Engineering Department, 101 West Portal, San Clemente, California 92672. Send comments to The Honorable James C. Hendrickson, City Manager, City of San Clemente, 100 Avenida Presidio, San Clemente, California 92672.					
California	City of San Juan Capistrano, Orange County.	San Juan Creek (shallow flooding).	Approximately 600 feet west of the intersection of Villa San Juan and Camino Capsitrano.	None	#1
Maps are available for inspection at the Public Works Department, 32400 Paseo Adelanto, San Juan Capistrano, California 92675. Send comments to Mr. Stephen B. Julian, City Manager, City of San Juan Capistrano, City Hall, 32400 Paseo Adelanto, San Juan Capistrano, California 92675.					
California	City of Seal Beach, Orange County.	Pacific Ocean	Approximately 400 feet south of the southernmost point of Park Circle Drive.	None	*5
			Approximately 700 feet west of the intersection of Sunset Way East and Park Circle Drive.	None	*5
			Approximately 2,200 feet west of the intersection of Sunset Way East and Park Circle Drive.	None	*5
Maps are available for inspection at City Hall, 211 8th Street, Seal Beach, California 90740. Send comments to Mr. Robert Nelson, City Manager, City of Seal Beach, 211 8th Street, Seal Beach, California 90740.					
Georgia	City of Clayton, Rabun County.	Stekoa Creek	1100 feet downstream of Camper Corrol Bridge.	*1,862	*1,862
			Confluence of Scott Creek	*1,868	*1,872
			Confluence of Needy Creek	*1,878	*1,878
		Scott Creek	At mouth	*1,868	*1,872
			Just upsteam of South Main Street	*1,873	*1,873
		Saddle Gap Branch	At mouth	*1,872	*1,875
			Just downstream of Duggan Hill Road	*1,875	*1,875
Maps are available for inspection at the City Clerk's Office, Attention Mary Ann Hollifield, Clayton, Georgia. Send comments to The Honorable Thomas H. Ramey, Mayor, City of Clayton, City Hall, P.O. Box 702, Clayton, Georgia 30525.					
Tennessee	City of Dayton, Rhea County.	Broyles Branch	Just downstream of Blythes Ferry Road	*691	*691
			About 250 feet upsteam of U.S. Route 27	*720	*721
		Unnamed Tributary to Broyles Branch.	Mouth at Broyles Branch	*720	*721
			About 650 feet upsteam of mouth	*722	*722
Maps are available for inspection at the City Hall, Building Inspector's Office, Dayton, Tennessee. Send comments to The Honorable William C. Pegram, Mayor, City of Dayton, City Hall, P.O. Box 226, Dayton, Tennessee 37321.					
Texas	Wylie, City, Collin, Dallas, and Rockwall Counties.	Rush Creek	Approximately 550 feet upstream of East Stone Road.	*477	*476
			Approximately 80 feet downsteam of East Brown Street.	*494	*492
Maps are available for inspection at the City Hall, 2000 N. Highway 78, Wylie, Texas. Send comments to The Honorable Chuck Trimble, Mayor of the City of Wylie, Collin, Dallas, and Rockwall Counties, 108 Jackson, Wylie, Texas 75098.					

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: September 9, 1988.

[FR Doc. 88-21256 Filed 9-16-88; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

[PR Docket No. 86-174; FCC No. 88-257]

47 CFR Parts 2 and 94

Order Terminating Proceeding

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; termination of proceeding.

SUMMARY: The Commission has adopted an Order terminating the proceeding in which it had proposed to allow secondary use of the 1700–1710 MHz frequency band for radio local area networks (RLANs) and other similar wireless interconnection techniques between information processing machinery such as desktop computer

terminals and slow or high speed data, digital, voice, facsimile and video devices. The Commission that the proceeding should be terminated due to unresolvable concerns about interference protection to the primary users. The Order was adopted on July 26, 1988 and released on August 12, 1988.

EFFECTIVE DATE: September 19, 1988.

FOR FURTHER INFORMATION CONTACT: Rudolfo Baca, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2444.

SUPPLEMENTARY INFORMATION:

1. On June 14, 1985, Motorola, Inc. (Motorola) petitioned this Commission to amend Parts 2 and 94 of its Rules to permit radio local area networks (RLANs) to share, on a secondary basis, the 1700–1710 MHz frequency band with the Meteorological Satellite Service (MetSat). Motorola's proposal for RLANs would provide wireless connection of personal computers and desktop terminals to central processors thereby allowing the terminals to be relocated without the expense and disruption of rewiring.

2. Upon review of Motorola's petition, we adopted a *Notice of Proposed Rulemaking* on May 19, 1986 (published May 30, 1986, 51 FR 19570), proposing to permit secondary use of the 1700–1710 MHz band for RLANs and for other systems that use similar interconnection techniques. The *Notice* expressed our overriding concern that the potential for interference be minimized and, therefore, solicited comments on several aspects of the proposal.

3. The Commission has maintained contact with the National Telecommunications and Information Administration (NTIA) throughout this proceeding because the 1700–1710 MHz band is allocated on a primary basis for meteorological satellite and government fixed station use.[1] Although NTIA did not initially object to use of the 1700–1710 MHz band for RLANs, in subsequent comments it provided new information regarding projected use of the band by the primary users.[2] Specifically, the number of ground terminals is expected to be several times larger than originally believed. Extensive use of the band for MetSat purposes makes the possibility of sharing much more difficult. Discussions between Motorola and NTIA have resolved some, but not all, of the concerns identified by the operating Federal agencies represented by NTIA.

[1] The 1700–1710 MHz band is available for non-government fixed use on a secondary basis. *See Notice* at para. 6.

[2] In developing its comments, NTIA consulted the Interdepartment Radio Advisory Committee (IRAC), which assists NTIA in authorizing and regulating the Federal government's use of radio frequency spectrum.

4. Upon review of the record in this proceeding, we conclude that there are too many complex technical and regulatory issues associated with permitting RLANs in the 1700–1710 MHz band to go forward at this time. Because the number of primary users that could be negatively affected by interference from secondary RLANs appears to be much larger than originally envisioned, the expenditure of limited Commission resources for administration of the proposed secondary licensing plan in the event of interference militates against use of the band primarily allocated to MetSat. We remain convinced, however, that development of the RLANs concept in some form is in the public interest. We welcome, therefore, andy further proposals that might prove more promising for an RLAN service.

5. In view of the above, pursuant to sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, It Is Ordered that this proceeding Is Terminated without further action.

Federal Communication Commission.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88–21121 Filed 9–16–88; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 53, No. 181
Monday, September 19, 1988

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Advisory Committee on Procedures under the U.S.-Canada Free Trade Agreement; Public Meeting

Summary: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Advisory Committee on Administrative Procedures under the U.S.-Canada Free Trade Agreement of the Administrative Conference of the United States. The Committee has scheduled this meeting to discuss certain administrative and procedural issues arising from implementation of the proposed Free Trade Agreement.

Date: Friday, September 30, at 1:30 p.m.

Location: Wilmer, Culter & Pickering, Board Room, 9th Floor, 2445 M Street, NW., Washington, DC 20037.

Public Participation: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

For Further Information Contact: Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500 (202) 254–7020.

September 14, 1988.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 88–21279 Filed 9–16–88; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.

Title: Export Controls on the Republic of South Africa.

Form Number: Export Administration Regulations, § 385.4(a)(9)(iv)(B).

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 20 Respondents; 20 reporting hours. Average hours per response—one-half hour.

Needs and Uses: This information, provided by the exporting public, is needed to comply with E.O. 12532 which prohibits exports of computers, computer software, of goods or technology to service computers to apartheid enforcing entities of the South African Government. The policy and practice of apartheid runs counter to the policy of the United States.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: September 13, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–21308 Filed 9–16–88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Regulations on the Conservation of Living Antarctic Resources.

Form Number: None.

Type of Request: Revision of a collection with OMB approval.

Burden: 4 respondents; 15 reporting hours; average hours per response—.536 hours.

Needs and Uses: Operators of fishing vessels in Antarctic Convention Subarea 48.3 will be required to appoint an agent in the U.S., and to report their catch of *C. gunnari* to the National Marine Fisheries Service within 5 days of the end of the 10 day reporting periods.

Affected Public: Businesses or other for-profit, small businesses or organizations.

Frequency: Every ten days when fishing.

Respondent's Obligation: Mandatory.

OMB Desk Officer: John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: September 13, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc.88–21309 Filed 9–16–88; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of the Census

Census Advisory Committee (CAC) of the American Economic Association (AEA) et al.; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as

amended by Pub. L. 94–409), we are giving notice of a joint meeting followed by separate and jointly held (described below) meetings of the CAC of the AEA, CAC of the AMA, CAC of the ASA, and CAC on Population Statistics. The joint meeting will convene on October 13–14, 1988 at the Ramada Hotel, 6400 Oxon Hill Road, Oxon Hill, Maryland 20745.

The CAC of the AEA is composed of nine members appointed by the President of the AEA. It advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems regarding economic surveys and censuses; reviews major aspects of the Census Bureau's programs; and advises on the role of analysis within the Census Bureau.

The CAC of the AMA is composed of nine members appointed by the President of the AMA. It advises the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The CAC of the ASA is composed of 12 members appointed by the President of the ASA. It advises the Director, Bureau of the Census, on the Census Bureau's programs as a whole and on their various parts, considers priority issues in the planning of censuses and surveys, examines guiding principles, advises on questions of policy and procedures, and responds to Census Bureau requests for opinions regarding its operations.

The CAC on Population Statistics is composed of four members appointed by the Secretary of Commerce and five members appointed by the President of the Population Association of America from the membership of that Association. The CAC on Population Statistics advises the Director, Bureau of the Census, on current programs and on plans for the decennial census of population.

The agenda for the October 13 combined meeting that will begin at 8:45 a.m. and end at 10:45 a.m. is: 1) Introductory remarks by the Director, Bureau of the Census; 2) 1990 census update; 3) Strategic Plan II; 4) 1987 Economic and Agricultural Censuses update; 5) twenty-first century census planning; and 6) report of statistics committee of the American Economic Association.

The agendas for the four committees in their separate and jointly held meetings that will begin at 10:45 a.m. and adjourn at 5:15 p.m., on October 13 are as follows:

The CAC of the AEA: 1) Progress report on planning for the 1992 Economic Censuses (joint with CAC of the AMA), 2) Census Bureau response to recommendations and activities of special interest to the CAC of the AEA, 3) Current Population Survey (CPS) redesign update (joint with CAC of the ASA), 4) disclosure avoidance in economic data (joint with CAC of the ASA), and 5) Consumer Expenditure Survey (joint with CAC of the AMA).

The CAC of the AMA: 1) Progress report on planning for the 1992 Economic Censuses (joint with CAC of the AEA), 2) Census Bureau response to recommendations and activities of special interest to the CAC of the AMA, 3) AMA student competition project, 4) marketing plans for statistical compendia program (joint with CAC on Population Statistics), 5) CPS redesign update (joint with CAC on Population Statistics), and 6) Consumer Expenditure Survey (joint with CAC of the AEA).

The CAC of the ASA: 1) 1990 Research, Evaluation, and Experimental Program (joint with CAC on Population Statistics), 2) Census Bureau response to recommendations and activities of special interest to the CAC of ASA, 3) CPS redesign update (joint with CAC of the AEA), 4) disclosure avoidance in economic data (joint with CAC of the AEA), and 5) changes in foreign trade statistics.

The CAC on Population Statistics: 1) 1990 Research, Evaluation, and Experimental Program (joint with CAC of the ASA), 2) Census Bureau response to recommedations and activities of special interest to the CAC on Population Statistics, 3) marketing plans for statistical compendia program (joint with CAC of the AMA), 4) CPS redesign update (joint with CAC of the AMA), and 5) subnational estimates of population characteristics.

The agendas for the October 14 meetings that will begin at 8:45 a.m. and adjourn at 1 p.m. are:

The CAC of the AEA: 1) Reexamination of standard industrial classification—status report (joint with CAC of the AMA), 2) center for economic studies activities (joint with CAC of the ASA), 3) development and discussion of recommendations, and 4) closing session including a) continued committee and staff discussions, b) plans and suggested agenda for the next meeting, and c) comments by outside observers.

The CAC of the AMA: 1) Reexamination of standard industrial classification—status report (joint with CAC of the AEA), 2) marketing 1987 Economic Censuses products, 3) development and discussion of recommendations, and 4) closing session including a) continued committee and staff discussions, b) plans and suggested agenda for the next meeting, and c) comments by outside observers.

The CAC of the ASA: 1) Future of the decennial census in the twenty-first century: a summary of Census Bureau staff discussions (joint with CAC on Population Statistics), 2) center for economic studies activities (joint with CAC of the AEA, 3) development and discussion of recommendations, and 4) closing session including a) continued committee and staff discussions, b) plans and suggested agenda for the next meeting, and c) comments by outside observers.

The CAC on Population Statistics: 1) Future of the decennial census in the twenty-first century: a summary of Census Bureau staff discussions (joint with CAC of the ASA), 2) 1990 census data products, 3) development and discussion of recommendations, and 4) closing session including a) continued committee and staff discussions, b) plans and suggested agenda for the next meeting, and c) comments by outside observers.

All meetings are open to the public, and a brief period is set aside on October 14 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau Committee Liaison Officer at least 3 days before the meeting.

Persons wishing additional information regarding these meetings or who wish to submit written statements may contact the Committee Liaison Officer, Mrs. Phyllis Van Tassel, Room 2423, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, DC 20233). Telephone: (301) 763–5410.

Date: September 14, 1988.

John G. Keane,

Director.

[FR Doc. 88–21313 Filed 9–16–88; 8:45 am]

BILLING CODE 3510-07-M

COUNCIL ON ENVIRONMENTAL QUALITY

Findings and Recommendations by the Council on Environmental Quality Regarding the Establishment of the Cherry I and Core Military Operating Areas Over Cape Lookout National Seashore, North Carolina

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Notice for Information Only. Findings and recommendations of the

Council on the proposal by the United States Marine Corps to establish military operating areas over the Cape Lookout National Seashore.

SUMMARY: The Council on Environmental Quality's regulations for the implementation of the National Environmental Policy Act includes procedures for referring to CEQ federal interagency disagreements concerning major federal actions that might cause unsatisfactory environmental effects (40 CFR Part 1504).

By a letter dated December 4, 1987, the Department of the Interior referred to CEQ a matter concerning the United States Marine Corps' proposal to fly low level, high speed combat training missions over the Cape Lookout National Seashore. The referral letter stated that "the proposal will have a long-term impact" on the seashore and that the "noise intrusions of the magnitude, frequency, special and temporal extent possible under the proposal, are unacceptable."

The Department of the Navy, United States Marine Corps responded on December 31, 1987. The Marine Corps stated that "projected noise levels associated with this proposed action are wholly consistent with activities normally conducted in outdoor recreation areas" and indicated that several mitigation measures would be implemented to reduce noise impacts.

To better understand the reasoning of both the Department of the Interior, National Park Service and the Department of the Navy, United States Marine Corps regarding the proposal, the Council held a public meeting under the Government in the Sunshine Act with representatives of both agencies on January 25, 1988. At that meeting, the Council also heard presentations from other concerned entities such as the State of North Carolina, from congressional representatives, and from affected individuals. An additional time period was allowed for written comments to be submitted. Council Chairman Hill conducted a site visit on May 24–25, 1988.

By letter dated september 13, 1988, the Council made the following findings and recommendations:

After reviewing the issues represented by the NPS referral, the Council is unable to conclude that there are any reasonable alternatives available to the USMC for low altitude, high speed, water-to-land training flights. The Council believes that the NPS and the USMC should now work together to mitigate the expected adverse noise impacts on the Cape Lookout National Seashore. As part of this resolution, the Marine Corps should undertake environmental monitoring studies which will examine the actual impacts of the overflights on the park, if the MOAs are approved by the FAA.

The Council also believes that the cumulative effects of military airspace use over North Carolina has not been adequately considered and recognizes that the FAA will be required to prepare a cumulative impact analysis as part of its NEPA documentation for the Cherry I and Core MOA designation request.

Looking at the broader issues raised in this referral, the Council has found a need for coordination within DOD to adequately assess the cumulative impacts of the military agencies' airspace requests, and a need for consideration of the inherent conflicts between airspace use and land use below. Further, the Council has found that the FAA needs to play a larger role in the assessment of competing uses and of cumulative impacts of all of its airspace designation decisions.

DATE: September 14, 1988.

SUPPLEMENTARY INFORMATION: Set forth below is the text of the letters addressed to Donald Paul Hodel, Secretary of the Interior, and Keith E. Eastin, Principal Deputy Assistant Secretary of the Navy (Shipbuilding and Logistics):

Attached are the Findings and Recommendations of the Council on Environmental Quality regarding the United States Marine Corps' proposal to establish military operating areas over the Cape Lookout National Seashore. On behalf of the Council, I want to express appreciation for the assistance and cooperation provided by your agency in our consideration of the serious environmental issues presented.

Sincerely

A. Alan Hill,

Chairman.

Attachment: Findings and Recommendations by the Council on Environmental Quality Regarding the Establishment of the Cherry I and Core Military Operating Areas Over Cape Lookout National Seashore, North Carolina

Findings and Recommendations by the Council on Environmental Quality Regarding the Establishment of the Cherry I and Core Military Operating Areas Over Cape Lookout National Seashore, North Carolina

Introduction

On December 4, 1987, the National Park Service (NPS), through a letter signed by the Secretary of the Interior, referred to the Council on Environmental Quality (CEQ) a proposal by the Department of the Navy, United States Marine Corps (USMC) to use airspace over the Cape Lookout National Seashore, North Carolina, for training exercises. Under the USMC proposal, military aircraft would fly over Cape Lookout several times a day at low levels for combat training purposes. As the agency which manages the Cape Lookout National Seashore, the NPS opposes the Marine Corps' proposal primarily because of the expected noise impacts of the overflights on the use and enjoyment of the area. In support of its proposal, the USMC states that the overflights are necessary to insure combat readiness and that there are no reasonable alternatives. The NPS referred this disagreement to the Council in accordance with CEQ's regulations. *See* 40 CFR Part 1504.

Description of USMC Proposal

The Marine Corps proposes to establish two military operating areas (MOA) known as Cherry I and Core.[1] A MOA is "a designated volume of airspace having defined vertical and lateral limits and providing an area for performance of nonhazardous military training activities." Final Environmental Impact Statement for Establishment of Cherry I and Core Military Operating Areas, Marine Corps Air Station Cherry Point (FEIS), at I.4. Establishment of the Cherry I MOA, located inland over portions of Beaufort, Craven, Hyde, and Pamlico counties in North Carolina, is not in direct contention in this referral; establishment of the Core MOA, however, is opposed by the NPS and others including the State of North Carolina and the Albemarle Commission.

The Core MOA is approximately 4 miles wide by 30 miles long and is situated over the Cape Lookout National Seashore. Establishment of this MOA will allow military aircraft sea-to-land access to a highly sophisticated bombing target located in a restricted

[1] It is important to note at the outset that, by statute, the Federal Aviation Administration (FAA) is ultimately responsible for the establishment and control of airspace for uses such as military operations. 49 U.S.C. App. 1348(a), 1522; 49 U.S.C. 106(g)(1). FAA regulations require that military training exercises which are conducted at speeds above 250 knots and below 10,000 feet be flown in special use airspace; a military operating area is a form of special use airspace. FAA regulations also require a military agency submitting a special use airspace request to prepare the appropriate environmental documentation. Thus, the USMC has prepared an environmental impact statement in support of its proposal for the establishment of the Cherry I and Core MOAs. This proposal, along with the supporting documentation, will be submitted to the FAA for a final decision.

area inland. Aircraft activity within the Core MOA will involve high speed, low altitude ingress missions: certain training operations will require flight altitudes as low as 500 feet [2] and at speeds exceeding 250 knots (but remaining at subsonic levels). FEIS at I.7.

The training missions are necessary in order to achieve "[p]roficiency in low-altitude, high-speed tactical maneuvering and ingress sea-to-land target interception * * *." FEIS at I.3.

These tactics are needed to combat the "formidable anti-air capability" of potential adversaries and are "essential to ensure mission accomplishment and aircrew survival * * *." [3] *Id.* The USMC currently can perform only limited low altitude, low speed operations within the region and must deploy pilots and support personnel to airspace areas in the western United States for necessary training. Because of competition between the many Department of Defense air squadrons for airspace, only short training times are available thus preventing pilots from training on a recurrent basis. *Id.*

The primary aircraft type using the MOA will be the AV8B Harrier. Approximately 80% of the flights will be conducted by the Second Marine Aircraft Wing based at the Marine Corps Air Station Cherry Point. The reamining flights will be conducted by the Navy and the Air Force. FEIS at I.7.

Operations will normally begin at 7:30 am and could end as late as 11:00 pm during weekdays; occasional weekend operations will also be required.[4] There would be a maximum of 21 missions (42 crossings) per day.[5] FEIS at I.7.

The Harrier aircraft used in this training are limited by fuel capacity to a 75 mile radius from the Marine Corps Air Station at Cherry Point. The Core MOA was selected because of its proximity to the air station and because it met "essential operational criteria under the required training scenario." FEIS at I.3.

Objections to the USMC Proposal

The NPS objects to the USMC proposal because of the "long-term impact on Cape Lookout National Seashore * * *." Letter to Chairman A. Alan Hill from Secretary of the Interior Donald Paul Hodel, dated December 4, 1987 (Referral Letter), at 1. A majority of the park lands were purchased by the State of North Carolina and donated to the federal government, and in 1966, Congress established the national seashore to "preserve for public use and enjoyment an area of the State of North Carolina possessing outstanding natural and recreational values." [6] Pub. L. No. 89-366 (1966). The Cape Lookout area is an outstanding example of a wild, undeveloped barrier island.

The noise from the proposed overflights is expected to be at a level above 100 decibels (dBA) at the Sound Exposure Level (SEL).[7] Despite the mitigation measures proposed by the USMC, the NPS believes that the overflights would cause substantial interference with the "enjoyment of recreation in a relatively undisturbed area" and, should the proposal be implemented, expects to receive complaints from those who use the park. Referral Letter at 1.[8] The NPS states that the USMC's analysis of alternatives in its FEIS is insufficient and that, given the adverse impacts on the seashore, other alternatives should be pursued.

The State of North Carolina and the Albermarle Commission also object to the USMC proposal. The State notes the impact of the overflights on valuable state-owned lands [9] and questions the validity of the alternatives analysis contained in the FEIS. *See* Presentation of the State of North Carolina to the Council on Environmental Quality, dated January 25, 1988 (North Carolina Presentation), at 4-7. In addition, North Carolina is concerned that the cumulative impacts of the USMC proposal have not been adequately assessed and discussed, and that the role of the FAA in the designation of the MOAs has not been made clear.[10] *See id.* at 8-12.

The Albemarle Commission, an organization of several local governments in the affected area, objects to the proposed flyovers because of the noise impacts on the Cape Lookout National Seashore, the use of the laser guidance system on the range, the availability of other alternatives,[11] and the cumulative impacts of other military activities such as electronic warfare targets. *See* Letter to Chairman A. Alan Hill from Don C. Flowers, Jr., Executive Director of the Albemarle Commission, dated February 2, 1988. The Albemarle Commission also questions the extent of the FAA's involvement in the designation of these MOAs. *See id.* at 3.

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[2] As originally proposed, the Core MOA would allow overflights at 100 feet above ground level. The USMC raised the level to 500 feet in response to concerns raised by the NPS and others. Letter to Chairman A. Alan Hill from Keith E. Eastin, Principal Deputy Assistant Secretary of the Navy, dated December 31, 1987 (USMC Response), at 1.

[3] Specifically, the low level flights will train pilots to "take advantage of terrain masking to avoid early detection" by increasingly advanced radar systems. FEIS at I.3.

[4] As a mitigation measure, the USMC has proposed that weekend operations from Memorial Day through Labor Day will be restricted to greater than 3000 feet above ground level. USMC Response at 1-2.

[5] While aircraft would initially cross the seashore at low levels, return flights "would cross * * * at much higher altitudes * * *." Attachment to USMC Response at 3.

[6] In 1942, however, Congress authorized the Cherry Point Air Station as the Marine Corps' major East Coast technical aviation training center. *See* Pub. L. No. 77-174 (1942). When establishing the part in 1966, Congress made no reference to the earlier designation or to the possibility for conflict between two compelling national interests.

[7] Sound Exposure Level is the sound energy produced by a single noise event. The SEL accounts for both the maximum sound level of the noise intrusion and the duration of the intrusion. *See* Letter to Alan Zusman, Naval Facilities Engineering Command, from Richard D. Horonjeff, Senior Consultant, Harris Miller Miller & Hanson, dated June 9, 1987, at 4 (Attachment No. 5 to USMC Response). It should be noted that the USMC states that the expected noise level would be no higher than 69 dBA at the Day/Night Average Sound level (Ldn). The Ldn is the 24-hour average sound level for the period from midnight to midnight, obtained after addition of 10 dBA to sound levels in the night from midnight to 7:00 a.m. and from 10:00 p.m. to midnight. *See Guidelines for Considering Noise in Land Use Planning and Control*, prepared by the Federal Interagency Committee on Urban Noise, at A-1 (Attachment No. 2 to USMC Response). Regardless of the noise measurement used, it is quite clear that Harrier aircraft flying at 500 feet above ground level at speeds above 250 knots several times per day will produce significant noise levels.

[8] The NPS further states that the overflights "could also conflict with the use of National Park Service aircraft for resource management and visitor protection, and other emergency and management overflights; and possible interference with radio transmissions use for law enforcement, visitor safety and emergency communications." Statement of the U.S. Department of the Interior Concerning the Cherry I and Core Military Operating Areas, attached to Interior's Referral Letter, at 1.

[9] The affected state-owned lands include all of the ocean beaches located between the mean high and low water marks of the Cape Lookout National Seashore and all of the coastal submerged lands seaward from the mean high water mark to a line three miles distant.

[10] The FAA will be the final decisionmaker in the designation of Cherry I and Core as military operating areas. Under NEPA and the CEQ regulations, the FAA's decision regarding the establishment of these MOAs must be supported by environmental documentation. The State believes that the FEIS prepared by the Marine Corps cannot be sufficient to meet the FAA's needs and assumes that the FAA "cannot simply accept the existing environmental documentation without additional analysis and review, relevant to their specific considerations." North Carolina Presentation at 12. However, the State notes, there are "no assurances that such assumption is correct, or that this is not the last adminsitrative opportunity to address NEPA issues." *Id.*

[11] Specifically, the Albemarle Commission states that the Marine Corps base at Camp Lejeune in North Carolina would be appropriate for the sea-to-land combat training missions. *See* Letter to Chairman A. Alan Hill from Don C. Flowers, Jr., Excecutive Director of the Albemarle Commission, dated February 2, 1988, at 3.

In addition, the Council received statements and other material from many concerned citizens and congressional representatives. All of the comments received opposed the USMC proposal, generally because of the noise impacts on the seashore and the cumulative impacts of other military overflights on this area of North Carolina.[12]

CEQ'S Referral Process

Background

Under the National Environmental Policy Act (NEPA) and Executive Order No. 11514, as amended by Executive Order No. 11991, CEQ is authorized to review and attempt to resolve disputes between federal agencies regarding environmental matters. Thus, in its regulations implementing NEPA, the Council has established a referral process in which interagency disagreements concerning the environmental effects of major federal actions can be examined. *See generally* 40 CFR Part 1504.

Not all matters are appropriate for referral to CEQ. In determining whether environmental objections should be pursued, the CEQ regulations ask federal agencies to weigh potential adverse environmental impacts including the possible violation of national environmental standards or policies; the severity, geographical scope, and duration of the impacts; the importance of the issue as a precedent; and the availability of environmentally preferable alternatives. *See* 40 CFR 1504.2. In addition, after reviewing the concerns raised in a referral, the Council may determine that the issues are not of national importance and ask the lead and referring agencies to proceed with their decision processes. *See* 40 CFR 1504.3(f)(4).

In the referral process, a federal agency must advise the lead agency that it intends to refer a matter to the Council unless a satisfactory agreement is reached. *See* 40 CFR 1504.3(a)(1). If such agreement is not obtained, within 25 days after the final environmental impact statement is available, the referring agenct must send to the Council a statement supported by factual evidence which indicates that the proposal is environmentally unsound. *See* 40 CFR 1504.3 (b) and (c). Within 25 days of the referral to CEQ, the lead agency may submit a statement in response. *See* 40 CFR 1504.3(d).

After receipt of the referral and response from the lead agency, and any submittals from other interested parties, the Council may take one or more of several actions. These actions include initiating discussions with the agencies to mediate the dispute; holding public meetings to obtain additional views or more information; determining that the matter should be further negotiated by the parties; publishing findings and recommendations; and, where appropriate, submitting the referral and the response along with the Council's recommendation to the President for action. *See* 40 CFR 1504.3(f).

Pending Referral

In this referral by the National Park Service regarding military overflights, the Council held a public meeting on January 25, 1988, at which representatives from the Marine Corps and the National Park Service made presentations.[13] Representatives from the State of North Carolina, the Albemarle Commission, and other concerned organizations and citizens also spoke at this public meeting. The Council provided a comment period during which interested parties could submit written statements.[14]

The Council staff met with representatives of the USMC and the NPS on April 1 and April 11, 1988, respectively. On May 24–25, 1988, CEQ Chairman Hill visited the area to observe a flight operation similar to those proposed. He was accompanied on the site visit by USMC Colonel Kenneth D. Holland, NPS Park Superintendent William A. Harris, CEQ Staff Attorney Lisa Defensor, and other representatives of the Department of the Navy and Department of the Interior. At that time, the Chairman met again with representatives from the NPS, the USMC, the State, and the Albemarle Commission.

Findings and Recommendations

This referral presents the issue of the environmental impacts on the Cape Lookout National Seashore from low level military flights. The specific issue raised in the USMC proposal to fly over the seashore, however, is representative of the nationwide question of the environmental impacts associated with the designation of airspace for military purposes, which often involves conflicting uses of federal land resources.[15]

The Council has carefully considered all of the statements and material furnished by the affected federal agencies in this referral, as well as those submitted by outside parties. Set forth below are the Council's findings and recommendations on the issues presented.

Core MOA—Alternative Sites

At the public meeting on January 25, the National Park Service suggested, and the Marine Corps agreed, that the Council should undertake an independent analysis of the alternatives presentated in the FEIS. If, after this analysis, the Council could not identify other reasonable alternatives, the NPS and the USMC would work together to mitigate the adverse impacts of the overflights on the Cape Lookout National Seashore. The Council agreed to perform such a review.

Based on its review of the USMC's FEIS, other relevant material, and information provided at the several meetings held with the Federal agencies, the Council has found no reasonable alternative sites where the USMC could conduct its sea-to-land, low level, high speed combat training missions. The Council was unable to find any sites previously unexamined by the USMC, and the alternatives suggested by the NPS or the State and local governments cannot meet the USMC's requirements.

A central limitation on the choice of alternatives is the location of the target complex within a restricted area in Pamlico Sound. The target complex is situated on 12,000 acres of government property containing electronically scored, state-of-the-art target protected by a seven mile buffer zone. Relocation of the target complex is impractical, and would require the purchase of several thousand acres of land and creation of an additional restricted area.

A second limitation is the range of the Harrier aircraft to be used for the low-level combat training missions. As noted above, use of this aircraft necessitates the location of a MOA within a 75 mile radius of the Marine Corps Air Station at Cherry Point where the planes are based.[16] The 75 mile radius allows a 20

[12] Copies of the 52 comment letters received are available from the Council.

[13] The Council specifically invited the FAA, as the agency ultimately responsible for designating Core and Cherry I as military operating areas, to participate. *See* Letter to FAA Administrator T. Allan McArtor from Chairman A. Alan Hill, dated January 14, 1988. Representatives from the FAA did attend the public meeting and did respond to questions, although they made no formal presentation.

[14] *See* 53 FR 837 (January 13, 1988).

[15] For example, the Council is aware of a proposal by the United States Air Force for low level flights over the Florida Everglades. Such overflights could, again, present a situation where military airspace use conflicted with use of the federal lands below.

[16] Relocation of the Marine Corps base at Cherry Point has not been suggested as an alternative, but would cause substantial burden, expense, and disruption in military training.

minute maneuver time, 20 minute return time, and a 10 minute reserve for landing. Still another limitation is the need for water-to-land ingress for the training missions.

Because of these inherent limitations, none of the alternatives outlied in the FEIS or suggested by others are appropriate. Camp Lejeune, strongly urged as an alternative site by the Albemarle Commission, currently is used extensively for training by the 200 helicopters stationed there. It is also used for live fire infantry training and other artillery firing training, including high speed tanks. Both the helicopter and live fire training make this area unsuitable for pilot training flights at 500 feet.

The target complex and restricted airspace located adjacent to the Naval Air Station in Fallon, Nevada is the only area currently available to the USMC for low altitude, high speed training flights. Continued deployment to Fallon for this type of training, however, would provide only limited training time (due to competition for training time by other air squadrons) and thus pilot readiness. Moreover, use of this facility does not provide the necessary water-to-land ingress.

Similary, use of the MOA currently located over Pamlico Sound would not satisfy the requirements of the Marine Corps for combat training flights. This MOA is entirely over water, and flights are restricted to 7,000 feet above ground level. Even if the floor were lowered, there currently is no radar coverage for low altitude flights; installation of a radar system to provide such coverage would cost several million dollars.

Given the need for a national defense capable of low altitude, high speed flights and the absence of alternative locations for training for such flights, and despite the clear and substantial noise impacts, the Council recommends that representatives of the NPS and the USMC meet at the earliest opportunity to discuss how combat training flights over the Cape Lookout National Seashore could be scheduled so as to minimize the noise impacts on the seashore and its visitors. Continuing, jointly funded, environmental studies of the impacts should be a part of the NPS and USMC resolution.[17] The NPS and the USMC should establish a standing working group or other coordinating mechanism to review the results of these studies and to modify the scheduling of overflights or implement other mitigation measures as necessary and appropriate.[18]

The Council stresses that its findings regarding available alternatives are limited to the extraordinary circumstances presented. Federal lands are a valuable resource, the varying uses of which must be carefully weighed and balanced. In this instance, the Council believes that low level, high speed combat training flights are critical to national defense needs and has found no alternative locations for such flights. Different circumstances, however, could produce a different result.

Core MOA—Cumulative Impact Analysis

While the Council has found no appropriate alternative sites for the USMC training flights, the Council does find that the cumulative impacts of airspace use by all military agencies over North Carolina has not been adequately assessed. The State of North Carolina is home to four major military bases and, over the past several years, has seen the expansion of flight training activities requiring special use airspace. As special use airspace designations increase, so does the potential for serious cumulative environmental impacts.

The FAA, as the agency with final authority over the designation of special use airspace, will be responsible for conducting the necessary cumulative effects [19] analysis for the Cherry I and Core MOAs. In accordance with NEPA and the CEQ regulations, the FAA's decision with regard to the establishment of these MOAs must be supported by environmental documentation which contains a discussion of cumulative impacts.[20]

Under the CEQ regulations, the scope of an EIS must include cumulative actions and cumulative impacts. 40 CFR 1508.25. "Cumulative actions" are those which, when viewed with other proposed actions, have cumulatively significant impacts and which should be discussed in the same EIS.[21] *Id.* Further, the regulations define "cumulative impact" as

> the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 CFR 1508.7.

The requirement for a cumulative effects analysis has been further elucidated in Judicial decisions. For example, the court in *Fritiofson v. Alexander*, 772 F.2d 1225 (5th Cir. 1985), explained that an agency cannot rely upon the lack of either an overall plan or functional and economic dependence to avoid considering cumulative impacts. *Id.* at 1244. The court also held that:

> a meaningful cumulative-effects study must identify: (1) the area in which effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions—past, proposed, and reasonably foreseeable—that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that than can be expected if the individual impacts are allowed to accumulate.

Id. at 1245.

The case law and the CEQ regulations cited above demonstrate that the FAA is required to conduct a cumulative effects analysis and that such an analysis must consider the impacts of all current, proposed, and contemplated special use

[17] In the May meeting with CEQ Chairman Hill and the NPS, the USMC agreed to cooperate with the Fish and Wildlife Service in studies to monitor the effect of overflights on the migratory bird population and studies on ambient noise. The Environmental Protection Agency has also suggested that an examination of noise impacts and related compliants be conducted after the MOAs have been used for a few training cycles. FEIS at III. 207.

[18] The FEIS prepared by the USMC states that there would be a maximum of 21 round trip missions per day. That document also states that increased military overflights might be an indirect effect of the Mid-Atlantic Electronic Warfare Range being proposed for the area. FEIS at I.24. The CEQ regulations require federal agencies to prepare supplements to environmental impact statement if the agency makes substantial changes in the proposed action that are relevant to environmental concerns or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. 40 CFR 1502.9(c). Thus, increased overflights or other military activities in the area *e.g.*, the Mid-Atlantic Electronic Warfare Range, may require the USMC to supplement its FEIS for the Cherry I and Core MOAs.

[19] The terms "effects" and "impacts" as used in the CEQ regulations are synonymous. 40 CFR § 1508.8.

[20] Under the CEQ regulations, the FAA may adopt those portions of the USMC EIS which are appropriate for its purposes, after it independently evaluates the accuracy of the data it is adopting and takes responsibility for its scope and content. 40 CFR 1506.3; *see also* "CEQ Guidance Regarding NEPA Regulations," 48 FR 34263, 34265–66 (1983). As discussed below, however, the FAA's NEPA documentation for its decision on the Cherry I and Core MOAs must also include a cumulative effects analysis.

[21] This requirement is based upon the United States Supreme Court's decision in *Kleppe v. Sierra Club*, 427 U.S. 390 (1976). There the Court stated: "when several proposals . . . that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together (Footnote omitted)." *Id.* at 410.

airspace designations in the region.[22] Moreover, the NEPA document prepared by the FAA should consider all of the special use airspace applications which are pending before the agency for the North Carolina area.

Nationwide Airspace Designation Issues

This referral demonstrates that the designation of special use airspace to the military agencies needs to be the subject of careful environmental review by both the military agencies themselves and the FAA. Special use airspace designations can cause not only conflicts between important national interests as at Cape Lookout, but also significant adverse impacts on the residents and natural resources below, particularly when considered cumulatively.

In this referral, the Council has been made aware of increasing complaints from across the country by affected citizens regarding the number of and noise from low level military flights. Congress, concerned by low level civilian and military flights over the national parks, enacted legislation in 1987 requiring the National Park Service to study the impact of such overflights on the resources of at least 10 national parks.[23] Pub. L. No. 100-91 (1987). As these events indicate, the potential conflicts and the cumulative impacts of military overflights on the people and lands below can be severe and must be addressed fully in the environmental documentation prepared to support special use airspace requests.

Thus, the Council recommends that the Department of Defense (DOD) take steps to coordinate the process by which the military services petition the FAA for special use airspace. Currently, airspace designation requests are pursued by the individual military components, with little or no environmental or operational oversight by DOD. By establishing a coordinating mechanism, DOD can better evaluate the services' use of airspace for training exercises and can better assess the potential conflicts and cumulative impacts arising from such use.

In addition, the FAA should insure that, with all future special use airspace requests, the supporting NEPA documentation submitted by the military agencies considers conflicting uses and cumulative impacts. If the environmental documentation submitted by a military agency in support of its special use airspace request does not adequately address these issues, the FAA should either require additional information or conduct its own analyses.[24]

Conclusion

After reviewing the issues represented by the NPS referral, the Council is unable to conclude that there are any reasonable alternatives available to the USMC for low altitude, high speed, water-to-land training flights. The Council believes that the NPS and the USMC should now work together to mitigate the expected adverse noise impacts on the Cape Lookout National Seashore. As part of this resolution, the Marine Corps should undertake environmental monitoring studies which will examine the actual impacts of the overflights on the park, if the MOAs are approved by the FAA.

The Council also believes that the cumulative effects of military airspace use over North Carolina has not been adequately considered and recognizes that the FAA will be required to prepare a cumulative impact analysis as part of its NEPA documentation for the Cherry I and Core MOA designation request.

Looking at the broader issues raised in this referral, the Council has found a need for coordination within DOD to adequately assess the cumulative impacts of the military agencies' airspace requests, and a need for consideration of the inherent conflicts between airspace use and land use below. Further, the Council has found that the FAA needs to play a larger role in the assessment of competing uses and of cumulative impacts of all its airspace designation decisions.[25]

A. Alan Hill,
Chairman.
Wiliam L. Mills,
Member.
Jacqueline E. Schafer,
Member.
A. Alan Hill,
Chairman.

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[22] The General Accounting Office, at the request of Senator Helms, has prepared a report summarizing current proposals for additional special use airspace in North Carolina and the public concerns which have been raised about them. *See Airspace Use: Status of Proposals to Expand Special Use Airspace In North Carolina*, Gao Report No. GAO/RCED-88-133FS (April, 1988).

[23] Of these ten parks, six are specified in the legislation and a minimum of four are to be named by the NPS. The NPS has selected the Cape Lookout National Seashore as one of the parks to be studied. The legislation requires an evaluation of the impacts of aircraft noise on the safety of park users, the impairment of visitor enjoyment by overflights, and other injurious effects of overflights on the resources for which the park units were established. Pub. L. No. 100-91, § 1(c).

[24] With respect to the need to consider competing uses of federal resources, the Council suggests that the Congress take these potential impacts into account when setting aside lands such as national recreation areas, seashores, national trails, wilderness areas, and other specialized designations. Congress should also offer some guidance as to how conflicts in use should be resolved. For example, neither the NPS nor the USMC were able to provide any evidence indicating that Congress had considered potential conflicts in use when it established the Cherry Point Marine Corps Air Station or the Cape Lookout National Seashore. The need to foresee such classes is an issue which deserves more extensive consideration by Congress.

[25] In a report assessing FAA's management of special use airspace on a nationwide basis, GAO also recognized that the FAA needs to more effectively manage special use airspace in order "to ensure its efficient and appropriate use." *Airspace Use—FAA Needs to Impove Its Management of Speial Use Airspace*, GAO Report No. GAO/RCED-88-147 (August 1988), at 1.

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 88-1-86JD; Req. No. 8-10046]

Final Determination of the Distribution of the 1986 Jukebox Royalty Fund

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of final determination.

SUMMARY: The Tribunal announces the adoption of its final determination in the proceeding concerning the distribution to certain copyright owners and performing rights societies of jukebox royalty fees deposited for 1986 performances.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC 20036, (202) 653-5175.

SUPPLEMENTARY INFORMATION:

Authority

17 U.S.C. 116(c)(3) authorizes the Copyright Royalty Tribunal (Tribunal) to distribute annually royalty fees paid by jukebox operators. First, the Tribunal is to assess the claims of, and make appropriate awards to, "every copyright owner not affiliated with a performing rights society." 17 U.S.C. 116(c)(4)(A). Second, the remainder is to be distributed to "the performing rights societies * * * as they shall by agreement among themselves, or if they fail to agree, the pro rata share to which such performing rights societies provide entitlement." 17 U.S.C. 116(c)(4)(B).

The Claimants and the Controversy

In this proceeding, the Tribunal takes up the distribution of the royalty fees

deposited by jukebox operators for the calendar year 1986.

Five parties filed claims in the 1986 proceeding: the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music, Inc. (BMI), SESAC, Inc. (SESAC), Association de Compositores y Editores de Musica Latinoamericana (ACEMLA), and Italian Book Corporation (IBC).

ASCAP, BMI, and SESAC (hereinafter A/B/S) reached an agreement for the division of the jukebox royalties among themselves, and decided to prosecute their claims jointly. *Justification of Claim*, filed November 2, 1987. On November 13, 1987, IBC reported to the Tribunal that it had reached a voluntary agreement with A/B/S and was therefore withdrawing its claim to the 1986 fund.

Consequently, the controversy in the 1986 proceeding was between A/B/S and ACEMLA. In the statements of justification of claim, A/B/S jointly claimed "all but the most negligible" amount of the fund, and ACEMLA claimed 8% of the fund. *Id.; Justification Statement of ACEMLA*, filed November 16, 1987. In its final pleading in this proceeding, A/B/S claimed that ACEMLA was entitled to no more than 0.02122% of the fund, and that A/B/S was entitled to the rest, 99.97878%. A/B/S Reply Findings, par. 22. In its final pleading in this proceeding, ACEMLA claimed 2% of the fund. ACEMLA Reply Findings, p. 3.

Background and Chronology

On December 4, 1987, the Tribunal published a notice declaring that a controversy existed concerning the distribution of the 1986 jukebox royalty fund, effective December 7, 1987. 52 FR 46113. In a separate order, the Tribunal ordered a partial distribution of 99% of the 1986 jukebox royalty fund upon the condition that in the event the Tribunal determined that ACEMLA's entitlement exceeded 1%, A/B/S would reimburse ACEMLA the excess amount plus interest. *Order*, dated November 30, 1987.

By Order, dated December 14, 1987, the Tribunal determined that the best disposition of the 1986 proceeding would be a bifurcated proceeding in which the question of the status of ACEMLA under section 116 of the Copyright Act, whether "copyright owner" or "performing rights society," would be decided first, and then the entitlement of all the parties would be decided second.

On February 17, 1988, ACEMLA filed its written direct case on the issue of whether it was a performing rights society in 1986. On March 1, 1988, the Tribunal heard ACEMLA's direct case.

On March 9, 1988, A/B/S filed its written rebuttal case. Because A/B/S's rebuttal case consisted solely of incorporation by reference of previous heard testimony, no hearing of A/B/S's rebuttal case was needed. By Order, dated March 14, 1988, the Tribunal dispensed with the rebuttal hearing.

Proposed Findings of Fact and Conclusions of Law on the question of ACEMLA's status were filed March 29, 1988, and Reply Findings of Fact and Conclusions of Law were filed April 5, 1988.

On April 8, 1988, the Tribunal met and determined that ACEMLA was a copyright owner, not a performing rights society, in 1986. Accordingly, the Tribunal ordered ACEMLA to produce on May 4, 1988 its written direct case on entitlement, and further ordered that the three performing rights societies, having resolved their differences, were not required to enter their proofs. 53 FR 12177 (April 13, 1988).

On May 4, 1988, ACEMLA filed its written direct case on entitlement. ACEMLA's case was heard by the Tribunal May 18, 1988.

A/B/S filed its written rebuttal case on entitlement May 25, 1988. Hearing were held June 2 and 3, 1988. Proposed Findings of Fact and Conclusions of Law were filed by the parties June 17, 1988. Reply Findings of Fact and Conclusions of Law were filed June 24, 1988.

Findings of Fact

Status of ACEMLA

Previous Findings. The Tribunal took evidence regarding the status, organization and practices of ACEMLA in the 1982/1983 consolidated proceeding, the 1984 proceeding and the 1985 proceeding. All of the facts of these proceedings are hereby incorporated by reference into the 1986 jukebox distribution proceeding final determination. 50 FR 47577; 51 FR 43455; 52 FR 46324.

Current Findings—1986 Proceeding. During 1986, ACEMLA stated it received royalty payments from the Tribunal as a copyright owner, and from radio station WNWK. ACMELA Direct p. 2.

ACEMLA stated it made partial distributions of these royalties to "various composers, publishers, and others" in 1987, for 1986. ACEMLA Direct, p. 2; Tr. 21. ACEMLA stated it made advance payments against future royalty collections to SPACEM, a Puerto Rican organization. ACEMLA, p. 3.

ACEMLA stated it has continued to prosecute for copyright infringement, and to monitor the play of music by New York City area radio and television stations. ACEMLA, p. 3.

Conclusions of Law

ACEMLA Was Not a Performing Rights Society in 1986

The Copyright Royalty Tribunal has a procedural, not a regulatory, obligation to ascertain whether the jukebox claimants are copyright owners or performing rights societies.[1] ASCAP, BMI and SESAC have been defined by Congress as peroming rights societies, so no further inquiry is required. 17 U.S.C. 116(e)(3). Consequently, the only status question in this proceeding applies to ACEMLA.

ACEMLA was found in the 1982/1983 consolidated proceeding, and in the 1984 and 1985 proceedings not to be a performing rights society. 50 FR 47577 (November 19, 1985), aff'd *ACEMLA v. Copyright Royalty Tribunal*, 809 F. 2d 926 (D.C. Cir. 1987); 51 FR 43455 (December 2, 1986), aff'd, *ACEMLA v. Copyright Royalty Tribunal*, 835 F. 2d 446 (2d. Cir. 1987); 52 FR 46324 (December 4, 1987), aff'd, *ACEMLA and Italian Book Corporation v. Copyright Royalty Tribunal*,— F. 2d—(2d. Cir. 1988).

However, previous findings by the Tribunal that ACEMLA was not a performing rights society in those years do not collaterally estop ACEMLA from relitigating its status, because it is possible that in all calendar year, ACEMLA may become a performing rights society.

However, the Tribunal, as is evident from the above discussion, has accumplated a considerable record regarding ACEMLA's status in which the Tribunal has found and the Court of Appeals has affirmed that ACEMLA is not a performing rights society. Therefore, the only questions in this proceeding are: did ACEMLA relitigate any earlier findings so as to convince the Tribunal that the preponderance of the evidence now favors a different conclusion, or, did any circumstances change in 1986 so that the Tribunal can conclude that ACEMLA became a performing rights society in 1986?

[1] The distinction between regulatory and procedural is important. As stated in earlier determinations, the Tribunal does not set standards for organizations to become performing rights societies; it does not raise or lower entry bars to becoming a performing rights society; nor does the Tribunal's opinion regarding performing rights society status have any legal effect upon the music industry. All that the Tribunal does, procedurally, is to make a finding whether a claimant is a copyright owner or a performing rights society so that it can structure the jukebox distribution proceeding according to Congress' mandate. Such a finding has no effect on the claimants' ultimate royalty award because the Tribunal makes every effort to ascertain the proper percentage award regardless of who is required to go forward with the evidence.

ACEMLA did not relitigate any earlier findings of fact, so that the only question is whether ACEMLA took any new steps in 1986 to become a performing rights society.

The definition of a performing rights society in the Copyright Act is: "an association or corporation that licenses the public performance of nondramatic musical work on behalf of the copyright owners, such as the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc." 17 U.S.C. 116(e)(3).

In applying this definition to ACEMLA the Tribunal has broken the definition down into three parts: (1) "An association or corporation"; (2) "that licenses the public performance of nondramatic musical works on behalf of the copyright owners;" (3) such as the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc." The Tribunal has previously concluded that ACEMLA needs to meet all three parts of the definition to be considered a performing rights society. Not meeting any one of these three parts would be fatal to ACEMLA's claim to being a performing rights society.

In each of the past three proceedings, we have stated that ACEMLA did not meet the first part of the definition, "an association or corporation." ACEMLA is but the assumed name of LAMCO, a music publishing company. It has no independent structure of its own. We have consistently required that ACEMLA must be at least independent enough of copyright owners to have its own organizational papers and structure. This holding was affirmed twice by the Court of Appeals.

In 1986, ACEMLA took no structural steps to cure this deficiency noted by the Tribunal. Hence, ACEMLA does not meet the first part of the definition of a performing rights society, and no further weighing of ACEMLA's other proffered evidence is necessary and our analysis ends here.

Our decision not to weigh ACEMLA's other evidence comports with the judicial rule of construction that states that a decision-maker only considers that which is necessary to resolve the issue at hand. To the extent the Tribunal considered all the evidence in previous proceedings it was to give guidance to ACEMLA so that it could glean the standards by which the Tribunal would consider the other aspects of ACEMLA's operation at such time when ACEMLA was properly structured.

Should it be the case in future proceedings that ACEMLA becomes an association or corporation, we state now that the current quality of its evidentiary submissions must be improved. Its oral and written cases have in the past consisted of the vaguest and most general statements, unsupported whatsoever by documentary proof. All attempts during the hearing by the Tribunal or A/B/S to elicit the most fundamental and relevant facts regarding these vague statements were consistently rebuffed by the witness. In our Findings of Fact listed above, each finding has been prefaced "ACMELA stated", because we cannot believe with confidence ACEMLA's vague assertions. In future proceedings we shall require clear and specific written testimony, supported by documentation upon the filing of the written case.

Effect of the Tribunal's First Conclusion

The Tribunal has concluded that ACEMLA was a copyright owner in 1986. The next step is to consider the value of the music ACEMLA represents. After Tribunal consideration of ACEMLA is rendered, the Tribunal's task is complete because the three performing rights societies are in agreement.

Findings of Fact

ACEMLA's Proofs of Entitlement

Incorporation by Reference. ACEMLA incorporated by reference the record evidence supporting its awards in the 1982/1983, the 1984, the 1985 jukebox distribution proceedings, and the 1985 cable distribution proceeding. A recitation of that evidence is not repeated herein. ACEMLA Direct, p.2.

Monitoring of public performance of ACEMLA's works. ACEMLA undertook a limited monitoring of four New York City area radio stations in 1986 to determine which titles in its repertory were being broadcast. Radio station WADO was monitored on 11 days, WJIT on 22 days, WKSQ on 11 days and WKDM on 15 days. In total, 139 different ACEMLA-controlled songs were played a total of 227 times during this limited monitoring. ACEMLA Direct, p. 3; Ex. 2 (revised).

ACEMLA's manner of monitoring was the same as it was for 1985. It was not conducted on any scientific basis. The recordings were not made continuously, and so do not show the frequency of performance of ACEMLA-claimed songs in relation to other songs. The four New York area stations do not constitute a representative sample of all 207 Spanish-language radio stations. Tr. 21; 1985 Tr. 343–344; 1985 ACEMLA Ex. 5.

Hit Songs Charts. ACEMLA submitted 25 "Top Latin Album" hit parade charts pubished in *Billboard Magazine* in 1986, and they indicated that 61 different recordings of ACEMLA-controlled songs could be found on 28 different long-playing albums listed in the "Top Latin Albums" charts. ACEMLA Direct Case, p. 3; ACEMLA Ex. 1, pp. 1–2; ACEMLA's Response of May 20, 1988. ACEMLA's witness L. Raul Bernard (Bernard) was unable to state how many—if any—of these 61 songs were pressed as 45 rpm singles. Tr. 7.

44 ACEMLA-controlled songs appeared on song charts in a bi-weekly magazine *Guia Radial Del Show* based upon information furnished by a Puerto Rican record store. ACEMLA Ex. 3. 11 of the 44 songs were also played by New York Spanish-language radio stations, as revealed by ACEMLA's limited monitoring. ACEMLA's Response of May 20, 1988.

The hit songs charts from New York Spanish-language newspapers, *Noticias El Mundo* and *Vocero,* which were submitted in previous proceedings were not submitted this year. ACEMLA Direct.

ACEMLA was advised in the 1985 jukebox final determination to file evidence in this proceeding to explain more of its operation—which of its songs have been recorded on 45 rpm records, how many were released, how they have been distributed, and where. 51 FR 46330–46331. ACEMLA did not provide that information in this proceeding, and when asked why, Bernard stated, "It is not our operation to distribute or really to find out where these 45's are distributed. We know they are, as a matter of fact, within the business, within the trade, and all we can give you is what we have given you so far." Tr. 15.

A/B/S Radio Survey, and Dispute of Title Ownership. As in prior years, A/B/S performed a radio survey of ACEMLA-controlled works. A/B/S Reb. Test. of Adler; Reb. Test. of Ahrold. In this proceeding, A/B/S performed a survey of the songs listed by ACEMLA in the 1982–1985 proceedings, and the songs listed for the first time in the 1986 proceeding. Tr. 57–59, 119. These works totalled 580 songs. Of these, 120 songs were claimed by A/B/S to belong to the combined catalogues of A/B/S. Reb. Test. of Adler, p. 1; Reb. Test. of Ahrold, p. 1, corrected in A/B/S Proposed Findings, p. 17, fn. 9.

According to ASCAP's methodology, if ACEMLA had been an ASCAP member in 1986, it would have earned for all 580 songs, 3,174 radio credits out of a total of 14,959,388 radio credits earned by all ASCAP members, yielding a percentage of 0.02122%. Reb. Test. of Adler, pp. 4–5. Excluding the 120 contested songs, the percentage is

0.01217%. *Id.* Both percentage figures—0.021222% and 0.01217% represent a decline from comparable percentage figures from 1985 of 0.3277%, and 0.01791%, respectively. *Id.*

According to BMI's methodology, if ACEMLA has been a BMI member in 1986, it would have earned for all 580 songs 0.005209% of BMI's distribution for all similar U.S. radio performances. Reb. Test. of Ahrold, p. 5; Tr. 59–60. Excluding the 120 contested songs, the percentage is 0.00211%. *Id.* Both percentage figures—0.005209% and 0.00211%—represent an increase from comparable percentage figures from 1985 of 0.00453% and 0.001383%. 1985 Reb. Test. of Ahrold, p. 5; 1985 A/B/S Proposed Findings, par. 110, fn. 36.

Conclusions of Law

ACEMLA has shown entitlement to 0.07% of the 1986 jukebox fund

The Tribunal holds yearly distribution proceedings in jukebox and in cable which, because they primarily involve the same claimants, build year by year on the earlier records. Hence, the only questions for the Tribunal to decide this year is whether either ACEMLA or A/B/S chose to relitigate previouly found facts or conclusions, or whether either ACEMLA or A/B/S has shown changed circumstances for 1986.

This hearing was marked by an absence of relitigation of previous facts or conclusions, so that the only question is whether the value of ACEMLA's catalogue has changed in 1986.

In 1984, the Tribunal awarded ACEMLA 0.06% of the fund. In 1985, ACEMLA and IBC were joint claimants and together they were awarded 0.12% of the fund. The Tribunal would not indicate how much of the 0.12% of the fund was attributable to either ACEMLA or IBC, because of our policy favoring settlement—a determination of ACEMLA's subshare of the joint claim of ACEMLA/IBC would be an impermissible substitution of the Tribunal's judgment for whatever settlement ACEMLA and IBC reached.

Therefore, the question of changed circumstances from 1985 is a particularly difficult problem, because it has no starting point, i.e., ACEMLA's 1985 award. However, it does have a starting range. ACEMLA was awarded 0.06% in 1984, and we generally noted that perhaps in 1985 ACEMLA's works were getting greater circulation. Therefore, we can say that the starting range is in the area slightly greater than 0.06%.

Proceeding from that range, we can detect no change in circumstances for ACEMLA in 1986. First, regarding ACEMLA's proofs, we note that the Court of Appeals latest description of it—"scanty at best"—is truer this year than last. The only portion of ACEMLA's case which we can credit is the monitoring of New York City area radio stations. The monitoring, which was not scientific and which cannot be used to project to the universe of radio play, nonetheless shows consistent play of ACEMLA works on those stations, and shows the same level of play from 1985 to 1986.

Regarding the hit songs charts, ACEMLA dropped the New York City song charts from its showing. The Puerto Rican song chart has validity only to the extent it was corroborated by the monitoring of the New York City area radio stations. Otherwise, the criticisms offered in the last proceeding by A/B/S—that Puerto Rico has no licensed jukeboxes, and that the song charts may be influenced by the desire of a music store to sell records are sound.

The *Billboard Magazine* album charts cannot be given any credit because we do not know whether any of those songs were made into 45 rpm singles. LP's are not the form in which music is played on jukeboxes. We started last year that we were concerned about A/B/S' testimony that generally Latin songs are not pressed into 45's, and we required ACEMLA to explain the distribution of the music it represents or we would credit A/B/S' testimony. ACEMLA has not been forthcoming on this issue, and we therefore cannot conclude that the *Billboard Magazine* album charts are probative of ACEMLA's case.

Consequently, ACEMLA's showing this year rests on its monitoring. We can conclude that the frequently played titles on these radio stations are generally singles. Then the songs which ACEMLA monitored were singles capable of being played on jukeboxes. We can also conclude that the level of radio play was about the same, and therefore, it's likely that the level of jukebox play was the same and ACEMLA's award this year should be in the same range as in previous years.

Nothing in A/B/S' rebuttal case deters us from the same conclusion. ASCAP's and BMI's radio surveys continue to provide valuable information for the Tribunal. However, we note that in shedding any light on whether there has been changed circumstances, the surveys seem to be contradictory. While ASCAP's surveys, inclusive or exclusive of the contested songs, show a decline in air play of ACEMLA's songs, BMI's surveys, inclusive or exclusive of the contested songs, show an increase in air play of ACEMLA's songs.[2]

Accordingly, the Tribunal awards 0.07% of the 1986 jukebox royalty fund to ACEMLA as the assumed name of Latin American Music Co., Inc. The remainder of the fund is awarded to ASCAP, BMI and SESAC, Inc., collectively.

Mario F. Aguero,

Chairman.

Dated: September 14, 1988.

[FR Doc. 88–21282 Filed 9–16–88; 8:45 am]

BILLING CODE 1410-09-M

[2] The Tribunal stated last year that it was not the proper forum to resolve disputes over copyright ownership, which position has just recently been affirmed by the Court of Appeals, *NBC v. Copyright Royalty Tribunal*, —— F. 2d. —— (D.C. Cir. 1988), and it urged the jukebox claimants to settle this matter. We continue to urge them to resolve who owns the contested songs, but for this proceeding, we conclude that the Tribunal can reach a proper allocation without determining the ownership of the songs in question.

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In according with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 11–12 October 1988.

Time of Meetings: 0800–1700 hours, each day.

Place: The Pentagon, Washington, D.C.

Agenda: The Army Science Board Ad Hoc Subgroup for Threat of AIDS on Operational Deployments of Army Forces to a Theater will meet for the purpose of discussing short, medium and long range national strategic issues concerning AIDS and personnel and recruitment issues regarding retention, deployment, and assisgnment. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally

Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–21271 Filed 9–16–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 19, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or subtantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: September 14, 1988.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Annual Performance and Financial Status Reports for Drug-Free Schools—State Education Agency.
Affected Public: State or local governments.
Frequency: Annually.
Reporting Burden:
Responses: 57.
Burden Hours: 1,425.
Recordkeeping
Recordkeepers: 57.
Burden Hours: 57.

Abstract: State education agencies that participate under the Drug-Free Schools and Communities Program submit these reports to the Department. The Department uses the information to monitor grantee performance and to improve the administration of State and local programs.

Office of Special Education and Rehabilitation Services

Type of Review: REVISION.
Title: Three Year State Plan for Vocational Rehabilitation Services.
Affected Public: State or local governments.
Frequency: Triennially.
Reporting Burden:
Responses: 86.
Burden Hours: 6,450.
Recordkeeping
Recordkeepers: 86.
Burden Hours: 1,450,860.

Abstract: State agencies that administer Vocational Rehabilitation (VR) programs must submit a three year State plan to receive Federal funds. The Department will use the information to make grant awards, and to evaluate States' performance and compliance under Title I of the Rehabilitation Act, as amended.

Office of Special Education and Rehabilitation Services

Type of Review: REVISION.
Title: Report of Eligible Handicapped Children in Schools Operated by State Agencies.
Affected Public: State or local governments.
Frequency: Annually.
Reporting Burden:
Responses: 58
Burden Hours: 5,887.
Recordkeeping
Recordkeepers: 0.
Burden Hours: 0.

Abstract: State education agencies will report the number of handicapped children and youth receiving services to the Department. The Department will use the information to determine grant awards.

Office of Postsecondary Education

Type of Review: REINSTATEMENT.
Title: Performance Report for the Student Support Services Program.
Affected Public: Non-profit institutions.
Frequency: Annually.
Reporting Burden:
Responses: 715.
Burden Hours: 3,218.
Recordkeeping
Recordkeepers: 0.
Burden Hours: 0.

Abstract: Grantees who participate in the Student Support Services Program submit this report to the Department. The Department uses the information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: REINSTATEMENT.
Title: Application for the Bilingual State Educational Agency Program.
Affected Public: State or local governments.
Frequency: Annually.
Reporting Burden:
Responses: 59.
Burden Hours: 2,360.
Recordkeeping
Recordkeepers: 0.
Burden Hours: 0.

Abstract: This form will be used by State educational agencies to apply for funding under the Bilingual State Educational Agency Program. The Department will use the information to make grant awards.

[FR Doc. 88–21337 Filed 9–16–88; 8:45 am]

BILLING CODE 4000–01–M

Senior Executive Service Performance Review Board Membership

AGENCY: Department of Education.

ACTION: Notice of Membership of the Performance Review Board.

SUMMARY: Notice is hereby given of the names of members of the Department of Education Performance Review Board.

FOR FURTHER INFORMATION CONTACT: JoAnn Ryan, Director, Executive Resources Staff, Office of Personnel Management Service, Office of Management, Department of Education, [Room 1187A, FOB 6], 400 Maryland Avenue SW., Washington, DC 20202, Telephone: [202] 732-5546.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Membership

The following executives of the Department of Education have been selected to serve on the Performance Review Board of the Department of Education: Patrick Pizzella, Co-Chair, Alicia Coro, Co-Chair, Michelle Easton, Richard LaPointe, D. Kay Wright, Douglas Ponci, Patricia Smith, Carol Fox, Richard Fairley, William Bostic, Raymond Van Buskirk, Kenneth Whitehead, Daniel Lau, Carlos Rice, Ronald Oleyer, Charles Kolb, Diane Weinstein, Milton Goldberg, Emerson Elliott, Thomas Skelly, Carol Cichowski, Ernest Canellos, William Smith, Thomas Bellamy, John Klenk, Frances Norris, Charles O'Malley, Mary Jean LeTendre.

Dated: September 13, 1988.

Patrick Pizzella,

Acting Deputy Under Secretary for Management.

[FR Doc. 88-21336 Filed 9-16-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP88-117-001]

Northern Natural Gas Co., Division of Enron Corp.; Compliance With Order Nos. 483 and 483-A

September 14, 1988.

Take notice that on Sept. 7, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing, as part of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume 1 Tariff) and Original Volume No. 2 (Volume 2 Tariff), the following tariff sheets:

Third Revised Volume No. 1

Substitute Fifth Revised Sheet No. 66
Substitute Seventh Revised Sheet No. 67
Substitute Sixth Revised Sheet No. 68
Substitute Ninth Revised Sheet No. 69
Substitute First Revised Sheet No. 69a
Substitute Eight Revised Sheet No. 70
Substitute Fourth Revised Sheet No. 70a
Third Revised Sheet No. 70b
Substitute Fifth Revised Sheet No. 70c

Original Volume No. 2

Substitute Fifth Revised Sheet No. 1d
Substitute Fifth Revised Sheet No. 1e
Substitute Sixth Revised Sheet No. 1f
Substitute Eight Revised Sheet No. 1f
Substitute Sixth Revised Sheet No. 1h
Substitute Sixth Revised Sheet No. 1i
Substitute Second Revised Sheet No. 1i.1
Fith Revised Sheet No. 1i.2
First Substitute Original Sheet No. 1i.2a

Northern states such revised tariff sheets are required in compliance with the Letter Order dated July 29, 1988, in order that Northern's tariff will be in conformance with Order Nos. 483 and 483-A.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-21312 Filed 9-16-88; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Floodplain/Wetlands Involvement for the Limestone-Gering-McGrew 69-Kilovolt Transmission Line Rebuild Project; Goshen and Platte Counties, WY, and Morrill, Scotts Bluff, and Sioux Counties, NE

AGENCY: Western Area Power Administration, DOE.

ACTION: Floodplain/wetlands involvement and opportunity to comment.

SUMMARY: The Department of Energy (DOE), Western Area Power Administration (Western), is proposing to rebuild its existing 34.5-kilovolt (kV) Limestone-Gering-McGrew transmission line to 69 kV. The line, located in Goshen and Platte Counties, Wyoming, and Morrill, Scotts Bluff, and Sioux Counties, Nebraska, is approximately 100 miles in length and extends from the Limestone Substation near Guernsey, Wyoming, to the McGrew Substation near Bayard, Nebraska. In addition, Western proposes to rebuild approximately 27 miles of tap lines associated with the Limestone-McGrew line which it also owns, operates, and maintains. These tap lines include the approximately 18-mile line connecting East Morrill Tap to Lyman Substation, the approximately 6-mile line connecting Limestone Substation with Continental Substation, and three other tap lines of less than 1 mile each. The Bayard to McGrew segment of the proposed project does not presently exist; it would be new transmission line on new right-of-way. Pursuant to DOE's "Compliance with Floodplain/Wetlands Environmental Review Requirements," 10 CFR 1022, Western has determined that this proposed project would involve activities within a floodplain area. The existing transmission line closely follows the course of the North Platte River, crossing the river channel seven times. Approximately 60 percent of the proposed project area has been mapped by the Federal Emergency Management Agency (FEMA). Goshen County, Wyoming, has not been mapped. According to the FEMA maps, approximately 30 percent of the proposed transmission line route in the mapped area lies within an identified floodplain. Western will prepare a floodplain/wetlands assessment in accordance with Executive Order 11988—Floodplain Management, and Executive Order 11990—Protection of Wetlands. The floodplain/wetlands assessment will be an integral part of an environmental assessment (EA) which Western is preparing for the subject proposed project. The existing transmission line was constructed in 1935 using wood single-pole structures and copper conductor. It is a primary source of electric power in the region, presently serving 21 taps and substations which deliver power to Rural Electric Association cooperatives, public power districts, and municipalities in eastern Wyoming and

the Western Nebraska panhandle. These agencies in turn distribute this power to consumers in communities and on farms in the area. The existing line is well beyond the normal life expectancy of 35–45 years and is badly deteriorated. The 53-year-old line is a serious safety and reliability hazard because of its condition and its lack of an overhead ground wire for lightning protection. In addition to the problem related to its age, the line is incapable of carrying any additional capacity to serve new area loads. Because of this situation, Western is proposing to rebuild the transmission line to 69-kV specifications to retain safe and reliable service to its area customers and in anticipation of meeting increased future regional loads. The EA that is being prepared for the proposed project will examine routing alternatives in addition to the option of remaining on the existing alignment; however, due to the necessity of continuing to serve the many taps and substations along the present line route, it is expected that routing alternatives will be severely limited. The restrictions posed by the locations of the existing taps and substations will likely preclude the total relocation of the line away from designated floodplain areas; however, the present line has been in place for over 50 years without any observed significant effects either to floodplains or to the line. The design of the proposed new transmission line would not be appreciably different; it too would utilize single wood-pole structures. These proposed structures would be higher and would have larger insulator assemblies and an overhead ground wire.

DATE: Public comments or suggestions concerning the floodplain involvement of Western's proposed action are invited. Any comments are due by October 4, 1988.

ADDRESSES: Comments or suggestions should be sent to:

Mr. Stephen A. Fausett, Acting Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 490–7200

Mr. Gary W. Frey, Director of Environmental Affairs, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231–1527.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Melander, Environmental Specialist, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539 (303) 490–7231.

Issued at Golden, Colorado, September 7, 1988.

William H. Clagett,

Administrator.

[FR Doc. 88–21324 Filed 9–16–88; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3448–9]

Science Advisory Board, Clean Air Scientific Advisory Committee; Open Meeting

October 6, 1988.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given of a public meeting of the Clean Air Scientific Advisory Committee (CASAC) of the Environmental Protection Agency's Science Advisory Board. The meeting will be held from 9:30 a.m. to 4:00 p.m. on Thursday, October 6, 1988 in the 11th Floor Conference Room (Room 1101–1103W), West Tower, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

PURPOSE: The purpose of the meeting is to allow the Committee to review the action of its Acid Aerosol Subcommittee which met on June 14–15, 1988 to review the Agency's February 1988 draft "Acid Aerosols Issue Paper" (See 53 FR 18601, May 14, 1988). At that meeting, the Subcommittee recommended that the Agency list acid aerosols as a new criteria pollutant. The CASAC will consider the recommendation of its Subcommittee and any comments from members of the interested public before preparing its final recommendation to the Agency.

SUPPLEMENTARY INFORMATION: The following information is summarized from the March 29, 1988 **Federal Register** Notice (53 FR 10150) which announced availability of the issue paper: Copies of the draft issue paper may be obtained by writing or calling the Office of Research and Development Publications Center, CERIFRN, U.S. EPA, 26 West Martin Luther King Drive, Cincinnati, OH 45268, (513) 569–7562. Please ask for the "Acid Aerosols Issue Paper", report number EPA/600/8–88/005A.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting should contact Mr. Robert Flaak, Executive Secretary, Clean Air Scientific Advisory Committee, Science Advisory Board (A–101F), U.S. EPA, Washington, DC 20460, (202) 382–2552, (FTS) 382–2552. Copies of the minutes of the June 14–15, 1988 Subcommittee meeting are available from Ms. Carolyn Osborne, CASAC Staff Secretary, at the address above. Since seating is limited due to the size of the room, seating at the meeting will be on a first-come basis. Persons wishing to make a brief presentation (8–10 minutes) at the meeting must contact Mr. Flaak no later than September 30, 1988 to reserve space on the agenda. It is requested that 10 copies of a written statement for the record be submitted to Mr. Flaak at the time of the meeting for distribution to the members of the Subcommittee. Oral presentation should supplement and not repeat the written statement.

Donald G. Barnes,

Director, Science Advisory Board.

Date: September 13, 1988.

[FR Doc. 88–21266 Filed 9–16–88; 8:45 am]

BILLING CODE 6560–50–M

[PF 504; FRL–3449–3]

Elanco Products Co.; Amended Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the filing of amendments to pesticide petition (PP) 7F3507 and food/feed additive petition (FAP) 7H5534 by the Elanco Products Co. for the fungicide fenarimol.

ADDRESS: By mail, submit written comments to:

Information Services Section, Progam Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington,, VA 22202

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential maybe disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:
By mail:

Attention: Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, contact: Lois Rossi (PM 21), Rm. 227, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202

SUPPLEMENTARY INFORMATION: EPA has received an amendment to PP 7F3507 from Elanco Products Co., P.O. Box 708, Greenfield, IN 46140, proposing to amend 40 CFR 180.421 by establishing a regulation to permit the residues of the fungicide fenarimol [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] in or on the following raw agricultural commodities: apples at 0.1 part per million (ppm), eggs at 0.01 ppm, poultry, fat at 0.01 ppm, poultry, meat at 0.01 ppm, and poultry, meat by-products (mbyp) at 0.01 ppm. Elanco also proposed that tolerances be established for combined residues of fenarimol and its metabolites, alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-1,4-dihydro-5-pyrimidinemethanol and 5-[(2-chlorophenyl)(4-chlorophenyl)methyl]-3,4-dihydro-4-pyrimidinol measured as the total of fenarimol and 5-[(2-chlorophenyl)-(4-chlorophenyl) methyl]pyrimidine (DHF, calculated as fenarimol), in or on grapes at 0.2 ppm.

EPA also received an amendment to FAP 7H5534 from Elanco Products Co. to amend 21 CFR Part 561 (redesignated as 40 CFR Part 186 in the **Federal Register** of June 29, 1988 (53 FR 24666)) by establishing a regulation to permit the residues of the fungicide fenarimol in or on the following feed commodity: apple pomace (wet and dry) at 2.0 ppm and to permit the combined residues of fenarimol and its metabolites, alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-1,4-dihydro-5-pyrimidinemethanol and 5-[(2-chlorophenyl)(4-.chlorophenyl)methyl]-3,4-dihydro-4-pyrimidinol measured as the total of fenarimol and 5-[(2-chlorophenyl)-(4-chlorophenyl)methyl]pyrimidine (DHF, calculated as fenarimol), in or on the following food additive commodities: grape juice at 0.6 ppm and raisins at 0.6 ppm and the feed commodities grape pomace (wet and dry) at 2.0 ppm and raisin waste at 3.0 ppm.

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

Dated: September 9, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–21267 Filed 9–16–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59851; FRL–3449–4]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of four such PMNs and provides a summary of each.

DATES: Close of Review Periods:

Y 88–251—September 18, 1988.
Y 88–252—September 20, 1988.
Y 88–253, 88–254—September 21, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460 (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 88–251

Manufacturer. Confidential.
Chemical. (G) Saturated polyester.
Use/Production. (S) Laminating adhesive for packaging materials, nonwoven fabrics and cellulose sponge. Prod. range: Confidential.

Y 88–252

Manufacturer. Confidential.
Chemical. (G) Polyester polymer with neopentyl glycol.
Use/Production. (G) Coating (open, industrial use. Prod. range: 20,000–270,000 kg/yr.

Y 88–253

Manufacturer. Bostik Industrial Division.
Chemical. (G) Polyester.
Use/Production. (G) Adhesive (open, nondispersive). Prod. range: Confidential.

Y 88–254

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Acid modified bisphenol A-propylene oxide (1:2) propylene glycol polymer.
Use/Production. (G) Binder used in graphic reproduction. Prod. range: Confidential.

Date: September 8, 1988.

Steven Newburg-Rinn,

Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88–21268 Filed 9–16–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30291; FRL 3450–5]

Monsanto Agricultural Co.; Intent To Conduct Small-Scale Field Test of Genetically Altered Organism

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document gives notice that the Monsanto Agricultural Co. has notified EPA of the company's intent to conduct a small-scale field test of a genetically altered organism, *Pseudomonas aureofaciens* (Ps. 2–79RNL3), to be used on winter wheat.

FOR FURTHER INFORMATION CONTACT:

By mail: Lois Rossi, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1900.

SUPPLEMENTARY INFORMATION: EPA has received from the Monsanto Agricultural

Co., 800 N. Lindberg Blvd., St. Louis, MO 63167, a notification of intent, notification number 524–NMP–006, to conduct a small-scale field test of a genetically altered organism, *Pseudomonas aureofaciens* (Ps. 2–79RNL3), a fungicide to be used on winter wheat as seed treatment to evaluate wheat root colonization and level of root infection by take-all fungus. Wheat grown from treated seed will be destroyed or used for research purposes. The Agency intends to respond to this notification by October 1, 1988.

Authority: 7 U.S.C. 136.

Dated: September 12, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–21386 Filed 9–16–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Renewal without any change.

Title: Application for Consent to Reduce or Retire Capital.

Form Number: None (letter application).

OMB Number: 3064–0079.

Expiration Date of Current OMB Clearance: 11/30/88.

Frequency of Response: On Occasion.

Respondents: Insured state nonmember banks applying for FDIC consent to reduce or retire capital.

Number of Respondents: 179.

Number of Responses Per Respondent: 1.

Total Annual Responses: 179.

Average Number of Hours Per Response: 1.

Total Annual Burden Hours: 179.

OMB Reviewer: Robert Neal, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: John Keiper, (202) 898–3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550—17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and shoudl be submitted on or before November 18, 1988.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to continue, without change, the collection of information involved in requiring insured state nonmember banks to submit letter applications to obtain FDIC consent prior to reducing or retiring any part of their common or preferred stock or retire any part of their capital notes or debentures. Such consent is mandatory under law (12 U.S.C. 1828(i)). The FDIC evaluates the information contained in a letter application submitted by a requesting bank and makes a decision to grant or withhold consent based on statutory consideration.

Dated: September 12, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88–21242 Filed 9–16–88; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 1635.

Name: Luis F. Torres d/b/a Costa International Freight.

Address: P.O. Box 160131, Miami, FL 33116.

Date Revoked: August 29, 1988.

Reason: Surrendered license voluntarily.

License Number: 2727.

Name: Gunter Wegner d/b/a Wegner International Forwarding Company.

Address: P.O. Box 72137, Marietta, Georgia 30007–2137.

Date Revoked: August 29, 1988.

Reason: Surrendered license voluntarily.

License Number: 1227A.

Name: Fast Shipping Co.

Address: P.O. Box 523363, 7370 NW., 36th Street, Miami, FL.

Date Revoked: September 1, 1988.

Reason: Failed to maintain a valid surety bond.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 88–21303 Filed 9–16–88; 8:45 am]

BILLING CODE 6730–01–M

Performance Review Board; Membership

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: William J. Herron, Jr., Director of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Pesonnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

James J. Carey,

Vice Chairman.

The Members of the Performance Review Board Are

1. James J. Carey, Vice Chairman
2. Thomas F. Moakley, Commissioner
3. Edward J. Philbin, Commissioner
4. Francis J. Ivancie, Commissioner
5. Charles E. Morgan, Chief, Administrative Law Judge
6. Norman D. Kline, Administrative Law Judge
7. Joseph N. Ingolia, Administrative Law Judge
8. Edward P. Walsh, Managing Director
9. Robert D. Bourgoin, General Counsel
10. John Robert Ewers, Director, Bureau of Administration
11. Wm. Jarrel Smith, Jr., Director, Bureau of Investigations
12. Robert A. Ellsworth, Director, Bureau of Economic Analysis
13. Seymour Glanzer, Director, Bureau of Hearing Counsel
14. Robert G. Drew, Director, Bureau of Domestic Regulation
15. Joseph C. Polking, Secretary
16. Bruce A. Dombrowski, Deputy Managing Director

17. Austin L. Schmitt, Director, Bureau of Trade Monitoring

[FR Doc. 88-21307 Filed 9-16-88; 8:45 am]
BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Immunology Devices Panel

Date, time, and place. October 6 and 7, 1988, 9 a.m., Rm. 503A-529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, October 6, 1988, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; open committee discussion, October 7, 1988, 9 a.m. to 10 a.m.; closed presentation of data, 10 a.m. to 12 m.; closed committee deliberations, 1 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; Srikrishna Vadlamudi, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for theirs regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 23, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed partipants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for a tumor marker test kit for the monitoring of cancer.

Closed presentation of data. Trade secret and/or confidential commercial or financial information will be presented to the committee regarding the above premarket approval application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552(c)(4)).

Closed commitee deliberations. The committee will review and discuss trade secret and/or confidential or financial information regarding the above premarket approval application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Ophthalmic Devices Panel

Date, time, and place. October 19 and 20, 1988, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Avenue SW., Washington, DC.

Type of meeting and contact person. Open public hearing, October 19, 1988, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; open public hearing, October 20, 1988, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Daniel W. C. Brown, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7320.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation. The committee also reviews data on new devices and makes recommendations regarding their safety, effectiveness, and suitability for marketing.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 2, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 19, 1988, the committee will discuss general issues relating to approvals of premarket approval applications (PMA's) for Nd:YAG lasers, intraocular lenses (IOL's), and other class III surgical or diagnostic devices, and may discuss specific PMA's for these devices. If discussion of all pertinent Nd:YAG laser, IOL, or other class III surgical or diagnostic device issues are not completed, discussion will be continued the following day. On October 20, 1988, the committee will discuss PMA's for contact lenses and other devices, and requirements for PMA approval.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial or financial information relevant to PMA's for IOL's, Nd:YAG lasers, contact lenses, or other ophthalmic devices. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

General and Plastic Surgery Devices Panel

Date, time, and place. October 20, 1988, 8 a.m., Rm. 503A-529A, Hubert H. Humphrey Bldg. 200 Independence Avenue SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 5 p.m.; Paul F. Tilton, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7238.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 29, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) Reclassification petitions for polypropylene, polyethylene terephthalate, and silk surgical sutures, and (2) a supplement to a premarket

approval application for a hemostatic agent for neurosurgical use. The committee may also discuss a premarket approval application for a nylon surgical suture and a reclassification petition for suction lipectomy devices.

Closed committee deliberations. The committee may discuss trade secret and/or confidential or commercial information regarding the manufacture of a hemostatic agent and/or nylon surgical suture. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximatley 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: September 13, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88–21297 Filed 9–14–88; 2:55 pm]

BILLING CODE 4160–01–M

Advisory Committees: Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Veterinary Medicine Advisory Committee

Date, time, and place. October 11, 1988, 8:45 a.m., October 12, 1988, 8 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, October 11, 1988, 8:45 a.m. to 9:45 a.m., unless public participation does not last that long; open committee discussion, 9:45 a.m. to 4:30 p.m.; open committee discussion, October 12, 1988, 8 a.m. to 11:30 a.m.; Gary E. Stefan, Center for Veterinary Medicine, Food and Drug Administration (HFV–244), 5600 Fishers Lane, Rockville, MD 20857, 301–443–0830.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal diseases and increased animal production.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss: (1) The classification of prescription and over-the-counter animal drug products, (2) sulfamethazine animal drugs, (3) the identification of disease conditions and species for which drug approvals are needed, (4) the Center for Veterinary Medicine's adverse animal drug reaction reporting program, and (5) the identification of issues which the Center for Veterinary Medicine and/or the committee should address.

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. October 17, 1988, 9 a.m., Jack Masur Auditorium, Bldg. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, October 17, 1988, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; John R. Short, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in endocrine and metabolic disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss the safety and effectiveness of Lopod (gemfibrozil) for the claim of preventing coronary heart disease. The results of the Helsinki Heart Study will be the basis of discussion.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: September 13, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–21294 Filed 9–16–88; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Division of Research Resources; Meeting of the Biomedical Research Technology Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Research Technology Review Committee (BRTRC), Division of Research Resources (DRR), November 8–9, 1988, Building 31, Conference Room 9, C Wing, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on November 9, from 2:00 p.m. until recess, during which time there will be comments by the Acting Director, DRR, and a report of the Director, BRTP.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 9:00 a.m. November 8 until recess and from 8:30 a.m. to 2:00 p.m., on November 9 for the review, discussion, and evaluation of individual grant applications. The 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, Bldg. 31, Rm. 5B–10, National Institutes of Health, Bethesda, MD 20892, (301) 496–5545, will provide a summary of the meeting and a roster of committee members upon request. Dr. Caroline Holloway, Executive Secretary, Biomedical Research Technology Review Committee, Division of Research Resources, Bldg. 31, Rm. 5B–41, National Institutes of Health, Bethesda, MD 20892, (301) 496–5411, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.371, Biotechnology Research, National Institutes of Health.)

Dated: September 13, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–21333 Filed 9–16–88; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Resources; Meeting of the General Clinical Research Centers Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, Division of Research Resources (DRR), November 15–16, 1988, at the National Institutes of Health, Conference Room 6, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on November 15 from 3:00 p.m. to 4:00 p.m. during which time there will be comments by the Acting Director, DRR; and an update on the General Clinical Research Centers Program by Dr. Judith L. Vaitukaitis, Director, GCRC Program, DRR. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on November 15 from 8:30 a.m. to 3:00 p.m. and 4:00 p.m. to 6:00 p.m., and on November 16 from 8:00 a.m. to approximately 4:00 p.m., for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets of commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, DRR, Building 31, Room 5B10, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting, and a roster of the committee members upon request. Dr. Bela J. Gulyas, Executive Secretary, General Clinical Research Centers Committee, (301) 496–6595, will furnish program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health).

Dated: September 13, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–21334 Filed 9–16–88; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, September 26–28, 1988, Building 31C, Conference Room 6, 6th Floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Portions of the Board meeting and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

Portion of the meeting will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets of 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.

Mrs. Winifred J. Lumsden, Committee Management Officer, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and rosters of the Board members, upon request.

Name of Committee: AIDS Subcommittee.

Executive Secretary: Dr. Maryann Roper, Building 31, Room 11A48, Bethesda, MD 20892 (301/496–1927).

Date of Meeting: September 26.

Place of Meeting: Building 31C, Conference Room 7.

Open: Immediately following adjournment of NCAB meeting to adjournment.

Agenda: Discuss update on AIDS activities within the National Cancer Institute.

Name of Committee: Subcommittee on Organ Systems.

Executive Secretary: Dr. Andrew Chiarodo, Blair Building, Room 722A, Bethesda, MD 20892 (301/427–8818).

Date of Meeting: September 26.

Place of Meeting: Building 31C, Conference Room 8.

Open: Immediately following adjournment of NCAB meeting to adjournment.

Agenda: To review Organ Systems Program.

Name of Committee: Subcommittee on Information and Cancer Control for the Year 2000.

Executive Secretary: Mr. J. Paul Van Nevel, Building 31, Room 10A29, Bethesda, MD 20892 (301/496–6631).

Date of Meeting: September 26.

Place of Meeting: Building 31C, Conference Room 8.

Open: 5:30 p.m. to adjournment.

Agenda: Follow-up on NCAB hearings.

Name of Committee: Subcommittee on Special Actions for Grants.

Executive Secretary: Mrs. Barbara S. Bynum, Building 31, Room 10A03, Bethesda, MD 20892 (301/496–5147).

Date of Meeting: September 27.

Place of Meeting: Building 31C, Conference Room 6.

Closed: 8:30 a.m. to adjournment.

Agenda: Review and discussion of individual grant applications.

Name of Committee: Subcommittee on Planning and Budget.

Executive Secretary: Ms. Judith Whalen, Building 31, Room 11A19, Bethesda, MD 20892 (301/496–5515).

Date of Meeting: September 27.

Place of Meeting: Building 31C, Conference Room 8.

Open: Immediately following adjournment of the Subcommittee on Special Actions for Grants.

Agenda: Discussion of FY 88 and FY 89 budgets and the FY 90 By-Pass Budget.

Name of Committee: Subcommittee for Review of Contracts and Budget for the Office of the Director.

Executive Secretary: Mr. Philip Amoruso, Building 31, Room 11A48, Bethesda, MD 20892 (301/496–5737).

Date of Meeting: September 27.

Place of Meeting: Building 31C, Conference Room 7.

Open: Immediately following adjournment of the Subcommittee on Planning and Budget.

Agenda: To discuss contracts for the Office of the Director, NCI.

Name of Committee: National Cancer Advisory Board.

Executive Secretary: Mrs. Barbara Bynum, Building 31, Room 10A03, Bethesda, MD 20892 (301/496–5147).

Date of Meeting: September 26 and 28.

Place of Meeting: Building 31C, Conference Room 6.

Open: September 26, 8:30 a.m. to recess, September 28, 8 a.m. to adjournment.

Agenda: Reports on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; Subcommittee Reports; and New Business.

Dated: September 13, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

(Catalog of Federal Domestic Assistance Program Numbers: 13.392, Project grants in cancer construction; 13.393, Project grants in cancer cause and prevention; 13.394, Project grants in cancer detection and diagnosis; 13.395, Projects grants in cancer treatment; 13.396, Project grants in cancer biology; 13.397, Project grants in cancer centers support; 13.398, Project grants in cancer research manpower; and 13.399, Project grants and contracts in cancer control)

[FR Doc. 88–21327 Filed 9–16–88; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, October 13–14, 1988, at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

This meeting will be open to the public on October 13 from 9 a.m. to 10 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on October 13 from 10 a.m. to recess; and on October 14 from 9 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and a roster of committee members, upon request.

Dr. Harvey P. Stein, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 804, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7030) will furnish substantive program information, upon request.

Dated: September 13, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–21328 Filed 9–16–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting of Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on October 27–28, 1988, in Conference Room 6, Building 31C, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. on October 27, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the Transplantation Biology and Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. on October 27, until recess and from 8:30 a.m. until adjournment on October 28. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Nirmal K. Das, Executive Secretary, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Westwood Building, Room 3A07, Bethesda, Maryland 20892, telephone (301–496–7966), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: September 13, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 21330 Filed 9–16–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given to meetings of the review committees of the National Institute of Child Health and Human Development for November 1988.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and executive secretaries, for approximately one hour at the beginning of the first session of the first day of the meeting. 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 secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, 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. Linda Hall, Committee Management Officer, NICHD, Executive Plaza North Building, Room 520, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the Executive Secretary indicated.

Name of Committee: Population Research Committee.

Executive Secretary: Dr. A.T. Gregoire, Room 520, Executive Plaza North Building, Telephone: 301, 496–1696.

Date of Meeting: Nov 3–4, 1988.

Place of Meeting: Executive Plaza North, 6130 Executive Blvd., Bethesda, Maryland.

Open: Nov. 3, 1988, 9:00 a.m.–10:00 a.m.

Closed: Nov. 3, 1988, 10:00 a.m.–5:00 p.m.; Nov. 4, 1988, 9:00 a.m.–adjournment.

Name of Committee: Mental Retardation Research Committee.

Executive Secretary: Dr. Susan Streufert, Room 520, Executive Plaza North Building, Telephone: 301, 496–1696.

Date of Meeting: Nov. 3, 1988.

Place of Meeting: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesday, Maryland.

Open: Nov. 3, 1988, 9:00 a.m.–10:00 a.m.;

Closed: Nov. 3, 1988, 10:00 a.m.–adjournment.

Name of Committee: Maternal and Child Health Research Committee.

Executive Secretary: Dr. Scott Andres, Room 520, Executive Plaza North Building, Telephone: 301, 496–1485.

Date of Meeting: Nov. 9, 1988.

Place of Meeting: Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

Open: Nov. 9, 1988, 9:00 a.m.–10:00 a.m.;

Closed: Nov. 9, 1988, 10:00 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research and No. 13.865, Research for Mothers and Children, National Institutes of Health.)

Dated: September 13, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–21331 Filed 9–16–88; 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 5C05, National Institutes of Health, Bethesda, Maryland 20892 (301/496–9322), 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: Gerontology and Geriatrics Review Committee, Subcommittee B and C.

Executive Secretary: Dr. David Lavrin, Subcommittee B, Dr. James Harwood, Subcommittee C, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892. Phone: 301/496–9666.

Dates of Meeting: November 2–3, 1988.

Place of Meeting: Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland 20892.

Open: November 2, 8:30 to 9:00 a.m.

Closed: November 2, 9:00 a.m. to recess, November 3, 9:00 to adjournment.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee A.

Executive Secretary: Dr. Walter Spieth, Dr. Maria Mannarino, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892. Phone: 301/496–9666.

Dates of Meeting: November 30–December 1–2, 1988.

Place of Meeting: Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20892. Phone: 301/496–9666.

Open: November 30, 8:30 a.m.–9:00 a.m.

Closed: November 30, 9:00 a.m. to recess, December 1–2, 9:00 a.m. to adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health.)

Dated: September 13, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–21329 Filed 9–16–88; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meetings of the Biomedical Library Review Committee and the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications

Pursuant to Pub L. 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on November 3–4, 1988, 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, and the meeting of the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications on November 2 from 3 p.m. to 4 p.m. in the 5th-Floor Conference Room of the Lister Hill Center Building.

The meeting on November 3 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 secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and sec. 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 November 3 from 11:30 a.m. to 5 p.m., and on November 4, from 8:30 a.m. to adjournment; and the subcommittee meeting on November 2 from 3 to 4 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: September 13, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–21332 Filed 9–16–88; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Resources; A Special Meeting of the National Advisory Research Resources Council

Pursuant to Pub L. 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), Division of Research Resources (DRR), on October 31, 1988, at the National Institutes of Health, Conference Room 10, Building 31C, 9000 Rockville Pike, Bethesda, Maryland 20892.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and sec. 10(d) of Pub. L. 92–463, the entire meeting will be closed to the public on October 31 from approximately 10 a.m. until adjournment for the review, discussion and evaluation of individual grant applications.

The applications and the discussions could reveal confidential trade secrets or commerical 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, DRR, Burlidng 31, Room 5B10, National Institutes of Health, Bethesda, Maryland 20892, 301/496–5545, will provide a summary of the meeting and a roster of the Council members upon request. Dr. James F. O'Donnell, Deputy Director, DRR, Building 31, Room 5B03, National Institutes of Health, Bethesda, Maryland 20892, 301/496–6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program No. 13.306, Laboratory Animal Sciences and Primate Research; 13.333, Clinical Research; 13.337, Biomedical Research Support; 13.371, Biomedical Research Technology; 13.375, Minority Biomedical Research Support; 13.389 Research Centers in Minority Institutions, National Institutes of Health.)

Dated: September 13, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–21335 Filed 9–16–88; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Privacy Act of 1974; Waiver of Advance Notice Period

AGENCY: Public Health Service, HHS.

ACTION: Notification of waiver of advance notice period for a new system of records.

SUMMARY: On August 8, 1988, PHS notified Congress and the Office of Management and Budget (OMB) of proposed new system of records 09–19–0001, "Records of Persons Exposed or Potentially Exposed to Toxic or Hazardous Substances, HHS/ATSDR/OHA," (53 FR 30720, August 15, 1988) and requested from OMB a waiver of the 60-day advance notice period.

OMB has granted the waiver in accordance with Section 4b.(4) of Appendix I, OMB Circular No. A–130, "Management of Federal Information Resources," which states: "Agencies may assume that OMB concurs in their request if OMB has not commented within 30 days of the date the transmittal was signed." PHS has not received comments from OMB.

Accordingly, system 09–19–0001 became effective on September 7, 1988, except for the routine uses established for the system. The routine uses will become effective on September 14, 1988, following the 30-day public comment period.

Date: September 12, 1988.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

[FR Doc. 88–21302 Filed 9–16–88; 8:45 am]

BILLING CODE 4160–70

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–GP8–0122]

Albuquerque District, NM; District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Advisory Council Meeting.

SUMMARY: The BLM Albuquerque District Advisory Council will meet October 6–7, 1988, in Grants, New Mexico. The session on October 6 will be held at the Cibola County Convention Center—El Malpais Room, located at 515 High Street in Grants. The first day's session will begin with an overview presentation on issues related to district Resource Management Plan (RMP) status with emphasis on the Farmington RMP. Other briefings will focus on the status of El Malpais National Conservation Area General Management Plan and district wilderness management plans. Members of the public are invited to attend, although transportation is arranged for Advisory Council members only.

The second day session will begin at 8:30 a.m. with a tour of El Malpais National Conservation Area. Those wishing to attend the tour should meet at the El Malpais Information Center located at 620 E. Santa Fe Avenue in Grants, New Mexico at 8:00 a.m. The tour of El Malpais National Conservation Area will be concentrated along State Highway 117, and topics of discussion will include visitor use, wilderness planning and land acquisition.

This council is managed in accordance with the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976, and the Rangeland Improvement Act of 1976. Minutes of the meeting will be prepared and made available for review within 30 days following the meeting.

Richard E. Fagan,

Acting District Manager.

[FR Doc. 88–21306 Filed 9–16–88; 8:45 am]

BILLING CODE 4310–FB–M

INTERSTATE COMMERCE COMMISSION

Section 5a Application No. 54;[1] Heavy & Specialized Carriers Tariff Bureau; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: Heavy & Specialized Carriers Tariff Bureau (HSCTB) has filed, pursuant to section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Since modifications are required before the agreement receives final approval, and because new and complex questions are involved in determining whether the agreement is

[1] Section 5a was recodified as section 10706.

consistent with the MCA, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions.

DATES: Comments from interested persons are due October 19, 1988. Replies are due 15 days thereafter.

ADDRESS: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 54 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:
Ken Schwartz, (202) 275–7956
or
Richard Felder, (202) 275–7691
[TDD for hearing impaired, (202) 275–1721]

SUPPLEMENTARY INFORMATION: We have provisionally approved HSCTB's agreement as consistent with 49 U.S.C. 10706(b) and *Motor Carrier Rate Bureaus—Imp. of Pub. L. 96–296,* 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981) (*Rate Bureau*), subject to certain conditions and modifications in the following subject areas: identification and description of member carriers; right of independent action; employee docketing; open meetings; quorum standard; final disposition of cases; general standards; single-line rates; general increases and decreases; and zone of rate freedom and released rates. We also have offered comments and imposed requirements concerning the agreement generally. HSCTB has been directed to file a revised agreement conforming to the imposed conditions within 120 days of service of the decision.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MCA and the *Rate Bureau* case, *supra,* we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria, and their application to HSCTB's agreement.

A copy of any comments filed with the Commission also must be served on HSCTB, which will have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that HSCTB must submit to the Commission as a condition to final approval of its agreement.

Copies of HSCTB's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, and from HSCTB's representative: Thomas M. Auchincloss, Jr., Rea, Cross & Auchincloss, 700 World Center Building, 918 16th Street NW., Washington, DC 20006.

Additional information is contained in the Commission's decision. Copies may be obtained from Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275–7428 (assistance for the hearing impaired is available through TDD Services, (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229, at Commission headquarters).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: September 9, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88–21292 Filed 9–16–88; 8:45 am]

BILLING CODE 7035–01–M

Section 5a Application No. 116 [1]; Willamette Tariff Bureau, Inc.; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: Willamette Tariff Bureau, Inc. (WTB), has filed, pursuant to Section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Since modifications are required before the agreement receives final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions.

DATES: Comments from interested persons are due October 19, 1988. Replies are due 15 days thereafter.

ADDRESS: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 116 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:
Ken Schwartz (202) 275–7956
or
Richard Felder (202) 275–7691
[TDD for hearing impaired (202) 275–1721]

SUPPLEMENTARY INFORMATION: We have provisionally approved WTB's agreement as consistent with 49 U.S.C. 10706(b) and *Motor Carrier Rate Bureaus—Imp. of P.L. 96–296,* 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981) (*Rate Bureau*), subject to certain conditions and modifications in the following areas: identification and description of member carriers; right of independent action; employee docketing; open meetings; proxy voting; quorum standard; final disposition of cases; general standards; single-line rates; general increases and decreases and changes in tariff structure; and zone of rate freedom and released rates. We have also offered comments and imposed requirements concerning the agreement generally. WTB has been directed to file a revised agreement conforming to the imposed conditions within 120 days of service of the decision.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MCA and the *Rate Bureau* case, *supra,* we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria, and their application to WTB's agreement.

A copy of any comments filed with the Commission must also be served on WTB, which will have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that WTB must submit to the Commission as a condition to final approval of its agreement.

Copies of WTB's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC, 20423, and from WTB's representatives:

J.L. Stewart, Willamette Tariff Bureau, Inc., 1444 S.E. Hawthorne Boulevard, Portland, OR 97214
Earle V. White, White & Southwell, 2400 S.W. Fourth Avenue, Portland, OR 97201

Additional information is contained in the Commission decision. Copies may be obtained from Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275–7428, (assistance for the hearing impaired is

[1] Section 5 was recodified as section 10706.

available through TDD Services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: September 9, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 88–21293 Filed 9–16–88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–55 (Sub-No. 265X]

CSX Transportation, Inc.; Abandonment Exemption in Hillsborough County, FL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its .42 mile line of railroad between mileposts S–843.55 and S–843.97 located in Tampa, Hillsborough County, FL.

Applicant has certified (1) that no local or overhead traffic has moved over the line for at least 2 years, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective October 19, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by September 29, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 11, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, resulting from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by September 26, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 12, 1988.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–21291 Filed 9–16–88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 88–12]

Donald Laken T/A Safe Pet Inc. Philadelphia, PA; Hearing

Notice is hereby given that on January 13, 1988, the Drug Enforcement Administration, Department of Justice, issued to Donald Laken, T/A Safe Pet Inc., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration PI0234269 and PD0234411 and deny any pending applications.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, September 22, 1988, beginning at 9:30 a.m. at the United States Customs House, Courtroom 300 (3rd Floor), 2nd and Chestnut Streets, Philadelphia, Pennsylvania.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88–21325 Filed 9–16–88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88–46]

Sunshine Pharmacy, Philadelphia, PA; Hearing

Notice is hereby given that on March 31, 1988, the Drug Enforcement Administration, Department of Justice, issued to Sunshine Pharmacy an Order to Show Cause as to why the Drug Enforcement Administration should not revoke the pharmacy's DEA Certificate of Registration AS3023734, and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, September 20, 1988, beginning at 9:30 a.m. at the United States Custom House, Courtroom 30 (3rd Floor), 2nd and Chestnut Streets, Philadelphia, Pennsylvania.

Dated: September 14, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88–21326 Filed 9–16–88; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Credit Union Revolving Loan Program

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Notice of elimination of Community Development Revolving

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988).

[2] *See Exemp. of Rail Line Aband. or Discont.—Offers of Fin. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

Loan Program for Credit Unions from coverage under Executive Order 12372.

SUMMARY: In 1986, the Department of Health and Human Services ("HHS") inadvertently caused the Community Development Credit Union Revolving Loan Fund Program, ("Program"), for which the agency had rsponsibility, to be included in the list of programs subject to Executive Order 12372. That Order, and Office of Management and Budget ("OMB") implementing rules, set forth procedures to assure that Federal agencies providing financial assistance consult with officials of state and local governments "directly affected" by Federal financial assistance. NCUA, which has now been given responsibility for the Program, has determined, after requesting and evaluating public comment, that the Program is not covered by the Order: (a) Because it does not "directly affect" state or local governments; and (b) because, in any event, NCUA regulations require prior state or local consent for loans to state-chartered credit unions.

EFFECTIVE DATE: September 19, 1988.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Staff Attorney, NCUA Office of General Counsel, at the above address, or telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION:

The Program

Congress esablished the Program: (1) To provide "basic financial and related services to residents" in needy communities; and (2) to stimulate "economic activities in the communities [served] which will result in increased income, ownership and employment opportunities for low income residents, and other community growth efforts." 42 U.S.C. 9812(a), 9822; 12 CFR 705.2.

Funding for the Program comes from Congressional appropriation. No state or local funds are required. A Federal or state-chartered credit union applies to NCUA for a loan from the Community Development Revolving Loan Fund. 12 CFR 705.5(A). A state-chartered credit union seeking a loan must obtain "written concurrence from [its] * * * state regulatory authority." 12 CFR 705.8. Moreover, a state-chartered credit union receiving a loan under the Program remains subject to supervision and examination by the state regulator.

Executive Order 12372

The Presidential directive "Intergovernmental Review of Federal Programs" (Executive Order 12372), issued July 14, 1982, was designed "to foster an intergovernmental partnership and a strengthened federalism by relying on state and local processes for the state and local government coordination and review of proposed Federal financial assistance and direct Federal development."

The Order requires Federal agencies:

> [to] provide opportunities for consultation by elected officials of those state and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development.

OMB is charged with assuring compliance with the Order. The agency is authorized to prescribe rules and regulations "deemed appropriate," and to maintain "a list of official state entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development."

Inclusion of the Program Under Executive Order 12372

In 1981, responsibility for administering the Program was placed in HHS. 12 U.S.C. 9812(a), 9822. Under the Community Development Credit Union Revolving Loan Fund Transfer Act of 1986 (Pub. L. 99–609, 100 Stat. 3475), this responsibility was transferred to NCUA. Shortly before transfer, however, HHS inadvertently had the Program included in the official list of activities covered by Executive Order 12372 (General Services Administration, *Catalogue of Federl Domestic Assistance* #44.002 (1987)).

Exclusion of the Program from Executive Order 12372 Coverage

After preliminary review, NCUA and OMB agreed the Program was a good candidate for exclusion from coverage as not "directly affecting" state and local government. In December, 1987, pursuant to OMB guidance, NCUA published in the **Federal Register** (52 FR 48387 (Dec. 23, 1987)) and sent to all state agencies designated to coordinate Executive Order 12372 compliance (called "state single points of contact") notice of intent to remove the Program from coverage.

One comment was received—from a Federal credit union agreeing with the proposal. OMB has again been consulted; it agrees the Program should be deleted.

Accordingly, the Program will hereafter be deleted from Executive Order 12372 coverage.

By the National Credit Union Administration Board on September 9, 1988.

Becky Baker,

Secretary of the Board.

[FR Doc. 88–21272 Filed 9–16–88; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings; National Endowment for the Humanities

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW. Washington, DC 20506.

FOR FURTHER INFORMATION: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy or; (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552 of Title 5, United States Code.

(1) *Date:* September 30, 1988.

Time: 9:00 a.m. to 5:00 p.m.

Room: 315.

Program: This meeting will review Editions applications in American History and Literature, submitted to the

Division of Research Programs, for projects beginning after April 1, 1989.

(2) *Date:* October 7, 1988.
Time: 9:00 p.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Editions applications in British and European History and Literature, submitted to the Division of Research Programs, for projects beginning after April 1, 1989.

(3) *Date:* October 11, 1988.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Editions applications in Philosophy, Religion, and Medieval Studies, submitted to the Division of Research Programs, for projects beginning after April 1, 1989.

(4) *Date:* October 14, 1988.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Editions and Translations applications in Music, Art, and Theater, submitted to the Division of Research Programs, for projects beginning after April 1, 1989.

(5) *Date:* October 17, 1988.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Translations applications in Philosophy and Classics, submitted to the Division of Research Programs, for projects beginning after April 1, 1989.

(6) *Date:* October 13–14, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of General Programs, for projects beginning after April 1, 1989.

Stephen J. McCleary,
Advisory Committee Management Officer.

[FR Doc. 88-21280 Filed 9-16-88; 8:45 am]
BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-425A]

Georgia Power Co., et al., Receipt of Antitrust Information

Georgia Power Company, acting as agent for co-owners Oglethorpe Power Corporation, Municipal Electric Authority of Georgia and the City of Dalton, Georgia, has submitted antitrust information in conjunction with the application for an operating license for a pressurized water reactor known as Vogtle Electric Generating Plant (Plant Vogtle), Unit 2, located on the Savannah River in Burke County, Georgia. The data submitted contain antitrust information for review pursuant to Nuclear Regulatory Commission (NRC) Regulatory Guide 9.3, "Information Needed by the AEC Regulatory Staff in Connection with its Antitrust Review of Operating License Applications for Nuclear Power Plants," necessary to determine whether there have been any significant changes since the completion of the antitrust operating license review for Unit 1 of Plant Vogtle.

The NRC conducts separate antitrust operating license reviews for multiunit applications only for units which are licensed (or scheduled to be licensed) eighteen months after the previous unit has been licensed. The antitrust operating license review of Unit 1 of Plant Vogtle was completed on November 21, 1986 and the operating license was issued on March 16, 1987. The current schedule for issuance of a license for Unit 2 of Plant Vogtle is scheduled for the spring of 1989—more than two years after issuance of the operating license for Unit 1 of Plant Vogtle. Consequently, staff requested updated Regulatory Guide 9.3 information required to conduct its antitrust operating license review of Unit 2 of Plant Vogtle. The updated Regulatory Guide 9.3 response addresses relevant information since Georgia Power's submission of the Regulatory Guide 9.3 information for Unit 1, dated February 24, 1986.

This **Federal Register** notice acknowledges receipt of this updated information and seeks public comment on same.

Upon completion of a staff antitrust review, the Director of the Office of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Atomic Energy Act, as amended. A copy of this finding will be published in the **Federal Register** and will be sent to the Washington, DC and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, requests for reevaluation may be submitted for a period of 30 days after the date of the **Federal Register** notice. The results of any reevaluation that are requested will be published in the **Federal Register** and copies sent to the Washington, DC and local public document rooms. A copy of the general information portion of the application for an operating license and the antitrust information submitted is available for public examination and copying for a fee at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room at the Burke County Library, Fourth Street, Waynesboro, Georgia 30830.

Any person who desires additional information regarding the matter covered in this notice or who wishes to have views considered with respect to significant changes related to antitrust matters which have occurred in the applicants' activities since the completion of the antitrust operating license review for Unit 1 of Plant Vogtle should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation, within 30 days of the initial publication of this notice in the **Federal Register.**

Dated at Rockville, Maryland, this 8th day of September 1988.

For the Nuclear Regulatory Commission.

Darl Hood,
Acting Director, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-21283 Filed 9-16-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-353A]

Philadelphia Electric Co.; Receipt of Antitrust Information

Philadelphia Electric Company has submitted antitrust information in conjunction with the application for an operating license for a boiling water reactor known as Limerick Generating Station, Unit 2, located near Pottstown, in Limerick Township, Pennsylvania. The data submitted contain antitrust information for review pursuant to Nuclear Regulatory Commission (NRC) Regulatory Guide 9.3, "Information Needed by the AEC Regulatory Staff in Connection with its Antitrust Review of Operating License Applications for Nuclear Power Plants," necessary to determine whether there have been any significant changes since the completion of the antitrust operating license review for Unit 1 of Limerick Generating Station.

The NRC conducts separate antitrust operating license reviews for multiunit applications only for units which are licensed (or scheduled to be licensed) eighteen months after the previous unit has been licensed. The antitrust operating license review of Unit 1 of Limerick Generating Station was completed on July 11, 1984 and the operating license was issued for Unit 2

of the Limerick Generating Station is scheduled for June of 1989, almost four years after issuance of the operating license for Unit 1. Consequently, staff requested updated Regulatory Guide 9.3 information required to conduct its antitrust operating license review of Unit 2 of Limerick Generating Station. The updated Regulatory Guide 9.3 response addresses relevant information since Philadelphia Electric Company's submission of the Regulatory Guide 9.3 information for Unit 1, dated May 3, 1982. This **Federal Register** notice acknowledges receipt of this updated information and seeks public comment on same.

Upon completion of a staff antitrust review, the Director of the Office of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Atomic Energy Act, as amended. A copy of this finding will be published in the **Federal Register** and will be sent to the Washington, DC and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, requests for reevaluation may be submitted for a period of 30 days after the date of the **Federal Register** notice. The results of any reevaluation that are requested will be published in the **Federal Register** and copies sent to the Washington, DC and local public document rooms. A copy of the general information portion of the application for an operating license and the antitrust information submitted is available for public examination and copying for a fee at the Commission's Public Document Room, 2120 L NW., Washington, DC 20555, and at the local public document room at the Pottstown Public Library, 500 Hight Street, Pottstown, Pennsylvania 19464.

Any person who desires additional information regarding the matter covered in this notice or who wishes to have views considered with respect to significant changes related to antitrust matters which have occurred in the applicant's activities since the completion of the antitrust operating license review for Unit 1 of Limerick Generating Station should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation, within 30 days of the initial publication of this notice in the **Federal Register.**

Dated at Rockville, Maryland, this 9th day of September 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-21284 Filed 9-16-88; 8:45 am]

BILLING CODE 7590-01-M

[Materials License No. 35-17186-02; Docket No. 30-19498; ASLBP No. 88-578-02-CivP]

Precision Logging & Perforating Co.; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a presiding officer is designated in the following proceeding:

Precision Logging & Perforating Company

Materials License No. 35-17186-02
E. A. 87-184

The presiding officer is being designated pursuant to the Licensee's request for a hearing regarding an Order issued by the Deputy Executive Director for Regional Operations, dated July 7, 1988, entitled "Order Imposing Civil Monetary Penalty."

The presiding officer in this proceeding is The Honorable Morton B. Margulies, Administrative Law Judge.

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed with Judge Margulies in accordance with 10 CFR 2.701. His address is: Administrative Law Judge Morton B. Margulies, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 12th day of September 1988.

[FR Doc. 88-21286 Filed 9-16-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-134; Facility Operating License No. R-61; Amendment No. 10]

Worcester Polytechnic Institute, Worcester, MA 01609; Order Modifying License

Worecster Polytechnic Institute (licensee or WPI) is the holder of Facility Operating License No. R-61 (License) issued on December 16, 1959 and subsequently renewed on December 30, 1982 by the U.S. Nuclear Regulatory Commission (Commission). The license originally authorized operation of the Worcester Polytechnic Institute Training and Research Reactor (facility) at a power level of up to 1 kilowatt (thermal). In 1967, the license was amended to allow operation up to 10 kilowatts (thermal) at which level it is now limited. The facility is a training and research reactor located in Worcester, Massachusetts, approximately 45 miles west-southwest of Boston, Massachusetts, and is located in the Washbury Laboratory on the east of the WPI compus. The mailing address is Worcester Polytechnic Institute, Nuclear Reactor Facility, Worcester, Massachusetts 01609.

On February 25, 1986, the Commission promulgated a final rule in 10 CFR 50.64 of its regulations limiting the use of high-enriched uranium (HEU) fuel in domestic research and test reactors (non-power reactors) (see 51 FR 6514). The rule, which became effective on March 27 1986, requires that a licensee of an existing non-power reactor replace HEU fuel at its facility with low-enriched uranium (LEU) fuel acceptable to the Commission: (1) Unless the Commission has determined that the reactor has a unique purpose and (2) contingent upon Federal Government funding for conversion-related costs. The rule is intended to promote the common defense and security by reducing the risk of theft and diversion of HEU fule used in non-power reactors and the adverse consequences to public health and safety and the environment from such theft or diversion.

10 CFR 50.64(b)(2) (i) and (ii) require that a licensee of a non-power reactor: (1) not initiate acquisition of additional HEU fule, if LEU fuel acceptable to the Commission for that reactor is available when it proposes that acquisition, and (2) replace all HEU fuel in its possession with available LEU fuel acceptable to the Commission for that reactor, in accordance with a schedule determined pursuant to 10 CFR 50.64(c)(2).

10 CFR 50.64(c)(2)(i) of the rule, among other things, requires each licensee of a non-power reactor, authorized to possess and to use HEU fuel, to develop and to submit to the Director of the Office of Nuclear Reactor Regulation (Director) by March 27, 1987, and at 12-month intervals thereafter, a written proposal (proposal) for meeting the rule's requirements.

10 CFR 50.64(c)(2)(i) also requires the licensee to include in its proposal: (1) A certification that Federal Government

funding for conversion is available through the Department of Energy (DOE) or other appropriate Federal agency, and (2) a schedule for conversion, based upon availability of fuel acceptable to the Commission for that reactor and upon consideration of other factors such as the availability of shipping casks, implementation of arrangements for the available financial support, and reactor usage.

10 CFR 50.64(c)(2)(iii) requires the licensee to include in its proposal, to the extent required to effect conversion, all necessary changes to the license, to the facility, and to the licensee's procedures (all three types of changes hereafter called modifications). This paragraph also requires the licensee to provide supporting safety analyses so as to meet the schedule estabished for conversion.

10 CFR 50.64(c)(2)(iii) also requires the Director to review the licensee's proposal, to confirm the status of Federal Government funding, and to determine a final schedule, if the licensee has submitted a schedule for conversion.

10 CFR 50.64(c)(3) requires the Director to review the licensee's supporting safety analyses and to issue an appropriate enforcement order directing both the conversion and, to the extent consistent with protecting the public health and safety, any necessary modifications. The Commission explained in the statement of considerations of the final rule that in most cases, if not all, the enforcement order would be in the form of an order to modify the license under 10 CFR 2.204 (see 51 FR 6514).

10 CFR 2.204 provides, among other things, that the Commission may modify a license by issuing an amendment on notice to the licensee that it may demand a hearing with respect to any part or all of the amendment within 20 days from the date of the notice or such longer period as the notice may provide. The amendment will become effective on the expiration of this 20-day-or-longer period. If the licensee requests a hearing during this period, the amendment will become effective on the date specified in an order made after the hearing.

10 CFR 2.714 sets out the requirements for a person whose interest may be affected by any proceeding to initiate a hearing or to participate as a party.

III

On September 17, 1987, the Director received the licensee's proposal, including its proposed modifications, supporting safety analyses and schedule for conversion. The conversion consists of replacement of high-enriched with low-enriched uranium fuel elements. The fuel elements contain MTR-type fuel plates with the fuel meat in the form of uranium aluminides dispersed in an aluminum matrix. The enrichment is less than 20% in the U-235 isotope. The Licensing Conditions and Technical Specification changes needed to amend the facility license are included in the attachment to this Order. On the bases of the licensee's submittals and the requirements of 10 CFR 50.64, I have made a determination that the public health and safety and the common defense and security require the licensee to convert from the use of HEU to LEU fuel pursuant to the modifications set forth in the attachment in accordance with the schedule set out below.

IV

Accordingly, pursuant to sections 51, 53, 57, 101, 104, 161b., 161i., and 161o. of the Atomic Energy Act of 1954, as amended, and to the Commission's regulations in 10 CFR 2.204 and 50.64, IT IS HEREBY ORDERED THAT:

On the later date of either receipt of low-enriched uranium fuel elements by the licensee or 30 days following the date of publication of this Order in the **Federal Register**, Facility Operating License No. R-61 is modified by amending the License Conditions and Technical Specifications as stated in the Attachment to this Order.

V

Pursuant to the Atomic Energy Act of 1954, as amended, the licensee or any other person adversely affected by this Order may request a hearing within 30 days of the date of this Order. Any request for a hearing shall be submitted to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Assistant General Counsel for Enforcement at the same address. If a person other than the licensee requests a hearing, that person shall set forth with particularity in accordance with 10 CFR 2.714 the manner in which the person's interest is adversely affected by this Order.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission shall issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearings is whether this Order should be sustained.

This Order shall become effective on the later date of either the receipt of low-enriched uranium fuel elements by the licensee or 30 day following the date of publication of this Order in the **Federal Register** or, if a hearing is requested, on the date specified in an order following further proceedings on this Order.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland this 12th day of September 1988.

[FR Doc. 88-21288 Filed 9-16-88; 8:45 am]

BILLING CODE 7590-01-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting change

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: The Pennsylvania Avenue Development Corporation announces a change in the date of the forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, September 28, 1988, at 10:00 a.m.

ADDRESS: The meeting will be held at Pennsylvania Avenue Development Corporation, Suite 1220N, 1331 Pennsylvania Avenue, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Date: September 13, 1988.

M.J. Brodie,

Executive Director.

[FR Doc. 88-21277 Filed 9-16-88; 8:45 am]

BILLING CODE 7630-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rule 17f-2 File No. 270-233]

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17f-2 under the Investment Company Act of 1940.

Rule 127f–2 sets standards to be followed and requirements to be made by registered management investment companies that maintain in their own custody their portfolio securities. Approximately 50 investment companies spend about 152 hours reporting and keeping records necessary to comply with the rule.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Robert Neal at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6004, and Robert Neal, Clearance Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

September 13, 1988.

[FR Doc. 88–21317 Filed 9–16–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

September 13, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

ACM Government Spectrum Fund Inc.
Common Stock, $.001 Par Value (File No. 7–3874)
American Realty Trust
Share of Beneficial Interest, $1.00 Par Value (File No. 3875)
Burlington Resources Inc.
Common Stock, $.01 Par Value (File No. 3876)
Comstock Ptrns. Strategy Fund Inc.
Common Stock, $.001 Par Value (File No. 3877)
Chaparral Steel Co.
Common Stock, $.01 Par Value (File No. 3878)
Dreyfus Strat. Gov't Income Inc.
Common Stock, $.001 Par Value (File No. 3879)
Ekco Group Inc.
Common Stock, $.01 Par Value (File No. 3880)
Empresa Nacional De Electric, SA
American Depository Shares (File No. 3881)
First Union Corp.
Common Stock, $3.33⅓ Par Value (File No. 3882)
Midway Airlines Inc.
Common Stock, $.01 Par Value (File No. 3883)
Newhall Resources
Depository Receipts, No Par Value (File No. 3884)
Oakwood Homes
Common Stock, $.05 Par Value (File No. 3885)
Prudential Intermediate Income Fund Inc.
Common Stock, $.01 Par Value (File No. 3886)
Putnam Intermediate Government Income Trust
Shares of Beneficial Interest, No Par Value (File No. 3887)
Santa Anita Realty Enterprises
Common Stock, $.10 Par Value (File No. 3888)
Sizeler Property Inv. Inc.
Common Stock, $.01 Par Value (File No. 3889)
Spain Fund Inc.
Common Stock, $.01 Par Value (File No. 3890)
Teleconnect Co.
Common Stock, $.07 Par Value (File No. 3891)
Tootsie Roll Industries Inc.
Common Stock, $.69 ⅘ Par Value (File No. 3892)
Wynn's International Inc.
Common Stock, $1.00 Par Value (File No. 3893)
AIFS Inc.
Common Stock, $.10 Par Value (File No. 3894)
Bayou Steel Corp.
Class "A" Common Stock, $.01 Par Value (File No. 3895)
California Energy
Common Stock, $.06 ¾ Par Value (File No. 3896)
Continental Graphics Corp.
Common Stock, $.12 ½ Par Value (File No 3897)
Crown Crafts Inc.
Common Stock, $1.00 Par Value (File No. 3898)
Cypress Fund Inc.
Common Stock, $.001 Par Value (File No. 3899)
Datametrics Corp.
Common Stock, $.01 Par Value (File No. 7–3900)
Ecology and Environment Inc.
Class "A" Common Stock, $.01 Par Value (File No. 3901)
Frequency Electronics Inc.
Common Stock, $1.00 Par Value (File No. 3902)
Healthvest, SBI
Shares of Beneficial Interest, No Par Value (File No. 3903)
McClatchy Newspapers Inc.
Class "A" Common Stock, $.01 Par Value (File No. 3904)
Newmark & Lewis Inc.
Common Stock, $.05 Par Value (File No. 3905)
Tejon Ranch Co.
Common Stock, $1.00 Par Value (File No. 3906)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 4, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–21319 Filed 9–16–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges of Opportunity for Hearing; Midwest Stock Exchange, Inc.

September 13, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

ACM Government Opportunity Fund Inc.
Common Stock, $.01 Par Value (File No. 7–3907)
Van Kampen Merritt/Municipal Income Trust

Common Stock, $.01 Par Value (File No. 3908)

Duke Realty Investment Inc.

Common Stock, $.01 Par Value (File No. 3909)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 4, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-21320 Filed 9-16-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16562; (811-1375)]

Systematic Plans To Accumulate Shares of Industries Trend Fund, Inc.; Notice of Application

September 13, 1988.

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

ACTION: Notice of application for de-registration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Systematic Plans to Accumulate Shares of Industries Trend Fund, Inc.

Relevant 1940 Act Section: Application filed pursuant to section 8(f) and Rule 8f-1.

SUMMARY OF APPLICATION: An order is requested declaring that Applicant has ceased to be an investment company under the 1940 Act.

FILING DATES: The application was filed by Criterion Distributors, Inc. on behalf of Applicant on July 22, 1988, and amended on August 30, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 7, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicant, 1000 Louisiana, Suite 6000, Houston, TX 77002.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney (202) 272-3047, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. Applicant is a unit investment trust registered under the 1940 Act. Created in Texas by a contract between Systematic Plans, Inc. (now Criterion Distributors, Inc.) and Texas Commerce Bank N.A., Applicant filed its Notification of Registration on Form N-8A and its registration statement pursuant to section 8(b) of the 1940 Act on March 17, 1966. Applicant also filed a registration statement under the Securities Act of 1933, which was declared effective on June 20, 1966, on which date the initial public offering of Applicant's periodic payment plan certificates representing a contractual undertaking to acquire shares of Industries Trend Fund, Inc. ("Trend") commenced.

2. The Board of Directors of Trend resolved to sell all of the assets of Trend of Pilot Fund, Inc. ("Pilot") in exchange for shares of Pilot which were distributed to shareholders of Trend on April 30, 1980. Trend shareholders then became shareholders of Pilot. Applicant's securityholders who held Trend shares through Applicant received 922,892 shares of Pilot with a total value of $8,509,869. Thereafter, Applicant no longer held any shares or other assets under the contract with Texas Commerce Bank, N.A. and continued in existence solely as a legal shell. On September 2, 1982, Trend filed an application on form N-8F requesting an order declaring that it had ceased to be an investment company. According to the application, a separate application was not previously filed on behalf of Applicant because it was believed that Applicant would cease to be an investment compnay concurrently with the granting of the order declaring that Trend had ceased to be an investment company under the 1940 Act (Investment Company Act Rel. No. 12732, October 13, 1982).

3. Applicant has no assets, no outstanding debt, and is not a party to any litigation or administrative proceedings. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust and is not now engaged, nor does it propose to engage, in any business activity other than that necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-21318 Filed 9-16-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended September 9, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45810

Date Filed: September 9, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 7, 1988.

Description: Application of Qantas Airways Limited pursuant to section 402 of the Act and Subpart Q of the Regulations, requests amendment of its foreign air carrier permit to provide foreign air transportation of passengers,

property and mail between the United States and Australia.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-21250 Filed 9-16-88; 8:45 am]

BILLING CODE 4910-62-M

Maritime Administration

[Docket S-828]

Proposed Modification of the Application of Apex Resources, Inc. and Liberty Shipping Group With Respect To Proposed Assignment of Operating-Differential Subsidy Agreements of American Shipping, Inc. and Aeron Marine Shipping Co.

By application dated April 22, 1988, Apex Resources, Inc., advised that certain partnerships and companies in which Apex Resources, Inc. and its subsidiaries (collectively Apex) have an interest propose to sell to Liberty Shipping Group (Liberty) four U.S.-flag vessels—The ARCHON, ALTAIR, ASPEN and ARION—and to assign to Liberty the contractor's rights under two related Operating-Differential Subsidy Agreements (ODSA), Contract MA/MSB-166(a) with Aeron Marine Shipping Company (Aeron) for which no ship is currently named and ODSA, Contract MA/MSB-272 with American Shipping, Inc. (American Shipping) for which the BEAVER STATE is named. Apex also advised that certain partners in partnerships which own the vessels AURORA and BEAVER STATE propose to sell their partnership interests to Liberty. Apex advised that Liberty would be formed as a partnership which would be controlled by Schnitzer Investment Corp. (SIC), currently a subsidiary of Schnitzer Steel Products Co. (Schnitzer Steel). The partners in Liberty would be SIC and Philip J. Shapiro or an entity to be formed by him.

In its application of April 22, 1988, Apex requested the following approvals and determinations under the Merchant Marine Act, 1936, as amended (Act), in connection with the sale to Liberty of the ARCHON, ALTAIR, ASPEN and ARION and the contractor's right under ODSA, Contract MA/MSB-166(a) and ODSA, Contract MA/MSB-272:

(1) Under the Title VI (a) approval pursuant to section 608 to transfer to Liberty the contractor's rights under the ODSAs; (b) approval for Liberty to operate any of the vessels pursuant to the ODSA for a maximum of 730 total voyage days in any one calendar year under a sharing system; (c) confirmation that the vessels may continue carrying, without ODSA, cargoes subject to the cargo preference statutes of the United States without restriction; and (d) approval to the extent necessary, to transfer to Liberty the rights arising from the prior approvals applicable to the ARCHON, ALTAIR, ASPEN, and ARION granted pursuant to section 615.

(2) Under section 804(a) (a) a determination that foreign-flag bulk vessels owned by companies which may be related to Liberty do not compete "with any American-flag service determined . . . to be essential . . . within the meaning of section 804(a)"; or alternatively (b) if it is determined that such foreign-flag operators compete with an essential U.S.-flag service within the meaning of section 804(a), a waiver for special circumstance and good cause shown pursuant to section 804(b) to permit Liberty to receive ODS with respect to the operation of any of the vessels in the U.S.-foreign and foreign-to-foreign commerical trades during the remaining term of Contract MA/MSB-166(a) and Contract MA/MSB-272 with Liberty.

Notice of the application of April 22, 1988, was published in the Federal Register of May 6, 1988 (53 FR 16334), Docket S-828, with a closing date of May 20, 1988.

By letter of June 16, 1988, Apex requested that consideration of the transfer to Liberty of the ODSA to which Aeron is a party, Contract MA/MSB-166(a) be delayed and considered together with the transfer of the ODSA, to which American Shipping is a party, Contract MA/MSB-272, covering the BEAVER STATE, at a later date. Apex also requested that the Maritime Administration (MARAD) proceed with consideration of the transfer of the ARCHON, ALTAIR, ASPEN, and ARION, pursuant to section 615 of the Act, to the extent required, since transfer of those vessels to Liberty was scheduled for June 23, 1988.

On June 22, 1988, MARAD agreed to the requested delay with respect to consideration of the transfers of the ODSAs to Liberty and authorized pursuant to section 615 of the Act to any extent required, the purchase by Liberty of the ARCHON, ALTAIR, ASPEN, and ARION.

By letter of August 26, 1988, Apex and Liberty submitted the following proposal to modify the applicant of April 22, 1988, so as to restructure the transaction with respect to transfer of the ODSAs to avoid any issue under section 804 of the Act.

Instead of transferring ODSAs, Contracts MA/MSB-166(a) and MA/MSB-272 to Liberty (in which members of the Schnitzer family have an interest), the parties now propose that the ODSAs be transferred to a new entity, NEWCO, yet to be formed, which will be wholly and exclusively owned by Philip J. Shapiro.

NEWCO (the proposed holder of the ODSAs) will, when the vessels are operated in the foreign commercial trades, bareboat charter the vessels covered by the ODSAs and time charter them back to the owner, Liberty, at a rate net of subsidy. Liberty Maritime Corporation, the present operator of four bulk vessels built under section 615, wholly and exclusively owned by Philip J. Shapiro, will be employed as a managing agent. Neither NEWCO, nor any holding company, subsidiary, affiliate or associate will, directly or indirectly, own, charter, act as agent or broker for, or operate any foreign-flag vessel. No officer, director, agent or executive of NEWCO will, directly or indirectly, own, charter, act as agent or broker for, or operate any foreign-flag vessel.

As presently contemplated, the vessel or vessels intended for subsidized operation in the foreign commercial (i.e. non-preference) trade will be chartered in to NEWCO and chartered out for use in the foreign commercial trade on a subtime or contract of afreightment basis from Liberty Shipping Group, the time charter of the vessel. Whether only two vessels or all six vessels proposed to be owned by Liberty will be included depends upon the pending request from ODS sharing.

The applicant advised that the proposed structure mirrors the existing structures previously approved by MARAD involving the BEAVER STATE and ROSE CITY. Those vessels are or were owned, respectively, by Yeon Shipping Corp. and Northwest Shipping Corp. (wholly owned subsidiaries of Schnitzer Steel), bareboat chartered to American Shipping, and Pacific Shipping, Inc., respectively, (companies controlled by Leo V. Berger), which held the ODSAs, and then time chartered back to Schnitzer Steel.

Interested parties may inspect the foregoing proposal in the Office of the Secretary, Maritime Administration, Room 7300 Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Any person, firm, or corporation having any interest in such proposal and desiring to submit comments thereon must file comments in triplicate with the Secretary, Maritime Administration by close of business on September 22, 1988. The Maritime Administration will consider such comments and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating Differential Subsidies)).

By Order of the Maritime Subsidy Board.

Date: September 15, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-21388 Filed 9-16-88; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Announcement of Second Meeting of the Heavy Truck Subcommittee of the Motor Vehicle Safety Research Advisory Committee

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

ACTION: Meeting announcement.

SUMMARY: This notice announces the second meeting of the Heavy Truck Subcommittee of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The MVSRAC established this subcommittee at the February 1988 meeting to examine research questions regarding crashworthiness and crash avoidance for vehicles over 10,000 pounds GVWR.

DATE AND TIME: The meeting is scheduled for November 3, 1988, from 10:00 a.m. to 5:00 p.m.

ADDRESS: The meeting will be held in Room 6332 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research. The MVSRAC wil provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration, and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

Heavy truck safety is a very broad subject area. At the initial meeting of the Heavy Truck Subcommittee, it was the general consensus that the subcommittee members needed to develop a process for systematically evaluating and prioritizing the possible heavy truck research topics. It was agreed that the starting point for this discussion would be the research agendas proposed by NHTSA in the Section 216 and 217 Congressional reports expanded and/or made more specific based on inputs from the members of the subcommittee.

At this subcommittee meeting, a first cut assessment of potential research topics will be made. The focus of the discussions will be the current state of knowledge in each particular area, ongoing activities relevant to the topic, identification of information that is needed to make progress in that area, and discussion of whether the subject area is worth pursuing and, if so, whether it should be a short, medium or long range priority.

The meeting is open to the public, and participation by the public will be determined by the Subcommittee Chairman.

A public reference file (Number 88-01—Heavy Truck Subcommittee) has been established to contain the products of the subcommittee and will be open to the public during the hours of 8:00 a.m. to 4:00 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in Room 5108 at 400 Seventh Street SW., Washington, DC 20590, telephone: (202) 366-2768.

FOR FURTHER INFORMATION CONTACT: William A Leasure, Jr., Chairman, Heavy Truck Subcommittee, Office of Research and Development, 40 Seventh Street, SW., Room 6220, Washington, DC 20590, telephone: (202) 366-5662.

Issued on: September 14, 1988.

Howard M. Smolkin,

Chairman, Motor Vehicle Safety Research, Advisory Committee.

[FR Doc. 88-21304 Filed 9-16-88; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Office of Hazardous Materials Transportation (OHMT), Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: The notice is to advise interested persons that RSPA and the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council will jointly conduct a public meeting to report the results of the 38th session of the United Nations Group of Rapporteurs on the Transport of Dangerous Goods and the 28th Session of the United Nations Group of Experts on Explosives.

DATE: October 6, 1988, 9:30 a.m.

ADDRESS: Room 6200, Nassif Building, 400 Seventh Street SW., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Richard C. Barlow, Acting International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366-0656.

Issued in Washington, DC, on September 14, 1988.

Alan I. Roberts,

Director, Office of Hazardous Materials, Transportation.

[FR Doc. 88-21270 Filed 9-16-88; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 14, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0112.

Form Number: ATF 2105 (5000.7).

Type of Review: Extension.

Title: Extension of Coverage of Bond.

Description: ATF F 2105 (5000.7) is used by ATF to ensure the payment of excise taxes on unpaid taxable commodities and serves as a notification that coverage already granted under the original bond is to be extended to new items or conditions which did not exist when the original bond was initiated.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 25.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 25 hours.

OMB Number: 1512-0205.

Form Number: ATF REC 5110/01—ATF F 5110.40.

Type of Review: Extension.

Title: Distilled Spirits Plants (DSP) Production Records and Report.

Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends in the industry, and plan efficient allocation of field resources, audit plant operations and compilation of statistics for government economic analysis.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 20.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 2,880 hours.

Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 21315 Filed 9-16-88; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Performance Review Board Members

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: This Notice is issued to revise the membership of the United States Information Agency (USIA) Performance Review Board.

DATE: September 19, 1988.

FOR FURTHER INFORMATION CONTACT:

Ms. Patricia Hoxie (Co-Executive Secretary), Chief, Domestic Personnel Division, Office of Personnel, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547, Telephone: (202) 485-2617

or

Mr. John Welch (Co-Executive Secretary), Chief, Policy and Foreign Service Personnel Division, Office of Personnel, Voice of America, U.S. Information Agency, 300 C Street SW., Washington, DC 20547, Telephone: (202) 485-8732.

SUPPLEMENTARY INFORMATION: In accordance with Section 4314(c) (1) through (5) of the Civil Service Reform Act of 1978 (Pub. L. 95-454), the following list supersedes the U.S. Information Agency Notice (52 FR 39765, October 23, 1987):

Chairperson: Assistant Director for Management—Henry E. Hockeimer (non-career SES).

Deputy Chairperson: Director, Voice of America—Richard Carlson (Presidential Appointee).

Career SES Members

Assistant Inspector General for Audits, Office of Inspector General—J. Richard Berman

Director, Office of Engineering and Technical Operations, Voice of America—Robert E. Frese

Deputy Director for Programs, Voice of America—Alan L. Heil, Jr.

Director, Office of Management and Program Services, Television and Film Service—Vincent R. Lauria

Executive Director, Bureau of Educational and Cultural Affairs—Thomas G. Leydon

Assistant Inspector General for Inspections, Office of Inspector General—Richard D. Moore

Alternate Career SES Members

Director for Broadcast Operations, Voice of America—Edward DeFontaine

Director, Exhibits Service, Bureau of Programs—William K. Jones

This supersedes the previous U.S. Information Agency Notice (52 FR 39765, October 23, 1987).

Henry E. Hockeimer,

Acting Associate Director for Management, U.S. Information Agency.

[FR Doc. 88-21274 Filed 9-16-88; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Availability of Report; Program Evaluation

Notice is hereby given that the Analysis of the Education Program Approval Process: A Program Evaluation has been completed.

Single copies of the Analysis of the Education Program Approval Process evaluation report are available free. Reproduction of multiple copies can be arranged at the user's expense.

Direct inquiries, specifying the name of the program evaluation desired, to Mr. H. Raymond Wilburn, Director, Studies and Evaluation Service, Veterans Administration (072), 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: September 13, 1988.

By Direction of the Administrator:

H. Raymond Wilburn,

Acting Director, Office of Program Analysis and Evaluation.

[FR Doc. 21314 Filed 9-16-88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 181
Monday, September 19, 1988

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).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Monday, September 26, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200–C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations (Optional).
3. Proposed Recordkeeping Modifications to 29 CFR Part 1602, "Reports and Records" and 29 CFR Part 1627, "Records to be Made or Kept Relating to Age".

Closed Session

1. Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals.
2. Litigation Authorization: General Counsel Recommendations.
3. Discussion of Certain Commission's Charge.

Note. Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at any time for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 634–6748.

Date: September 15, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 88–21443 Filed 9–15–88; 3:48 pm]

BILLING CODE 6750–06–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, September 13, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Memorandum and resolution re: (1) Notice of Withdrawal of proposed policy statement, entitled "Bank Merger Transactions" which policy statement was published in the **Federal Register** on October 4, 1985, and (2) Solicitation of Comment on a new, substitute proposed policy statement entitled "Bank Merger Transactions," which redefines and clarifies product and geographic markets and the standards to be applied in assessing both the competitive effects and prudential concerns involved in a proposed bank merger transaction.

Review of FDIC's financial performance.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,250
Houston Consolidated Office, Houston, Texas

The Board also determined, on motion of Director Robert L. Clarke (Comptroller of the Currency), seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Chairman L. William Seidman, that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum and resolution re: Proposed amendments to Part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control," and Part 346 of the Corporation's rules and regulations, entitled "Foreign Banks," which amendments pertain to exemptions from the deposit insurance requirement, the capital equivalency requirement, the country exposure provision, the pledge of assets requirement and to the delegations of authority concerning it, as well as to miscellaneous provisions throughout the regulation.

By the same majority vote, the Board further determined that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: September 14, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88–21361 Filed 9–15–88; 10:14 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provision of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m., on Tuesday, September 13, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of (1) the application of Great Western Savings Bank, an operating non-FDIC-insured savings association located at 11201 SE. 8th Street, Bellevue, Washington, for Federal deposit insurance, and (2) a memorandum regarding the Corporation's corporate activities.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: September 14, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88–21362 Filed 9–16–88; 10:14 am]

BILLING CODE 6714–01–M

NATIONAL LABOR RELATIONS BOARD

Notice of Meeting

TIME AND DATE: 9:30 a.m., Thursday, September 8, 1988, and continued 10:30 a.m., Thursday, September 15, 1988.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. 552b(c)(2) (internal personnel rules and practices and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORAMTION: Joseph E. Moore, Acting Executive Secretary, Washington, DC 20570, Telephone: (202) 254–9430.

Dated: Washington, DC, September 14, 1988.

By direction of the Board.

Joseph E. Moore,

Acting Executive Secretary, National Labor Relations Board.

[FR Doc. 88–21323 Filed 9–14–88; 4:43 pm]

BILLING CODE 7445–01–M

Corrections

Federal Register
Vol. 53, No. 181
Monday, September 19, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 86F-0363]

Indirect Food Additives; Polymers

Correction

In rule document 88-18972 beginning on page 31832 in the issue of Monday, August 22, 1988, make the following corrections:

1. On page 31834, in the first column, under *C. 2,4-Toluenediisocyanate and 2,4-Toluenediamine*, in the sixth line, "reacted" should read "unreacted".

2. On page 31835, in the first column, under **IV. References**, in reference 5, beginning in the fourth line, "2.4-Toluenediamine" should read "2,4-Toluenediamine".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 444

[Docket No. 79N-0155]

Oligosaccharide Antibiotic Drugs; Neomycin Sulfate for Compounding Oral Products

Correction

In rule document 88-18973 appearing on page 31837 in the issue of Monday, August 22,1988, make the following correction:

On page 31837, in the second column, under **FOR FURTHER INFORMATION CONTACT**, in the second line, "(HFS—222)" should read "(HFC—222)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8217]

Income Tax; Taxable Years Beginning After December 31, 1953 and OMB Control Numbers Under the Paperwork Reduction Act; Certain Cash or Deferred Arrangements Under Employee Plans

Correction

In the issue of Friday, September 2, 1988, on page 34194, a correction to FR Doc. 88-17720 appeared. Several items were inaccurate and should have appeared as follows:

1. On page 34194, in the second column, in paragraph 4, in the second line, "§ 1.401(k)-1(b)(4)" should read "§ 1.401(k)-1(b)(4)(i)".

2. On the same page, in the same column, in paragraph 5, in the second line, "§ 1.401(k)-1(b)(4)(B)" should read "§ 1.401(k)-1(b)(4)(i)(B)".

3. On the same page, in the same column, in paragraph 6, in the second line, "§ 1.401(K)-1(b)(4)(B)(ii)" should read "§ 1.401(k)-1(b)(4)(b)(ii)".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

Proposed Posting of Stockyards; Turlock Livestock; et al.

Correction

In notice document 88-20178 appearing on page 34328 in the issue of Tuesday, September 6, 1988, make the following correction:

In the second column, the heading should read as set forth above.

BILLING CODE 1505-01-D

Federal Register

Monday
September 19, 1988

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 780 and 784

Surface and Underground Mining Permit Applications; Probable Hydrologic Consequences Determination; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 780 and 784

Surface and Underground Mining Permit Applications; Probable Hydrologic Consequences Determination

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior is amending its permanent program regulations to specify the content and scope of the probable hydrologic consequences (PHC) determination required in an application for a permit to conduct surface coal mining and reclamation operations. This action is undertaken in response to a district court decision in litigation on OSMRE's permanent regulatory program. This final rule establishes the permit and adjacent areas as the scope of the PHC determination.

EFFECTIVE DATE: October 19, 1988.

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SUPPLEMENTARY INFORMATION:

I. Background

Statutory Provisions

The Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, provides for the submission of specific hydrologic information and findings in permit applications for both surface and underground mining operations. Specifically, section 507(b)(11) of the Act, 30 U.S.C. 1257(b)(11), requires that each application contain, among other things, "a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the regulatory authority of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability: *Provided, however,* that this determination shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate Federal or State agency: *Provided further,* that the permit shall not be approved until such information is available and is incorporated into the application * * *."

Thus, section 507(b)(11) requires the applicant to submit a determination of the probable hydrologic consequences (PHC) of the proposed operation, and sufficient data to enable the regulatory authority to prepare a cumulative hydrologic impact assessment (CHIA). The purpose of these requirements is to ensure that the applicant has evaluated the impact of the proposed operation on existing hydrologic conditions, both on and off the mine site, and that the regulatory authority has sufficient information to assess the probable cumulative hydrologic impacts of all anticipated mining in the area.

History of the Rule

OSMRE has promulgated rules implementing section 507(b)(11) of the Act on two occasions. Permanent program rules for PHC determinations were first promulgated on March 13, 1979 (44 FR 15360 and 15367). Those rules used the term "mine plan area" in defining the scope of the PHC determination. The rules, which required that the reclamation plan contain a PHC determination for the mine plan area and adjacent area, were found at 30 CFR 780.21(c) for surface mining activities and at 30 CFR 784.14(c) for underground mining activities.

In *In Re: Permanent Surface Mining Regulation Litigation (In Re: Permanent),* No. 79–1144, slip op. at 35–36 (D.D.C. February 26, 1980), the use of the term "mine plan area" in section 780.21(c) was challenged on the grounds that it required mining companies to supply information for areas outside the permit boundary and to require information covering the entire life of the mining operation.

The district court concluded that section 507 of the Act consistently referred to "specific land mined or the immediate permit area," and that "Congress articulated with specificity those instances in which information outside the permit area was necessary." The court remanded the definition of *mine plan area,* suspended the term as found in Parts 779, 780, 783 and 784, and directed the Secretary of the Interior to revise the definition in accordance with the informational requirements of the Act.

The Secretary sought clarification of the court's February 26, 1980, opinion with respect to whether the suspension of the term *mine plan area* affected those provisions of the rules containing informational requirements whose statutory basis required information either: (1) both on and off the mine site; or (2) extending over the estimated life of the mining operation. The court noted in its May 16, 1980, opinion that it was fully cognizant that section 507(b)(11) requires information both on and off the mine site and recognized the possibility that some of the regulations using the term *mine plan area* may derive authority for expansive information requirements from this section of the Act. However, rather than rule on the merits of this possibility, the court referred the question to OSMRE for further rulemaking and the process of public notice and comment. *In Re: Permanent,* No. 79–1144, slip op. at 57–58 (D.D.C. May 16, 1980).

To comply with the court's decision and to reorganize and consolidate hydrologic requirements scattered throughout the rules, OSMRE promulgated new hydrology rules for surface and underground operations (48 FR 43956, September 26, 1983). The rule at 30 CFR 780.21(f) for surface mining permits and at 30 CFR 784.14(e) for underground mining permits used the term "permit and adjacent areas" in lieu of the suspended term "mine plan area" in defining the scope of the PHC determination to implement the statutory phrase "both on and off the mine site" found in section 507(b)(11).

Plaintiffs in *In Re: Permanent Surface Mining Regulation Litigation (II), Round III (In Re: Permanent II),* No. 79–1144, slip op. at 9–16 (D.D.C. July 15, 1985), challenged the Secretary's 1983 rules on PHC determination contending that they were wrongly limited to activities occurring during the "life of the permit" as opposed to the "life of the mine." The plaintiffs contended that unless the PHC determination contained a life-of-mine analysis, as opposed to a life-of-permit analysis, the regulatory authority would be unable to develop an adequate CHIA.

The court remanded the rules on procedural grounds. *In Re: Permanent II,* slip op. at 16. In its 1985 decision, the court stated that: "First, the court does not conclude that the regulation is inconsistent with the plain language of the Act * * *. Nor, however, does the court find that the language of the Act *requires* that the operator's analysis be limited to activities conducted during the permit period." *Id.* at 14. The court

concluded that the preamble to the final rule did not explain why a life-of-mine analysis was not required. The court found that including a life-of-mine analysis in the PHC determination was not precluded by the Act, and invited the Secretary to explain why the life-of-mine analysis should be in the CHIA as opposed to the PHC determination. *Id.* at 16.

As a result of the court's decision, OSMRE suspended the PHC rules at 30 CFR 780.21(f) for surface mining permit applications, and at 30 CFR 784.14(e) for underground mining permit applications (51 FR 41957, November 20, 1986). OSMRE reexamined these rules in light of the court's decision, as well as the legislative history of the Act and comments on rule options from citizen and environmental groups, industry trade associations, and State regulatory authorities, and proposed rules identical to those that were suspended (52 FR 32764, August 28, 1987). OSMRE discussed in the notice of proposed rule why it was appropriate to limit the PHC determination to the permit and adjacent areas. A 70-day period for public comment was provided, ending November 6, 1987, and the public was given the opportunity to request public hearings. No public hearing was requested and none was held.

II. Discussion of Final Rule and Comments

The final rule at 30 CFR 780.21(f) governs the probable hydrologic consequences (PHC) determination for surface coal mining and reclamation activities, and the final rule at 30 CFR 784.14(e) governs the probable hydrologic consequences determination for underground mining activities. The rules for surface and underground mining activities are identical, except that there is no underground mining counterpart to § 780.21(f)(3)(iii), which requires applicants for surface mining permits to make a finding on whether the proposed operation may proximately result in the contamination, diminution or interruption of an underground or surface source of water. Unless otherwise noted in this discussion, all references to section 780.21(f), the surface mining rule, also apply to the underground mining rule at section 784.14(e).

The final rule adopted here is identical to the rules promulgated on September 26, 1983 (48 FR 43956), suspended on November 20, 1986 (51 FR 41957), and reproposed on August 28, 1987 (52 FR 32764). Except as clarified or modified herein, OSMRE incorporates by reference in this rule the statement of basis and purpose for the corresponding provisions of the September 26, 1983 rule. In reaching a decision to make no changes in the rule governing PHC determinations, OSMRE carefully considered the comments submitted and reviewed the legislative history.

OSMRE received comments on the proposed rule from three coal industry associations, four state regulatory authorities, three citizen and environmental groups, and one Federal agency. The comments received from the coal industry associations and State regulatory authorities supported the proposed rule and provided reasons why the scope of the PHC determination should be limited to the permit and adjacent areas. In contrast, the citizen and environmental groups argued that the final rule should expand the scope of the PHC determination to include the life-of-mine area.

A. General Description and Purpose of Rule

There are four paragraphs in the PHC determination rule. Paragraph (f)(1) requires the applicant for a surface coal mining and reclamation permit to determine the probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

Paragraph (f)(2), requires this estimate of the potential impacts on the hydrologic balance to be developed from baseline hydrologic, geologic and other information collected for the permit application. Data statistically representative of the permit area may be used.

Paragraph (f)(3) specifies that the PHC determination shall contain certain minimum findings on whether there may occur adverse impacts to the hydrologic balance, whether acid-forming or toxic-forming materials are present that could result in the contamination of water supplies, and what impact the proposed operation will have on sediment yield, water quality, flooding or stream-flow alteration, water availability and other characteristics of hydrologic systems required by the regulatory authority. As previously indicated, applicants for surface mine permits must also make a finding on whether their proposed operation may result in the contamination, diminution or interruption of certain water uses. Paragraph (f)(4) requires the regulatory authority to review applications for permit revisions to determine whether a new or updated PHC determination is needed.

The PHC determination is an estimate of the consequences to the hydrologic regime, both on and off the proposed permit area, resulting from the proposed operation, including any mitigating measures to be taken during mining and reclamation. The PHC determination is closely linked to the other hydrologic permitting requirements in § 780.21, including the hydrologic reclamation plan, surface and ground-water monitoring plans, and supplemental baseline information.

Existing § 780.21(h) requires that each application for a surface coal mining and reclamation permit include a hydrologic reclamation plan with maps and descriptions of how the hydrologic performance standards in Part 816 will be met. The plan must include preventative and remedial measures that specifically address the potential adverse impacts to the hydrologic balance.

The surface and ground-water monitoring plans required by existing §§ 780.21(i) and 780.21(j) are based on the PHC determination and the baseline hydrologic data. These data and the PHC determination may serve as the basis for the regulatory authority to grant a ground-water monitoring waiver or to require the applicant to submit supplemental baseline hydrologic information as provided for in existing § 780.21(b)(3).

Under existing §§773.15(c)(5) and 780.21(g), which are not affected by this rule, the regulatory authority is required to make an assessment of the probable cumulative impact of all anticipated mining and prepare a written finding that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area before a permit can be issued.

There are important differences between a PHC determination and a cumulative hydrologic impact assessment (CHIA). The PHC determination is prepared by the permit applicant whereas the CHIA is prepared by the regulatory authority. The PHC determination must predict the wide range of hydrologic impacts that could result from a proposed mining and reclamation operation. In contrast, the CHIA focuses on those specific hydrologic impacts (e.g., acid mine drainage, water availability, flooding) over which there are regional concerns as determined by the regulatory authority. The PHC determination aids the regulatory authority in identifying local concerns which may become the subject of the CHIA. A PHC determination is judged by whether it contains sufficient technical analysis to

support the findings required under § 780.21(f)(3).

B. Comments Received on the Scope of PHC Determination

In considering the comments received on the proposed rule, OSMRE divided them into two groups—those addressing the scope of the PHC determination and those addressing its content. The majority of the comments concerned the scope.

Section 780.21(f)(1) of this rule specifies the scope of the PHC determination as the "permit and adjacent areas," as these terms are defined at 30 CFR 701.5. The *permit area* generally is the area of land upon which the operator proposes to conduct surface coal mining and reclamation operations, and has so indicated on a map submitted with the application to mine. *Adjacent area* in the context of a PHC determination means the area outside the permit area where surface or ground-water resources are or reasonably could be expected to be adversely impacted by the proposed mining activities within the permit area. This reference in § 780.21(f)(1) to the "permit and adjacent areas" is based on section 507(b)(11) of the Act, which in specifying the area for which an applicant must provide a PHC determination uses the phrase "on and off the mine site." Thus, section 507(b)(11) sets the scope of the PHC determination in terms of land area.

This rule uses the phrase "permit and adjacent areas" to specify the scope of the PHC determination because the phrase has spatial significance equivalent to the language of the Act. It was noted in the preamble to the proposed rule that the phrases "life of permit" and "life of mine" have a temporal connotation that is inconsistent with the wording of section 506(b)(11).

Several commenters endorsed this interpretation of section 507(b)(11). One commenter concluded that the proposed rule adhered to the clear statutory language that focuses the relevant analysis to "on and off the mine site." The commenter stated that the alternative of the PHC determination occuring in a temporal context, e.g., "life-of-mine," has no basis in the statute.

In contrast, other commenters contended that the agency erred in making a distinction between temporal and spatial limits for the hydrologic analyses required by the Act, and that both the PHC determination and the CHIA required by section 507(b)(11) inevitably involve both temporal and spatial aspects. In further explanation of this point, one commenter stated that "both the CHIA and PHC will have spatial limits—i.e., the area where the activity occurs and the area impacted by these activities—and temporal limits or how long the activity will occur in the area—i.e., over what period of time the actions occur in the spatial area involved."

OSMRE disagrees with the commenter's assertion that the PHC is required to have temporal limits. In the final rule, the PHC determination applies to the permit area as described on maps in the permit application, and to adjacent areas where surface or ground-water resources are or reasonably could be expected to be adversely impacted by all proposed mining that would be authorized if the permit were issued, irrespective of whether that mining occurs during the permit term or subsequent renewals. The permit application describes certain proposed mining activities that would occur within a proposed area of operation. The PHC will assess the probable consequences of all those proposed activities, not just those that would occur during the initial permit term. Thus, the PHC is not a "life of permit" assessment. This concept is recognized by section 506 of the Act, which provides for a right of automatic renewal, but requires that any extensions of the area authorized for mining activities shall be subject to the full standards applicable to a new application, which would include a new PHC for that additional area. Also, the requirement for a CHIA in section 510(b) applies to new permits and revisions, but not to renewals, which are only subject to the public notice portion of section 510(a) of the Act. OSMRE's decision to adopt the term "permit and adjacent areas" reflects the language chosen by the Congress in section 507(b)(11) to describe the scope of the PHC in areal terms. The phrase "permit and adjacent areas" is consistent with the statutory language "on and off the mine site."

Two commenters focused on the provision of section 507(b)(11) which requires "the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the regulatory authority of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability * * *." In their reading of section 507(b)(11), the commenters concluded that data collected to satisfy this provision should be included as part of the PHC determination.

OSMRE disagrees, and interprets this provision as a separate requirement to support the regulatory authority's assessment of probable cumulative hydrologic impacts. Section 507(b)(11) imposes two separate requirements for permit applicants: (1) a determination of the probable hydrologic consequences of the proposed mining and reclamation operations; and (2) sufficient data for the mine site and surrounding areas so that the regulatory authority can make an assessment of the cumulative hydrologic impacts of all anticipated mining in the area.

OSMRE agrees with the commenter that the PHC determination may serve as input for the cumulative analysis of the hydrologic impact of existing and anticipated mines by the regulatory authority. However, the PHC determination was not intended to entirely satisfy the regulatory authority's needs, and therefore the additional requirement was added by the Congress to section 507(b)(11) for the collection of sufficient data from the mine site and surrounding area so the regulatory authority can conduct the CHIA. As the legislative history shows, however, the Senate and House were not in full agreement on the applicant's responsibility to collect data for the CHIA. Thus, the Senate included in section 507(b)(11) a proviso that the CHIA would not be required until hydrologic information on the general area was available from an appropriate Federal or State agency. And the House responded with the further proviso that the permit could not be approved until such information was available and incorporated into the application. S. Rep. No. 95–337, 95th Cong., 1st. Sess. 103 (1977).

One commenter cited the district court's July 15, 1985, decision in *In Re: Permanent II* remanding §§ 780.21 and 784.14 as support for broadening the scope of the PHC determination to include the life-of-mine area. The commenter stated that the district court made two major points: (1) the Act does not require the PHC determination to be limited to activities conducted during the permit period; and (2) the Secretary failed to articulate a rationale for limiting the PHC determination to activities during the permit term.

The commenter has misconstrued the proposed rule. As noted above, the PHC determination is not limited to activities conducted during the permit term, but includes the hydrologic impacts both on and off the site of all proposed operations that would be authorized under the permit, irrespective of whether or not they would be conducted

during the permit term. Thus, the concerns raised by the district court were addressed in the preamble to the proposed rule and are expanded on here.

The United States Court of Appeals for the District of Columbia Circuit repeatedly has recognized the discretion vested in the Secretary of the Interior to use reasoned and expert judgment in interpreting the Act. *NWF v. Hodel*, No. 84–5743, slip op. at 43 (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)), 59 (citing *Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837, 844–45 (1984); and *Chemical Mfrs. Ass'n v. NRDC*, 470 U.S. 116, 125 (1985)), 80–81, 104–105, 107, 133–134, and 137–138 (D.C. Cir. January 29, 1988).

In the context of deciding the extent of the information required for a CHIA, the court of appeals in *NWF v. Hodel* refused to second-guess the Secretary's decision "to avoid the difficulty of requiring data * * * which might render the regulator's assessments speculative and meaningless." Slip op. at 133–134. OSMRE has concluded that because of operational uncertainties a PHC determination for the life-of-mine area, including the impact of possible mining activities not proposed or described in the permit application, also would be speculative and meaningless. Thus, under *NWF v. Hodel* it is reasonable to limit the PHC determination to the permit and adjacent areas. This is particularly true since sections 506(d)(2) and 510(b)(3) of the Act make it clear that another PHC determination would have to be prepared, and new findings made, before additional mining activites could be conducted in areas not authorized under a permit.

OSMRE's interpretation of section 507(b)(11) is consistent with related provisions in sections 507 and 508 of the Act. Generally, section 507 specifies the content of a surface coal mining and reclamation permit application, including in paragraph (d) a reclamation plan. Section 508, 30 U.S.C. 1258, specifies the content of the reclamation plan. As noted by the district court in *In Re: Permanent*, slip op. at 57 (D.D.C. May 16, 1980) and slip op. at 35 (D.D.C. Feb. 26, 1980), in these two sections the sole reference to the life-of-mine activities and area appears in section 508(a)(1), which requires that the reclamation plan include "the identification of the lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought."

This reference to a so-called "life-of-mine" area in section 508(a)(1) and its absence from the section 507(b)(11) requirement for a PHC determination indicate that the Congress was aware of the distinction between the life-of-mine activities and area, and the activities and area covered by the permit, and deliberately refrained from requiring a PHC determination for the activities and areas for which permit authorization was not being sought. In deferring to the Secretary's interpretation of the Act, the court of appeals in *NWF v. Hodel* has recognized this principle of statutory construction, that " '[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion[,]' " In *In Re: Permanent II*, slip op. at 137–138 (quoting district court, citations omitted).

The previously discussed legislative history of the first proviso in section 507(b)(11) indicates that the Congress was sensitive to the burden that providing hydrologic information would impose on the permit applicant. The first proviso in section 507(b)(11) shifts the burden of providing hydrologic information on the general area from the applicant to the "appropriate Federal or State agency." It would be unreasonable to conclude that the Congress on the one hand added this explicit proviso to section 507(b)(11) to limit the hydrologic information burden imposed on the applicant, but on the other hand intended that OSMRE would expand this burden by reading into that same section a requirement that the PHC determination cover the anticipated mining activities beyond the boundaries authorized under the permit. This leads OSMRE to conclude that the Congress deliberately intended to restrict the scope of the PHC determination.

In addition to concluding, based on the language of the Act, that the Congress intended to limit the scope of the PHC determination to the permit and adjacent areas, OSMRE believes there are sound technical reasons for such a limitation. The existing regulations require an applicant to submit a detailed description of the proposed mining operations in a hydrologic reclamation plan. (30 CFR 780.21) The findings in a PHC determination are highly site-specific and are based on the detailed information contained in this plan. It would be difficult, if not impossible, to accurately determine the impact of so called life-of-mine operations beyond the boundaries of the proposed activities on such hydrologic factors as sediment yield from disturbed areas, water quality and availability, and flooding potential, for example, without detailed information on the number and location of sediment-control structures and permanent impoundments and constructed and natural drainways.

As explained above, the PHC determination is related to permit application requirements, such as those in the hydrologic reclamation plan, that pertain to the permit area. This plan is limited to hydrologic predictions and findings that apply to the proposed activities associated with the proposed permit area. Aggregate values of important hydrologic parameters in the larger life-of-mine area, including the anticipated mining activities for which detailed plans are not available, may mask or fail to bring into focus adverse impacts which are local in nature. Such localized hydrologic problems are most likely to come to the attention of the permit applicant and the regulatory authority when the unit of analysis for the PHC determination is the permit and adjacent areas, and the review is limited to the mining activities described in the permit and covered by the reclamation plan.

Several commenters agreed with OSMRE that the PHC determination should be based upon the maps, engineering designs and narrative information in the proposed operation and reclamation plan. One commenter stated that generally the information in the operation and reclamation plan covers only the permit and adjacent areas. The commenter said that extending the PHC determination to areas that may not be mined would dilute the accuracy of predictions because of the absence of relevant operational data. A second commenter added that the PHC determination requires extensive baseline data and a careful analysis of the effects of specific mining plans on the hydrologic system. The commenter noted that in some cases minor changes in plans, such as the location of drainage ditches or the sequence of operations, have significantly different effects on surface and ground-water systems. This commenter stressed that accurate PHC determinations require plans that are in sufficient detail to show the precise nature of the proposed mining and reclamation operations.

OSMRE agrees. PHC determinations encompass the dual functions of impact identification and mitigation applied in an interactive fashion. The PHC

determination process involves identifying the potential adverse impacts of the proposed operation on the hydrologic balance, developing a hydrologic reclamation plan to minimize these impacts, and reevaluating the impacts after incorporating the preventative and remedial measures found in the hydrologic reclamation plan, and finally, developing the estimate of impacts required for the PHC determination. OSMRE believes that this process of making a PHC determination can be effectively applied only when a proposed operation and reclamation plan is available for the mining operation. The Act requires these plans for the permit area, not the life-of-mine area.

Other commenters cited what they termed "practical considerations" as to why they believed the PHC determination should include only the permit and adjacent areas. One commenter stated that the life-of-mine area cannot always be determined accurately by either the operator or the regulatory authority because of factors such as the economy, and changes in State and Federal law and property ownership. A second commenter noted that life-of-mine areas change with property holdings and economic conditions, and that if "life-of-mine area" were used the boundaries of the PHC determination could change markedly prior to such areas being permitted. This was said to be unworkable for both operator and regulatory authority. The commenter added that if additional areas were proposed for mining in the future, the regulatory authority could require a PHC determination for the new areas under the proposed rule.

Likewise, a third commenter indicated that future mining, especially in the eastern coal fields where most lands are held by private interests, is speculative at best and that predictions of hydrologic impacts from future mining cannot be made accurately, if at all. The commenter concluded that the scope of the PHC determination should be limited to the area proposed to be permitted and mined so that accurate hydrologic predictions can be made.

OSMRE agrees that accuracy is an important consideration in estabishing the scope of the PHC determination. As the commenters indicated, future operations in the life-of-mine area often depend on unpredictable events which are beyond the control of the permit applicant and the regulatory authority. OSMRE believes that such error is minimized when the PHC determination is limited to the permit and adjacent areas where detailed operational plans are available and which are less likely to change or be affected by non-mining activities.

Some commenters said that the Congress intended the CHIA to build on the PHC determinations submitted for specific mines, and that limiting the PHC determination to the permit term left a major gap in the analysis of hydrologic impacts. Requiring a PHC determination for the life-of-mine area purportedly made sense because the mine operator was in the best position both to collect the hydrologic data for the proposed mine site and to conduct the initial analysis of the impact that mining would have on the hydrologic system.

OSMRE agrees with the commenters' assertion that the results of PHC determinations for specific mines be useful to the regulatory authorities in developing CHIA's and that the operator is in the best position to collect hydrologic data for the proposed mine site as defined by the permit area. However, the commenters' view that a gap in the analysis of hydrologic impacts would occur if the PHC determination were limited to the permit term is incorrect since it misconstrues the regulation. First, the proposed rule requires a PHC determination for all proposed mining and reclamation activities associated with the permit and adjacent areas and not for the "permit term" as stated by the commenter. The permit term is a period of time, usually five years, that is not applicable to a PHC determination. The "permit and adjacent areas," as previously discussed, include the permit area, which is described on maps in the permit application, and adjacent areas where surface and ground-water resources are or reasonably could be expected to be adversely impacted by the proposed mining operation. As previously noted, if the permit were renewed, only those operations authorized under the original permit could continue and would be limited to the area previously covered by the PHC determination. Because the PHC determination must consider hydrologic impacts of all activities to be authorized by the permit, without regard to the time when they occur, all impacts would be evaluated prior to permit issuance.

Second, the commenters have overlooked the requirement in section 507(b)(11) of the Act that there be sufficient data for the mine site and surrounding areas so that a CHIA can be made by the regulatory authority. Thus, if insuficient hydrologic information exists for preparing a CHIA, then the regulatory authority must delay issuance of a permit until either the necessary information is available from an appropriate Federal or State agency or is collected and incorporated into the permit application by the applicant.

Another commenter said that the proposed rule was impractical because the Act requires the permit applicant, as part of the application, to submit all data necessary to make a PHC determination, while the burden of data development for the CHIA rests with the regulatory authority. The commenter concluded that CHIA's will be based on whatever data happens to be available because the applicant is not required, and the regulatory authority does not have the resources, to collect hydrology data. The commenter wanted OSMRE to broaden the scope of the PHC determination to the life-of-mine area to ensure that there would be sufficient data for making a CHIA.

First, the scope of a CHIA is not an issue in this rule. The issue is whether or not an adequate PHC can be prepared without addressing future mining activities which are not described in the permit application, which would occur beyond the boundary of the permit, and for which approval is not being sought. Second, OSMRE does not agree with the commenter's reasoning. Section 507(b)(11) of the Act prohibits a regulatory authority from issuing a permit until it has sufficient data to assess the cumulative hydrologic impacts of the proposed operation. As previously discussed, data needed by the regulatory authority for the CHIA can either be supplied by an appropriate Federal or State agency or collected by the permit applicant.

Relative to information useful for a CHIA, approximately 40 million dollars have been appropriated by the Congress and used by the United States Geological Survey (USGS) since the passage of the Act to collect geologic and hydrologic data, and to prepare special hydrologic reports for all coal mining areas in the United States. Hydrologic reports No. 1 through No. 24 cover the Eastern Coal Province; hydrologic reports No. 25 through No. 35 cover the Interior Coal Province, Eastern Region; hydrologic reports No. 35 through No. 42 cover the Interior Coal Province, Western Region; and hydrologic reports No. 43 through No. 62 cover the Northern Great Plains and Rocky Mountain Coal Province. These reports, which were funded to aid mine operators and state regulatory authorities in complying with the Act, include information on geology, physiography, surface drainage, soils, climatology, water use, hydrologic networks, surface water quantity and

quality, ground water sources, recharge areas, ground water yields and quality, and the location and magnitude of acid mine drainage and other mine related pollutants. These reports are included in the administrative record for this final rule.

One commenter advocated requiring the PHC determination for the life-of-mine area because a CHIA was insufficient to adequately assess the long-term impacts of surface mining. The commenter said that the Act directs the inclusion of sufficient data in the permit application to enable the regulatory authority to make an assessment of the probable cumulative hydrologic impacts of "all anticipated mining in the area." This analysis, the commenter believed, could not be done piecemeal with five-year permit applications unless the permit area included all of what is in the life-of-mine area. From the commenters viewpoint, a PHC determination could only be useful if it included enough data to allow an estimate of the cumulative hydrologic impacts over the entire life of the mine.

OSMRE disagrees. The PHC determination is not an analysis of cumulative impacts of anticipated mining activities. That is precisely what the CHIA is for. To argue that the PHC determination should analyze the cumulative long-term impacts of anticipated life of mine activities beyond the permit area because the CHIA analysis otherwise would be inadequate is to attack the scope of the CHIA which is outside the scope of this rule.

Another commenter said that, as a technical matter, there was little value to submitting data for areas that might not be mined for 10, 20 or 40 years, since non-mining activities might occur in the meantime which would affect the hydrologic regimes and thus the value of the data. From the commenter's viewpoint, potential hydrologic impacts could be more accurately measured when future operations reached these areas. This commenter also pointed out that an operator may not have access to the surface for the purpose of collecting data in areas beyond the initial permit area.

OSMRE agrees in part. Non-mining activities could significantly affect the hydrologic regime and reduce the accuracy of a PHC determination. As the commenter suggests, operators might also experience difficulty in gaining access to areas beyond the initial permit area, which would make a life-of-mine PHC determination difficult or impossible to produce. Under the final rule, these problems will be minimized because the scope of the PHC determination is limited to the permit and adjacent areas. However, while the mining to which the PHC determination applies is most likely to occur during the immediate rather than the distant future, the PHC determination must address all mining activities associated with the permit area for which authorization is sought, irrespective of whether it will occur within 5 years.

The U.S. Environmental Protection Agency (EPA) suggested that OSMRE augment the preamble with a reference to both the wellhead protection areas developed under EPA's approved State programs, and EPA's ground-water classification guidelines. No explanation was provided as to why the commenter thought this would be appropriate.

OSMRE believes existing environmental laws and applicable programs of EPA are referenced, and thus already covered, by section 702(a) of the Act. As set forth in section 702(a), nothing in the Act or the rules promulgated thereunder shall be construed as superseding, amending, or repealing the Federal Water Pollution Control Act, State laws enacted pursuant thereto, or other Federal laws relating to the preservation of water quality.

Four State regulatory authorities commented in support of the proposed rule. One regulatory authority said that by defining the PHC determination to include the permit and adjacent areas the rule allowed sufficient flexibility for regulatory authorities to consider the specific characteristics of each coal mining region. OSMRE agrees. Section 201(c)(9) of the Act requires OSMRE to assist States in developing regulatory programs which satisfy the Act, and reflect local requirements and local environmental and agricultural conditions. OSMRE believes that the final rule is structured in a way that reflects the diverse characteristics of mining and environmental conditions in the various coal mining regions and is sufficient to produce adequate PHC determinations.

Another regulatory authority cautioned OSMRE not to promulgate a rule which would needlessly cause operators to incorporate costly and perhaps unnecessary controls in their permit applications in attempts to minimize cumulative impacts associated with speculative future mining. This regulatory authority maintained that as additional mining is proposed hydrologic impacts should be analyzed in the PHC determination for that permit area and controls put in place as appropriate.

The final rule requires the PHC determination for the proposed permit and adjacent areas. Because operation and reclamation plans and performance bonds must be filed for the permit area, mining that is proposed in this area is not speculative in nature. OSMRE believes the final rule achieves what the commenter is seeking, namely limiting the scope of the PHC determination to the permit and adjacent areas and requiring successive PHC determinations with each new permit application.

A final consideration in establishing the scope of the PHC determination is whether the requirements adopted are enforceable. In this regard the court in *NRDC V. OSM* (Mt. Gunnison decision), Recommended decision at 33 (June 24, 1983), *aff'd in part*, 89 IBLA 1 (September 27, 1985), recognized that a coal company's plans to mine beyond the permit area were simply a matter of intentions and that if excessive information requirements were imposed upon a company for stating its long-term intention, it would assure that coal companies would keep these intentions to themselves. OSMRE concludes that the PHC determination is best limited to the permit and adjacent areas because these areas are better defined than the life-of-mine area and do not rely on intentions which may be speculative and not clearly identifiable.

In sum, based on the legislative history and the plain language of the Act the PHC is linked with proposed activities within the permit area. Therefore, in order to expand the PHC beyond this area, OSMRE would need clear and compelling technical rationale. After closely examining the comments on the proposed rule in this light, OSMRE concludes that no persuasive legal or technical arguments have been offered that would necessitate or even justify expanding the scope of the PHC beyond the permit and adjacent areas, especially when the court has found that the more limited scope was not inconsistent with the Act.

C. Content of the PHC Determination

In the final rule § 780.21 (surface mining) and section 784.14 (underground mining) are identical, with one exception. Section 784.14 does not have a counterpart to § 780.21(f)(3)(iii), which requires the permit applicant to include in the PHC determination a finding on whether the proposed operation may proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose.

One commenter recommended that OSMRE adopt a companion provision for underground mining that tracks § 780.21(f)(3)(iii). The commenter based his recommendation on sections 717(b) and 508(a)(13) of the Act. Section 717(b) requires surface mine operators to replace water supplies that they damage, and section 508(a)(13) specifies the hydrologic information that must be included in the reclamation plan submitted as part of a permit application for a surface or underground mine.

Section 784.14 of the final rule does not contain the recommended provision. The United States Court of Appeals for the District of Columbia Circuit has affirmed the district court's decision that section 717(b) does not apply to underground mines, and that the permitting requirements of section 508(a)(13) do not provide a separate statutory basis for requiring underground mine operators to replace damaged water supplies. *NWFV v. Hodel*, slip op. at 121–127. The appeals court concluded "from the text as well as the legislative history of the water replacement provision, and from other provisions distinguishing between surface and underground mining, that Congress explicitly recognized the difference between surface and underground mines; that it deliberately chose to apply some environmental safeguards to one and not the other; and that water replacement is a provision it explicitly required only of surface mine operators." Slip op. at 124–125. In accordance with this decision, the final rule does not require applicants for underground mining permits to make a finding in the PHC determination on whether the proposed underground mine may proximately result in contamination, diminution or interruption of an underground or surface source of water.

III. Procedural Matters

Effect in Federal Program States and on Indian Lands

The final rules apply through cross-referencing in those States with Federal Programs. This includes Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal Programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 respectively. The final rules also apply through cross-referencing to Indian lands under the Federal Program for Indian lands as provided in 30 CFR Part 750. OSMRE has proposed (52 FR 39594, October 22, 1987) to implement a Federal Program for the State of California. When the program has been implemented these rules would apply through cross reference.

Federal Paperwork Reduction Act

The information collection requirements of Parts 780 and 784 have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.* The following clearance numbers were assigned: 30 CFR Part 780 (OMB Control No. 1029–0036); and 30 CFR Part 784 (OMB Control No. 1029–0039). The information is needed to meet the requirements of section 507(b)(11) of Pub. L. 95–87, and will be used by the regulatory authority to assess the impact of the proposed mining operation on the hydrologic balance. The obligation to respond is mandatory.

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that it will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule does not distinguish between small and large entities, and will make no change in the threshold for determining whether to approve permits for surface coal mining operations because of hydrologic consideration. No incremental economic effects are anticipated as a result of the rule.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) of the impacts of this final rule and has made a finding that it will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The EA and finding of no significant impact are on file in the OSMRE Administrative Record Room 5131, 1100 L Street NW., Washington, DC.

Author

The principal author of this rule is Dr. Charles Wolf, Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, PA 15220; Telephone (412) 937–2897 (FTS 726–2897).

List of Subjects

30 CFR Part 780

Coal mining, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 784

Coal mining, Reporting and recordkeeping requirements, Underground mining.

For the reasons set out in this preamble, 30 CFR Parts 780 and 784 are amended as set forth below.

Date: July 20, 1988.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management.

PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

1. The authority citation for Part 780 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; Pub. L. 100–34; and 16 U.S.C. 470 *et seq.*

2. Section 780.21 is amended by revising paragraph (f) to read as follows, and lifting the suspension to that paragraph, as noted in the editorial note at the end of the section:

§ 780.21 Hydrologic information.

* * * * *

(f) *Probable hydrologic consequences determination.* (1) The application shall contain a determination of the probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

(2) The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

(3) The PHC determination shall include findings on:

(i) Whether adverse impacts may occur to the hydrologic balance;

(ii) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface or ground water supplies;

(iii) Whether the proposed operation may proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose; and

(iv) What impact the proposed operation will have on:

(A) Sediment yields from the disturbed area; (B) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact; (C) flooding

or streamflow alteration; (D) ground water and surface water availability; and (E) other characteristics as required by the regulatory authority.

(4) An application for a permit revision shall be reviewed by the regulatory authority to determine whether a new or updated PHC determination shall be required.

* * * * *

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

3. The authority citation for Part 784 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; Pub. L. 100–34; and 16 U.S.C. 470 *et seq.*

4. Section 784.14 is amended by revising paragraph (e) to read as follows, and lifting the suspension to that paragraph, as noted in the editorial note at the end of the section:

§ 784.14 Hydrologic information.

* * * * *

(e) *Probable hydrologic consequences determination.* (1) The application shall contain a determination of the probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

(2) The PHC determination shall be based on baseline hydrologic, geologic, and other information collected for the permit application and may include data statistically representative of the site.

(3) The PHC determination shall include findings on:

(i) Whether adverse impacts may occur to the hydrologic balance;

(ii) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface or ground water supplies; and

(iii) What impact the proposed operation will have on:

(A) Sediment yield from the disturbed area; (B) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact; (C) flooding or streamflow alteration; (D) ground water and surface water availability; and (E) other characteristics as required by the regulatory authority.

(4) An application for a permit revision shall be reviewed by the regulatory authority to determine whether a new or updated PHC shall be required.

* * * * *

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Monday
September 19, 1988

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 701 et al.

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Federal Lands Program; Indian Lands Program; Requirements for Permits and Permit Processing; Federal Enforcement; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 740, 750, 773, and 843

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Federal Lands Program; Indian Lands Program; Requirements for Permits and Permit Processing; Federal Enforcement

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) in the Department of the Interior (DOI) proposes to amend its rules to provide for specific situations where a coal mine operator may not be required to obtain a permit to conduct reclamation activities on a location where no coal extraction is taking place. The proposed rule would remove requirements to obtain or renew a permit when only reclamation activities must be performed.

DATES: *Written comments:* OSMRE will accept written comments on the proposed rule until 4:00 p.m. Estern time on November 3, 1988.

Public hearings: Upon request, OSMRE will hold a public hearing on the proposed rule in Washington, DC on October 27, 1988, at 9:30 a.m. local time. OSMRE will accept requests for public hearings until 4:00 p.m. Eastern time on October 11, 1988. Individuals wishing to attend but not testify at the hearing should contact the person identified under **"FOR FURTHER INFORMATION CONTACT"** beforehand to verify that the hearing will be held.

ADDRESSES: Written comments: *Hand-deliver* to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC; or *mail* to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, 1951 Constitution Avenue NW., Washington, DC 20240.

Public Hearing: Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC.

Request for public hearings: Submit requests orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: Dr. Fred Block, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone (202) 343–1864.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rules should be specific, should be confined to issues pertinent to the proposed rules, and should explain the reason for any recommended change. Where possible, commenters should submit three copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see **"DATES"**) or delivered to addresses other than those listed above may not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The time, data and address scheduled for the hearing in Washington, DC has been specified previously in this notice (see **"DATES"** and **"ADDRESSES"**). Any person interested in participating at the hearing should inform Dr. Block (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing by 4:00 p.m. Eastern time October 11, 1988. If no one has contacted Dr. Block to express an interest in participating in a hearing by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons in attendance wishing to testify have been heard. The hearing will be transcribed. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit an advance copy of their testimony to OSMRE, at least two working days prior to any hearing. The testimony should be submitted at the address previously specified for the submission of written comments (see **"ADDRESSES"**).

Persons interested in attending the hearing, but not testifying, should contact the individual listed under **"FOR FURTHER INFORMATION CONTACT"** prior to the scheduled hearing date to verify that the hearing will be held.

II. Background

The Surface Mining Control and Reclamation Act of 1977 (SMCRA), establishes a regulatory framework under which persons may obtain the right to surface mine coal. However, the right to mine carries with it the obligation to restore the land after mining has ceased. The tie between mining and reclamation is one of the basic underlying themes of SMCRA. In section 101, Congress finds that regulation of surface coal mining operations in accordance with the requirements of SMCRA is an appropriate and necessary measure to minimize the adverse effects of mining. SMCRA made it clear that mining must be followed by efforts to ameliorate the disturbances it causes. Section 102, which sets forth the basic purposes of SMCRA, again ties mining and reclamation together. Paragraph (c) provides that SMCRA will assure that mining will not take place where reclamation is not possible. Paragraph (e) indicates that SMCRA will assure that procedures to reclaim will be undertaken as contemporaneously as possible with mining operations.

Section 502, which establishes the initial regulatory program, repeats the concept that surface coal mining operations can only take place when accompanied by reclamation. Paragraph (c) provides that all surface coal mining operations regulated by a State under the initial regulatory program conform to certain performance standards in section 515 of SMCRA, including the requirement for restoring the land affected to a condition capable of supporting premining or higher or better uses. Similarly, section 506, which establishes the permitting requirements for the permanent regulatory program, provides that no one may engage in surface coal mining operations in a State without first obtaining a permit issued pursuant to an approved State program or a Federal program. The State program requirements of sections 503 and 515(a) of SMCRA provide that the State must have a law that regulates mining in accordance with the requirements of SMCRA, one of which is, as noted above, the requirement to restore the land to a condition capable of supporting premining or higher or better uses. Thus, it is evident that SMCRA requires reclamation to accompany mining and that the regulatory framework can only allow mining if the obligation to reclaim is also assumed.

In its previous public positions, OSMRE has required that the permit remain active during reclamation

activities. The September 28, 1983, preamble to OSMRE's final rule at 30 CFR 773.19(d) addressed rights of renewal under an approved permit application (48 FR 44374). In discussing the relationship between the area covered by the permit and the area comprising the life-of-mine operation, a commenter expressed the belief that a permit cannot properly contain within its boundaries more area than can be mined and reclaimed during the permit term. Implicit in this statement is the belief that reclamation must be completed before the permit expires. OSMRE disagreed with the commenter, but affirmed the implied assumption that a permit is necessary for reclamation by stating, "A permit is required for reclamation activities until final bond release" (48 FR 44374). The preamble did not contain an explanation of the requirement nor did it provide any references or citations where an explanation could be found.

OSMRE has also argued before the Interior Board of Land Appeals that permanent program reclamation activities must be permitted. In a case concerning whether a permanent program permit is required for the reclamation of an operation that extracted coal only during the initial regulatory program (81 IBLA 209, June 5, 1984), OSMRE argued that "when surface coal mining occurs, it triggers the requirement of reclamation" and "reclamation activities which follow coal extraction which occurs during the permanent program must be permitted until they are completed and the bond release occurs."

However, at the same time that OSMRE argued that a permit was required for solely reclamation activity, OSMRE recognized specific circumstances where reclamation may be ordered in the absence of a permit. Both the initial program regulations and the permanent program regulations provide for the suspension or revocation of a permit without affecting the obligation to reclaim (30 CFR 722.16(d) and 843.13(c) respectively). During the revision of the permanent program regulations in 1982, OSMRE re-emphasized that the obligation to reclaim continues in cases where the permit has been suspended or revoked. In the preamble to the final Federal enforcement rules OSMRE stated, "The permit issued under the Act is a permit to mine coal under specified conditions. Suspension of the right to mine does not suspend the obligation to reclaim under the Act." (47 FR 35631, August 16, 1982)

The coal exploration rules provide an example where the obligation to reclaim exists independent of any permit. Under 30 CFR Part 772, persons who intend to conduct coal exploration outside a permit area must file with the regulatory authority a notice of intent to explore. The notice requires "a description of the * * * practices that will be followed to protect the environment and reclaim the area from adverse impacts of the exploration activities * * *" (30 CFR 772.11(b)(5)). In these cases, it is again clear that reclamation is required even if no exploration permit exists.

OSMRE recognizes that it is inconsistent to argue on one hand that reclamation activities must be permitted and on the other that reclamation may be required in the absence of a permit. Therefore, OSMRE has initiated this rulemaking action to eliminate this inconsistency.

III. Discussion of Proposed Rule

OSMRE is proposing to amend its rules at 30 CFR 701.11, 740.13, 750.11, 773.11 and 843.11 to implement a consistent policy with respect to permit requirements when reclamation activities would be conducted where no coal extraction would be taking place.

In accordance with OSMRE's determination that there are circumstances under which a permit is not required to conduct reclamation, 30 CFR 701.11 (a), (b), (c) and (d), 740.13 (a) and (c), 750.11 (a) and (c), 773.11(a) and 843.11(a)(2) would be revised by replacing the term "surface coal mining and reclamation operations" with the term "surface coal mining operations." OSMRE is also proposing to add language to 30 CFR 773.11(a) to clarify that obligations under a permit continue even if the permit has expired or has been terminated, revoked or rescinded.

Section 701.11—Applicability

Section 701.11 describes the applicability of the permanent regulatory program. Paragraphs (a), (b), and (c) require that persons conducting surface coal mining and reclamation operations on or after 8 months from approval of a State program or implementation of a Federal program shall have a permit issued pursuant to the applicable program. The proposed rule would substitute "surface coal mining operations" where "surface coal mining and reclamation operations" appears in these paragraphs. Paragraph (d) would be revised to apply the requirements of Subchapter K to "each surface coal mining operation which is required to obtain a permit under the Act," rather than to "each surface coal mining and reclamation operation which is required to obtain a permit under the Act."

Section 740.13—Permits

Section 740.13(a) contains the general requirements for permits on Federal lands. Paragraph (a)(1) provides that no person shall conduct surface coal mining and reclamation operations on lands subject to Part 740 unless that person has first obtained a permit issued pursuant to the regulatory program and Part 740. Paragraph (a)(3) provides that surface coal mining and reclamation operations authorized under the initial regulatory program or 43 CFR Parts 3480–3487 may be conducted beyond the eight-month period prescribed in the applicable regulatory program under certain conditions. These paragraphs would be amended to delete the words "and reclamation."

Section 750.11—Permits

Section 750.11 contains permit requirements under the Federal program for Indian lands. Paragraph 750.11(a) provides that no person shall conduct surface coal mining and reclamation operations on Indian lands after eight months following the effective date of Subchapter E (Indian Lands Program) unless that person has first obtained a permit pursuant to Part 750. Paragraph 750.11(c) provides that surface coal mining and reclamation operations authorized prior to the effective date of Subchapter E may be conducted beyond the specified eight month period under certain conditions. These paragraphs would be amended to delete the words "and reclamation."

Section 773.11—Requirements to obtain permits

Existing § 773.11(a) states that "* * * no person shall engage in or carry out any surface coal mining and reclamation operations, unless such person has first obtained a permit * * *." Proposed § 773.11(a) would state that "* * * no person shall engage in or carry out any surface coal mining operations, unless such person has first obtained a permit * * *"

Language is also proposed in paragraph (a) to clarify that obligations established under a permit continue until satisfied, regardless of whether the permit has expired or has been terminated, revoked, or rescinded. The rule would state that any person conducting reclamation activities pursuant to the requirements of a permit, even if the permit is no longer extant, must comply with all applicable provisions as a permittee.

Section 843.11—Cessation orders

Existing § 843.11(a)(2) states that "surface coal mining and reclamation

operations conducted by any person without a valid surface coal mining permit constitute a * * * significant imminent environmental harm * * *" Proposed § 843.11(a)(2) would state that "surface coal mining operations conducted by any person without a valid surface coal mining permit constitute a * * * significant imminent environmental harm * * *"

No new substantive requirements would be proposed under this rulemaking action. Rather, this proposed rule language would clarify and make consistent OSMRE's interpretation of its requirements concerning a permit to conduct reclamation operations where no coal extraction is taking place, and would remove the requirement to renew or obtain a permit solely to conduct reclamation activities.

Effects of Proposed Rules

In keeping with OSMRE's determination that the obligation to reclaim continues in the absence of a valid or unexpired permit, under the proposed rule it would not be necessary for an operator to obtain a permit where only reclamation activity is required. The proposed changes would provide that a permit is required for surface coal mining operations for the extraction of coal, an activity of benefit to the operator, but the reclamation obligations associated with that mining are and continue to be imposed upon the operator or permittee irrespective of whether a permit was issued or the permit is extant. Thus, the permit, including any conditions, defines the nature of the reclamation obligation that will be assumed by the operator should he conduct any mining activities under the permit. Those obligations are unaffected by suspension, revocation or expiration of the authorization for further coal extraction under the permit. For the purposes of enforcing the requirements of SMCRA and its implementing regulations, the person conducting solely reclamation activities will still be deemed a "permittee".

The proposed rule would also provide an economic benefit insofar as operators and regulatory authorities would realize reductions in time and cost expenditures on permit renewals no longer necessary.

Permit Renewal.—In cases where coal extraction, processing and handling have been completed under a valid permit, the proposed rule would provide that the permit need not be renewed simply for the completion of reclamation since there is no longer any right the permittee wishes to exercise and the only remaining activities are those associated with reclamation obligations assumed with the mining activities. The operator assumed the obligation to complete reclamation when mining occurred. The ongoing obligation to reclaim in accordance with the permit and any permit conditions exists whether or not the permit is renewed. Regardless of whether a permit is in existence or has been renewed, section 509(b) of SMCRA provides that liability under the performance bond posted to guarantee faithful performance of all requirements of SMCRA and the permit, shall extend for the duration of the surface coal mining and reclamation operation and for a period coincident with the operator's responsibility for the revegetation requirements of section 515 of SMCRA, a period that is independent of the permit term. In addition, section 506(d) of SMCRA does not mandate permit renewal. It provides that permit holders *may* apply for renewal.

Reclamation must be achieved according to the approved reclamation plan, and that obligation is unaffected by expiration of the permit. The reclamation obligations under the applicable State or Federal program, the permit, and the performance bond would remain in effect and be enforceable regardless of whether the permit term has expired. In cases where mining has been completed under a valid permit that has expired and reclamation work remains to be completed or the period of extended liability has not expired, permit renewal would not be a prerequisite for completion of the reclamation phase of the operation according to the approved permit. The operator holding an expired permit and solely conducting reclamation activities according to an expired permit which references SMCRA "permittee" requirements must conduct the reclamation activities as if the operator were still a "permittee." Any revisions to the reclamation plan following expiration of the permit still would have to comply with the requirements of 30 CFR 774.11 and 774.13 or the State or Federal program counterparts thereof.

Surface Disturbance Off the Permit Area.—Surface disturbances off the permit can occur either from mining activities conducted within the permit or from extension of mining operations beyond the permitted boundaries. In the first case, off-permit disturbances such as those caused by flyrock, landslides, subsidence, or sedimentation typically result from a violation of a performance standard and are confined to small areas. Under this proposed rule, it is not necessary to require a permit for corrective action on these disturbances because the operator would be required to return the land to its previous condition through abatement measures ordered in an enforcement action issued by the regulatory authority.

In the latter case, the permittee would be ordered to cease mining on the unauthorized areas and be given the option of either immediately reclaiming the area or submitting and diligently pursuing approval of a new permit or permit revision if he wished to continue such operations.

Unauthorized (Illegal) Mining.—When mining is conducted without the required permit (wildcat operations), the operator nevertheless incurs the obligation to reclaim. However, there are difficulties with requiring these operators to obtain a permit for reclamation only. These operators are often reluctant to cooperate, unable to obtain the financing necessary to conduct the required studies or unable to obtain a performance bond or liability insurance. Also, environmental harm may result during the time (six to nine months) required to prepare and process a permit application.

Therefore, in lieu of requiring a permit and a site-specific reclamation plan in cases of mining without a permit, OSMRE's policy is to order the immediate cessation of mining and direct the person to backfill, grade and revegetate in accordance with applicable regulations. This proposed rule would continue that policy by requiring immediate reclamation pursuant to the applicable standards of the State or Federal program, in the absence of a site-specific reclamation plan, in accordance with any enforcement action citing performance standard violations. A notice of violation or cessation order written for each such occurrence would specify the standards necessary to assure proper reclamation.

Applicable Regulatory Programs

In accordance with the interpretation of the requirements for permits for surface coal mining operations provided in this notice and the obligations associated with such permits, this proposed rule would be primarily applicable to mining operations conducted pursuant to a Federal program for a State (30 CFR Part 736), the Federal lands program (30 CFR Part 740), and the Indian lands program (30 CFR Part 750). The proposed rule if finalized, would mean that a State could amend its program not to require renewal of a permit on which coal extraction, processing, and handling have been completed but where the period of extended liability has not expired. In such circumstances, the

State program would be considered no less effective than Federal requirements if the reclamation plan, permit conditions and related permit provisions remain in effect until the operation has met all applicable performance standards and the appropriate operator liability period has expired. Any revisions to the reclamation plan following expiration of the permit term would have to comply with the requirements of the State program counterparts to 30 CFR 774.11 and 774.13. With respect to the other situations discussed in the proposed rule, State performance would be evaluated in terms of the policy set forth herein unless the approved State program contains specific differing requirements.

IV. Procedural Matters

Federal Paperwork Reduction Act

This proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The proposed rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor and no incremental economic effects are anticipated as a result of the rule.

National Environmental Policy Act

The DOI has also determined that the proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C).

Author

The principal author of this rule is Dr. Fred Block, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343–4560.

List of Subjects

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Part 740

Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

30 CFR Part 750

Indians-lands, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 773

Report and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 843

Administrative practice and procedure, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, it is proposed to amend Title 30, Chapter VII, Parts 701, 740, 750, 773 and 843 as set forth below.

Dated: July 20, 1988.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management.

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for Part 701 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, as amended and Pub. L. 100–34.

2. In § 710.11 the first sentence of paragraphs (a) and (b), paragraphs (c) introductory text and (d) are revised to read as follows:

§ 701.11 Applicability.

(a) Any person who conducts surface coal mining operations on non-Indian or non-Federal lands on or after 8 months from the date of approval of a State program or implementation of a Federal program shall have a permit issued pursuant to the applicable State or Federal program. * * *

(b) Any person who conducts surface coal mining operations on Federal lands on or after 8 months from the date of approval of a State program or implementation of a Federal program for the State in which the Federal lands are located shall have a permit issued pursuant to Part 740 of this chapter. * * *

(c) Any person who conducts surface coal mining operations on Indian lands on or after eight months from the effective date of the Federal program for Indian lands shall have a permit issued pursuant to Part 750 of this chapter. However, a person who is authorized to conduct surface coal mining operations may continue to conduct those operations beyond eight months from the effective date of the Federal program for Indian lands if the following conditions are met:

* * * * *

(d) The requirements of Subchapter K of this chapter shall be effective and shall apply to each surface coal mining operation which is required to obtain a permit under the Act, on the earliest date upon which the Act and this chapter require a permit to be obtained, except as provided in paragraph (e) of this section.

* * * * *

PART 740—GENERAL REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON FEDERAL LANDS

3. The authority citation for Part 740 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, 30 U.S.C. 181 *et seq.* and Pub. L. 100–34.

4. In § 740.13, paragraphs (a)(1) and (a)(3) introductory text are revised to read as follows:

§ 740.13 Permits.

(a) *General requirements.* (1) No person shall conduct surface coal mining operations on lands subject to this part unless that person has first obtained a permit issued pursuant to the regulatory program and this part.

* * * * *

(3) Surface coal mining operations authorized under the initial regulatory program or 43 CFR Parts 3480–3487, as applicable, may be conducted beyond the eight-month period prescribed in the applicable regulatory program if all of the following conditions are present: * * *

* * * * *

PART 750—REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON INDIAN LANDS

5. The authority citation for Part 750 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

6. In § 750.11, paragraphs (a) and (c) introductory text are revised to read as follows:

§ 750.11 Permits.

(a) No person shall conduct surface coal mining operations on Indian lands after eight months following the effective date of this subchapter unless that person has first obtained a permit pursuant to this part.

* * * * *

(c) Surface coal mining operations authorized prior to the effective date of this subchapter may be conducted beyond the eight-month period specified in paragraph (a) of this section if the following conditions are present: * * *

* * * * *

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

7. The authority citation for Part 773 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; 16 U.S.C. 470 *et seq.*; 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 661 *et seq.*; 16 U.S.C. 703 *et seq.*; 16 U.S.C. 668a; 16 U.S.C. 469 *et seq.*; 16 U.S.C. 470aa *et seq.*, and Pub. L. 100–34.

8. In § 773.11, paragraph (a) is revised to read as follows:

§ 773.11 Requirements to obtain permits.

(a) *All operations.* On and after 8 months from the effective date of a permanent regulatory program within a State, no person shall engage in or carry out any surface coal mining operations, unless such person has first obtained a permit issued by the regulatory authority except as provided for in paragraph (b) of this section. Obligations established under a permit continue until satisfied, regardless of whether the permit has expired or has been terminated, revoked, or rescinded. Any person conducting reclamation activities pursuant to the requirements of a permit which is no longer extant must comply with all applicable provisions as a permittee.

* * * * *

PART 843—FEDERAL ENFORCEMENT

9. The authority citation for Part 843 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34.

10. In § 843.11, Paragraph (a)(2) introductory text is revised to read as follows:

§ 843.11 Cessation orders.

(a) * * *

(2) Surface coal mining operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources unless such operations:

* * * * *

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federal register

Monday
September 19, 1988

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171 et al.

Transportation of Hazardous Materials; Proposed Miscellaneous Amendments; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 175, 176, 178, and 179

[Docket No. HM-166W; Notice No. 88-5]

RIN: 2137-AA44

Transportation of Hazardous Materials; Proposed Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The RSPA is proposing to make a number of amendments to the Hazardous Materials Regulations (HMR) based on rulemaking petitions from industry and RSPA's own initiative. This action is necessary to update the regulations and to reduce RSPA's backlog of rulemaking petitions.

DATE: Comments must be received by October 25, 1988.

ADDRESS: Address comments to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should identify the docket and notice number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Docket Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC. Public Dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Marilyn E. Morris, Standards Division, Office of Hazardous Materials Transportation, U.S. Department of Transportation, Washington, DC 20590, (202) 366-4488.

SUPPLEMENTARY INFORMATION: This document is primarily designed to reduce regulatory burdens by incorporating changes in the Hazardous Materials Regulations based on either petitions for rulemaking submitted in accordance with 49 CFR 106.31 or on RSPA's own initiative. These proposed amendments are in keeping with Executive Order 12291 and are designed to update and simplify existing regulations.

In Part 171, proposed changes to § 171.7 would (1) revise paragraph (c)(4) to reflect the current address of the Bureau of Explosives, Association of American Railroads; (2) remove paragraph (c)(5), as the office in Chicago has been relocated to the address shown in proposed paragraph (c)(4); (3) amend paragraph (d)(7)(iv) by removing the reference to the Bureau of Explosives "Pamphlets 1 and 2 titled", and the "June 1973" date; and (4) update paragraph (d)(17) to reflect the latest edition of the International Maritime Dangerous Goods Code. In § 171.8, the definition of "Atmospheric gases" would be revised to include "air".

In Part 172, the § 172.101 Table would be amended by (1) revising the parenthetical text in both the Class A and C explosive entries for "Charged well casing jet perforating gun"; (2) adding "1,1-Difluoroethylene" as a proper shipping name; (3) removing the entry "Empty cartridge case, primed"; (4) revising the hazard class for "Hydrogen selenide"; (5) revising the entry for "Life rafts, inflatable"; (6) adding a cross reference for the entry "Tetrachloroethylene *or* Perchloroethylene" to read "Tetrachloroethylene *see* Perchloroethylene"; (7) revising the entry "sulfur, molten" to allow the spelling "sulphur, molten"; (8) revising the entry *"Tetraethylammonium perchlorate (dry)"* and (9) revising column 5(b) for the entry "Vinyl methyl ether" to include a reference to "§ 173.315". In § 172.504 paragraph (c) would be revised for clarity.

In Part 173, several changes would be made. In § 173.5, paragraph (a)(2) would be amended by increasing the capacity of the inside packaging used for formulated agricultural chemicals from one gallon to 2½ gallons. In § 173.25, paragraph (c) would be amended by changing the wording "Poison B material" to read "hazardous material". In § 173.31, paragraph (a)(7) would be reserved; paragraphs (a)(5) and (a)(6) would be updated to reflect the latest changes regarding coupler vertical restraint systems on tank cars; paragraph (c)(14) would be added to require that excess flow valves be checked for tightness; and paragraph (d)(10) would be added to authorize previously filled multi-unit tank car tanks to be transported after expiration of the retest date.

In § 173.115, paragraphs (b)(1), (b)(2)(i), and (b)(2)(ii) would be revised to provide an exception for combustible and flammable liquids that do not meet the definition of any other hazard class except ORM-E. In § 173.118a, paragraph (b)(7) would be revised to reference certain provisions that would apply to transportation of combustible liquids in bulk packagings. In § 173.182, footnote 1 would be updated to reference the August 1984 edition of The Fertilizer Institute's publication. In § 173.245, paragraph (a)(29) would be amended by removing the restriction that MC 303 cargo tanks must be fabricated from 12-gauge, type 316 stainless steel. In § 173.249a, paragraph (d)(3) would be revised to allow the use of a tight-head fiber drum.

In § 173.250, a sentence would be added at the end of the introductory text of paragraph (a) stating that the exception for automobiles and other self-propelled vehicles equipped with wet electric storage batteries does not apply to transportation by vessel. Also, § 176.905(k) would be revised accordingly. In § 173.262, paragraphs (b)(1) and (b)(2) would be removed and paragraph (b)(3) would be revised to prohibit the transportation of Hydrobromic acid in concentrations greater than 49 percent in polyethylene packagings. In § 173.264, paragraph (b)(1) would be amended by adding DOT 3BN cylinders. In § 173.304, paragraph (a)(2) and (b) would be amended by adding packaging requirements for 1,1-Difluoroethylene. In § 173.314, the Table in paragraph (c) would be revised to authorize the use of DOT-105A500W tank cars for Bromotrifluoromethane (R-13B1 or H-1301). In § 173.315, the last column of the Table in paragraph (a)(1), certain entries referencing paragraph (c) and (c)(1) would be corrected. The heading for Subpart H of Part 173 would be amended by removing the words "Radioactive Materials" and inserting "Irritating Materials". In § 173.417, Table 4 in paragraph (b)(1), the first entry under Uranium-235 would be corrected to read "$3 < H/X < 20$".

In § 175.10, paragraph (a)(5) would be amended to add an exception for persons traveling under the provision of 14 CFR 108.11 (a) and (b).

In part 176, § 176.11(a) would be revised to authorize hazardous material to be stowed and segregated in accordance with the IMDG Code. In § 176.340, paragraph (a)(4) would be added to authorize the use of certain nonspecification portable tanks for the transportation of combustible liquids by vessel. In § 176.905, paragraph (k) would be revised for consistency with changes proposed to § 173.250.

Section 178.39-5 would be revised to clarify the percentages of the nickel and cobalt content in DOT 3BN seamless nickel cylinders. Section 178.224-1 and the Tables in § 178.224-2 would be revised to increase the maximum capacity of certain DOT 21C fiber drums from 55 gallons to 75 gallons. In § 178.251-7, paragraph (a) would be amended to clarify the meaning of "original test date".

In Part 179, § 179.14 would be revised to update coupler vertical restraint system requirements. In § 179.100–13, paragraph (d) would be revised for clarity. Sections 179.100–15(c) and 179.200–18(c) would be amended to add provisions on the device used to detect an increase in pressure. In § 179.100–23, paragraph (c) would be added to authorize the use of an additional head shield design. In § 179.200–18, paragraph (b) would be revised for clarity. In § 179.300–7, paragraph (a) would be revised to authorize the use of stainless steel to fabricate tank car tanks. In § 179.200–18, paragraph (b) would be revised for clarity. References to certain obsolete or inapplicable sections would be corrected, where necessary.

Based on limited information available concerning size and nature of entities likely to be affected, I certify that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Also, in view of the type of changes, the RSPA has further determined that this Notice (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact would be minimal; (4) will not affect not-for-profit enterprises, or small governmental jurisdictions and (5) does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effects on the States, in the Federal-State relationship or the distribution of power and responsibilities among levels of government. Thus, this regulation contains no policies that have Federalism implications, as defined in Executive Order 12612.

The following list of **Federal Register** Thesaurus of Indexing Terms apply to this notice of proposed rulemaking:

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Definitions.

49 CFR Part 172

Hazardous materials transportation, Labeling, packagings and containers.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 175

Hazardous materials transportation, Carriage by aircraft.

49 CFR Part 176

Hazardous materials transportation, Maritime, carriers, Radioactive materials.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers.

49 CFR Part 179

Hazardous materials transportation, Railroad safety.

PARTS 171, 172, 173, 176, 178, and 179 [AMENDED]

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1.

2. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1.

3. The authority citation for Part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

4. The authority citation for Part 176 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808, 49 CFR 1.53, App. A to Part 1.

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

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR Part 1.

6. The authority citation for Part 179 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR Part 1, unless otherwise noted.

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 171.7	To reflect current address of the Bureau of Explosives and to update titles of publications.	In § 171.7, paragraph (c)(5) would be removed and reserved; paragraphs (c)(4), (d)(7)(iv) and (d)(17) would be revised to read as follows: **§ 171.7 Matter incorporated by reference.** • • • • • (c) * * * (4) Bureau of Explosive: Hazardous Materials Systems (Bureau of Explosives) Association of American Railroads, American Railroads Building, 50 F Street, NW., Washington, DC 20001. (5) [Reserved] • • • • • (d) * * * (7) * * * (iv) Bureau of Explosives "Emergency Handling of Hazardous Materials in Surface Transportation". • • • • • (17) "International Maritime Dangerous Goods Code" (IMDG Code), 1988 Consolidated Edition. • • • • •
§ 171.8	To revise definition of "Atmospheric Gases" to include "Air"	In § 171.8 the definition for "Atmospheric Gases" would be revised to read as follows: "Atmospheric Gases" means air, nitrogen, oxygen, krypton, neon and xenon. • • • • •
§ 172.101 (Table)	To add the shipping name "1,1-Difluoroethylene" to the § 172.101 Table.	See § 172.101 Table for proposed entry.
§ 172.101 (Table)	To remove the entry "Empty cartridge case, primed" which was inadvertently missed under Docket No. HM-166R (50 FR 11048) March 19, 1985.	In § 172.101, the Table would be amended by removing the entry "Empty cartridge case, primed".

Regulation affected	Reason(s) for proposed change	Proposed amendment
§ 172.101 (Table)	The Compressed Gas Association (CGA) has recommended that the hazard class for Hydrogen selenide be changed from "Flammable gas"; to "Poison A". The CGA stated that, based on published toxicity data, "Poison A" more properly describes the hazard of Hydrogen selenide in transportation.	In § 172.101, the Table would be amended by changing the hazard class for "Hydrogen selenide" from Flammable gas to Poison A. Required labeling would be changed from "Flammable gas and Poison" to "Poison gas and Flammable gas".
§ 172.101 (Table)	The entry "Life rafts, inflatable" does not have an assigned "UN" or "NA" identification number. The Air Transport Association of America has requested that the shipping name "Life rafts, inflatable" be changed to read "Life-saving appliances, self-inflating" for consistency with international air descriptions. The identification number would be UN 2990.	In § 172.101, the Table would be amended by changing the entry "Life rafts, inflatable", to read "Life-saving appliances, self-inflating" and "UN 2990".
§ 172.101 (Table)	To provide for the spelling of "sulfur" as "sulphur"	In § 172.101, the Table would be amended by changing the entry "sulfur, molten" to read "sulfur, molten *or* sulphur, molten".
§ 172.101 (Table)	The entry "Tetrachloroethylene *or* Perchloroethylene" is confusing because the material is usually transported and identified as "Perchloroethylene". For this reason RSPA is proposing that the material be cross referenced in the Table.	In § 172.101, the Table would be amended by changing the entry "Tetrachloroethylene *or* Perchloroethylene" to read "Tetrachloroethylene *see* Perchloroethylene".
§ 172.101 (Table)	To revise the hazard class of the entry *Tetraethylammonium perchlorate (dry)*. This material is presently prohibited from being offered or accepted for transportation. The G. Frederick Smith Chemical Company has requested that this restriction be removed. The Bureau of Explosives has conducted tests on this material and has recommended that dry tetraethylammonium perchlorate be classed as a flammable solid.	In § 172.101, the Table would be amended by revising the hazard class entry for "Tetraethylammonium perchlorate (dry)" from "Forbidden" to "Flammable solid".

§ 172.101 Hazardous materials table.

+/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Packaging		Maximum net quantity in one package		Water shipments		
					Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo aircraft only	Cargo vessel	Passenger vessel	Other requirements
(1)	(2)	(3)	(3)(a)	(4)	(5)(a)	(5)(b)	(6)(a)	(6)(b)	(7)(a)	(7)(b)	(7)(c)
	Remove										
	Empty cartridge case primed.	Class C explosive.		Explosive C	None	173.107	50 pounds	150 pounds	1,3	1,3	
	Life rafts, inflatable.	ORM-C		None	None	173.906	1 per inaccessible cargo compartment.	No limit	1,2	1,2	
A	Tetrachloroethylene *or* perchloroethylene.	ORM-A	UN 1897	None	173.505	173.605	10 gallons	55 gallons.			
	Tetraethylammonium perchlorate (dry).	Forbidden.									
	ADD										
	1,1-Difluoroethylene.	Flammable gas.	UN 1959	Flammable	173.306	173.304	Forbidden	300 pounds	1,2	5	Stow away from living quarters.
A	Tetrachloroethylene *see* Perchloroethylene.										
	Life-saving appliances, Self-inflating.	ORM-C	UN 2990	None	None	173.906	1 per inaccessible cargo compartment.	No limit	1,2	1,2	
A	Perchloroethylene.	ORM-A	UN 1897	None	173.305	173.605	10 gallons	55 gallons.			
	REVISE										
	Hydrogen selenide.	Poison A	UN 2202	Poison gas and flammable gas.	None	173.328	Forbidden	Forbidden	1	5	Stow away from living quarters.
	Sulfur, molten *or* sulphur, molten.	ORM-C	UN 2448	None	173.505	173.1080	Forbidden	Forbidden	1	1	Stow away from oxidizers and living quarters.
	Tetraethylammonium perchlorate (dry).	Flammable solid.	UN 1325	Flammable solid	173.153	173.154	25 pounds	25 pounds	1,2	1,2	

+/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Packaging		Maximum net quantity in one package		Water shipments		
					Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo aircraft only	Cargo vessel	Passenger vessel	Other requirements
(1)	(2)	(3)	(3)(a)	(4)	(5)(a)	(5)(b)	(6)(a)	(6)(b)	(7)(a)	(7)(b)	(7)(c)
	Vinyl methyl ether.	Flammable gas.	UN 1087	Flammable gas	173.306 173.314 173.315	173.304	Forbidden	20 pounds	1,2	1	Stow away from living quarters.

§ 172.101 Table	Vinyl methyl ether is authorized to be transported in DOT Specification MC 330 and MC 331 cargo tanks under § 173.315(a)(1). However, column 5(b) of the § 172.101 table does not include a reference to §173.315.	In § 172.101, column 5(b) for the entry "Vinyl methyl ether" would be revised to include "173.315".
§ 172.504(c)	To clarify that a rail car does not have to be placarded when transporting freight containers or transport vehicles that do not require placarding. The present wording infers that if a rail car is transporting two freight containers each containing 500 pounds of Table 2 materials, placards are not required on the freight containers but are required on the rail car when 1,000 pounds of Table 2 materials are being transported.	In 172.504, paragraph (c) would be revised to read as follows: **§ 172.504 General placarding requirements.** * * * * * (c) Except for portable tanks, cargo tanks, tank cars, transport vehicles and freight containers subject to §172.505, and transportation by aircraft or vessel, placards for hazardous materials covered by Table 2 are not required on— (1) A transport vehicle, or freight container which contains less than 1,000 pounds (453.6 kilograms aggregate gross weight of hazardous materials covered by Table 2; or (2) A rail car loaded with transport vehicles or freight containers, none of which are required to be placarded. The exceptions provided in this paragraph do not prohibit the display of placards in the manner prescribed in this subpart, if not otherwise prohibited (see § 172.401), on transport vehicles or freight containers which are not required to be placarded.
§173.5(a)(2)	To increase the capacity of inside packagings of liquid formulated agricultural chemicals from 1-gallon to 2½ gallons when offered for transportation in less-than-case-lots quantities.	In § 173.5, paragraph (a)(2) would be revised to read as follows: **§ 173.5 Agricultural operations.** (a) * * * (2) Each inside packaging does not exceed 2½ gallons capacity for liquids or 25 pounds for dry materials. * * * * *
§ 173.25(c)	To delete the reference to "Poison B material" to clarify that hazardous material labeled POISON is subject to the restrictions of this section, even if it also meets the definition for another hazard class.	In § 173.25, the introductory test to paragraph (c) would be revised to read as follows: **§ 173.25 Authorized packages and overpacks.** * * * * * (c) Hazardous materials which are required to be labeled POISON, may be transported in the same motor vehicle with material that is marked or known to be foodstuffs, feed or any edible material intended for consumption by humans or animals provided the hazardous material is marked, labeled, and packaged in accordance with this subchapter, conforms to the requirements of paragraph (a) of this section and is overpacked as specified in § 177.841(e) or is in an overpack meeting the following requirements: * * * * *
§ 173.31	The Association of American Railroads (AAR) has requested that several changes be made in Part 173 and Part 179 to reflect the latest changes regarding coupler vertical restraint systems on tank cars. See proposed § 179.14 in this notice. This proposed change is considered necessary because the Association of American Railroads (AAR) has similar requirements for flammable gas and ethylene oxide cars in interchange service and the AAR reports that it is industry practice to examine the excess flow values on chlorine tank cars when the tanks are retested. The Compressed Gas Association has recommended that a provision be added to § 173.31 to allow transportation of multi-unit tank car tanks charged with non-corrosive gases prior to expiration of the retest date. After emptying, a tank may not be refilled and shipped until it has been properly retested.	In § 173.31, paragraph (a)(7) would be removed and reserved, paragraphs (a)(5) and (a)(6) would be revised, and paragraphs (c)(14) and (d)(10) would be added to read as follows: **§ 173.31 Qualification, maintenance, and use of tank cars.** (a) * * * (5) Each DOT specification tank car shall be equipped with a coupler vertical restraint system that meets the requirements of § 179.14 of this subchapter. (6) Effective (1 year after effective date of final rule) each non-DOT specification tank car used for the transportation of hazardous materials shall be equipped with a coupler vertical restraint system that meets the requirements of § 179.14 of this subchapter. (7) [Reserved] * * * * * (c) * * * (14) Excess flow valves having threaded seats must be checked for tightness and tightened at the time of each tank retest or safety relief valve retest. (d) * * * (10) A DOT 106A or 110A class tank car tank (§§ 179.300, 179.301, 179.302 of this subchapter) used exclusively for transportation of non-corrosive gases (as listed in the table in §173.34(e)(10)) for which the retest has become due may not be filled and shipped until it has been properly tested. However, tanks filled prior to the expiration of the retest date may be shipped on a one-time basis.

§ 173.115(b)(1), (b)(2)(i) and (b)(2)(ii).	Upon the effective date of Docket HM-145F (July 1, 1987), many shippers of aqueous solutions containing alcohol were no longer able to take advantage of the exceptions in § 173.115(b)(2)(i) and (ii) because certain constituents in the solutions were classed as ORM-E. The National Tank Truck Carriers, Inc., has requested a revision to exclude constituents in solutions classed as ORM-E. These proposed changes also would clarify the exception provided in § 173.115(b)(1).	In § 173.115, paragraphs (b)(1), (b)(2)(i) and (b)(2)(ii) would be revised to read as follows: **§ 173.115 Flammable combustible, and pyrophoric liquids; definitions.** * * * * * (b) *Combustible liquid.* (1) For the purpose of this subchapter, a combustible liquid is defined as any liquid that does not meet the definition of any other hazard class defined in this subchapter, other than ORM-E, and which has a flash point at or above 100 °F. (37.8 °C.) and below 200 °F. (93.3 °C.). Notwithstanding this definition, a mixture having one component or more with a flash point at 200 °F. (93.3 °C.) or higher, that makes up at least 99 percent of the total volume of the mixture, is not subject to the requirements of this subchapter. (2) * * * (i) An aqueous solution containing 24 percent or less alcohol by volume is considered to have a flash point of no less than 100 °F. (37.8 °C.) if the remainder of the solution contains no material (other than an ORM-E) that is subject to this subchapter, and (ii) An aqueous solution containing 24 percent or less alcohol by volume is not subject to the requirements of this subchapter if it contains no less than 50 percent water and no material (other than the alcohol or an ORM-E) which is subject to this subchapter.
§173.118(a)	*See* § 173.115(b)(1), (b)(2)(i) and (b)(2)(ii) for reason	In § 173.118, the first sentence in paragraph (a) would be revised to read as follows: **§ 173.118 Limited quantities of flammable liquids.** (a) Limited quantities of flammable liquids that do not meet the definition of another hazard class defined in this subchapter, other than ORM-E, and for which exceptions are permitted as noted by reference to this section in § 172.101 of this subchapter, are excepted from labeling (except when offered for transportation by air) and specification packaging requirements of this subchapter when packed according to the following paragraphs. * * * * * * * *
§ 173.118a(b)(7)	To clarify that the transportation of combustible liquids is subject to 49 CFR for loading and unloading purposes by rail.	In § 173.118a, paragraph (b)(7) would be revised to read as follows: **§ 173.118a Exceptions for combustible liquids.** * * * * * (b) * * * (7) The requirements of §§ 173.1, 173.3, 173.24, 173.29, 173.30, 173.31, 174.67 and 177.804 of this subchapter.
§ 173.182 Footnote [1]	To update the referenced Fertilizer Institute's publication to the August 1984 edition.	In §173.182, footnote 1 would be revised to read as follows: **§173.182 Nitrates.** (a) * * * --- [1] Applies only to materials tested in accordance with and meeting the definition in The Fertilizer Institute's publication "Definition and Test Procedures for Ammonium Nitrate Fertilizer" dated August 1984.
§ 173.245 (a)(29)	To remove the restriction that MC 303 cargo tanks must be fabricated from 12-gauge, Type 316 stainless steel. DOT-E 8732 authorizes these tanks made of aluminum.	In § 173.245, paragraph (a)(29) would be revised to read as follows: *§ 173.245 Corrosive liquids not specifically provided for.* (a) * * * (29) Specification 303 or MC 304. Cargo tanks meeting §178.343-2(c) of this subchapter. MC 303 is authorized only for monoethanolamine: primary amyl alcohol; and (except for an MC 303 made of aluminum) phosphoric acid and solutions thereof. * * * * *
§ 173.249a(d)(3)	To authorize the use of a tight-head fiber drum. Removable (open) head fiber drums are presently authorized and the tight-head is considered to be equal to or greater in strength and efficiency as the open head drum.	In § 173.249a, paragraph (d)(3) would be revised to read as follows: **§ 173.249a Cleaning compound, liquid; coal tar dye, liquid; dye intermediate liquid; mining reagent, liquid; and textile treating compound mixture, liquid.** * * * * * (d) * * * (3) Removable (open) head or tighthead fiber drum lined or coated on the inside with a plastic material, not over 55-gallon capacity. Not authorized for shipment by aircraft. * * * * *
§173.250(a)	Section 176.905(c) requires battery cables on vehicles to be disconnected and secured away from the battery terminals when vehicles are stowed in a hold or compartment. Section 176.905(k) permits vehicles with flammable fuel in their tanks to be transported in frieght containers. Since a freight container is not considered a hold or compartment, a motor vehicle could be transported and stowed on deck with fuel in the tank and battery terminals connected. Compared to a hold or compartment, the confined space of a freight container may present an equal or greater risk of accumulation of flammable vapors. For safety reasons, RSPA is proposing that § 173.250(a) not apply to transportation by vessel. Also, §176.905(k) would be revised to require battery cables to be disconnected and secured away from the battery terminals.	§ 173.250, a sentence would be added at the end of the introductory text of paragraph (a) to read as follows: **§ 173.250 Automobiles, other self-propelled vehicles, engines or other mechanical apparatus.** (a) * * * This paragraph does not apply to transportation by vessel. * * * * *

§ 173.262(b)(1) § 173.262(b)(2) § 173.262(b)(3).	To prohibit the transportation of Hydrobromic acid, (HBR) greater than 49 percent in polyethylene packagings. The Ethyl Corporation has stated that tests of 62 percent of HBR was found to diffuse through the polyethylene in all cases, after a few days. An acid haze developed on the standing bottles, color of the amber bottle darkened, the appearance of the bottle's surface changed, and labels were damaged by the acid.	In § 173.262, paragraphs (b)(2) and (b)(3) would be removed, paragraphs (b)(4), (b)(5) and (b)(6) would be redesignated as (b)(2), (b)(3) and (b)(4), respectively, and paragraph (b)(1) would be revised to read as follows: **§ 173.262 Hydrobromic acid.** * * * * * * (b) * * * (1) Specification 15A or 19B (§§ 178.168, 178.191 of this subchapter). Wooden boxes with one inside glass bottle, not over 1-gallon capacity with tetrafluoroethylene polymer lined screw-cap. Bottle must be enclosed in a metal can and be surrounded with an appropriate fire resistant cushioning material. * * * * * *
§ 173.264(b)(1)	To authorize the use of DOT 3BN cylinders for the transportation of Hydrofluoric acid, anhydrous (hydrogen fluoride). This packaging is being used under the provisions of DOT-E 9746.	In § 173.264, the introductory text of paragraph (b)(1) would be amended by adding "3BN,", after the phrase "3B,", and adding "178.39" after the phrase "173.38,". * * * * * *
§173.301(d)(3) and (1)	To revise §173.301(d)(3) to authorize "1,1-Difluoroethylene" in manifolded cylinders. To revise § 173.301(1) to authorize cylinders to be transported in ISO frames.	In § 173.301, paragraph (d)(3) would be amended by adding "1,1-Difluoroethylene" immediately after the word "gases:" in the first sentence. The introductory text of paragraph (1) in § 173.301 would be revised to read as follows: **§ 173.301 General requirements for shipment of compressed gases in cylinders.** * * * * * * (1) Specification 3AX, 3AAX, and 3T cylinders are authorized for transportation only when mounted on a motor vehicle or in an ISO frame. Portable ISO frame units may not be transported in COFC or TOFC service except under conditions approved by the Associate Administrator for Safety, Federal Railroad Administration. Cylinder valves and safety devices must be protected as follows: * * * * * *
§ 173.304(a)(2), Notes 12 and 13 and § 173.304(b).	To add In § 173.304(a)(2) and (b) packaging requirements fo "1,1-Difluoroethylene". 1,1-Difluorethylene has been transported as proposed, under a DOT exemption, for over 14 years without an incident. To add Notes 12 and 13 referencing additional packagings for insecticide gases and refrigerant or dispersant gases which are nonpoisonous and nonflammable.	In §173.304, the Table in paragraph (a)(2) would be amended by adding "1,1-Difluoroethylene" immediately following the entry "Difluoroethane". Notes 12 and 13 would be added for the entries "insecticide" and "Refrigerant Gases". Paragraph (b) would be amended by adding "1,1-Difluoroethylene" immediately following the words "carbon dioxide".

Kind of gas	Maximum permitted filling density (percent) (see note 1)	Containers marked as shown in this column or of the same type with higher service pressure must be used except as provided in § 173.34(a), (b), § 173.301(i) (see notes following table)
* * * *	* * * *	* * *
1,1-Difluoroethylene	73	DOT-3A2200, DOT-3AA2200 DOT-3AX2200, DOT-3AAX2200, DOT-3T2200, DOT-39.
* * * *	* * * *	* * *
Insecticide, liquefied gas (see notes 8 and 12).	Not liquid full at 130°F	DOT-3A300; DOT3AA300; DOT-3B300; DOT-4B300; DOT-4BA300; DOT-4BW300; DOT-9; DOT-40; DOT-41; DOT-3E1800.
* * * *	* * * *	* * *
Refrigerant gas, n.o.s. of Dispersant gas, n.o.s. (see notes 8 and 13).	Not liquid full at 130°F	DOT-3A240; DOT-3AA240; DOT-3B240; DOT-3EI800; DOT-4A240; DOT-4B240; DOT-4BA240, DOT-4BW240; DOT-4E240; DOT-9; DOT-39; and DOT-3AL240.
* * * *	* * * *	* * *

Note 12: For an Insecticide gas which is nonpoisonous and nonflammable, see § 173.305(c)(1).
Note 13: For a refrigerant or dispersant gas which is nonpoisonous and nonflammable, see § 173.304(e).

§ 173.314(c) Table	Editorial correction. In the entry "Bromotrifluoromethane (R-13B1 or H-1301)", the DOT-105A500W tank car which was deleted unintentionally under Docket HM-189 [48 FR 50444; November 1, 1983] would be reinstated.	In § 173.314, the Table in paragraph (c) would be amended by revising the entry for Bromotrifluoromethane (R-13B1 or H-1301) to read as follows:

Kind of Gas	Maximum permitted filling density, Note 1	Required tank car, see § 173.31(a) (2) and (3)
Bromotrifluoromethane (R-13B1 or H-1301)	124	DOT-110A800W, Notes 13 and 25.
	140	DOT-105A500W, Note 13.

§ 173.315(a)(1) Table	For the entries "Carbon dioxide, refrigerated liquid" and "Nitrous oxide, refrigerated liquid" the second column in the Table, incorrectly refers the reader to see paragraph (c) instead of (c)(1).	For the entries "Carbon dioxide, refrigerated liquid" and "Nitrous oxide, refrigerated liquid" the reference to paragraph (c) in the second column would be amended to read "(c)(1)".
§ 173.417(b)(1) Table 4	Editorial correction	In § 173.417, Table 4 in paragraph (b)(1) would be amended by changing "3<H/X<10" under the heading Uranium-235 to read "3<H/X<20."
§ 175.10(a)(5)	Personnel traveling under the provisions of 14 CFR 108.11 usually carry additional ammunition in small plastic pouches specifically designed to carry 12 to 18 cartridges in separate compartments. The ammunition is generally carried in their checked baggage when they are not armed. RSPA is proposing that these persons be excepted from § 175.10(a)(5). Also, § 175.10(a)(7) would be corrected to reflect § 135.91 instead of § 135.114 which is outdated.	In § 175.10, paragraph (a)(7) would be revised and paragraph (a)(5) would be amended by adding a sentence at the end to read as follows: § 175.10 *Exceptions.* (a) * * * (5) * * * This paragraph does not apply to persons traveling under the provisions of 14 CFR 108.11 (a) and (b). * * * * * (7) Oxygen, or any hazardous material used for the generation of oxygen, carried for medical use by a passenger in accordance with 14 CFR 121.574 or 135.91. * * * * *
§ 176.11(a)	To authorize hazardous materials to be stowed and segregated in accordance with the IMDG Code.	In § 176.11, the introductory text of paragraph (a) would be revised to read as follows: § 176.11 *Exceptions.* (a) A hazardous material may be offered and accepted for transportation by vessel when in conformance with the requirements of the IMDG Code in place of the corresponding requirements of this subchapter pertaining to packaging, marking, labeling, classification, description, certification, placarding, stowage and segregation. All hazardous materials must otherwise be stowed and carried in accordance with this subchapter. * * * * *
§ 176.340(a)(4)	To authorize the use of a nonspecification portable tank for the transportation of combustible liquids by vessel. The proposed tank is similar to a DOT Specification 57 portable tank except that it may have a capacity not exceeding 1,200 gallons. At the present time, the portable tank manufacturer must submit design drawings, material specification, and test results to the Commandant, U.S. Coast Guard for review. If the data submitted is found satisfactory, a Letter of Authorization is issued. The proposed change would eliminate this time consuming burden on the tank manufacturers.	In § 176.340, paragraphs (a)(4) and (b) would be added to read as follows: § 176.340 *Combustible liquids in portable tanks.* (a) * * * (4) Portable tanks built in accordance with § 178.251 and § 178.253 may be used, except: (i) The rated capacity of the tank may not exceed 1,200 gallons, and the rated gross weight may not exceed 30,000 pounds; (ii) The vibration test (§ 178.253–5(a)(1) need not be performed; (iii) When the total surface area of the tank exceeds 160 square feet, Table III of § 178.341–4 must be used to determine the total emergency venting capacity; (iv) Each tank must also be marked on at least two sides in letters at least two inches high on contrasting background: "FOR COMBUSTIBLE LIQUIDS ONLY" and "49 CFR 176.340(a)(4)"; (v) Each tank must be made of steel; (vi) The design pressure must be at least 9 psig; and (vii) No pressure relief device may open at less than 5 psig. (b) The owner of each portable tank authorized under paragraph (a)(4) of this section shall— (1) Obtain a manufacturer's data report and retain it during the time the tank is in service; (2) Ensure that the tank is periodically inspected and tested in accordance with § 173.32 (e)(1)(ii) and § 173.32 (e)(2) through (e)(4); and (3) Comply with the provisions of paragraphs (g), (h), (i), and (k) of § 173.32 of this subchapter.

§ 176.905(k)	See § 173.250(a) for reason.	In § 176.905, the introductory text of paragraph (k) would be revised to read as follows: § 176.905 *Motor vehicles or mechanical equipment powered by internal combustion engines.* * * * * * (k) Motor vehicles with fuel in their tanks may be stowed in a closed freight container if the battery cables are disconnected and secured away from the battery terminals and the following warning is affixed to the access doors: * * * * *
§ 178.39–5	The present wording "At least 99.0 percent pure nickel plus cobalt" is confusing to some readers. For clarity, we are proposing to revise the section to specifically state that the remainder is cobalt.	§ 178.39–5 would be revised to read as follows: § 178.39–5 *Nickel.* (a) Must be at least 99.0 percent nickel with the remainder being cobalt.
§ 178.224–1(a)(1); § 178.224–2(c); Table.	To increase the maximum capacity of DOT Specification 21C fiber drums from 55 gallons to 75 gallons for drums having a net weight not over 115 pounds and 250 pounds respectively. Also, the use of a plastic head would be authorized.	In § 178.224, the Table in § 178.224–1 and § 178.224–2 would be revised to read as follows: § 178.224 *Specification 21C; fiber drum.* 178.224–1 *Construction requirements.* (a) * * * (1) * * *

Net weight of contents (pounds) not over	Capacity, maximum (gallons) (not over)	Diameter inside maximum (inches)	Sidewall strength (lbs.) [1] [2]	Tops and bottoms					
				Fiber [3]		Steel, U.S. (gauge)	Wood thickness (inches)		Plastic top thickness
				Thickness (inches)	Strength		Solid [4] [5] [6]	Plywood at least 3-ply construction	
60	5	11¼	500	0.090	600	28	13/16	3/11	.....
60	20	18½	600	.120	800	28	13/16	3/10	.....
115	20	18½	700	.120	800	26	13/16	3/8	.....
115	75	23	800	.160	1100	26	13/16	7/16	.090
250	75	23	900	.200	1200	24	13/16	7/16	.090
400	75	23	1000	.200	1300	24	13/16	7/16	.....

[1] Mullen or Cady Test. Either of the following test methods may be used. When more than single ply, test shall be determined from the summation of the tests of individual plies; or, when test is made on a complete drum, the punctures shall be made from the exterior to the interior surface in which case the values for sidewalls shall not be less than 80 percent of the value in the above table and the values for fiber tops and bottoms shall be not less than the value in the above table. There shall be a minimum of six tests and the average shall be not less than the prescribed minimum requirements.

[2] Sidewalls. Sidewalls to be convolutely wound of fiberboard at least 0.012 inch thick the plies being secured together with adhesives; or may consist of an outer shell and an inner tube each convolutely wound with each fiberboard ply not less than 0.012 inch thick and secured together with adhesive. Drums may contain barrier or lining materials.

[3] When made of 2 or more discs, the discs must be fastened together with adhesive.

[4] Joints in head must be Linderman joints, glued, except as specified in footnote 5.

[5] Wooden heads at least one-half inch thick having kraft paper glued on both sides at all contact areas with water-resistant adhesive are authorized provided tests prescribed in § 178.224–2 are successful. Joints of any type are authorized.

[6] Minimum thickness may be reduced to 25/32 inch for lumber dressed two sides.

§ 178.224–2 Type tests.

(c) * * *

* * * * *

Maximum net weight	Maximum capacity (gallons)	Maximum inside diameter (inches)	Compression (pounds)	
			Static [1]	Dynamic [2]
60	5	11¼	1200	1600
60	20	18½	1200	1600
115	20	18½	1200	1600
115	75	23	1500	2000
250	75	23	1800	2400
400	75	23	2100	2800

[1] Static Test. Compression as specified must be applied to full area of top cover of drum for period of 48 hours.

[2] Dynamic Test. Compression as specified must be applied end to end. Speed of compression tests to be one-half inch plus or minus one-fourth inch per minute.

* * * * * * *

§ 178.251–7	A manufacturer of DOT Specification 57 portable tanks has been marking the original prototype test date (§ 178.251–5(a) on the certification plate in lieu of each individual tank's leak test date (§ 178.253–5(b)). Section 178.251–7 requires that the original test date be marked on the certification plate and the manufacturer in question is erroneously construing this to mean the prototype test date. RSPA is proposing that the entry "Original test date" on the certification plate be revised to read "Leakage test date" for clarification.	In § 178.251–7, paragraph (a) would be amended by changing Original test date" to read "Leakage test date".
§ 179.14	See § 173.31 for the reason(s) for this proposed change	In § 179.14, the section would be revised to read as follows: **§ 179.14 Coupler vertical restraint system.** (a) *Performance standard.* Each tank car shall be equipped with couplers capable of sustaining, without disengagement or material failure, vertical loads of at least 200,000 pounds (90,718.5 kg) applied in upward and downward directions in combination with buff loads of 2,000 pounds (907.2 kg), when coupled to cars equipped with couplers that do have this vertical restraint capability, and cars equipped with couplers, that do not have this vertical restraint capacity. (b) *Test verification and approval.* Except as provided in paragraph (d) of this section, compliance with the requirements of paragraph (a) of this section shall be achieved by verification testing of the coupler vertical restraint system in accordance with paragraph (c) of this section, and approval by the Associate Administrator of Safety—Federal Railroad Administration. (c) *Coupler vertical restraint tests.* A coupler vertical restraint system shall be tested under the following conditions: (1) The test coupler shall be tested with a mating coupler (or simulated coupler having only frictional vertical force resistance at the mating interface; or a mating coupler (or simulated coupler) having the capabilities described in paragraph (a) of this section; (2) The testing apparatus shall simulate the vertical coupler performance at the mating interface and may not interfere with coupler failure or otherwise inhibit failure due to force applications and reactions; and (3) The test shall be conducted as follows: (i) A minimum of 200,000 pounds (90,718.5 kg) vertical downward load shall be applied continuously for at least 5 minutes to the test coupler head simultaneously with the application of a nominal 2,000 pounds (907.2 kg) buff load; (ii) The procedures described in paragraph (c)(3)(i) of this section shall be repeated with a minimum vertical upward load of 200,000 pounds (90,718.5 kg); and (iii) A minimum of three consecutive successful tests shall be performed for each load combination prescribed in paragraphs (c)(3) (i) and (ii) of this section. A test is successful when a vertical disengagement or material failure does not occur during any of the prescribed load combinations. (d) *Listing of approved couplers.* The following classes of couplers have been approved by the Federal Railroad Administration and need not be verified by the testing requirements of paragraph (c) of this section: (1) E double shelf couplers desinated by the Association of American Railroads' Catalog Nos., SE60CHT, SE60CC, SE60CHTE, SE60CE, SE60DC, SE60DE, SE67CC, SE67CE, SE67BHT, SE67BC, SE67BHTE, SE67BE, SE68BHT, SE68BC, SE68BHTE, SE68BE, SE69AHTE, and SE69AE. (2) F double shelf couplers designated by the Association of American Railroads' Catalog Nos., SF70CHT, SF70CC, SF70CHTE, SF70CE, SF73AC, SF73AE, SF73AHT, SF73AHTE, SF79CHT, SF79CC, SF79CHTE, and SF79CE.
§ 179.100–13(d)	The Association of American Railroads (AAR) belives that the present wording is confusing. The AAR has stated that tank mounted excess flow valves are not intended to substitute for adequate excess flow equipment in plant loading systems. The only use of such valves is for protection against loss of lading due to shearing of external closure during transit. The AAR has recommended that the words "such as may be encountered" in § 179.100–13(d) be deleted.	In § 179.100–13, paragraph (d) would be revised to read as follows: **§ 179.100–13 Venting, loading and unloading valves, measuring and sampling devices.** * * * * * (d) an excess flow valve as referred to in this specification, is a device which closes automatically against the outward flow of the contents of the tank in case the external closure valve is broken off or removed during transit. Excess flow valves may be designed with a by-pass to allow the equalization of pressures.

§ 179.100–15(c)	To revise the regulations on safety relief valves used with frangible discs to ensure there is no release of a commodity from the vent on the space between the frangible disc and the safety relief valve. Proposed changes are based on a petition submitted by the AAR.	In § 179.100–15, paragraph (c) would be revised to reas as follows: **§ 179.100–15 Safety relief valves.** * * * * * (c) When a safety relief valve is used in combination with a frangible disc, the frangible disc must be designed to burst at a pressure of 75 percent of the tank test pressure and the safety relief valve must be set for a start-to-discharge pressure of 71 percent of the tank test pressure, as prescribed in § 179.101. Provisions must be made to detect any accumulation of pressure between the frangible disc and the safety relief valve. The detection device must be a needle valve trycock, tell-tale indicator or other approved device. The detection device must be closed during transportation. For certain commodities alternative pressures are permitted (see § 179.101–11). The tolerance on the valve start-to-discharge pressure is ±3 psi for 100 psi test pressure tanks and ±3 percent for all higher test pressure tanks. The minimum vapor tight pressure is 80 percent of the valve start-to-discharge pressure.
§ 179.100–23(c)	To authorize the use of an additional head shield design. It has been brought to the Federal Railroad Administration's attention that head shields on some jacketed tank cars are not in compliance with § 179.100–23(a)(2).	In § 179.100–23, paragraph (c) would be added to read as follows: **§ 179.100–23 Alternative requirements for tank head puncture resistance systems.** * * * * * (c) A head shield that was installed on a tank car before December 31, 1987, and that is in the size and shape of the head of the tank car tank (except for any portion of the tank car tank that is below the top of the center sill of the tank car) need not comply with paragraph (a)(2) of this section.
§ 179.200–18 (b) and (c).	The Federal Railroad Administration has recommended that this section be revised for clarity. It can be implied from the current regulations that, (1) a frangible disc made of lead may always be used even when the lading is not compatible with lead; and (2) a frangible disc with a burst pressure rated from 0 through 100 percent of the tank test pressure may be used even though the intent of the regulations was to make the burst pressure at 100 percent.	In § 179.200–18, paragraph (b) would be revised and paragraph (c) would be added to read as follows: **§ 179.200–18 Safety relief devices.** (a) * * * (b) Safety Vents: (1) When permitted in § 179.201–1, a safety vent, of an approved design, at least 1 and ¾ inch inside diameter which shall prevent interchange with other fixtures may be installed in lieu of a safety relief valve on tank cars or compartments used for the transportation of corrosive materials, flammable solids, oxidizing materials, or poisonous liquids, or solids. (2) The safety vent shall be closed with a frangible disc which: (i) is compatible with the lading; (ii) is not subject to rapid deterioration by the lading; (iii) is designed to rupture at 100 percent of the tank test pressure, and manufactured and marked in accordance with Appendix A of the Association of American Railroads Specifications for Tank Cars; (iv) is provided with means for holding the frngible disc in place that will prevent distortion or damage to the disc when properly applied. (3) A cover, with suitable means for preventing misplacement, must be provided for the safety vent that will prevent any upward or outward vertical or horizontal discharge of the lading. (4) All tanks equipped with safety vents shall be stenciled "NOT FOR FLAMMABLE LIQUIDS". (c) When a safety relief valve is used in combination with a frangible disc on a 100 psi-test pressure tank, the frangible disc must be designed to burst at 75 psi and the safety relief valve must be set for a start-to-discharge pressure of 71 psi. On 60 psi-test pressure tanks, the frangible disc must be designed to burst at 45 psi and the safety relief valve must be set for a start-to-discharge pressure of 35 psi. Provision must be made to detect accumulation of pressure between the frangible disc and the safety relief valve. The detection device must be a needle value, trycock, tell-tale indicator or other approved device. The detection device must be closed during transportation. The tolerance on the valve start-to-discharge pressure is ±3 psi. The minimum vapor tight pressure is 80 percent of the valve start-to-discharge pressure.
§ 179.201–1 Table	Sections 179.202–8, 179.202–11, and 179.202–16 specify special requirements for certain hazardous materials in DOT Specification 111A60W2 tank cars. However, these three section references are not presently listed under "Special references" for the 111A60W2 tanks cars.	In § 179.201–1, the Table would be amended by adding §§ 179.202–8, 179.202–11, and 179.202–16 under "Special references" for DOT Specification 111A60W2 tank cars.

Part 179	See § 173.31 for the reason(s) for this proposed change.	Reference to "§ 179.105-6 would be amended to reference "§ 179.14" in the following paragraphs: § 179.105-1(c)(1) § 179.105-2(a) § 179.105-2(b)(1) § 179.105-2(c)(1) § 179.105-3(a) § 179.106-1(c) § 179.106-2(a) § 179.106-2(b)(1) § 179.106-2(c)(1) § 179.106-3(a) § 179.106-3(b)(1) § 179.106-3(c)(1) § 179.106-4(a) § 179.106-4(b) § 179.203-2(a)(1) Section 179.105-6 would be removed and reserved. Section 179.105-9 would be removed. In § 179.203-1(c) reference to § 173.8 would be changed to read § 171.12a. In § 179.203-1(d) reference to § 173.9 would be changed to read § 171.12a.
§ 179.300	To authorize the use of stainless steel for fabrication of DOT 106A and 110A-W tank car tanks. Stainless steel is a preferred material of construction for containers for Poison gases and Poison A materials. Existing § 179.300 seems to prohibit the use of stainless steel for DOT 1006A and 110A-W tank car tanks.	In § 179.300-7, paragraph (a) introductory text would be revised and the table amended by adding the following entries to read as follows: **§ 179.300 General specifications applicable to multi-unit tank car tanks designed to be removed from the car structure for filling and emptying (Classes DOT 106A and 110A-W).** * * * * * **§ 179.300-7 Materials.** (a) Steel plate material used to fabricate tanks having heads fusion welded to the tank shell must conform with the following specifications with the indicated minimum tensile strength and elongation in the welded condition. The maximum allowable carbon content for carbon steel must be 0.31 percent when the individual specification allows carbon content greater than this amount. The plates may be clad with other approved materials:

Specifications	Tensile strength (psi) welded condition [1] (minimum)	Elongation in 2 inches (percent) welded condition [1] (longitudinal) (minimum)
ASTM A 240 type 304	75,000	25
ASTM A 240 type 304L	70,000	25
ASTM A 240 type 316	75,000	25
ASTM A 240 type 316L	70,000	25
ASTM A 240 type 321	75,000	25
* * *	*	*

[1] Maximum stresses to be used in calculations.

Issued in Washington, DC on September 9, 1988 under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

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Monday
September 19, 1988

Part V

Environmental Protection Agency

40 CFR Parts 180, 185 and 186
Pesticides Programs; Chlordimeform; Notice and Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/52; FRL-3449-5]

Chlordimeform; Proposed Decision Not To Initiate a Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice: Proposed Decision Not to Initiate a Special Review.

SUMMARY: A preliminary notification to chlordimeform registrants of the Agency's intention to commence a Special Review was issued in mid-September 1985 based on evidence that chlordimeform induced oncogenic effects in laboratory animals. The draft Registration Standard was made available for public comment in January 1986; in the draft Registration Standard, the Agency indicated its intention to put chlordimeform in the Special Review process. On February 19, 1988, both chlordimeform registrants, the Ciba-Geigy Corporation ("Ciba-Geigy") and the Nor-Am Chemical Company ("Nor-Am"), advised the Agency that they would voluntarily cancel all chlordimeform registrations effective February 19, 1989. Both companies have amended their registrations so as to terminate those registrations on February 19, 1989. The expiration of these registrations will result in a cancellation which will prohibit all sale, distribution and use of chlordimeform after February 19, 1989. Based on this action, the Agency is proposing not to initiate a Special Review of chlordimeform at this time and is requesting comment on this action, especially in regard to the prohibition against further sale, distribution, and use of chlordimeform after February 19, 1989.

DATE: Comments and other relevant information on the proposed decision not to initiate special review announced in this Notice must be received on or before December 19, 1988.

ADDRESS: Submit three sets of written comments bearing the document control number "OPP-30000/52 by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460. In person, bring comments to: Room 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment or response concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. A public docket containing all non-CBI written Rm. 236 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Paul Parsons, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1006, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1632).

SUPPLEMENTARY INFORMATION: This Notice has five units. Unit I is the Introduction. Unit II summarizes the Agency's risk concerns about chlordimeform. Unit III briefly discusses the comments received in response to the notification to registrants that the Agency was considering initiating a Special Review. Unit IV sets forth the Agency's decision not to initiate the Special Review of chlordimeform. Unit V describes the comment opportunities and announces the availability of the public docket.

I. Introduction

A. Description of Chlordimeform

Chlordimeform is the common name for N'-(4-Chloro-o-tolyl) -N, N-dimethylformamidine. Chlordimeform hydrochloride is the common name for N'-(4-Chloro-o-tolyl)-N,N-dimethylformamidine hydrochloride. The two most common trade names are Galecron® (Ciba-Geigy) and Fundal® (Nor-Am). Both Ciba-Geigy and Nor-Am are registrants of technical chlordimeform and chlordimeform hydrochloride.

Chlordimeform, an insecticide, is used to control *Heliothis spp.* both in the egg stage and in the larval stage. While there are many chemicals available for use as larvicides, chlordimeform is one of three products registered as an ovicide for *Heliothis spp.* control. Chlordimeform products are also registered as yield enhancers for all cotton growing areas with claims that its use, following specified label directions, has resulted in cotton yields above that expected from insect control.

B. Legal Background

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 et seq.). Before a product can be unconditionally registered it must be shown that it can be used without "unreasonable adverse effects on the environment." (FIFRA section 3(c)(5)). The term "unreasonable adverse effects on the environment" is defined in FIFRA section 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard, the Administrator may cancel this registration under section 6 of FIFRA.

The Special Review process provides a mechanism to permit public participation in EPA's deliberations prior to issuance of any Notice of Final Determination describing the regulatory action which the Administrator has selected. The Special Review process, which was previously called the Rebuttable Presumption Against Registration (RPAR) process, is described in 40 CFR Part 154, published in the **Federal Register** of November 25, 1985 (50 FR 49015).

The Special Review process is commenced by the issuance of a preliminary notification to registrants and applicants for registration pursuant to 40 CFR 154.21 that the Agency is considering commencing a Special Review. If the Agency determines, after issuance of a notification pursuant to 40 CFR 154.21, that it will not conduct a Special Review, it is required under 40 CFR 154.23 to issue a proposed decision to be published in the **Federal Register.** That regulation requires that a period of not less than 30 days be provided for public comment on the proposed decision not to conduct a Special Review. Subsequent to receipt and evaluation of comments on the proposed decision not to conduct a Special Review, the Administrator is required by 40 CFR 154.25 to publish in the **Federal Register** his final decision regarding whether or not a Special Review will be conducted.

C. Regulatory History

Chlordimeform was first registered in 1968 for use on apples. Between 1968 and 1976 use on several more crops was authorized, including cotton. In 1976 the registrants voluntarily withdrew chlordimeform from the market based on results of a chronic mouse study showing that chlordimeform caused malignant tumors.

Chlordimeform was reintroduced to the market in 1978 with only the cotton use on the label. At that time, extensive protective clothing measures were required as well as requirements for mixing and loading in closed systems, reduced application rates, restricted use classification, and training for workers. Registrants were also required to implement a worker urine monitoring program. Following the reintroduction of chlordimeform the Agency received additional positive mouse cancer studies on chlordimeform and its metabolites.

On September 15, 1985, the Agency issued a preliminary notification to the registrants of chlordimeform based on evidence that chlordimeform caused tumors in laboratory animals. On January 15, 1986, a draft Registration Standard for chlordimeform was issued for public comment. This document notified the public that the Agency would initiate a Special Review and invited comments from registrants and other interested parties. Public comment on the draft Registration Standard was initiated because there was a substantially complete chronic health data base for chlordimeform (40 CFR 155.34). The Agency decided not to issue a **Federal Register** notice announcing initiation of a Special Review but to proceed directly to a Notice of Preliminary Determination. The Notice of Preliminary Determination sets forth both the risks and the benefits of the chemical, analyzes the risks and benefits, discusses regulatory options for reducing risk, and proposes a regulatory action. The Agency was preparing a Notice of Preliminary Determination when, prior to formal initiation of a Special Review, on February 19, 1988, Ciba-Geigy and Nor-Am, the only registrants of chlordimeform, requested voluntary cancellation of all products containing chlordimeform, effective February 19, 1989. Both companies announced their intent to discontinue sale and distribution after the 1988 cotton-growing season, about October 1, 1988; they expect existing stocks, about the same amount as they sold last year, to be used up by then. Both companies also stated that they will recall any unused stocks down to the user level, and will dispose of these recalled stocks. Both companies requested immediate withdrawal of all tolerances except for cotton; they requested the withdrawal of the cotton related tolerances effective December 31, 1990. The Agency has approved amendments submitted by both companies which place a termination date of February 19, 1989 on their chlordimeform registrations.

This Notice announces that, for the reasons explained in Unit IV, the Agency is proposing not to proceed with the Special Review based on the companies' voluntary cancellations. The Agency will cancel Ciba-Geigy's and Nor-Am's chlordimeform registrations on February 19, 1989, and will prohibit any further sale, distribution, and use after that date.

II. Risk Concerns

A. Oncogenic Risks

1. Preliminary notification. A private notification, which began the pre-Special Review process, was sent to chlordimeform registrants because of Agency concerns that chlordimeform exceeded the risk criterion for oncogenicity now specified in 40 CFR 154.7(a)(2). This concern is specifically based on four mouse oncogenicity studies which demonstrate significant dose-related increases in tumor rates in male and female mice. These studies are discussed at length in the draft Chlordimeform Registration Standard, which can be obtained from the address given above for "**FURTHER INFORMATION.**"

The Agency also reviewed about 50 mutagenicity studies involving the parent chlordimeform and two metabolites, N-formyl-4-chloro-o-toluidine and 4-chloro-o-toluidine (5-CAT). Most of these studies indicated that the unmetabolized parent compound was not mutagenic. However, metabolism of the parent compound produced the N-formyl metabolite which was considered to be moderately mutagenic and the 4-chloro-o-toluidine metabolite which was considered the most strongly mutagenic. Since the oncogenic potencies also are greater in the 4-chloro-o-toluidine metabolite than in the parent compound, the Agency believes the mutagenicity data are consistent with the conclusion that chlordimeform is a probable human carcinogen.

The use of mutagenicity data as an indicator of oncogenic potential is based on a generally accepted hypothesis that an alteration of genetic material in affected cells is related directly or indirectly to tumorigenesis. The Agency's risk assessment guidelines (51 FR 33992, September 24, 1986) formally recognize mutagenicity tests for point mutations, numerical and structural chromosome aberrations, DNA damage/repair and *in vitro* transformation as supportive evidence of carcinogenicity.

2. New information. After the private notification to registrants, the Agency received preliminary findings from a retrospective mortality study of German production workers which suggests 4-chloro-o-toluidine (5-CAT), a metabolite of chlordimeform which has been detected in the urine of exposed agricultural workers, may induce bladder cancer in humans. The metabolite 5-CAT belongs to a class of organic chemicals, the substituted anilines, many members of which have been identified as carcinogenic.

3. Classification. Based on animal data, EPA concluded that there is sufficient experimental evidence to classify chlordimeform as a B_2 or probable human carcinogen, pursuant to Agency risk assessment guidelines. The human data support the classification of chlordimeform as a probable human carcinogen.

B. Exposure

Exposure estimates for chlordimeform were developed using data from Ciba Geigy/Nor-Am urine monitoring studies and the Agency's surrogate data base. Table 1 compares these exposure values.

TABLE 1.—ESTIMATES OF DAILY ABSORBED DOSE FOR MIXER/LOADERS

EPA surrogate dermal data	EPA analysis of urine data	Ciba's analysis of urine data	Ciba's formula using agency assumptions
0.1 mg/kg	0.023 mg/kg	0.006 mg/kg	0.013 mg/kg

These estimated values for absorbed dose vary by little more than an order of magnitude. The variations in values are not viewed as significant and in fact represent a reasonable agreement between the dermal surrogate data and urine data and support the level of confidence in the exposure determinations. A detailed exposure analysis is contained in the public docket.

C. Applicator Risk

The Agency concluded that the most appropriate potency value for the parent compound with regard to mixer/loader/applicator risk is 0.94 $(mg/kg/day)^{-1}$. This value was chosen because it represents the geometric mean of cancer potency estimates for males and females based on the benign hemangiomas and malignant hemangioendotheliomas observed in the mouse oncogenicity studies. The geometric mean is used in cases where one sex appears to be no more sensitive than the other sex, as is the case with chlordimeform.

After considering the data related to exposure and oncogenicity, the Agency developed risk estimates for agricultural workers. Table 2 summarizes the risk estimates for workers, mixer/loaders, and scouts. The exposure value used in the risk calculation for mixer/loaders (0.023 mg/kg/working day) was the absorbed dose value calculated by the Agency based on adjustments to the urine data base. Risk estimates for mixer/loaders based on the Ciba/Nor-Am urine data are consistent with those risk estimates based on the Agency's surrogate dermal data base, (10^{-3}). The risk estimates are for the upper 95 percent confidence level. For the purposes of conducting risk assessments, the Agency traditionally assumes a life expectancy of 70 years. In addition, the Agency traditionally assumes agricultural workers have a 35-year working lifetime. These values were used in calculating the risk estimates below.

TABLE 2.—LIFETIME CANCER RISKS FOR APPLICATORS EXPOSED TO CHLORDIMEFORM

	EPA surrogate data	Urine data agency corrections[1]
Mixers/loaders	10^{-3}	10^{-3}
Pilots	10^{-4}	
Flaggers	10^{-4}	
Scouts [1]	10^{-6}	

[1] Not presented in the draft Registration Standard.

D. Dietary Risk

Dietary exposure to chlordimeform and its metabolites results from consuming cotton seed oil and meal, meat, poultry, eggs, and milk and other dairy products containing residues of these compounds. It appears, however, that the greatest source of dietary exposure is likely to be from milk. Assuming that most of the cottonseed used for feed remains in the region where it was produced and the same is true for milk, the highest dietary exposure will be in the region with the highest chlordimeform use per person. In the case of chlordimeform, this would be the Mississippi Delta region (AL, AR, LA, MS, TN). Dietary exposure is estimated to be 7.0×10^{-8} mg/kg/day for people living in the Delta. There are no data available showing the proportion of chlordimeform and its metabolites which are in various food substances. Therefore, the Agency concluded that it would be reasonable to estimate potency for dietary exposures by using the geometric mean of the Q_1^*'s (a measure of oncogenic potency) for chlordimeform and the two metabolites tested for oncogenicity, N-formyl-4-chloro-o-toluidine and 4-chloro-o-toluidine. Using these potency estimates, a dietary cancer potency (Q_1^*) of 1.3 $(mg/kg/day)^{-1}$ was calculated.

Using the Q_1^* and exposure estimate above, risk was calculated to be about 10^{-7} for people living in the Delta. This value will vary depending on local use and dietary patterns.

III. Comments on Preliminary Notification and Draft Registration Standard

Ciba-Geigy and Nor-Am responded to numerous issues related to the studies reviewed by the Agency and cited in the draft Registration Standard and the preliminary notification of intent to initiate a special review. The registrants' comments, which mostly concern estimated exposures, and the Agency's responses can be found in the public docket. The Agency agrees with many of the comments. However, even where the Agency has revised its position because of comments, the estimated risks from exposure to chlordimeform do not change significantly.

IV. Agency's Proposed Decision Regarding Special Review

Both chlordimeform registrants have requested that all of their chlordimeform registrations be cancelled effective February 19, 1989, and that all chlordimeform tolerances be withdrawn (non-cotton related tolerances as soon as possible, cotton related tolerances on December 31, 1990). Pursuant to the termination dates now contained in the registration, the Agency will cancel the registrations as of February 19, 1989, and in a concurrent **Federal Register** action, is proposing to revoke all non-cotton related tolerances. The Agency is reviewing the request to revoke all cotton related tolerances on December 31, 1990 and will be publishing a proposed notice to revoke these tolerances at the appropriate time. Both registrants have indicated they will not be marketing chlordimeform after the 1988 cotton season, around the beginning of October 1988. Both registrants have also indicated that they will recall all existing stocks of chlordimeform after the 1988 cotton season. Both registrants have indicated that they intend to market about the same amount of chlordimeform in 1988 as in 1987, that is, about one season's worth of pesticide. The Agency will prohibit the sale, distribution, and use of chlordimeform immediately after the effective date of the cancellation. The Agency particularly invites comments on the appropriateness of this determination with regard to any stocks that might exist after Feb. 19, 1989.

While the Agency has concerns about the risks associated with chlordimeform use on cotton, it does not propose to initiate a Special Review of chlordimeform because all use, and therefore exposure, will end when all registrations are cancelled. The cancellations will become effective automatically on February 19, 1989. The Agency has acted in reliance on the voluntary cancellation by proposing revocation of non-cotton tolerances and by proposing not to initiate a Special Review.

Since the Agency would need at least nine months to complete a Special Review and that period could be extended from nine months to three years if a hearing were requested, the voluntary cancellations will become effective before the Agency would be able to take any regulatory actions pursuant to the Special Review process. In addition, by not initiating a Special Review, the Agency will be able to use its limited resources where they will have the greatest effect in protecting the environment. In this instance, the public health will best be protected by the voluntary actions of the registrants since exposure to chlordimeform will continue for a shorter period than if the Agency were to conduct a Special Review of chlordimeform.

V. Public Record

The Agency is providing a 90-day period to comment on this Notice. Comments must be submitted by December 19, 1988. All comments and information should be submitted in triplicate to the address given in this Notice under **ADDRESS.** The comments and information should bear the identifying notation "OPP–30000/52". After receipt and evaluation of comments on this Notice, the Agency will publish a final decision in the **Federal Register** regarding whether or not a Special Review will be conducted. The Agency has established a public record (public docket #30000/52) for the chlordimeform Special Review. This public record includes:

1. This Notice.
2. The draft Registration Standard.
3. Any other notices pertinent to the chlordimeform Special Review.
4. Documents and copies of written comments submitted to the Agency in response to the pre-Special Review registrant notification, the draft Registration Standard, this Notice, and any other notice regarding chlordimeform submitted at any time during the chlordimeform Special Review process by any person outside government.
5. Analysis of comments received in response to the draft Registration Standard and the preliminary notification to registrants.
6. Memoranda describing each meeting between Agency personnel and any person outside government which concerns a chlordimeform Special Review decision.
7. Comments, documents, proposals or other materials concerning the chlordimeform Special Review submitted by any person or party outside government.
8. A current index of materials in the public docket.

Information for which a claim of CBI has been asserted will not, however, be put in the public docket. The docket and index will be available for inspection and copying from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, at the following location: Program Management and Support Division, Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Dated: August 29, 1988.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88–21264 Filed 9–16–88; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300178; FRL-3449-6]

Chlordimeform; Revocation and Amendment of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes (1) the revocation of tolerances for combined residues of the insecticide chlordimeform (*N*-(4-chloro-*o*-tolyl)-*N,N*-dimethylformamidine) and its metabolities containing the 4-chloro-*o*-toluidine moiety (calculated as the insecticide) from application of the insecticide as the free base or as the hydrochloride salt in or on various raw agricultural commodities, and (2) the amendment of the existing tolerances for residues in or on meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep. These proposed actions are being initiated by EPA to remove most tolerances for residues of a pesticide for which registered food uses other than on cotton have been voluntarily cancelled by the registrants, and to amend (reduce) other tolerances affected by these cancellations.

DATE: Written comments, identified by the document control number (OPP-300178), must be received on or before November 18, 1988.

ADDRESS: By mail, submit comments to:
Public Docket and Freedom of Information Section, Field Operations Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460
In person, deliver comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:
By mail:
Patricia Critchlow, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460
Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-1806

SUPPLEMENTARY INFORMATION: The registrants of the pesticide chemical chlordimeform voluntarily cancelled their registrations for use on all food crops, except cotton, in the late 1970's and early 1980's. (Cottonseed and cottonseed byproducts are food and animal feed commodities which require tolerances for pesticide residues; thus, the growing crop is defined as a food crop.)

Because chlordimeform is no longer registered for use on any food crops except cotton and because a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA now proposes to revoke the tolerances listed in 40 CFR 180.285 for combined residues of chlordimeform and its metabolites containing the 4-chloro-*o*-toluidine moiety in or on the raw agricultural commodities apples, broccoli, brussels sprouts, cabbage, cauliflower, cherries, nectarines, peaches, pears, plums (fresh prunes), tomatoes, and walnuts.

Because chlordimeform is not persistent and because its registrations for use as an insecticide on the named crops were cancelled more than 4 years ago, there is no anticipation of residues in these crops because of environmental contamination. Consequently, action levels will not be recommended to replace the tolerances when they are revoked.

Cotton products are used as animal feed; consequently, chlordimeform residues in cottonseed and other cotton products (e.g., hulls, meal, soapstock) may result in residues occurring in eggs, milk, and meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep. Thus, the agency is not proposing to revoke the tolerances in these animal products so long as the use on cotton remains registered.

However, because registrations have been cancelled for some animal feed items, pesticide residue intake for animals should have decreased in recent years. Based on a cattle diet containing chlordimeform residues only from cotton products (cottonseed, cottonseed hulls, and cottonseed soapstock) and a cattle feeding study submitted in 1972, the Agency has concluded that residues of chlordimeform and its metabolites are not likely to exceed 0.1 ppm in the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep. Therefore, EPA is proposing to reduce the existing tolerances of 0.25 ppm for these animal commodities to 0.1 ppm.

No poultry metabolism study is available. However, based on a poultry diet containing chlordimeform residues only from cotton products (cottonseed meal and soapstock) and a poultry feeding study submitted in 1972, EPA has concluded that the current tolerance of 0.25 ppm for chlorimeform residues in the meat, fat, and meat byproducts of poultry should continue unchanged.

The current tolerances for residues in milk and in eggs (0.05 ppm) are at approximately the limits of detection of the analytical method. Therefore, EPA is not proposing to amend these tolerances.

Elsewhere in this issue of the **Federal Register**, EPA is publishing a related proposed rule (OPP-300177) which would revoke the food additive tolerances in 40 CFR 185.750 for the combined residues of chlordimeform in or on dried prunes and in 40 CFR 186.750 for the combined residues in the animal feed dried apple pomace.

On February 19, 1988, the registrants of chlordimeform, Ciba-Geigy Corporation and Nor-Am Chemical Company, advised the Agency that they would voluntarily cancel all chlordimeform registrations effective February 19, 1989. The cancellations will become automatically effective on February 19, 1989, and are irrevocable. The registrants also requested that cotton related tolerances be withdrawn on December 31, 1990. The Agency is reviewing that request and will be publishing a proposed notice to revoke cotton related tolerances at the appropriate time.

Based on the voluntary cancellation actions the Agency is also concurrently publishing in the **Federal Register** a proposed decision not to initiate a Special Review of chlordimeform.

Any person who has registered or submitted an application under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for the registration of a pesticide which contains chlordimeform may request within 30 days after publication of revoke certain chlordimeform tolerances and to amend certain others, listed in 40 CFR 180.285, be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on this

proposal to revoke or amend certain tolerances listed in 40 CFR 180.285 for residues of chlordimeform. Comments must bear a notation indicating the document control number, [OPP–300178]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 246, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

This regulatory action is intended to prevent the sale of foodstuffs primarily where the subject pesticide has been used in an unregistered or illegal manner. Because all registrations for use of chlordimeform on food crops except cotton were cancelled more than 4 years ago, the Agency anticipates that little or no economic impact would occur at any level of business enterprise if these tolerances were revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

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

Dated: August 24, 1988.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for 40 CFR Part 180 continues to read as follows:

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

2. Section 180.285 is revised to read as follows:

§ 180.285 Chlordimeform; tolerances for residues.

Tolerances are established for combined residues of the insecticide chlordimeform [*N*'-(4-chloro-*o*-tolyl)-*N,N*-dimethyl-formadine] and its metabolites containing the 4-chloro–*o*-toluidine moiety (calculated as the insecticide) from application of the insecticide as the free base or as the hydrochloride salt in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	0.1
Cattle, meat	0.1
Cattle, mbyp	0.1
Cottonseed	5
Eggs	0.05
Goats, fat	0.1
Goats, meat	0.1
Goats, mbyp	0.1
Hogs, fat	0.1
Hogs, meat	0.1
Hogs, mbyp	0.1
Horses, fat	0.1
Horses, meat	0.1
Horses, mbyp	0.1
Milk	0.05
Poultry, fat	0.25
Poultry, meat	0.25
Poultry, mbyp	0.25
Sheep, fat	0.1
Sheep, meat	0.1
Sheep, mbyp	0.1

[FR Doc. 88–21263 Filed 9–16–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Parts 185 and 186

[OPP–300177; FRL–3449–7]

Chlordimeform; Revocation of Food and Feed Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of the food additive tolerance listed in 40 CFR 185.750 and the feed additive tolerance listed in 40 CFR 185.750 for combined residues of the insecticide chlordimeform (*N*'-(4-chloro-*o*-tolyl)-*N,N*-dimethylformamidine) and its metabolites containing the 4-chloro-*o*-toluidine moiety (calculated as the insecticide) in or on dried prunes and in the animal feed dried apple pomace, resulting from carryover and concentration of residues in these processed foods and feeds when present as a result of application of the insecticide to the growing crops plums (fresh prunes) and apples. This proposed action is being initiated by EPA to remove food additive tolerances which are no longer necessary because the related registered uses of the pesticide on plums (fresh prunes) and apples have been voluntarily cancelled by the registrants.

DATE: Written comments, identified by the document control number (OPP–300177), must be received on or before November 18, 1988.

ADDRESS: By mail, submit comments to: Public Docket and Freedom of Information Section, Field Operations Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Patricia Critchlow, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 716, CM #2,

1921 Jefferson Davis Highway, Arlington, VA, (703)–557–1806.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, EPA is publishing a related document (OPP–300178) which proposes the revocation or amendment of tolerances for combined residues of chlordimeform and its metabolites containing the 4-chloro-*o*-toluidine moiety (calculated as the insecticide) in or on various raw agricultural commodities, including revocation of tolerances for apples and plums (fresh prunes).

The registrations for the use of chlordimeform on the growing crops apples and plums were voluntarily cancelled by the registrants in the late 1970's and early 1980's. Therefore, the food additive regulations for residues of chlordimeform in dried apple pomace and dried prunes are no longer necessary.

Because chlordimeform is not a persistent chemical and because its registrations for use on apples and plums were cancelled more than 4 years ago, there is no anticipation of residues occurring in the commodities because of environmental contamination. Consequently, no action levels will be recommended to replace the food additive tolerances upon their revocation.

Based on the information considered by the Agency and discussed herein and in the related proposed rule [OPP–300178] published in this issue of the **Federal Register**, EPA proposes to revoke the food additive tolerances for combined residues of chlordimeform and its metabolites containing the 4-chloro-*o*-toluidine moiety (calculated as the insecticide) in dried prunes and in the animal feed dried apple pomace resulting from carryover and concentration of residues in these processed foods and feed when present as a result of pesticide application to the growing crops plums (fresh prunes) and apples.

On February 19, 1988, the registrants of chlordimeform, Ciba-Geigy Corporation and Nor-Am Chemical Company, advised the Agency that they would voluntarily cancel all chlordimeform registrations, including all for use on cotton, effective February 19, 1989. Both companies have amended their registrations so as to terminate those registrations on February 19, 1989. The registrants also requested that cotton-related tolerances be withdrawn on December 31, 1990. The Agency is reviewing that request and will publish a proposed rule to revoke cotton related tolerances at the appropriate time.

Based on the voluntary cancellation actions, the Agency is also publishing in this issue of the **Federal Register** a proposed decision not to initiate a Special Review of chlordimeform.

Interested persons are invited to submit written comments on this proposal to revoke the food and feed additive tolerances listed in 40 CFR 185.750 and 186.750 for combined residues of chlordimeform in dried prunes and dried apple pomace, redesignated from 21 CFR 193.60 and 561.80, respectively, in the **Federal Register** of June 29, 1988 (53 FR 24666). Comments must bear a notation indicating the document control number (OPP–300177). Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 246, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*)), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

This regulatory action is intended to prevent the sale of foodstuffs primarily where the subject pesticide has been used in an unregistered or illegal manner. Because all registrations for use of chlordimeform on apples and plums were cancelled by 1983, it is anticipated that little or no economic impact would occur at any level of business enterprise.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Parts 185 and 186

Food additives, Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 24, 1988.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Chapter I be amended as follows:

PART 185—[AMENDED]

1. In Part 185:

a. The authority citation for Part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 185.750 [Removed]

b. By removing § 185.750 *Chlordimeform.*

PART 186—[AMENDED]

2. In Part 186:

a. The authority citation for Part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. Section 186.750 is revised to read as follows:

§ 186.750 Chlordimeform.

Tolerances are established for combined residues of the insecticide chlordimeform [*N*'-(4-chloro-*o*-tolyl)-*N*,*N*-dimethyl-formamidine] and its metabolites containing the 4-chloro-*o*-toluidine moiety (calculated as the insecticide) in the following processed animal feeds, resulting from carryover and concentration after application of the pesticide to the growing crops:

Commodities	Parts per million
Cottonseed hulls	10

[FR Doc. 88–21262 Filed 9–16–88; 8:45 am]

BILLING CODE 6560–50–M

federal register

Monday
September 19, 1988

Part VI

The President

Extension of Moratorium on Permits and Certificates for Foreign Motor Carriers
Memorandum of September 15, 1988

Federal Register
Vol. 53, No. 181
Monday, September 19, 1988

Presidential Documents

Title 3—

The President

Memorandum of September 15, 1988

Memorandum for the Secretary of Transportation, the United States Trade Representative

Pursuant to section 6 of the Bus Regulatory Reform Act of 1982 (49 U.S.C. 10922 (*l*) (1) and (2)), I hereby extend for an additional two years both the moratorium imposed by that section and all actions taken by me under that section on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country. This action preserves the *status quo* and will maintain the moratorium through September 19, 1990, unless earlier revoked or modified.

This memorandum shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, September 15, 1988.

[FR Doc. 88-21495
Filed 9-16-88; 11:46 am]
Billing code 3195-01-M

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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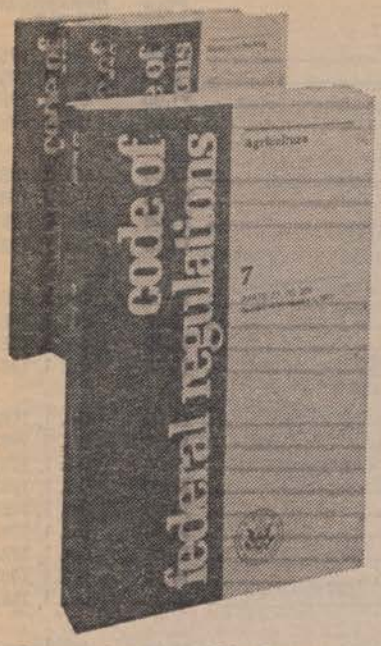
[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.



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