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For information on briefings in Minneapolis, MN and Kansas City, MO, see announcement on the inside cover of this issue.

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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

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

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WHERE: Bishop Henry Whipple Federal Building, Room 570, Ft. Snelling, MN.
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KANSAS CITY, MO

WHEN: June 19, at 9:00 a.m.
WHERE: Federal Building, 601 East 12th Street, Room 110, Kansas City, MO.
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Presidential Documents

Title 3—

The President

Proclamation 6138 of May 23, 1990

Older Americans Month, 1990

By the President of the United States of America

A Proclamation

Each May, during Older Americans Month, we gratefully acknowledge the many contributions that older men and women have made—and continue to make—to our Nation. With faith, hard work, and an abiding love of freedom, they have helped to make the 20th century the American Century. Today they share a wealth of wisdom and experience with their families, neighbors, and co-workers.

During this year's observance of Older Americans Month, we also celebrate the Silver Anniversary of the Older Americans Act. Signed into law in 1965, this important legislation reaffirmed the rights and dignity of America's senior citizens and established a framework for programs designed to help them remain active, independent, and productive members of society.

The Older Americans Act created the Administration on Aging as the Federal focal point and advocate for our Nation's older citizens. Since the signing of the Act, a nationwide network of State and Area Agencies on Aging has emerged. These agencies are working to dispel myths about aging; to protect older Americans from exploitation and discrimination; and to provide a range of services and opportunities they need and deserve. Last year alone, 9 million older men and women participated in programs sponsored under the Act. The assistance provided through such programs includes transportation, meals, supportive in-home services, and employment.

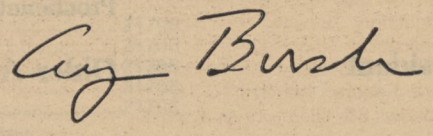
Thanks, in part, to the greater respect and well-being they enjoy as a result of such efforts, millions of older Americans are now remaining in the work force past the traditional "retirement age." Indeed, many are pursuing second careers, while others continue to enrich our communities and country through volunteer work. Whether they hold jobs, volunteer, or quietly devote their time to family and friends, older Americans are a great blessing to us, and all of them merit our appreciation and support.

Thus, as we celebrate all that has been accomplished in the 25 years since the enactment of the Older Americans Act, let us renew our determination to ensure that this progress continues. We must continue to promote, in every community, programs that are both accessible to older persons and their families and flexible enough to meet their individual needs.

In the coming decades, meeting this goal will become increasingly important. Americans 85 years of age and over will constitute one of the fastest-growing segments of our population, and, one American in five will be 65 or older.

NOW, THEREFORE, I, GEORGE BUSH, 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 May 1990 as Older Americans Month. I call upon the American people to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of May, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.



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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1809, 1902, 1910, 1941, 1943, 1944, and 1945

Certain Provisions of the Agricultural Credit of 1987 and Additional Amendments of Portions of Farmer Programs Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its insured loan servicing regulations to implement certain provisions of the Agricultural Credit Act of 1987 (Pub. L. 100–233) (ACT) and to provide clarification for the servicing of insured farmer programs loans. The FmHA published an interim rule effective October 14, 1988, with request for comments to be submitted on or before November 14, 1988, in the Federal Register (53 FR 35638–35798).

This final rule is based on comments received on the interim rule on 7 CFR parts 1902, 1910, 1941, 1943, and 1945. No comments were received on parts 1809 and 1944. The Agency is still reviewing the comments on 7 CFR parts 1924, 1951, 1955, 1962, and 1965 which will be published in a separate final rule at a later date. FmHA amends its regulations to conform to the Act and to make other clarifying and editorial changes.

This action is being taken to: (1) Facilitate keeping borrowers on the Farm or Ranch to the maximum extent possible; (2) respond to rural Farm problems throughout the Nation; (3) minimize losses under farmer programs loans; (4) reduce the Government's cost of maintaining regulations for obsolete and unfunded Farm loan programs; (5) reduce inconsistencies in interpretation of the regulations; and (6) provide more guidance to the FmHA field staff.

EFFECTIVE DATE: May 25, 1990.

The Interim Final Regulatory Impact Analysis is available for public inspection in the Directives and Forms Management Branch (DFMB) of the Farmers Home Administration (FmHA), room 6348, South Agricultural Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Chester Bailey, Assistant to the Assistant Administrator, Farmer Programs, Farmers Home Administration, USDA, room 5025, South Agricultural Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 382–1471.

SUPPLEMENTARY INFORMATION: Classification: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be major because it will result in an annual effect on the economy of $100 million or more.

Memorandum of Law

I have reviewed the regulations which the Farmers Home Administration (FmHA) is publishing as a final rule to implement, among other items, provisions of the Agricultural Credit Act of 1987, Public Law 100–233, 101 Stat. 1662 et seq. I find that these regulations comply with that statute and the FmHA has the authority to propose such regulations pursuant to that Act and section 339 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1989).

Alan Charles Raul,
General Counsel.

Summary of FRIA

These resolutions are part of a broad set of regulations that are being developed to implement the Agricultural Credit Act of 1987, (ACT). These regulations have been determined to be a major action because they include provisions relating to the restrictions of delinquent loans that are expected to have more than a $100 million impact on the economy.

The USDA has developed an Interim Final Regulatory Impact Analysis (FRIA) due to the effect the ACT will have on the economy. There are a number of requirements in the ACT; however, the most significant requirements are the loan restructuring with debt write-down provisions and the provisions for a secondary market. The secondary market provisions will be covered in a separate document. The Preliminary Regulatory Impact Analysis (PRIA) for this document was summarized in the interim rule published on September 14, 1988. (53 FR 35638–35798). The summary is incorporated into this document.

The estimates contained in the Preliminary Impact Analysis are considered to be substantially indicative of the number of borrowers qualifying for the write-down and associated costs of debt restructuring under the interim regulations revised for final publication. Changes in the final regulations are not likely to affect servicing and property management procedures more than the extent of debt adjustment under the interim rule restructuring provisions.

Since these provisions are required by the ACT, other alternatives were not considered.

Programs Affected

These changes affect the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans (Section 502 Rural Housing Loans)
10.416—Soil and Water Loans

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmer Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Programs is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Environmental Impact Statement

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, Public Law 91–190, an Environmental Impact Statement is not required.

Background

The Agricultural Credit Act of 1987 (Pub. L. 100–233) requires a number of changes in the Farmers Home Administration (FmHA) regulations and how we will continue to do business with our Farm borrowers. Due to the great number of changes and to expedite the implementation of the "Act," we are publishing the revisions in FmHA regulations in several separate issuances.

There are a number of sections of the Agricultural Credit Act of 1987 ("Act") that are very important to FmHA Farm Borrowers. The Act requires implementation of those sections. It will allow many Farm borrowers to continue to Farm and will, at the same time, assist in minimizing losses to the Government.

Interim Rule

The interim rule was published in the **Federal Register** (53 FR 35638) on September 14, 1988, effective October 14, 1988, with a 60 day comment period. The comment period ended November 14, 1988. Comments were received from 77 individuals and organizations. Comments were received from farmers, farm organizations, bank officials, FmHA employees, other Federal agencies and an FmHA employee association. Follow-up correspondence and/or dialogue has occurred with some respondents and changes or revisions have been made as a result of a review of the comments. This final rule is based on comments received on 7 CFR parts 1902, 1941, 1943 and 1945. Comments received on 7 CFR parts 1924, 1951, 1955, 1962 and 1965 are still being reviewed by the Agency and will be published in a separate final rule. Additional minor changes to correct internal inconsistencies and to clarify certain minor changes are not discussed below but are also adopted in this final rule.

Discussion of Comments

The comments and regulations revisions will be addressed in the order that the regulations appear in the CFR.

Part 1809—Appraisals

Subpart A—Appraisal of Farms and Leasehold Interests

No comments were received on changes in this subpart published in the interim rule. The interim rule is adopted as final.

Part 1902—Supervised Bank Accounts

Subpart A—Loan and Grant Disbursement

This subpart provides the procedures for administering loan and grant disbursements through supervised bank accounts.

Section 1902.2—Policies Concerning Disbursement of Funds

One respondent commented that further explanation is needed as to why supervised bank accounts will be used ony in rare instances and why the District Director's approval is needed to continue a supervised bank account beyond one year. The Agency believes that the use of supervised bank accounts as a supervisory technique should be of a temporary nature. The use of supervised bank accounts is time consuming for both FmHA and the borrowers. For these reasons the District Director's approval is required for extension of a supervised bank account beyond a one year period. The Agency adopts the language in the interim rule with a change to paragraph (a) of § 1902.2 by substituting the word "certain" for the work "rare".

Section 1902.14—Reconciliation of Accounts

One respondent commented that the definition of "Checks" should reference credit unions and share drafts, and suggested that a definition could be included in line 8 of paragraph (a) of § 1902.14 "* * * amount of each check, i.e., a negotiable demand draft drawn on or payable through or at an office of a financial institution." The Agency agrees and adopts this suggestion in principle.

Since there were no other comments on these regulations, the interim rule is adopted as final with the above changes.

Part 1910—General

Subpart A—Receiving and Processing Applications

This subpart provides the procedures for receiving and processing FmHA applications for services. This subpart was revised in part to incorporate section 623, "Farm Ownership Outreach Program to Socially Disadvantaged Individuals" of the Agricultural Credit of 1987.

Section 1910.1—General

This section has been clarified to reference Subpart S of Part 1951 of this chapter for delinquent borrower(s) requesting primary and preservation loans servicing actions on their accounts.

Section 1910.3—Receiving Applications

One respondent inquired if divorce decrees and settlements can still be requested as documentation along with court record of payments. The Agency does not believe that paragraph (d) of § 1910.3 needs any clarification. The information regarding the receipt and dependability of income from alimony, child support, or separate maintenance, provided by a former spouse, may be requested, considered, and verified to determine eligibility and repayment ability.

One respondent stated that paragraph (j)(2) of § 1910.3 references Form FmHA 440–59, instead of the correct Form FmHA 440–58. The Agency agrees and has corrected the error.

One respondent commented that the new regulations allow anyone with a farming background whether married or single to apply for a loan, and requires only one person to apply and sign for the loan, which appears to destroy the "family farm" ideals and concept. This change in the regulation was mandated, in part, by the Equal Credit Opportunity Act (ECOA), which prohibits a creditor from taking sex or marital status into account in connection with the evaluation of creditworthiness of an applicant; and prohibits a creditor from aggregating or combining accounts when each party separately and voluntarily applies for credit.

The Agency has revised paragraph (b)(3) of § 1910.3, to clarify when item 17, "Financial Statement", of Form FmHA 410–1, does not have to be completed for those applicants who are presently indebted to FmHA.

Section 1910.4—Processing Applications

To prevent any misunderstandings from arising, the Agency has revised paragraph (b)(6) of § 1910.4 to clarify that 5 years of production history is normally required except when the applicant has been farming less than 5 years and that the 5 years will immediately precede the year of application.

One respondent commented that paragraphs (g) and (h) of § 1910.4 should be amended to clarify that not only will the County Committee make its own independent decision, which does not involve consideration of the projected repayment ability or the adequacy of the collateral, but that the letter advising the applicant/borrower of the County Committee's decision will contain only the County Committee's decision. The Agency believes that the existing statement regarding the County Committee's review is adequate. The

present statement used by the County Committee leaves no question that the County Committee is only determining loan eligibility and not the applicant's projected repayment ability, the adequacy of the security or the feasibility of the proposed operation.

Rather than amending paragraph (g) of § 1910.4 as the respondent suggested, the Agency instead has amended paragraph (b)(2) of § 1910.6 to clarify that the letter advising the applicant/borrower of the County Committee's decision, will only contain the (1) reasons for the County Committee ineligibility determination, (2) right to meet with the County Committee, and (3) appeal rights. Paragraph (b)(2) of § 1910.6 is the more logical place to put this further guidance as it already deals with what Form FmHA 440–2 will contain regarding notification of an unfavorable County Committee determination. The Agency believes that paragraph (g) of § 1910.4 does not need further clarification with respect to either loan eligibility determination or the contents of the notification regarding ineligibility.

The Agency has made clarification changes by adding paragraph (b)(13) to reference Form FmHA 1945–22, "Certification of Disaster Losses;" correcting paragraph (b)(15) to cite the correct Form FmHA 1945–26, "Calculation of Actual Losses;" deleting the reference to Form FmHA 410–8 in paragraph (b)(16); and adding paragraph (b)(22) to reference Form FmHA 1940–38, "Request for Lender's Verification of Loan Application."

The Agency has also redesignated paragraphs (b)(13), (b)(14) and (b)(15) as (b)(14), (b)(15), (b)(16) respectively; and deleted paragraph (b)(16) that referenced Form FmHA 410–8.

The Agency has revised paragraph (i) of this section to clarify that for RH loans, when a determination of eligibility cannot be made within 30 days, the applicant will be notified in writing of the reason(s) for the delay. The paragraph is also revised to clarify that the receipt of a signed copy of Form FmHA 1940–1, Request for Obligation of Funds, by the applicant is considered written notice for loan approval.

Section 1910.5—Evaluating Applications

The Agency has amended § 1910.5(c)(1) to clarify that FmHA delinquencies resolved through loan service programs will not indicate an unacceptable credit rating.

One respondent commented that paragraph (c)(6) of this section pertaining to previous debts settled pursuant to subpart B of part 1956, part 1864 (FmHA Instruction 456.1) and subpart B of part 1951 of this chapter did not indicate an unacceptable credit rating and directly conflicted with § 1944.4(c) of subpart A of part 1944 of this chapter which states that a loan will not be made for such persons unless the State Office determines processing may continue. The respondent recommended that the phrase, "except as provided in § 1944.4(c) of subpart A of part 1944 of this chapter" be added to the end of paragraph (c)(6) of § 1910.5. The Agency agrees and has made the suggested change. A correction has been made in this paragraph to change "and debts settled pursuant to subpart B of part 1951" to "and debts restructured pursuant to subpart S of part 1951."

Section 1910.6—Notification of Applicant

A change has been made to § 1910.6(b) which was already discussed under the heading dealing with § 1910.4(g).

One respondent commented that § 1910.6(e), "Available funds," does not clearly state the time frame for making loan funds available, and that FmHA's delay in funding restricts the farmer's repayment ability as a result of late production. The Agency has amended paragraph (e) of this section to clarify the time frame for providing loan funds to the applicant after loan approval. If loan funds are available at the time a Farmer Program loan is approved, funds must be provided within 15 days of loan approval, unless the applicant agrees to a longer period. When a loan is approved subject to the availability of funds, loan funds will be provided within 15 days after funds become available, unless the applicant agrees to a longer period of time.

One respondent commented that § 1910.6(f) which states that applications received when funds are not available will be processed through approval subject to the availability of funds, conflicts with § 1944.26(a)(4) of subpart A of part 1944 of this chapter, which directs the County Supervisor only to make a determination of eligibility when Rural Housing funds are not available. The commentor suggested that paragraph (f) of this section be revised to distinguish between Farmer Programs and Rural Housing applications. The Agency agrees with this comment and has amended paragraph (f) of § 1910.6 to distinguish between Farmer Programs and Rural Housing applications.

One respondent commented that § 1910.6(f) regarding the notification of applicant by certified mail when loan funds become available, with a followup letter if the applicant does not respond within 10 days of the date of the first letter, is very cumbersome and could possibly be done with one letter. The Agency agrees with the comment and has amended paragraph (f) of this section to include a statement in the certified letter to the applicant, that if the applicant does not contact the County Office within 30 days from the date the certified letter was received, the application will be considered withdrawn.

Section 1910.6(f)(1), approval condition to be included under Section 41 of Form FmHA 1940–1, has been amended for clarification as to time limits for reviewing eligibility and feasibility when these changes would affect eligibility.

Exhibit A to Subpart A of Part 1910

One respondent commented that the production history for some delinquent farmers has been lost because the delinquent farmers may have been out of farming for a period exceeding 5 years, and that provisions should be made for establishing such a farmer's production history either on a historical basis for years when that farmer was farming or by some other equitable method. The Agency believes that a method of establishing the applicant/borrower's production history is adequately addressed in paragraph (b) of § 1924.57 of subpart B of part 1924 of this chapter, and that Exhibit A to subpart A of part 1910 does not need to be amended to cover this point.

The respondent further stated that ASCS acreage allotments and production history may have been lost on some farms that have been out of business, and FmHA should strive to reinstate these farms and reestablish their eligibility for ASCS payments. While the Agency agrees that ASCS acreage allotments/bases and production history may have been lost on some farms, the owner/operator is responsible for annual reporting of the farm's production status to the local ASCS office. It is felt that a relatively small percentage of these farms go unreported, regardless of whether the owner is an individual or the Government. Therefore, the Agency did not adopt the suggested changes.

One respondent commented that item 8 of Exhibit A should be more explicit as to the processing of Forms AD–1026 and SCS–CPA–26. The Agency agrees and has amended paragraph 9 of Exhibit A to provide further detail as to processing of the Forms AD–1026 and SCS–CPA–26. Paragraph 11(C) has been amended to clarify that Form FmHA 440–32, will be returned to the County Office for mailing to the applicant's creditors. Paragraph

15 has been amended to reference Form FmHA 440–32, "Request for Statement of Debts and Collateral." Reference to Form AD 1047 has been added as paragraph 18.

Exhibit B to Subpart A of Part 1910

One respondent commented that Exhibit B, "Letter to Notify Socially Disadvantaged Applicant(s)/Borrower(s) Regarding the Availability of Direct Farm Ownership (FO) loans and the Acquisition/Leasing of FmHA Acquired Farmland," should be rewritten to improve its readability, as some members of socially disadvantaged groups have limited education. The Agency amended Exhibit B for readability in the interim rule and does not feel there is any problem with present readability. Therefore, the Agency does not adopt this suggestion. The Agency has amended Exhibit B to delete the word "improve" as a loan purpose, to comply with the farm ownership loan regulation.

The interim rule, as amended, is adopted as final with the following changes: minor clarifying changes and corrections of typographical and grammatical errors.

Part 1941—Operating Loans

Subpart A—Operating Loan Policies, Procedures, and Authorizations.

This subpart provides procedures for receiving and processing insured operating loans, and was revised to incorporate section 602 "definitions" of the Agricultural Credit Act of 1987.

Section 1941.4—Definitions

One respondent recommended that the limited resource definition be revised to the original definition, whereby a limited resource loan would be granted only when the applicant lacked management ability or had limited resources. Limited resource rates are a required consideration in loan making and primary servicing action for operating and farm ownership loans. Therefore, the Agency does not adopt the suggestion.

One respondent commented that the definition of a feasible plan is weak because there is no requirement to budget for replacement of capital items or have a 10-percent margin between "balance available" and the amount due creditors in Table K of Form FmHA 431–2. The commentor stated that by adding these requirements, there would be fewer unsound loans made, less Government losses, and a higher success rate among FmHA financed family farmers. The Agency previously proposed to strengthen the feasible plan definition, but as a result of adverse comments from the public, the changes were not implemented. The Agency does not adopt the suggestion.

Section 1941.6—Credit Elsewhere

One respondent commented that County Supervisors have required applicants, applying for operating or farm ownership loans, to apply for a guaranteed loan when it was evident that a feasible plan could not be developed at guaranteed loan rates; and therefore, the rule should be changed requiring referral to a private lender only in cases where it is evident the applicant can cash flow at guaranteed loan rates either with or without interest rate buydown. The Agency believes the referral of an applicant to other credit is properly addressed in this section. The County Supervisor will refer such applicants to other credit only when a lender indicates credit can be extended with or without an FmHA guarantee, or it is determined the applicant can obtain a loan from a lender with or without a guarantee. Therefore, the Agency does not adopt the suggestion.

Section 1941.12—Eligibility Requirements

One respondent commented that the expertise requirement (1 year out of the last 5 years) as an eligibility requirement is in direct opposition to the intent of Congress as evidenced by paragraph (b)(1) of section 353, "Debt Restructuring and Loan Servicing," of Public Law 100–233, "Agricultural Credit Act of 1987", which states "the delinquency must be due to circumstances beyond the control of the borrower * * *." The experience requirement does not take into account that the farmer may have been unable to farm in any of the past 5 years or longer because FmHA refused to extend operating credit, which circumstance was clearly beyond the borrower's control. The commenter recommended the requirement for recent farm experience or training in 1 of the last 5 years be eliminated as an eligibility requirement. The commentor is misinformed regarding the eligibility requirements for loan making and eligibility requirements for debt restructuring and loan servicing. The experience requirement under this section pertains only to eligibility for loan making. The eligibility requirements for debt restructuring and loan servicing actions as referenced in section 353 of the "Agricultural Credit Act of 1987" do not consider the experience requirement and only pertain to existing FmHA Farmer Program borrowers. Therefore, the Agency does not adopt this suggestion. However, the Agency has amended the rule to clarify that the 1 year out of 5 years requirement refers to a complete production and marketing cycle and not just to a calendar year since a calendar year is an artificial timeframe for many farming operations.

One respondent commented that the requirement that applicants need to rely on farm income had been deleted from this section. The requirement was useful in situations where applicants did not need to farm, or were looking for tax shelters. The Agency removed this requirement in view of the ongoing depressed farm economy recognizing that many farmers now need supplemental off-farm incomes to develop a feasible plan of operation. The test for credit requirement prohibits the making of loans to those applicants who can obtain credit from other sources. Therefore, the Agency does not believe reinstatment of this requirement is appropriate at this time.

One respondent commented that the eligibility requirement pertaining to "character (emphasizing credit history, past record of debt repayment and reliability) and industry to carry out the proposed operation," needs revision because this regulation gives FmHA the right to refuse credit to practically any of the borrowers that Congress intended to be covered by the Agricultural Credit Act of 1987. The respondent further states that this requirement will eliminate most farmers who are delinquent, due to circumstances beyond their control. The respondent points out that the reference to "industry" is a catch-all phrase, that allows any farmer to be rejected, and it used should be clearly defined. The Agency amended this section as a result of comments received on the proposed rule with respect to credit history and past record of debt repayment by adding, "past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible, if an honest attempt has been made to meet the payment(s)." The Agency does not believe a further explanation is necessary. Also, the term "industry" is a statutory requirement which as existed for several years without problem. Therefore the suggestion is not adopted by the Agency.

Section 1941.14—Annual Production Loans to Delinquent Borrowers

The comments received on this section were addressed in the final rule published on March 20, 1989, in the **Federal Register** (54 FR 11363–11366).

The Agency had amended paragraph (b) by adding the word "annual" preceding the phrase "operating and family living expenses only," in the first sentence.

Section 1941.16—Loan Purposes

One respondent commented that the allowance of not more than $15,000 in a fiscal year for real estate improvements or repairs is too low, as many delinquent farmers have been without repair funds for many years, and the loan amount should be decided on a case-by-case basis. The Agency believes the $15,000 amount in a fiscal year is adequate, and if justified, an additional amount could be advanced in the ensuing fiscal year. Therefore, the suggestion was not adopted.

One respondent commented regarding payments to a creditor, whether an appraisal was required, and if the amount owed to such creditor included interest. The Agency believes the issues are properly addressed in § 1941.16(i), which references appraised market value and amount owed to such creditor. Accrued interest is considered as part of the debt owed to a creditor.

Section 1941.17—Loan Limitations

One respondent commented that loan limits are too low for some farmers particularly those who received larger loans under earlier programs; and consideration should be given to higher loan limits, as these farmers are restricted in their operations because of this under capitalization. Operating loan limits are established in accordance with the Consolidated Farm and Rural Development Act. Therefore, the Agency cannot administratively adopt the suggestion.

Section 1941.18—Rates and Terms

One respondent commented that this section does not denote any time limit on scheduling the first installment on the promissory note. The Agency agrees and has amended § 1941.18(b)(1) to indicate that the first installment must be scheduled within 18 months of loan closing.

The Agency has amended § 1941.18(b)(2) to clarify that annual production loans scheduled for repayment in one installment must be scheduled for repayment no later than 18 months from the date of closing.

Section 1941.29—Relationship Between FmHA Loans, Insured and Guaranteed

The Agency has amended this section for clarification. Paragraph (b) was amended to specify that an insured OL loan may be made to a guaranteed borrower.

The Agency has rewritten paragraph (b)(2) to clarify that the outstanding combined insured and guaranteed OL principal balance owed by the loan applicant, or owed by anyone who will sign the note as consigner, may not exceed the authorized guaranteed OL loan limit.

Paragraph (b)(3) has been rewritten to clarify that different lien positions on real estate are considered separate and identifiable security.

Section 1941.33—Loan Approval or Disapproval

One respondent commented that FmHA personnel were advised that sending a signed copy of Form FmHA 1940–1 to the applicant did not constitute written notice of approval and that a separate letter would be required; therefore, this section should be revised to include this requirement, and a guide letter should be added to the instruction. The Agency has determined that the receipt of a signed copy of Form FmHA 1940–1 by the applicant constitutes sufficient notice of loan approval action. Therefore, the Agency does not adopt the suggestion.

Exhibit A—Processing Guide

The Agency has deleted the reference to Form FmHA 410–8, "'Applicant Reference Letter," as Form FmHA 440–32, "Request for Statement of Debts and Collateral" has been revised to verify all secured and unsecured debts.

Subpart B—Closing Loans Secured by Chattels

This subpart provides the procedures for closing operating loans secured by chattels.

One respondent commented that members of cooperatives and corporations are no longer required to sign the promissory note as individuals and therefore, they are not legally obligated for the entity debt; they can abuse the system through excessive financial gains from the entity and walk away with no financial liability. The Agency has administratively determined that individual members of such entities may not always be required to sign the promissory note(s) as individuals; however, individual members of the entity or other cosigners will be required to sign the promissory note(s) and security instruments as individuals when the loan approval official determines that the entity cannot meet the necessary cash flow or security requirements. The same comment and response is made with regards to subpart B of part 1943, § 1943.38.

With these changes, other clarifying changes, and corrections of typographical and grammatical errors, the interim rule is adopted as final.

Part 1943—Farm Ownership, Soil and Water and Recreation

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

This subpart provides the procedures for receiving and processing of insured farm ownership loans.

Section 1943.4—Definitions

One respondent commented that the definition of a family farm remains ambiguous and questioned if further clarification and guidance would be provided to the field. The commentator further referred to the language, "Will produce agricultural commodities in sufficient quantities" and questioned whether this includes hobby farms as opposed to rural residences.

The Agency believes the present family farm definition provides adequate guidance to County Committees for their use in making an eligibility determination that individual applicants are operating family farms. It is the County Committee's responsibility for making this determination, taking into consideration typical family farming operations in their particular County Office area. The definition indicates a farm will produce agricultural commodities for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence. The agency does not plan further changes to the family farm definition.

Section 1943.6—Credit Elsewhere

One respondent commented that County Supervisors have required applicants, applying for operating or farm ownership loans, to apply for a guaranteed loan when it was evident that a feasible plan could not be developed at guaranteed loan rates, and, therefore, the rule should be changed requiring referral to a private lender only in cases where it is evident the applicant can cash flow at guaranteed loan rates either with or without interest rate buydown. The Agency believes the referral of an applicant to other credit is properly addressed in this section. The County Supervisor will refer such applicants to other credit only when a lender indicates credit can be extended with or without an FmHA guarantee, or it is determined the applicant can obtain a loan from a lender with or without a guarantee. Therefore, the Agency does not adopt the suggestion.

Section 1943.10—Preference

§ 1943.10(b) has been amended to clarify that the outreach program for socially disadvantaged applicants is directed at the purchase of farm land.

Section 1943.12—Farm ownership loan eligibility requirements

One respondent commented that the requirement which requires applicants to rely on farm income had been deleted from this section. This requirement was useful in identifying applicants who did not need to rely on farm income for their livelihoods or were looking for tax shelters. However, the agency removed this requirement in consideration of the ongoing depressed farm economy and farmers' needs for supplemental non-farm income to develop feasible plans of operation. The test for credit requirement precludes loans to those applicants who can obtain credit from other sources. Therefore, the Agency does not believe reinstatement of this requirement is desirable at this time.

For the reasons listed under the earlier discussion of changes to § 1941.12, the Agency has amended paragraphs (a)(3) and (b)(4)(ii) of this section to clarify that sufficient farm experience in managing and operating a farm represents 1 year's complete production and marketing cycle within the last 5 years.

Section 1943.13—Outreach Program for Applicants/Borrowers who are Members of Socially Disadvantaged Groups

One respondent commented that this section could be improved by requiring the Chief, Farmer Programs to do specific things in order to accomplish the various objectives of the outreach program. The commentor stated the regulations should indicate that the Chief, Farmer Programs will identify those organizations that work with socially disadvantaged groups, and be required to maintain a close liaison with those organizations. To ensure an efficient outreach program, FmHA should identify members of such groups and notify each and every member, who has been farming, of the availability of the special FmHA programs. The Agency believes the responsibilities of the Chief, Farmer Programs, identification of organizations working with socially disadvantaged groups, and the further identification of individual members of these groups, is adequately addressed in this section. Therefore, the Agency does not adopt this suggestion.

Section 1943.24—Special Requirements

One respondent commented that § 1943.24(b)(1)(iii), which allows for FmHA financing of a farm without an adequate dwelling, does not appear to be consistent with the stringent rural housing loan making requirements. The Agency believes the exception of not requiring a dwelling on the farm is justified. Whether or not a dwelling is located on the farm should be the applicant's personal preference and that decision is often made after consideration of the additional indebtedness which would have to be incurred. The requirements of subpart A of part 1944 of this chapter are considered only when the applicant cannot comply with the stated exceptions and a dwelling is acquired with rural housing funds. Therefore, the Agency does not propose any changes to this section.

Section 1943.29—Relationship with other FmHA Loans, Insured and Guaranteed

One respondent commented that § 1943.29(d) allows the borrower to use the same collateral as security for insured and guaranteed loans. The Agency incorporated this exception into the instruction as mandated by section 603 of the Agricultural Credit Act of 1987.

The Agency has rewritten paragraph (b)(2) to clarify that the outstanding combined insured and guaranteed FO, and SW and principal balance owed by the applicant/borrower or owed by anyone who will sign the note as cosigner, may not exceed the authorized guaranteed FO loan limit and provided further that the insured indebtedness portion does not exceed the authorized insured FO loan limit.

Section 1943.32—Loan Docket Processing and Forms

The Agency has amended § 1943.32(a) by deleting the reference to Form FmHA 410–8, "Applicant Reference Letter," and adding a reference to Form FmHA 440–32, "Request for Statement of Debts and Collateral," which has been revised to request information from all secured and unsecured creditors. Form FmHA 410–8 will no longer be used in conjunction with Farmer Programs applications.

Section 1943.33—Loan Approval or Disapproval

One respondent commented there was an inconsistency between § 1924.57(b)(1), which requires the use of Form FmHA 431–2, "Farm and Home Plan," and § 1943.33(b)(1)(iv) and § 1951.906, which allow for the use of other planning forms. The Agency included the use of other planning forms in the proposed rule and did not receive any comments. The Agency does not agree there is any inconsistency regarding the use of other planning forms in the subject instructions.

Section 1943.38—Loan Closing Actions

One respondent commented that § 1943.38(g)(3)(ii) requires the operator to execute the entity note as an individual. The commentor further stated this will allow members to milk the system and leave the operator, who will probably be the member with the least amount of financial strength, with the debt. The Agency agrees with the commentor and has amended § 1943.38(g)(3)(ii) to remove the reference to "operator," and to clarify that signatures, other than those of the entity officers, are required when necessary to assure that the loan(s) will be adequately secured.

Exhibit B to Subpart A—Target Participation Rates for Farmers Home Administration Loans for Socially Disadvantaged Applicants

One respondent commented that the subject exhibit states in part, "The targeted portion of a State's Fiscal Year direct farm ownership (FO) allocation * * * will be used exclusively to enable members of socially disadvantaged groups to purchase suitable farmland." The respondent stated that his/her interpretation of section 617 of the Agricultural Credit Act of 1987 (ACA) is that the targeted funds can and should be used for any purpose as outlined in § 1943.16 of the subject instruction. The respondent further stated that if FmHA is to have a viable targeted FO program and at the same time comply with the intent of section 617 of the ACA of 1987, FmHA's restriction on using targeted direct FO funds must be changed to include all FO loan purposes. The Agency has determined that Sections 617 and 623 of the ACA of 1987 allow FmHA the discretion to restrict the use of targeted direct FO funds to the purchase of farmland. Because of limited FO funds, the Agency has determined that the best use of targeted funds would be in the farm purchase area; therefore, § 1943.10 was revised to clarify that targeted direct FO funds will be used only to purchase farmland.

With these changes, other clarifying changes, and corrections of typographical and grammatical errors, the interim rule as amended is adopted as final.

Part 1943—Farm Ownership, Soil and Water, Recreation

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

This subpart contains regulations for making initial and subsequent insured Soil and Water (SW) loans.

Section 1943.62—Soil and Water Loan Eligibility Requirements

One respondent commented that this section does not restrict loans to owners or operators of not larger than family farms. The Agency agrees that Soil and Water loans are not restricted to the owners or operators of not larger than family farms in accordance with section 304 of the Consolidated Farm and Rural Development Act.

Section 1943.82—Loan docket Processing

The Agency has amended §1943.82(a) by deleting the reference to the Form FmHA 410–8, "Applicant Reference Letter," and adding a reference to Form FmHA 440–32, "Request for Statement of Debts and Collateral," which has been revised to request information from all secured and unsecured creditors. The Form FmHA 410–8, "Applicant Reference Letter" will no longer be used in conjunction with Farmer Programs applications.

Section 1943.83—Loan Approval or Disapproval

One respondent commented that § 1943.83(b)(1)(iv) requires the use of the Form FmHA 431–2, "Farm and Home Plan," which is not consistent with §§ 1941.33(b)(1)(iv) and 1951.906 which allow the use of other acceptable planning forms. The Agency referenced the use of other planning forms in the proposed rule and, therefore, does not agree that any inconsistency regarding the use of other planning forms exists in the subject regulations. The Agency, however, has revised § 1943.83(b)(1)(iv) to reference Form 431–2, "Farm and Home Plan", which was inadvertently omitted from the paragraph.

Section 1943.88—Loan Closing Actions

Reference is made to the comment and response under 1941–B pertaining to this section.

Since there were no other comments on this regulation, the interim rule is adopted as final.

Subpart C—Insured Recreation Loan Policies, Procedures, and Authorizations.

Sections 1943.101 through 1943.150 were removed and reserved in the interim rule because the program has not been funded since fiscal year 1981 and there are no plans to fund it in the future. Removing the regulation will reduce the Government's cost of revising and maintaining the regulations. No comments were received on this, so it is adopted in the final rule.

Part 1944—Housing

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

Sections 1944.23—Loans to Farm Ownership (FO) individual soil and water (SW) and recreation (RL) borrowers. No comments were received on this section, so it is adopted without change in the final rule.

Part 1945—Emergency

Subpart C—Economic Emergency Loans

This Subpart contains regulations for making and servicing Economic Emergency Loans made after August 11, 1978.

Since no comments were received on the interim rule of this subpart, the interim rule, as amended, is adopted as final.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

This subpart prescribes the policies, procedures and authorizations for making insured emergency (EM) loans.

Section 1945.154—Definitions and Abbreviations.

The Agency has amended § 1945.154(a)(31) to clarify that reductions in the production of feeder livestock and livestock products, or reductions in weight gains of such animals due to feed or pasture loss(es), will not be considered production losses when replacement feed is available to purchase. This section was not included in the interim rule published September 14, 1988.

Section 1945.155—Relationship Between FmHA and Other Federal Agencies

The Agency has made minor editorial changes to paragraphs (a) and (b) for clarification purposes. This section was not included in the interim rule.

Section 1945.162—Eligibility Requirements

The Agency has made minor editorial changes to the introduction and to paragraph (g) for clarification purposes. This section was not included in the interim rule.

Section 1945.163—Determining Qualifying Losses, Eligibility for EM Loan(s) and the Maximum Amount of Each

The Agency has rewritten § 1945.163(a)(1)(iv) to clarify how normal year yields are to be established when the applicant's production loss is on new land being developed, or on perennial crops such as fruits or nuts, and a mature production potential has not been reached.

Section 1945.163(a)(2) (v) and (ix) have been amended by clarifying that total disaster assistance entitlements through any disaster relief program, whether received or eligible to be received, must be verified for the calculation of actual production losses.

Section 1945.163(a)(2)(xii) has been amended by clarifying that only variable costs not incurred are deducted from the normal years production value in determining the production loss incurred when a crop cannot be planted.

Section 1945.163(a)(2)(xiv) has been amended to clarify that the dollar value of the substitute crop must be added to the dollar value of the disaster year's production and income before calculating the total production loss.

Section 1945.163(a)(2)(xvii) has been amended to clarify that calculation of production losses to foundation herds of breeding animals will be based on either the reductions of natural increase in numbers and animal unit weight gain of such offspring, or losses of feed crops and pasture, but not both.

The Agency has made minor editorial changes to paragraph (a)(1)(iii) and paragraphs (a)(2) (ii), (xi), (xvi), (xviii), and (xx) of this section to correct spelling, punctuation and errors in the instruction. This section was not included in the interim rule published September 14, 1988.

Section 1945.168—Rates and Terms

The Agency has corrected a typographical error in paragraph (b)(2). This change was not included in the interim rule published September 14, 1988.

Section 1945.169—Security Requirements

One respondent, referencing § 1945.169(a)(3), inquired as to when the amount of an EM loan would ever exceed the total value of the collateral at the time the loan(s) was made. Section 1945.169(d) allows the Agency to consider the applicant's repayment ability when adequate security is not available because of the disaster.

The Agency has rewritten § 1945.169(a)(3) to clarify that the same

collateral can be used as security for both insured and guaranteed loans.

One respondent commented that § 1945.169(b)(2) requires the operator to execute the entity note(s) as an individual. The commentor further stated that this would allow non-operator members to milk the system and leave the operator, who would probably be the member with the least amount of financial strength, responsible for the debt. The Agency agrees and has amended § 1945.169(b)(2) to remove the reference to "individuals that will operate the farm" and to clarify that signatures other than those of the entity officers are required when necessary to assure sufficient security will be obtained. The amended language is consistent with that contained in the other farmer program loan regulations.

Section 1945.175—Options, Planning, and Appraisals

The Agency has made minor editorial changes to reference planning forms, other than Form FmHA 431–2, which are used in the loan application process, and to delete the option of the applicant filing only abbreviated planning forms for certain loans. This section was not included in the interim rule published September 14, 1988.

Section 1945.182—Loan Docket Preparation

The Agency has made minor editorial changes to paragraphs (a), (b) and (d) to correct spelling and punctuation and for clarification purposes. This section was not included in the interim rule published on September 14, 1988 in the **Federal Register.**

Section 1945.183—Loan Approval or Disapproval

The Agency has rewritten paragraph (a)(3) of this section to clarify responsibilities of County Office employees in verifying the accuracy and propriety of calculations on Forms FmHA 1945–22 and FmHA 1945–26.

The Agency has made minor editorial changes to paragraphs (a)(4) (ii) and (iii) to correct spelling and punctuation and for clarification purposes. This section was not included in the interim rule published September 14, 1988, in the **Federal Register.**

Other than changes made as a result of comments, clarifying changes, and corrections of typographical and grammatical errors, the interim rule, as amended, is adopted as final.

List of subjects

7 CFR Part 1809

Loan Programs—Agriculture, Real property—Appraisals, Rural areas.

7 CFR Part 1902

Accounting, Banks, Banking, Grant programs—Housing and community development, Loan programs—Agriculture, Loan programs—Housing and community development.

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Loan and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1944

Home Improvement, Low and moderate housing rental, Mobile homes, Mortgages, Rural housing, Subsidies.

7 CFR Part 1945

Agriculture, Disaster assistance, Intergovernmental relations, Livestock, Loan programs—agriculture.

Accordingly, chapter XVIII. title 7, Code of Federal Regulations is amended by adopting parts 1809, 1902, 1910, 1941, 1943, 1944, and 1945 of the interim rule published September 14, 1988, (53 FR 35638–35798) as a final rule with the following amendments.

PART 1902—SUPERVISED BANK ACCOUNTS

1. The authority citation for Part 1902 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Sec. 10, Pub. L. 93–357, 88 Stat. 392; Title II of the Emergency Agricultural Credit Adjustment Act of 1978, 92 Stat. 429; 7 CFR 2.70.

Subpart A—Loan and Grant Disbursement.

§ 1902.2 [Amended]

2. Section 1902.2(a) is amended in the last sentence by removing the word "rare" and inserting in its place the word "certain".

3. Section 1902.14 is amended by revising paragraph (a) to read as follows:

§ 1902.14 Reconciliation of accounts.

(a) A checking account statement will be obtained periodically in accordance with established practices in the area. If the checking account statement does not include sufficient information to reconcile the account (the name of the payee or the check number and the amount of each check, i.e., a negotiable demand draft drawn on a financial institution), the original cancelled check or either a microfilm copy or other reasonable facsimile of the cancelled check must be provided to the District or County Office with the statement. Checking account statements will be reconciled promptly with District or County Office records. The person making the reconciliation will initial the record and indicate the date of the action.

* * * * *

PART 1910—GENERAL

4. The authority citation for part 1910 continues to read as follows:

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

Subpart A—Receiving and Processing Applications.

5. Section 1910.1 is amended by revising the introductory paragraph to read as follows:

§ 1910.1 General.

This subpart prescribes the policies and procedures for receiving and processing Farm Ownership (FO), Soil and Water (SW), Operating (OL), Emergency (EM), Rural Renting Housing (RRH), Rural Cooperative Housing (RCH), Rural Housing Site loans (RHS), and Labor Housing (LH) and insured Section 502 and 504 Rural Housing (RH) loan and grant applications, except as modified by program regulations. It also prescribes policies for informing applicants and other interested individuals about the services of the Farmers Home Administration (FmHA). Delinquent Farmer Programs borrowers requesting primary and/or preservation loan service programs will file their request by use of the applicable attachment(s) to Exhibit A, "Notice of the Availability of Loan Service Programs for Delinquent Farm Borrowers," of subpart S to part 1951 of this chapter.

* * * * *

§ 1910.31 [Amended]

6. Section 1910.3(b)(2) is amended by changing the reference, "Form FmHA 431–3, 'Household Financial Statement and Budget,' " to read, "Form FmHA 1944–3, 'Budget and/or Financial Statement.' "

7. Section 1910.3 is amended by revising paragraphs (b)(3), (j)(2), and (k) to read as follows:

§ 1910.3 Receiving applications.

* * * * *

(b) * * *

(3) Farmer Program applicants who are presently indebted to FmHA will be required to complete Form FmHA 410–1. When application is made within 60 days of the date of Table A, "Balance sheet," on Form FmHA 431–2, "Farm and Home Plan," and there are no significant changes that would affect eligibility, reference to Table A of Form FmHA 431–2 can be made in Item 17, "Financial Statement as of Date of Application," of Form FmHA 410–1.

* * * * *

(j) * * *

(2) A record of the date and method of delivery of the booklet and Form FmHA 440–58 will be kept in the running record section of the applicant's/borrower's County Office case folder.

(k) For loans, assumptions and credit sales to individuals for household purposes that are subject to the Real Estate Settlement Procedures Act (RESPA), Form FmHA 1940–41, "Truth in Lending Disclosure Statement," will be completed using "good-faith" estimates, and will be delivered or placed in the mail to the applicant within 3 business days of receipt of the written application in the County Office.

* * * * *

8. Section 1910.4 is amended by removing paragraph (b)(16); by redesignating current paragraphs (b)(13) through (b)(15) as paragraphs (b)(14) through (b)(16); by revising paragraph (a)(6)(ii), the introductory text of paragraph (b) and paragraph (b)(6); by adding a new paragraph (b)(13); by revising newly redesignated paragraph (b)(15); by adding new paragraph (b)(22); and by revising paragraphs (e), and (i) to read as follows:

§ 1910.4 Processing applications.

* * * * *

(a) * * *

(6) * * *

(ii) Under no circumstances may financial information obtained under this regulation be disseminated to any other department or agency of the Federal Government (other than the Office of the Inspector General (OIG) or the Department's Office of Advocacy and Enterprise (OAE)) without express approval of the Office of the General Counsel (OGC).

* * * * *

(b) *Completed Farmer Program applications.* Completed applications are those set forth below. All persons requesting an application will be provided Exhibit A of this subpart. Completed applications will be processed in the order of date received, except as outlined in § 1910.10 of this subpart. The filing date will be stamped on the front of Form FmHA 410–1. The date a Farmer Programs loan application is considered complete will be entered in Item 17, "Remarks," of Form FmHA 1905–4, "Application and Processing Card—Individuals." This date will establish the 30-day and 60-day timeframe for eligibility and loan approval/disapproval, respectively. The County Supervisor will verify the information furnished by the applicant and record and assemble additional information needed to properly evaluate the applicant's qualifications and credit needs. A completed Farmer Program application will consist of both the applicant's and FmHA's responsibilities which are as follows:

* * * * *

(6) Five years of production history immediately preceding the year of application, unless the applicant has been farming less than 5 years.

* * * * *

(13) Form FmHA 1945–22, "Certification of Disaster Losses." (EM loans only).

* * * * *

(15) Form FmHA 1945–26, "Calculation of Actual Losses" (EM loan only).

* * * * *

(22) Form FmHA 1940–38, "Request for Lender's Verification of Loan Application."

* * * * *

(e) *Notifying socially disadvantaged applicants regarding the availability of Direct Farm Ownership (FO) loans and the acquisition/leasing of FmHA acquired farmland.* Immediately after an application for FO assistance is received, the County Supervisor will send Exhibit B of this subpart, "Letter to Notify Socially Disadvantaged Applicants/Borrowers Regarding the Availability of Direct Farm Ownership (FO) Loans and the Acquisition/Leasing of FmHA Acquired Farmland" to the applicant(s). Exhibit B will also be presented to all socially disadvantaged individuals at the time they make their initial contact with FmHA regarding FmHA services. Socially disadvantaged applicants are defined in § 1943.4 of subpart A of part 1943 of this chapter.

* * * * *

(i) *Timeliness.* Written notice of eligibility or ineligibility will be sent to each applicant, not later than 30 days after receipt of a completed application; and for Farmer Program loan applications, each application must be approved or disapproved and the applicant notified in writing of the action taken not later than 60 days after receipt of a completed application. Receipt of a signed copy of Form FmHA 1940–1, Request for Obligation of Funds, by the applicant is considered written notice for loan approval. For RH loans, if a determination of eligibility cannot be made within 30 days from the date of receipt of the completed application, the applicant will be notified, in writing, of the circumstances causing the delay, and the approximate time needed to make a decision. If an applicant is disapproved, the applicant will be given appeal rights as provided in subpart B of part 1900 of this chapter. The letter will contain the ECOA paragraph set forth in § 1910.6(b)(1) of this subpart.

9. Section 1910.5 is amended by revising paragraphs (c)(1) and (c)(6) to read as follows:

§ 1910.5 Evaluating applications.

* * * * *

(c) * * *

(1) Foreclosures, judgments, delinquent payments of the applicant which occurred more than 36 months before the application, if no recent similar situations have occurred, or FmHA delinquencies that have been resolved through loan service programs as defined in § 1951.906 of part 1951 of subpart S of this chapter.

* * * * *

(6) Previous FmHA debts settled pursuant to subpart B of part 1956 of this chapter and part 1864 of this chapter (FmHA Instruction 456.1) and debts settled pursuant to subpart B of part 1951 of this chapter, except as provided in § 1944.4(c) of subpart A of part 1944 of this chapter.

10. Section 1910.6 is amended by revising paragraphs (a), (b)(2), (e), (f), and (f)(1) to read as follows:

§ 1910.6 Notification of applicant.

* * * * *

(a) *Favorable eligibility decision.* If the decision of eligibility is favorable, the County Supervisor will notify the applicant immediately and, for Farmer Programs, if the County Supervisor has determined the operation is feasible, the loan will be promptly processed in accordance with the applicable regulations. Care should be exercised that the applicant clearly understands that a decision of eligibility does not constitute approval of the loan. In notifying the applicant of a favorable decision on eligibility, the County Supervisor will, when necessary, schedule a meeting with the applicant to proceed with developing the loan docket. When the applicant has been determined eligible for assistance and additional information becomes

available that indicates the original eligibility determination may be in error, the applicant will be reconsidered by the County Committee taking the new information into account. The County Committee will then recertify whether or not the applicant still meets eligibility requirements by the use of Form FmHA 440–2. Written notification as to the action taken will be sent to the applicant.

(b) * * *

(2) If the County Committee determines that the applicant is not eligible, Form FmHA 440–2 will be completed by giving the specific reason(s) for the rejection and the factual basis in the blank space immediately above the space for the signatures of the County Committee members. The form will be dated and the County Committee members will sign in the space provided. The letter advising the applicant/borrower of the County Committee's decision will contain only those reasons pertaining to the County Committee's ineligibility determination, right to meet with the County Committee, and appeal rights. The letter of ineligibility will be formatted in accordance with Exhibits B–1 or C of subpart B of part 1900 of this chapter as appropriate.

* * * * *

(e) *Available funds.* After EM, OL, FO and SW loans are approved, loan funds will be made available to the applicants within 15 days of loan approval, unless the applicant(s) agree to a longer period. Loans approved subject to the availability of funds will be handled in accordance with paragraph (f) of this section.

(f) *Lack of funds.* Applications received for Rural Housing loans when funds are not available will be processed in accordance with § 1944.26 of subpart A of part 1944 of this chapter. Farmer Programs loan applications received when funds are not available will be processed through approval subject to the availability of funds. Applicants who are ineligible will be so advised, in accordance with paragraph (b)(1) or (b)(2) of this section. If no funds are available within 15 days of loan approval of a Farmer Programs loan, eligible applicants will be notified that their applications will be held until funds are available. When funds become available for the requested loan, eligible applicants will be notified immediately by letter. This letter will be sent by certified mail, return receipt requested. Funds must be provided to the applicant within 15 days of when they become available unless the applicant agrees to a longer period. The letter will advise the applicant to notify the County Office immediately, but no later than 10 days from the date the certified letter was received, if the applicant is still interested in obtaining the assistance applied for. The letter will also contain a statement that if the applicant does not contact the County Office within 30 days from the date the certified letter was received, the application will be considered withdrawn. The letter will contain the ECOA Notice set forth in paragraph (b)(1) of this section. If the applicant indicates a desire to obtain assistance, the County Supervisor will review the application with the applicant; and, if there have been any significant changes that would affect eligibility, the County Supervisor will obtain the necessary current information to determine eligibility, and when appropriate, present the application to the County Committee for reconsideration.

(1) When funds are not available for EM, OL, FO and SW loans within 15 days of loan approval, eligible applicants will be approved for the loan, and Form FmHA 1940–1, "Request for Obligation of Funds," will be executed by the appropriate loan approval official. The following approval condition will be included under section 41, "Comments and Requirements of Certifying Official," of Form FmHA 1940–1, upon execution of the form for all insured and guaranteed Farmer Program loans:

This loan is approved subject to the availability of funds. If this loan/guarantee does not close for any reason within 90 days from the date of approval on this document, the approval official will request an update of eligibility information. The undersigned loan applicant agrees that the approval official will have 14 working days to review any updated information prior to submitting this document for obligation of funds, if there are no changes that affect eligibility. If there have been significant changes that would affect eligibility, a decision as to eligibility and feasibility will be made within 30 days from the time the applicant provides the necessary information.

* * * * *

§ 1910.8 [Amended]

11. Section 1910.8 is amended in the first sentence by changing the word "applications" to read "applicants" and the word "basis" to read "basic."

12. Exhibit A to subpart A is amended by revising the exhibit title and paragraphs 9, 11, and 15, redesignating paragraphs 2 through 16 as 3 through 17 respectively and adding paragraphs 2 and 18 to read as follows:

Exhibit A—Letter Requesting Information Needed for a Complete Farmer Program Application

* * * * *

(2) Completed Form FmHA 410–9, "Statement Required by the Privacy Act."

* * * * *

(9) Form SCS CPA–26, "Highly Erodible Land and Wetland Conservation Determination," will be completed by the local Soil Conservation Service (SCS) Office upon receipt of Form AD 1026 "Highly Erodible Land and Wetland and Conservation Certification." You are required to initiate the processing of Form AD 1026, by contacting the local Agricultural Stabilization and Conservation (ASCS) office.

* * * * *

(11) Form FmHA 440–32, "Request for Statement of Debts and Collateral." If you presently owe loans or have unpaid operating accounts or bills with other creditors, it is essential that we verify the unpaid balances of these debts. Please complete your part of Form FmHA 440–32 for each of your present creditors. These forms are to be completed as follows: (Additional forms are available from our office.)

A. Enter the creditor's name and address in the top left portion of the form.

B. Enter your name and address on the line following "I," sign and date the form (bottom right).

C. Return the completed form to our office for mailing to your creditors.

* * * * *

(15) Applicant's Reference Letter List—this list may include credit references and these references must show complete address and credit account number when the reference is a credit institution.

FmHA will mail Form FmHA 440–32 letters to the references provided and they must be received back in the office before your application is considered complete.

OR

A credit report fee of $_____ payable to the Farmers Home Administration. Upon receipt of your fee, a commercial credit report will be ordered and this report must be received by the FmHA County Office before your application is considered complete.

* * * * *

(18) Form AD 1047, "Certification regarding Debarment, Suspension, and other Responsibility, Matters—Primary Covered Transactions."

* * * * *

(County Supervisor)

13. Exhibit B to subpart A is amended by revising the first paragraph to read as follows:

Exhibit B—Letter to Notify Socially Disadvantaged Applicant(s)/Borrower(s) Regarding the Availability of Direct Farm Ownership (FO) Loans and the Acquisition/Leasing of FmHA Acquired Farmland

Dear: _____

The Farmers Home Administration (FmHA) has authority under the Agricultural Credit

Act of 1987 to target direct farm ownership (FO) loan funds and acquired farmland to applicants/borrowers of socially disadvantaged groups.

This program provides credit to applicants/borrowers of socially disadvantaged groups, at regular or reduced interest rates, to purchase or enlarge farms. In addition, the program provides that FmHA acquired farmland be made available for sale or lease to applicants/borrowers of socially disadvantaged groups. Socially disadvantaged borrowers with existing direct FO loans may have their accounts deferred and/or reamortized at a reduced interest rate.

* * * * *

PART 1941—OPERATING LOANS

14. The authority citation for part 1941 continues to read as follows:

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

Subpart A—Operating Loans Policies, Procedures, and Authorizations

15. Section 1941.12 is amended by revising paragraphs (a)(3) and (b)(5)(ii) to read as follows:

§ 1941.12 Eligibility requirements.

* * * * *

(a) * * *

(3) Except for youth loans, have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (1 year's complete production and marketing cycle within the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

* * * * *

(b) * * *

(5) * * *

(ii) They must have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (1 year's complete production and marketing cycle within the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

* * * * *

16. Section 1941.14 is amended by revising paragraph (b) to read as follows:

§ 1941.14 Annual production loans to delinquent borrowers.

* * * * *

(b) Loan funds will be used to pay essential annual operating and family living expenses only, as defined in § 1962.17 (b)(2)(ii)(A) of subpart A of part 1962 of this chapter.

* * * * *

17. Section 1941.18 is amended by revising paragraphs (b)(1) and the first two sentences of paragraph (b)(2) to read as follows:

§ 1941.18 Rates and terms.

* * * * *

(b) * * *

(1) The final maturity date for each loan cannot exceed 7 years from the date of the promissory note. The first installment must be scheduled for payment within 18 months of loan closing.

(2) Loan funds used to pay annual operating expenses or bills incurred for such purposes for the crop year being financed will normally be scheduled for payment within 12 months, but no later than 18 months, from the date the loan is closed when marketing plans extend beyond 12 months. When an OL loan for annual production is scheduled for repayment in one installment, the installment must fall due no later than 18 months from the date of loan closing. Individual marketing circumstance may warrant repayment schedules which are longer than 18 months. * * *

18. Section 1941.29 is amended by revising the introductory text of paragraph (b), and paragraphs (b)(1), (b)(2), and (b)(3) to read as follows:

§ 1941.29 Relationship between FmHA loans, insured and guaranteed.

* * * * *

(b) An insured OL loan may be made to a guaranteed loan borrower provided:

(1) The outstanding insured and guaranteed OL principal balance owed by the loan applicant does not exceed $400,000 at loan closing.

(2) The outstanding combined insured and guaranteed OL principal balance owed by the loan applicant, or owed by anyone who will sign the note as co-signer evidencing personal liability, will not exceed the authorized guaranteed OL loan limit providing the portion representing the insured OL indebtedness does not exceed the insured loan limit. The deciding factors are the type of entity and the personal liability of the entity members. Individuals, who are members or stockholders of a cooperative or corporation that is indebted for a $200,000 insured and $200,000 guaranteed OL loan, can each borrow a $200,000 insured and $200,000 guaranteed OL loan, or any combination of insured or guaranteed OL loan funds that does not cause them to exceed the individual insured or guaranteed OL loan limits, provided they conduct separate farming operations as individuals and they have not signed as individuals giving personal liability for the entity OL debt. Likewise, such entities whose members or stockholders are individually indebted for the maximum insured or guaranteed OL loan limit, may borrow the maximum insured or guaranteed OL loan limits, providing none of the members or stockholders are required to pledge personal liability for the entity debt. Partners or joint operators of a partnership or joint operation, which is indebted for a $200,000 insured and a $200,000 guaranteed OL loan, cannot borrow additional OL funds as individuals in a separate operation because they are each personally liable for the total entity debt. Likewise, such entities, consisting of individuals who are indebted for the maximum insured or guaranteed OL loan limits, are not eligible for OL loan assistance.

(3) Chattel and/or real estate security must be separate and identifiable from the security pledge to FmHA for a guaranteed loan. Different lien positions on real estate are considered separate and identifiable security.

* * * * *

Exhibit A to Subpart A [Amended]

19. Exhibit A of Subpart A is amended in paragraph A under the heading "Application Processing" by removing the lines that begin with Forms FmHA "410–8" and FmHA "1924–14."

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

20. The authority citation for Part 1943 continues to read as follows:

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

Subpart A—Insured Farm Ownership Loan Policies, Procedures, and Authorizations.

21. Section 1943.10 is amended by revising paragraph (b) to read as follows:

§ 1943.10 Preference.

* * * * *

(b) The portion of a State's farm ownership (FO) loan fund allocation designated for applicants who are members of socially disadvantaged groups will be used exclusively to assist them in purchasing farmland. However, this requirement does not preclude the use of the State's regular allocation of FO funds for loans for other authorized FO loan purposes to applicants who are members of socially disadvantaged groups. (See exhibit B of this subpart, "Target Participation Rates for Farmers Home Administration (FmHA) Direct Farm Ownership (FO) Loans and

Acquired Property Outreach Program for Members of Socially Disadvantaged Groups".)

22. Section 1943.11 is revised to read as follows:

§ 1943.11 Receiving and processing applications.

Applications for FO loans will be received and processed as provided in subpart A of part 1910 of this chapter, with consideration given to the requirements in Exhibit M of subpart G of part 1940 of this chapter. Socially disadvantaged individuals will be provided the technical assistance necessary when applying for FO loans or other assistance to acquire inventory farmland. Such assistance shall include, but not be limited to, completion of application and farm and home planning.

23. Section 1943.12 is amended by revising paragraphs (a)(3) and (b)(4)(ii) to read as follows:

§ 1943.12 Farm ownership loan eligibility requirements.

* * * * *

(a) * * *

(3) Have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (1 year's complete production and marketing cycle within the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

* * * * *

(b) * * *

(4) * * *

(ii) They must have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (1 year's complete production and marketing cycle within the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

* * * * *

24. Section 1943.29 is amended by revising paragraph (b)(2) to read as follows:

§ 1943.29 Relationship with other FmHA loans, insured and guaranteed.

* * * * *

(b) * * *

(2) The outstanding combined insured and guaranteed FO principal balance owed by the loan applicant, or owed by anyone who will sign the note as cosigner evidencing personal liability, will not exceed the authorized guaranteed FO loan limit providing the portion representing the insured FO indebtedness does not exceed the insured FO loan limit. The deciding factors are the type of entity and the personal liability of the entity members. Individuals, who are members or stockholders of a cooperative or coproration that is indebted for a $200,000 insured and $100,000 guaranteed FO loan, can each borrow a $200,000 insured and $100,000 guaranteed FO loan, or any combination of insured or guaranteed FO loan funds that does not cause them to exceed the individual insured or guaranteed FO loan limits, provided they conduct separate farming operations as individuals and they have not signed for personal liability for the entity FO debt. Likewise, such entities, whose members or stockholders are individually indebted for the maximum insured or guaranteed FO loan limits, may borrow the maximum insured or guaranteed FO loans providing none of the members or stockholders are required to pledge personal liability for the entity debt. Partners or joint operators of a partnership or joint operation, which are indebted for a $200,000 insured and a $100,000 guaranteed FO loan, cannot borrow additional FO funds as individuals in a separate operation, because they are each personally liable for the total entity debt. Likewise, such entities consisting of individuals who are indebted for the maximum insured or guaranteed FO loan limits, are not eligible for FO loan assistance.

* * * * *

25. The table and footnotes in § 1943.32(a) are revised to read as follows:

§ 1943.32 Loan docket processing and forms.

(a) * * *

FmHA form no.	Name of form	Total no. copies	Signed by borrower	Loan docket	Copy for borrower
400-1	Equal Opportunity Agreement	2	-0	1-O	1-C
400-3	Notice of Contractors and Applicants	3		1-C	1-C
400-4	Assurance Agreement	2	2-O&C	1-O	1-C
400-6	Compliance Statement	3		1-O	1-C
[1] 403-1	Debt Adjustment Agreement	3(5)	1-O	1-O	1-C
410-1	Application for FmHA Services	1	1-O	1-O	1-C
410-9	Statement Required by the Privacy Act	2	2-O&C	1-C	1-O
410-10	Privacy Act Statement to References	2(8)			1-C
[1] 422-1	Appraisal Report Farm Tract	1		1-O	
1910-11	Applicant certification Federal Collection policies for consumer or commercial debts.	2	1-O2C	1-O	1-C
[1] 422-2	Supplemental Report Irrigation, Drainage, Levee, and Minerals.	1		1-O	
[1] 1924-1	Development Plan	2(3)	1-O	1-O	1-C
[1] 427-8	Agreement with Prior Lienholder	3(6)	1-O	1-C	
[1] 431-1	Long-Time Farm and Home Plan	2 2-O&C	1-C	1-O	
[1] 431-2	Farm and Home Plan	2(2)	1-O	1-O	1-C
[1] 431-4	Business Analysis Nonagricultural Enterprise	2	1-O	1-C	1-O
1940-1	Request for Obligation of Funds	4(4)	2-O&C(7)	3-O&2C	1-O
440-2	Country Committee Certification or Recommendation.	1		1-O	
[1] 440-9	Supplementary Payment Agreement	2	1-O	1-O	1-C
[1] 440-21	Appraisal of Chattel Property	1		1-O	
[1] 440-32	Request for Statement of Debts and Collateral	2	1		
[1] 440-34	Option to Purchase Real Property	3(1)	2-O&C	1-O	1-C
440-45	Nondiscrimination Certificate (Individual Housing).	2	1-O	1-O	1-C
1940-21	Environmental Review	1		1-O	
1940-22 or Exhibit H, Subpart G, Part 1940.					

FmHA form no.	Name of form	Total no. copies	Signed by borrower	Loan docket	Copy for borrower
[2] 443-12	Farm Ownership and Individual Soil and Water Fund Analysis.	3		1-C	
[1] 443-17	Agreement to Sell Nonessential Real Estate	2	2-O&C	1	1-C
[1] 1940-20	Request for Environmental Information	2	1-O		
[1] 1922-11	Appraisal For Mineral Rights	1		1-O	
[1] 443-8	Agreement (Between Seller, Purchaser, and Tenant).	4	4	3	1-C

O—Original; C—Copy.
[1] When applicable.
[2] Not used when a credit sale is processed without a loan.
Notes to Table
(1) Signed copy of option previously delivered to the seller.
(2) In addition to the plan for first full crop year, the Interim Plan, if prepared, will be included in the docket.
(3) When the Contract Method is used, three copies of plans and specifications will be required.
(4) Signed copy to applicants. An extra copy will be prepared in connection with a loan to acquire land when the Bureau of Indian Affairs must take action to have a patent issued to the purchaser. After the loan is approved, a copy of the form will be sent to the Area Director of the Bureau of Indian Affairs so that the patent can be requested from the Bureau of Land Management.
(5) Signed copy to creditor.
(6) Copy to lienholder.
(7) Applicant must sign and date this form.
(8) Signed by all sources of information concerning the applicant's character and credit. Original is retained by the person who supplies the information.

* * * * *

26. Section 1943.38 is amended by revising paragraph (g)(3)(ii) to read as follows:

§ 1943.38 Loan closing actions.

* * * * *

(g) * * *

(3) * * *

(ii) Cooperatives or corporations. The appropriate officers will execute the note on behalf of the cooperative or corporation. Any other individuals' signatures needed to assure the required security will be obtained as provided in State supplements, and they will be personally liable for the debt.

* * * * *

Subpart B—Insured Soil and Water Loan Policies, Procedure, and Authorizations

27. Section 1943.82(a) is revised to read as follows:

§ 1943.82 Loan docket processing.

(a) *Forms.* FmHA forms are available in any FmHA Office. The following table is a guide to the forms needed and shows how they are distributed.

FmHA form No.	Name of form	Total No. copies	Signed by borrower	Loan docket	Copy for borrower
400-1	Equal Opportunity Agreement	2	-0	1-0	1-C
400-3	Notice to Contractors and Applicants	3		1-C	1-C
400-4	Assurance Agreement	2	2-O&C	1-0	1-C
400-6	Compliance Statement	3		1-0	1-C
[1] 403-1	Debt Adjustment Agreement	3(5)	1-0	1-0	1-C
410-1	Application for FmHA Services	1(7)	1-0	1-0	1-C
410-9	Statement Required by the Privacy Act	2	2-O&C	1-C	1-O
410-10	Privacy Act Statement to References	2(8)			1-C
[1] 422-1	Appraisal Report Farm Tract	1		1-O	
1910-11	Applicant certification Federal Collection policies for consumer or commercial debts.	2	1-02C	1-0	1-C
[1] 422-2	Supplemental Report Irrigation, Drainage, Levee, and Minerals.	1		1-0	
[1] 1924-1	Development Plan	2(3)	1-0	1-0	1-C
[1] 427-8	Agreement with Prior Lienholder	3(6)		1-0	1-C
[1] 431-1	Long-Time Farm and Home Plan	2	2-O&C	1-C	1-0
[1] 431-2	Farm and Home Plan	2(2)	1-0	1-0	1-C
[1] 431-4	Business Analysis Nonagricultural Enterprise	2	1-0	1-C	1-0
1940-1	Request for Obligation of Funds	4(4)	2-O&C(7)	3-O&2C	1-0
440-2	County Committee Certification or Recommendation.	1		1-0	
[1] 440-9	Supplementary Payment Agreement	2	1-0	1-0	1-C
[1] 440-21	Appraisal of Chattel Property	1		1-0	
[1] 440-32	Request for Statement of Debts and Collateral	2	1		
[1] 440-34	Option to Purchase Real Property	3(1)	2-O&C	1-O	1-C
440-45	Nondiscrimination Certificate (Individual Housing).	2	1-O	1-O	1-C
1940-21	Environmental Review	1		1-O	
1940-22 or Exhibit H, Subpart G, Part 1940.					
[2] 443-12	Farm Ownership and Individual Soil and Water Fund Analysis.	3		1-C	
[1] 443-17	Agreement to Sell Nonessential Real Estate	2	2-O&C	1	1-C
[1] 1940-20	Request for Environmental Information	2	1-0		
[1] 1922-11	Appraisal for Mineral Rights	1		1-0	

0—Original; C—Copy.
[1] When applicable.
[2] Not used when a credit sale is processed without a loan.
Notes to Table

(1) Signed copy of option previously delivered to the seller.
(2) In addition to the plan for the first full crop year, the Interim Plan, if prepared, will be included in the docket.
(3) When the Contract Method is used, three copies of plans and specifications will be required.
(4) Signed copy to applicant. An extra copy will be prepared in connection with a loan to acquire land when the Bureau of Indian Affairs must take action to have a patent issued to the purchaser. After the loan is approved, a copy of the form will be sent to the Area Director of the Bureau of Indian Affairs so that the patent can be requested from the Bureau of Land Management.
(5) Signed copy to creditor.
(6) Copy to lienholder.
(7) Applicant must sign and date this form.
(8) Signed by all sources of information concerning the applicant's character and credit. Original is retained by the person who supplies the information.

* * * * *

28. Section 1943.83 is amended by revising paragraph (b)(1)(iv) to read as follows:

§ 1943.83 Loan approval or disapproval.

* * * * *

(b) * * *

(1) * * *

(iv) The proposed loan is based upon a feasible plan. Planning forms other than Form FmHA 432–2, "Farm and Home Plan" may be used when they provide the necessary information.

* * * * *

PART 1945—EMERGENCY

29. The authority citation for part 1945 continues to read as follows:

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

Subpart D—Emergency Loan Policies, Procedures, and Authorizations

30. Section 1945.154 is amended by revising paragraph (a)(31) to read as follows:

§ 1945.154 Definitions and abbreviations

(a) * * *

(31) *Qualifying production loss.* The production loss an applicant sustained from the disaster that is equivalent to at least a 30 percent loss of normal per acre or per animal production in any single enterprise, which is a basic part of the total farming operation. Losses of livestock increases e.g., calves, pigs, etc., are considered production losses, except when live animals are destroyed. When an animal is killed, lost or sold because of injury or reduced production potential caused by the disaster, it is considered a physical loss. Reductions in the production of feeder livestock and livestock products, or reductions in weight gain of such animals due to homegrown feed crop and/or pasture losses, will not be considered production losses when replacement feed is available to purchase, regardless of the cost of that feed. When the disaster has severely disrupted the usual feeding schedule of a livestock enterprise because of extended utility failure or inaccessibility to the livestock, losses in production of milk, eggs, weight losses, etc., may be considered as production losses. Such production losses will be calculated based on the reduction from the normal year's (full year's) production which was caused during the disruption period and the period needed to bring production back up to the normal level.

* * * * *

31. Section 1945.155 is revised to read as follows:

§ 1945.155 Relationship between FmHA and other Federal Agencies.

(a) *ASCS and FmHA.* A Memorandum of Understanding between the ASCS and FmHA on disaster assistance pertaining to the exchange of information essential to the elimination of duplication of compensatory disaster benefits from the two participating agencies for the same disaster losses is Exhibit A of FmHA Instruction 2000–JJ (available in any FmHA Office).

(b) *FCIC and FmHA.* A Memorandum of Understanding between the FCIC and FmHA pertaining to crop insurance and exchange of information essential to the elimination of duplication of compensatory disaster benefits from the two participating Agencies for the same disaster losses is Exhibit A of FmHA Instruction 2000–N (available in any FmHA office).

32. Section 1945.162 is amended by revising the introductory text and paragraph (g) to read as follows:

§1945.162 Eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR part 1308, which is Exhibit C to subpart A of part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and additionally will be ineligible for the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

* * * * *

(g) *Training and experience.* An applicant must have sufficient applicable training or farming experience in managing and operating a farm or ranch (1 year's production and marketing cycle within the last 5 years immediately preceding the application) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation and have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation.

* * * * *

33. Section 1945.163 is amended by revising paragraphs (a)(1)(iii), (a)(1)(iv), (a)(2)(ii), (a)(2)(v), (a)(2)(ix), (a)(2)(xi)(C)(1), (a)(2)(xii), (a)(2)(xiv), (a)(2)(xvi), (a)(2)(xvii), (a)(2)(xviii), (a)(2)(xix), and (a)(2)(xx) to read as follows:

§ 1945.163 Determining qualifying losses, eligibility for EM loan(s) and the maximum amount of each.

* * * * *

(a) * * *

(1) * * *

(iii) *The County or State average yields.* These average yields will be found in the State supplement mentioned in paragraph (a)(1) of this section. This production record source will be used only for those commodities and those years for which neither the applicant's reliable farm records nor ASCS actual or established yields are available. Only when there are no "actual yields" or "established yields" available will County or State average yields be used. However, County or State average yields may be combined with the actual yields when ASCS established yields are not available, but County or State average yields will not be combined with established yields when established yields are available for the disaster year.

(iv) When an applicant's production loss is on new land being developed, or to young perennial crops such as fruits

and nuts, and mature production potential has not been reached, the State Director will establish normal year yields on a case-by-case basis.

(2) * * *

(ii) Information certified on Form FmHA 1945–22 for the disaster year for all single enterprises (as defined in § 1945.154(a)(13)(i) of this subpart), which suffered a loss due to the disaster, will be transposted from Form FmHA 1945–22 to the appropriate places on Form FmHA 1945–26. The FmHA official completing Form FmHA 1945–26 is responsible for verifying loss information provided by the applicant. Information obtained from ASCS on Form FmHA 1945–29 will be cross checked with information provided by the applicant on Form FmHA 1945–22. Whenever there is a discrepancy between an applicant's acreage and/or yield information provided on Form FmHA 1945–22, by the applicant, and the information provided by ASCS on Form FmHA 1945–29, the applicant will be told about the discrepancy and the applicant and the County Supervisor will complete Form FmHA 1945–22 so that it accurately reflects the applicant's acreage and yield.

* * * * *

(v) The amount of actual production loss will be calculated for the single enterprise which is a basic part of the farming operation (see § 1945.154(a)(13) of this subpart) by subtracting all financial assistance, verified as having been received or to be received, through any disaster relief program, and all compensation for disaster losses provided by any source (i.e., crop insurance indemnity payments, ASCS disaster program payments) for that enterprise, from the gross dollar amount of production losses for that enterprise as determined in paragraph (a)(2)(iv) of this section.

* * * * *

(ix) Once eligibility is established, based on production losses, the total production loss sustained by the applicant, directly attributable to the disaster, is computed by adding the gross dollar amount of production losses of all single enterprises, whether or not they constitute a basic part of the farming operation, and subtracting from this total all financial assistance verified as having been received or to be received through any disaster relief program, and all compensation for disaster losses provided by any source for those enterprises.

* * * * *

(xi) * * *

(C) * * *

(*1*) Determine the normal year gross dollar value. To calculate this, multiply the number of acres grazed during the disaster year by the established price per pound or ton (this figure is established by the State Director in accordance with paragraph (a)(2)(iv) of this section); by the average number of pounds or tons of forage equivalent produced per acre per year during the average of the highest 4 out of the preceding 5 years for forage of the type being used in this calculation. (The State Office will set forth the forage equivalent values to be used or the methodology to be used for deriving this value, in a State Supplement. This information may be set forth on a countywide or statewide basis. The State Director may contact the State's Extension Service or other knowledgeable sources to assist in establishing the forage equivalent determination.)

* * * * *

(xii) When a crop cannot be planted, an applicant may treat the loss either as a production loss or as a physical loss (see paragraph (b) of this section). When a crop cannot be planted and the applicant chooses to treat the loss as a production loss, the loss will be calculated as set out in this paragraph as follows: Add all income that is derived from the enterprise to the variable costs which were not incurred because of the disaster. (The cost figures will be derived from current crop enterprise budgets prepared by State Agricultural Extension Service economists, based on normal farming conditions in the area.) Subtract this figure from the value of the normal year's production. The resulting figure is the gross dollar amount of production loss.

* * * * *

(xiv) When a crop is planted and completely destroyed by a disaster, a yield of "zero" may be shown on Form FmHA 1945–22 for the disaster year, but only if no part of the crop could be harvested and no substitute crop could be planted and harvested. When figuring the actual dollar amount of production losses, subtract the normal costs of harvesting and marketing which were not incurred for crops that were completely destroyed by a disaster. If a substitute crop is planted and harvested during the same crop year, a yield of "zero" should be shown for the original crop, and the actual yield for the substitute crop on Form FmHA 1945–22 On Form FmHA 1945–26, the dollar value of the substitute crop must be added to the dollar value of the disaster year's production and income.

* * * * *

(xvi) When an applicant elects to sell feeder livestock at an earlier date than usual rather than purchase feed to replace that which was lost as a result of the disaster, that is a management decision; and the difference between what the sale weight would have been if the livestock had been fed for the normal period and the disaster year's lighter, premature sale weight may *not* be claimed as a loss.

(xvii) Calculation of production losses to livestock enterprises may be based either on loss of production in feed crops, including pasture, to be fed to the applicant's own livestock; *or* on loss (from normal) of weight gain of the livestock or livestock products produced, but not both. Normally, calculations of production losses to livestock enterprises will be based on feed crop(s) and pasture losses. In the case of foundation herds of breeding animals; however, the value of feed produced on native rangeland and pasture constitutes a small portion of the total input costs of maintaining a foundation herd of breeding animals and their offspring. Therefore, loan approval officials normally will calculate production losses to this type of livestock operation based on reductions in the natural increase in numbers and animal unit weight of such offspring. (Example available in any FmHA office.)

Example:

A rancher has accurate records indicating that the rancher's 200 head foundation breeding cow herd produced a normal calf crop average of 85 percent (170 calves) with an average weaned weight of 350 pounds per calf. As a result of a drought, the rancher found it necessary to cull the cow herd by 50 cows over the normal number culled.

The predisaster value of the cows was $600 per head. The rancher received 35 cents per pound for the cull cows, which had an average weight of 1100 pounds.

Additionally, the rancher's calf crop was only 70 calves with an average weight of 240 pounds in the disaster year (DY). Therefore, the rancher would have sustained a physical loss on the cow herd (see § 1945.163(b)(6)(i)(B) and a production loss on the calf crop.

The established price for calves is 60 cents per pound

Calculations:

The rancher's normal year's (NY) calf crop was 85 percent. Since the rancher reduced the breeding herd by 50 cows, an adjustment must be made to determine the calf losses The reduced herd size is now 150 cows

150 cows × 85% = calves (NY calf crop from a herd of 150). cow

Normal year	128×.60×350 =	$26,880	NY income
Disaster year	70×.60×240 =	$10,080	DY income
		$16,800	Loss

16,800

26,880=63% production loss

Additionally, an EM loan may be made based on the physical loss of 50 cows. (See example in § 1945.163(b)(6)(i)(B).

(xviii) Any claims of production losses from the applicant will be verified by FmHA when the applicant's claim(s) appears to be unreasonable.

(xix) Claims of production losses for orchard crops (fruits or nuts) will be considered only for the crop loss directly attributable to the qualifying disaster and determined in accordance with paragraph (a)(2) of this section.

(xx) When an applicant's farming operation(s) is conducted in a designated county(ies) and a non-designated county(ies), eligibility will be established based on losses to a single enterprise which constitutes a basic part of the total farming operation, without regard to whether the single enterprise is located in the designated county. The disaster year's actual yields, both in the designated and non-designated counties, will be used to determine losses. Compensatory payments will be subtracted as explained in paragraph (a)(2)(v) of this section when determining eligibility. The amount of the production loss loan will be limited to the production loss sustained in the designated county(ies) only, minus any compensatory payments received or to be received for that portion of the farming operation located in the designated county(ies).

* * * * *

34. Section 1945.168 is amended by revising paragraph (b)(2) in the first sentence to read as follows:

§ 1945.168 Rates and terms.

* * * * *

(b) * * *

(2) *Real estate purposes (subtitle A).* EM loans made for real estate purposes under § 1945.166(b) of this subpart will normally be scheduled for repayment for a term not to exceed 30 years. * * *

* * * * *

35. Section 1945.169 is amended by revising paragraphs (a)(3) and (b)(2) to read as follows:

§ 1945.169 Security requirements.

* * * * *

(a) * * *

(3) The same collateral may be used to secure two or more loans made, insured and/or guaranteed, to the same borrower. Accordingly, when an EM loan is made to an indebted FmHA guaranteed loan borrower, a junior lien may be taken on the same chattels and/or real estate that serves as collateral for the guaranteed loan(s).

(b) * * *

(2) Cooperatives or corporations. The appropriate officers will execute the note on behalf of the cooperative or corporation, and any other signatures needed, to assure the required security will be obtained as provided in State supplements.

* * * * *

36. Section 1945.175 is amended by revising the first four sentences of paragraph (b)(1) and the first sentence of paragraph (c)(5) to read as follows:

§ 1945.175 Options, planning and appraisals.

* * * * *

(b) * * *

(1) Form FmHA 431–2 or other planning forms that provide similar/necessary information, and Form FmHA 431–4, "Business Analysis-Nonagricultural Enterprise," when appropriate, will be completed as provided in subpart B of part 1924 of this chapter and in accordance with the FMIs. This planning process with the applicant is essential to making sound loans and, therefore, must receive careful attention in development of the loan docket. The plan will show any major items of expenditure and the reason(s) these items are needed. * * *

(c) * * *

(5) Chattel appraisals will be completed on Form FmHA 1945–15, "Value Determination Worksheet (EM Loans Only)," when chattels are taken as security. * * *

37. Section 1945.182 is amended by revising paragraphs (a) and (b) and the first sentence of paragraph (d) to read as follows:

§ 1945.182 Loan docket preparation.

(a) *Processing guide.* See Exhibit A of this subpart for Insured Emergency Loan Processing Guide. When a packager has developed the loan docket, the County Supervisor will fully analyze the docket to ascertain that it is complete and conforms with this EM loan regulation. The County Supervisor will reverify calculations with § 1945.183(a) and insure that the provisions of § 1945.183 of this subpart are met, before a final action is taken on the loan request.

(b) *Form FmHA 1940–1, "Request for Obligation of Funds."* A separate Form FmHA 1940–1 will be prepared for each EM loan which has a different interest rate and/or a different repayment period, as determined under § 1945.168 (a) and (b) of this subpart. Also, the new appropriate disaster number will be shown on each Form FmHA 1940–1, for indebted EM loan borrowers having new qualifying losses from a subsequent authorized disaster.

* * * * *

(d) *Lease agreement.* Generally, copies of written lease agreements between tenant applicants and their landlords will be obtained and made a part of the loan docket. * * *

38. Section 1945.183 is amended by revising paragraphs (a)(3) and (a)(4)(ii) and the first sentence of paragraph (a)(4)(iii) to read as follows:

§ 1945.183 Loan approval or disapproval.

(a) * * *

(3) All information provided by the applicant on Form FmHA 1945–22, all transcription of numbers and information from Form FmHA 1945–22 to Form FmHA 1945–26, and all calculations performed on Form FmHA 1945–26 by an FmHA County Office employee will be checked and verified for accuracy and propriety by a different County Office employee. This is to assure that any errors are detected. The verifying employee will initial and date the Form FmHA 1945–26. If any error(s) is detected, the County Supervisor or Assistant County Supervisor will make the necessary corrections; and a computer printout of the corrected Form FmHA 1945–26 will be signed and dated by the preparer and filed in the applicant's/borrower's county case file.

(4) * * *

(ii) For dwelling and/or household content applications, FmHA County Offices will send a copy of their final action taken on each application to the

appropriate SBA Disaster Area Office. Those actions include: loan approval on Form FmHA 1940–1; notification of application withdrawal; notification of loan denial; confirmation of request for reconsideration or appeal of loan denial; and final determination on an appeal. A copy of each written communication from FmHA County Offices to the SBA Area Offices will be sent to the State Director, Attention: Chief, Farmer Programs; and the District Director.

(iii) Applicants who receive SBA physical loss loans for losses to dwellings and/or household contents may also file for FmHA EM loan assistance based on farm losses other than to dwellings. * * *

Exhibit A to Subpart D [Removed and Reserved]

39. Exhibit A of Subpart D is removed and reserved.

Dated: January 23, 1990.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 90–12049 Filed 5–24–90; 8:45 am]

BILLING CODE 3410–07–M

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV–90–137FR]

Expenses and Assessment Rate for the Marketing Order Covering Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate for the 1990–91 fiscal year (August 1–July 31) under Marketing Order No. 905. The expenditures and assessment rate are needed by the Citrus Administrative Committee (committee) established under the marketing order to pay its expenses and collect assessments from handlers to pay those expenses. This action will enable the committee to perform its duties and the marketing order to operate.

EFFECTIVE DATES: August 1, 1990 through July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. The agreement and order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 citrus handlers subject to regulation under the marketing order covering fresh oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 13,000 producers of these fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of these producers may be classified as small entities.

This marketing order, administered by the U.S. Department of Agriculture (Department), requires that the assessment rate for a particular fiscal year shall apply to all assessable citrus fruit handled from the beginning of such year. An annual budget of expenses and assessment rate is prepared by the committee and submitted to the Department for approval. The committee members are handlers and producers of Florida citrus. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the expected cartons (⅘ bushels) of fruit shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The annual budget and assessment rate are usually recommended by the committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The committee met on February 27, 1990, and unanimously recommended a 1990–91 budget with expenditures of $180,000, compared with $185,000 budgeted for 1989–90. The 1990–91 expenditures are comparable to those budgeted for 1989–90. The expenses are for program administration, including employee salaries, fringe benefits, travel, office rent and equipment, and miscellaneous costs.

The committee also unanimously recommended a 1990–91 assessment rate of $0.0034 per ⅘ bushel carton of fresh fruit shipped. Based on estimated fresh shipments of 50,000,000 cartons, 1990–91 assessment income is expected to total $170,000. Interest income for 1990–91 is estimated at $2,600, while the budgeted deficit ($7,400) is to be drawn from the committee's reserve. The 1989–90 assessment rate was $0.0027. The assessment rate increase ($0.0007) reflects a 10,000,000 carton reduction in estimated fresh shipments for 1990–91, compared with the 1989–90 estimate. A reserve in the neighborhood of $90,000 is expected at the end of the 1989–90 fiscal year. This is well within the amount authorized under the order.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule adds new § 905.229 under this marketing order, based on the

committee's recommendations and other information.

A proposed rule concerning this action was published in the **Federal Register** (55 FR 12367, April 3, 1990). Comments on the proposed rule were invited from interested persons until May 3, 1990. No comments were received.

After consideration of the information and recommendations submitted by the committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

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

2. New § 905.229 is added to read as follows:

Note: This action will not appear in the Code of Federal Regulations.

§ 905.229 Expenses and assessment rate.

Expenses of $180,000 by the Citrus Administrative Committee are authorized, and an assessment rate of $0.0034 per ⅘ bushel carton of assessable fruit is established for the fiscal year ending July 31, 1991. Any unexpended funds from the 1989–90 fiscal year may be carried over as a reserve.

Dated: May 22, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–12198 Filed 5–24–90; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket 90–073]

Restrictions on the Importation of Horses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations by adding Portugal and the Yemen Arab Republic to the list of countries in which the Animal and Plant Health Inspection Service considers African horse sickness to exist. This action is necessary because veterinary authorities of these two countries have confirmed the existence of African horse sickness in their respective countries. The intended effect of this action is to help prevent the introduction of African horse sickness, a fatal equine viral disease, into the United States.

EFFECTIVE DATE: June 25, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel Richeson, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8144.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective on March 6, 1990 (55 FR 7883–7884, Docket 89–218), we amended the regulations in 9 CFR part 92 that restrict the importation of horses that could introduce various diseases into the United States by adding Portugal and the Yemen Arab Republic to the list of countries in § 92.11(d)(1)(ii) in which African horse sickness is considered to exist.

Comments on the interim rule were required to be received on or before May 7, 1990. We did not receive any comments. The facts presented in the interim rule still provide the basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

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

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

We will continue to allow U.S. importers to import horses from Portugal and the Yemen Arab Republic, although we will require these horses to enter through the port of New York and undergo a quarantine of at least 60 days at the New York Animal Import Center. While importers of horses from Portugal and the Yemen Arab Republic will incur additional costs because of the longer quarantine under this rule, we do not expect this to have a significant economic impact on a substantial number of small entities. There has been an average of 30,000 horses imported into the United States annually during the past five years. During this same period, there have been no horses imported into the United States from the Yemen Arab Republic and fewer than 10 horses from Portugal. We have no reason to anticipate any substantial changes in the number of horses imported from these countries.

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

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 92.11(d)(1)(ii) that was published at 55 FR 7883–7884 on March 6, 1990.

Authority: 7 U.S.C. 1622, 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 22nd day of May 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-12200 Filed 5-24-90; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-CE-37-AD; Amendment 39-6619]

Airworthiness Directives; SOCATA Groupe AEROSPATIALE Models TB 9, TB 10, TB 20, and TB 21 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends Airworthiness Directive (AD) AD 90-02-18, applicable to certain SOCATA Groupe AEROSPATIALE Models TB 9, TB 10, TB 20, and TB 21 airplanes, which requires modification of the wing fuel tanks and replacement of certain electric fuel boost pumps. It incorporates a revision to the manufacturer's service information, and provides for an extension of the compliance time for modification of the fuel tanks and the electric fuel boost pump. These modifications and interim procedures will preclude fuel interruption and contamination that may result in power interruption or loss and will also preclude unwarranted grounding of the airplanes due to parts unavailability.

EFFECTIVE DATE: June 13, 1990.

COMPLIANCE: As prescribed in the body of this AD.

ADDRESSES: SOCATA Groupe AEROSPATIALE TB Aircraft Service Bulletin (SB) No. 47/1, dated October 1989, and SB 48/2, dated March 1990, applicable to this AD, may be obtained from SOCATA Groupe AEROSPATIALE, B.P. 38, 65001 Tarbes, Cedex, France; Telephone 62.51.73.00 or 62.51.73.55 (for Telefax); or the Product Support Manager, U.S., AEROSPATIALE, 2701 Forum Drive, Grand Prairie, Texas 75053; Telephone (214) 641-3614. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932, or Mr. Carl Mittag, Aerospace Engineer, Brussels Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office; Telephone (322) 513.38.30; c/o American Embassy, B-1000 Brussels, Belgium.

SUPPLEMENTARY INFORMATION: To prevent power interruption or power loss due to fuel system contamination on SOCATA Models TB 9, TB 10, TB 20, and TB 21 airplanes, AD 90-02-18, Amendment 39-6454, was published in the **Federal Register** on January 8, 1990 (55 FR 607). The AD was issued as a result of service difficulty reports and accident investigations which prompted an engineering review of the fuel system for these airplanes.

Subsequent to the issuance of AD 90-02-18, the FAA became aware of Revisions 1 and 2 to Aerospatiale TB Aircraft SB 48, which changed the fuel system modification kit number effectivity referenced in the AD and the recurring intervals of the interim procedure. In addition, the FAA has learned that material delays have caused delays in the shipment of these modification kits. These delays have resulted in requests for extension of compliance time from numerous airplane operators. The FAA has reviewed this situation and determined that interim fuel tank sump draining procedures and electric fuel boost pump checks will provide an equivalent level of safety until the modification kits are available.

The FAA has determined that an additional 150 hours should be allowed in order to modify the affected airplanes. The compliance interval for both these actions has been proposed by the manufacturer and found acceptable by the FAA.

The Direction Generale de l'Aviation Civile (DGAC), who has responsibility and authority to maintain the continuing airworthiness of these airplanes in France, has classified the latter aforementioned SBs and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. In addition, the DGAC has issued Consigne de Navigabilite (AD) No. 89-177(A), effective November 25, 1989. On airplanes operated under French registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the DGAC combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of SB 47/1, dated October 1989, and SB 48/2 dated March 1990, and the mandatory classification of SB 48/2 by the DGAC. Based on the foregoing, the FAA has determined that the condition described herein that resulted in the original issuance of AD 90-02-18 is still an unsafe condition that may exist or develop on other products of the same type design certificated for operation in the United States.

Therefore, AD 90-02-18 is being revised. It will still require replacement of the electric fuel boost pump on certain SOCATA Models TB 20 and TB 21 airplanes and modification of the wing fuel tanks to allow complete drainage of the wing fuel tank sumps in the normal ground attitude on SOCATA Models TB 9, TB 10, TB 20, and TB 21 airplanes. In addition, the revision will provide for interim fuel tank sump draining procedures and electric fuel boost pump checks which may be used as a temporary alternate means of compliance until the airplanes can be modified thus precluding an unwarranted grounding of the airplanes. Because an emergency condition continues to exist that requires the immediate adoption of this amended regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is

determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

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 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. Section 39.13 is amended by revising and reissuing AD 90–02–18, Amendment 39–6454, to read as follows:

SOCATA Groupe Aerospatiale: Applies to Models TB 9 and TB 10, TB 20, and TB 21 (all serial numbers (S/N), airplanes certificated in any category.

Compliance: As indicated in the body of the AD, unless already accomplished per AD 90–02–18.

To preclude loss of power due to contamination of the fuel system, accomplish the following:

(a) Within the next 75 hours time-in-service (TIS) from February 6, 1990, except as indicated in paragraph (c) of this AD, modify the fuel system by the installation of the following applicable SOCATA modification kit, as described in SOCATA Service Bulletin (SB) Number 48/2, dated March 1990:

Airplanes	Kit number
All TB airplanes (S/N 1 through 822, 850 through 887, 889 and subsequent)	9154
TB 20 (S/N 823 through 849, and 888)	9155

(b) For Models TB 20 and TB 21 (S/N 1 through 730) airplanes (unless modified with SOCATA Modification Number 66), within the next 75 hours TIS from February 6, 1990, except as indicated in paragraph (d) of this AD, modify the fuel system by replacement of the installed Dukes fuel pump with a Weldon fuel pump and the addition of a check valve, in accordance with the instructions contained in SOCATA SB Number 47/1, dated October 1989.

(c) If the required parts are not available to accomplish the modification specified in paragraph (a) of this AD, the airplane may continue operation for an additional 150 hours TIS after the compliance time specified in paragraph (a) of this AD provided the fuel tank sump is drained at intervals not to exceed each 50 hours TIS in accordance with the procedures specified in the DESCRIPTION section of SOCATA SB 48/2, dated March 1990.

(d) If the required parts are not available to accomplish the modifications specified in paragraph (b) of this AD, the airplane may continue operation for an additional 150 hours TIS after the compliance time specified in paragraph (b) of this AD provided the following preflight actions are accomplished by the pilot prior to each engine start:

(i) Select battery (main switch) ON.

(ii) Advance the mixture control to FULL RICH.

(iii) Select electric fuel boost pump ON.

(iv) Advance the throttle until a positive fuel flow is observed on the fuel flow gauge, then retard the throttle and move the mixture control to IDLE/CUTOFF.

(v) Select electric fuel boost pump OFF.

(vi) Select battery (main switch) OFF.

(vii) Visually inspect the electric fuel boost pump area for leaks.

(viii) If no positive fuel flow is observed on the fuel flow gauge, or fuel leaks are detected from the electric fuel boost pump, repair or replace the defective component prior to further flight.

Note: Avoid moving the propeller and standing in the propeller area while inspecting the engine.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(f) An alternate method of compliance or adjustment of the initial or repetitive compliance times which provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to SOCATA Groupe Aerospatiale, B.P. 38, 65001 Tarbes, Cedex, France; Telephone 62.51.73.00, or 62.51.73.55 (for Telefax); or the Product Support Manager, U.S., AEROSPATIALE, 2701 Forum Drive, Grand Prairie, Texas 73053; Telephone (214) 641–3614; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment amends AD 90–02–18, Amendment 39–6454.

This amendment becomes effective on June 13, 1990.

Issued in Kansas City, Missouri, on May 17, 1990.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–12214 Filed 5–24–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–ASW–21; Amdt. 39–6618]

Airworthiness Directives; McDonnell Douglas Helicopter Company (MDHC) Model 369D, E, F, and FF Helicopters

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires a one-time check of the tail rotor swashplate bearing seals to determine, by seal color, if certain MRC bearings (black seal) have been installed on certain McDonnell Douglas Helicopter Company model helicopters. If black seal bearings within a specified serial number range are installed, periodic inspections are required until these bearings are replaced. The AD is needed to prevent failure of the bearing which could result in loss of control of the helicopter.

EFFECTIVE DATES: June 22, 1990.

COMPLIANCE: As indicated in the body of the AD.

ADDRESSES: The applicable AD-related material may be obtained from: McDonnell Douglas Helicopter Company, Technical Publications, Building 543/D214, 5000 E. McDowell Road, Mesa, Arizona 85205–9797, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Building 3B, Room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Davis, FAA, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5233.

SUPPLEMENTARY INFORMATION: This AD is prompted by a report of the existence of defective tail rotor swashplate bearing sets installed in certain MDHC helicopters which could result in tail rotor malfunction and possible loss of helicopter control. MDHC has advised the FAA that certain tail rotor swashplate bearing sets, part number (P/N) 369D21832, serial numbers (S/N) 059150–0001 through 059150–0692 and 059150–0734 through 059150–0742, may be defective. These bearing sets were

manufactured by MRC Corporation and shipped from MDHC between September 14, 1989, and March 1, 1990. The defective bearings can be identified by black seals instead of green seals used by a previous manufacturer or yellow seals which are now being used.

Since this condition is likely to exist on other helicopters of the same type design, an AD is being issued which requires a one-time check of the tail rotor swashplate bearing seals to determine if black seal bearings have been installed on McDonnell Douglas Helicopter Company (MDHC) Models 369D, E, F, and FF helicopters. If so, periodic inspections of certain black seal bearings are required until these bearings are replaced. These black seal bearings are acceptable for 300 hours' total time in service when the periodic inspections are accomplished.

Since a situation exists that requires the 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 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 does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive 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 action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Regional Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Regional Rules Docket.

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 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. Section 39.13 is amended by adding the following new AD:

McDonnell Douglas Helicopter Company (MDHC): Applies to Model 369D, E, F, and FF helicopter, certificated in any category. (Docket No. 90–ASW–21)

Compliance is required as indicated, unless already accomplished.

To prevent tail rotor malfunction, which could result in loss of control and possible loss of the helicopter, accomplish the following:

(a) Within the next 10 hours' time in service after the effective date of this AD, check the tail rotor swashplate bearing assembly to determine the color (green, yellow, or black) of the bearing seal, P/N 369D21832. The check required by this paragraph may be performed by a pilot. The bearing seal can be observed by looking into the outboard end of the T/R swashplate bearing assembly. If necessary, clean the face of the bearing seal so that the color can be determined.

Note: Part I of MDHC Service Information Notice DN–167, EN–58, and FN–46 pertains to this one-time check.

(b) If the bearings have green or yellow seals, record the seal color in the logbook together with the record of compliance with this AD, and no further action is required.

(c) For bearings with black seals which have a serial number in the range of 059150–0001 through 059150–0692, or 059150–0734 through 059150–0742, or which have unidentified serial numbers, conduct the following inspections within the next 10 hours' time in service, and thereafter at intervals not to exceed 10 hours' time in service from the last inspection until the bearing is replaced:

(1) Disconnect the outboard end of the bellcrank.

(2) Disconnect the dust boot from the inboard end of the pitch assembly. This will allow rotation of the tail rotor swashplate housing.

(3) While applying a down load on top of the housing by hand, slowly rotate the pitch control housing to verify smoothness of operation. The bearing must rotate smoothly and without roughness to be acceptable. A slight feeling of grit in the grease, with smooth areas in between, is considered acceptable for an additional 10 hours' time in service. If the gritty feeling is continuous, replace the bearings.

(4) If the roughness is beyond that allowed in paragraph (c)(3) or if the gritty feeling is continuous, replace the tail rotor swashplate bearing with an airworthy bearing before further flight.

(5) Install and lockwire the dust boot on the inboard end of the pitch control housing.

(6) Service the tail rotor swashplate pivot bearing assembly with an acceptable grease as specified in the Handbook of Maintenance Instructions.

(7) Reconnect the bellcrank to the outboard end of the pitch control assembly as specified in the Handbook of Maintenance Instructions.

(8) If an acceptable black seal bearing (i.e., a bearing having a serial number exclusive of the specified unacceptable ranges) is installed or has been installed as a replacement, apply a white paint dot on the outside face of the housing and record this action in the helicopter log book.

(9) Record compliance in the helicopter log book, together with the serial number of the newly installed bearing.

Note: Part II of MDHC Service Information Notice DN–167, EN–58, and FN–46 pertains to this inspection procedure.

(d) Replace any bearings with black seals which have any serial number in the range of 059150–0001 through 059150–0692 or 059150–0734 through 059150–0742, or which have unidentified serial numbers as follows:

(1) For bearings which have 290 or more hours' time in service on the effective date of this AD, replace the bearing with an airworthy part within the next 10 hours' time in service.

(2) For bearings which have less than 290 hours' time in service on the effective date of this AD, replace the bearing with an airworthy part before the accumulation of 300 hours' time in service.

(e) Prior to the installation of new or replacement bearing sets, P/N 369D21832; pitch control assemblies, P/N 369D21800 or 369D21820 series; or tail rotor assemblies, P/N 369D21600 or 369D21610 series, determine the color of the swashplate bearing seal and record in the logbook. If a bearing set has a black seal, install only parts that are verified to have serial numbers other than those listed in paragraph (c).

(f) In accordance with FAR §§ 21.197 and 21.199, the helicopter may be flown to a base where compliance with this AD may be accomplished.

(g) An alternate method of compliance or adjustment of the compliance time which provides an equivalent level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA, 32229 E. Spring Street, Long Beach, California.

This amendment becomes effective June 22, 1990.

Issued in Fort Worth, Texas, on May 16, 1990.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90–12213 Filed 5–24–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 51

[PN-1210]

Passports

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations at 22 CFR 51.21(b) to add to the list of those persons authorized and empowered by the Secretary of State to give oaths for passport purposes certain Department of Defense personnel designated by the Secretary of Defense stationed at military installations within the United States selected to accept passport applications.

The Department of State has determined that this change will promote the efficient processing of applications for United States passports made by active duty or civilian personnel of the armed forces of the United States, and their dependents, who are proceeding abroad on official duty or assignment.

EFFECTIVE DATE: May 25, 1990.

FOR FURTHER INFORMATION CONTACT: William B. Wharton, Director, Office of Citizenship Appeals and Legal Assistance, Passport Office, Washington, DC 20522–1705, telephone: (202) 326–6172.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 213 of title 22, United States Code, 22 CFR 51.21(a) enumerates those persons whose applications for United States passports must be subscribed and sworn to under oath before a person authorized by the Secretary to give such oaths. In addition to those persons authorized and empowered to give such oaths by virtue of their office or position, § 51.21(b) provides that other specifically designated persons may be authorized to give oaths for passport purposes when it is determined necessary to meet the needs of passport applicants in a specific locality.

The majority of persons specifically designated by name to administer oaths under the provisions of § 51.21(b) are United States citizen civilian or active duty personnel at military installations in the United States.

These individual designations, made at the request of the Department of Defense, facilitate the processing of passport applications made by active duty or civilian personnel of the armed forces of the United States who are proceeding abroad on official duty or assignment, and their dependents.

The Department of State is entering into an agreement with the Department of Defense under which the Secretary of Defense may designate the civilian or military personnel authorized to give oaths for passport purposes at those military or naval installations within the United States selected to accept passport applications.

The Department of State has determined that this change will promote the efficient processing of applications for United States passports made by active duty or civilian personnel of the armed forces of the United States, and their dependents, who are proceeding abroad on official duty or assignment.

This rule also amends the same regulation to reflect the Secretary's long-standing authority to withdraw designations made under § 51.21(b) in an individual case where it is determined such action will promote the efficient administration of the passport laws or is necessary to protect the integrity of the United States passport.

Compliance with the provisions of 5 U.S.C. 553 with respect to notice of proposed rulemaking, opportunity for comment and delayed effective date is unnecessary because the amendment involves a foreign affairs function of the United States.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981; and, as required by the Regulatory Flexibility Act (5 U.S.C. 301 et seq.), it is hereby certified that this final rule will not have a significant impact on small business entities. The provisions of the Paperwork Reduction Act (44 U.S.C. Ch. 35) do not apply.

List of Subjects in 22 CFR Part 51

Passports.

For the reasons set forth in the preamble, 22 CFR part 51 is amended as follows:

PART 51—PASSPORTS

1. The authority citation for part 51 continues to read as follows:

Authority: Sec. 1, 44 Stat. 887; Sec. 1, 41 Stat. 750; sec. 2, 44 Stat. 887; Sec. 4, 63 Stat. 111, as amended (22 U.S.C. 211a, 214, 417a, 2658); E.O. 11295, 36 FR 10603; 3 CFR 1966–70 Comp. p. 507.

2. The introductory text of paragraph (b) is § 51.21 is revised to read as follows:

§ 51.21 Execution of passport application

* * * * *

(b) Persons authorized by the Secretary to give oaths. The following persons are authorized by the Secretary to give oaths for passport purposes unless withdrawn by the Secretary in an individual case:

* * * * *

3. In § 51.21, paragraphs (b)(5) and (b)(6) are redesignated as paragraphs (b)(6) and (b)(7).

4. In § 51.21, a new paragraph (b)(5) is added to read as follows:

* * * * *

(b) * * *

(5) A U.S. citizen employee of the Department of Defense designated by the Secretary of Defense to accept passport applications at a military installation within the continental United States selected to accept passport applications;

* * * * *

Dated: January 22, 1990.

Elizabeth M. Tamposi,

Assistant Secretary for Consular Affairs.

[FR Doc. 90–11761 Filed 5–24–90; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–90–13]

Special Local Regulations: Cleveland Offshore Charity Classic, Lake Erie, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Cleveland Offshore Charity Classic. This event will be held on Lake Erie, off of Burke Lakefront, on 9 June 1990. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective at 10:30 a.m. (edst) until 2:30 p.m. (edst), 9 June 1990.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199, (216) 522–4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been

impracticable. The application to hold this event was received by the Commander, Ninth Coast Guard District on 26 February 1990. The original race course submitted with the application would more than incidentally interfere with navigation and would take place within confined waters. Before final action could be taken, additional information was necessary. The details of this event were not finalized until 3 May 1990, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Cleveland Offshore Charity Classic will be held on Lake Erie, off of Burke Lakefront, on 9 June 1990. This event will have an estimated 35 high performance and offshore powerboats which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Cleveland Harbor, OH).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the 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.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

PART 100—[AMENDED]

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.)

2. Part 100 is amended to add a temporary § 100.35–0913 to read as follows:

§ 100.35–0913 Cleveland Offshore Charity Classic, Lake Erie, Cleveland, OH.

(a) *Regulated Area.* That portion of Lake Erie, within the area bounded by a line drawn from origin at 41 degrees 36 minutes North, 081 degrees 33.8 minutes West; thence east to 41 degrees 38.4 minutes North, 081 degrees 34.9 minutes West; then to 41 degrees 33.8 minutes North, 081 degrees 43.1 minutes West; thence to 41 degrees 31 minutes North, 081 degrees 42.7 minutes West, then back to origin.

(b) *Special Local Regulations.* (1) The above area will be closed to navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 10:30 a.m. (edst) until 2:30 p.m. (edst) on 9 June 1990.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above sentence shall not apply to participants in the event or patrol vessels operating in the performance of their assigned duties.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(7) This section is effective from 10:30 a.m. (edst) until 2:30 p.m. (edst), 9 June 1990.

Dated: May 18, 1990.

J.G. Schmidtman,

Captain, U.S. Coast Guard Acting Commander, Ninth Coast Guard District.

[FR Doc. 90–12207 filed 5–24–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 09–90–08]

Special Local Regulations: 6th Annual Miller Genuine Draft Hydroplane Race, Maumee River, Toledo, OH

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the 6th Annual Miller Genuine Draft Hydroplane Race, (formerly the Toledo International Grand Prix). This event will be held on the Maumee River on the 16th and 17th of June 1990 from 11 a.m. (e.d.s.t.) until 6 p.m. (e.d.s.t.), each day. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective at 11 a.m. (e.d.s.t.) and terminate 6 p.m. (e.d.s.t.), 16 and 17 June 1990.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199, (216) 522–4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until 29 March 1990, and there was not sufficient time remaining to publish proposed rules in advance of the event

or to provide for a delayed effective date.

This event was published, under its former name Toledo International Grand Prix, in 33 CFR part 100 as one of the Great Lakes Annual Marine Events for Permanent Special Local Regulations. The published date was for late May. Due to the significant change in dates, special local regulations are being adopted.

This has been an annual event for the past five years and no negative comments concerning it have been received.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

Citifest Incorporated will sponsor the 6th Annual Miller Genuine Draft Hydroplane Race on the Maumee River on the 16th and 17th of June 1990. This event will have an estimated sixty to seventy hydroplanes, which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the U.S. Coast Guard Patrol Commander, (Officer in Charge, U.S. Coast Guard Station Toledo, OH).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the 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.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Part 100 is amended to add a temporary § 100.35–0908 to read as follows:

§ 100.35–0908 6th Annual Miller Genuine Draft Hydroplane Race, Maumee River, Toledo, OH.

(a) *Regulated Area.* That portion of the Maumee River lying between the Martin L. King Bridge and the Anthony Wayne Bridge.

(b) *Special Local Regulations.* (1) The above area will be closed to navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 11 a.m. (e.d.s.t.) until 6 p.m. (e.d.s.t.), each day, on 16 and 17 June 1990.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel desiring to transit the regulated area, during the effective time period (16 and 17 June 1990), may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other vessel. The rules contained in the above sentence shall not apply to participants in the event or patrol vessels in the performance of their assigned duties.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(7) Effective Dates: These regulations will become effective 11 a.m. (e.d.s.t.) and terminate at 6 p.m. (e.d.s.t.), 16 and 17 June 1990.

Dated: May 18, 1990.

J. G. Schmidtman,

Captain, U.S. Coast Guard Acting Commander, Ninth Coast Guard District.

[FR Doc. 90–12205 Filed 5–24–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 09–90–09]

Special Local Regulations: Racine on the Lake, Lakefront Airshow, Lake Michigan, Racine, WI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Racine on the Lake, Lakefront Airshow which is to be conducted on Lake Michigan, directly off Racine Harbor, from 28 June through 30 June 1990. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective, each day, at 11:45 a.m. (CDST) and terminate at 4 p.m. (CDST) on 28, 29, and 30 June 1990.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199, (216) 522–4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making has not been published for these regulations. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District until 23 April 1990 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Racine on the Lake, Lakefront Airshow will be conducted on Lake Michigan, directly off of Racine Harbor from the 28th of June through the 30th of June 1990. This event will have low flying aircraft demonstrations, high performance aircraft aerobatics, parachutists, and other events which could pose hazards to navigation in the area. Vessels desiring to transit or anchor in the area may do so only with prior approval of the Patrol Commander (Commanding Officer, U.S. Coast Guard Cutter Mobile Bay).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the 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.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–0909 to read as follows:

100.35–0909 Racine on the Lake, Lakefront Airshow, Lake Michigan, Racine, WI.

(a) *Regulated Area.* That portion of Lake Michigan enclosed by the following corner points:

Southeast corner—42 degrees, 41.95 minutes, 0.0 seconds North 87 degrees, 45.5 minutes, 0.0 seconds West

Southwest Corner—42 degrees, 41.95 degrees, 0.0 seconds North 87 degrees, 47.2 minutes, 0.0 seconds West

Northwest Corner—42 degrees, 45.6 minutes, 0.0 seconds North 87 degrees, 46.2 minutes, 0.0 seconds West

Northeast Corner—42 degrees, 45.6 minutes, 0.0 seconds North 87 degrees, 45.5 minutes, 0.0 seconds West

(b) *Special Local Regulations.* (1) The above area will be closed to navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, each day, from 11:45 a.m. (CDST) until 4 p.m. (CDST) on 28, 29, and 30 June 1990.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above sentence shall not apply to participants in the event or patrol vessels operating in the performance of their assigned duties.

(3) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(4) This section is effective each day at 11:45 a.m. (CDST) and terminate at 4 p.m. (CDST) on 28, 29 and 30 June 1990.

Dated: May 18, 1990.

J.G. Schmidtman,

Captain, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 90–12206 Filed 5–24–90; 8:45 am]

BILLING CODE 4910–14–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1206

RIN 3095–AA43

National Historical Publications and Records Commission; Grant Program Procedures

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration (NARA) is revising its regulations in 36 CFR part 1206 relating to the National Historical Publications and Records Commission (NHPRC) grant programs to ensure greater clarity, as well as conformance with the new common rules governing administrative procedures and suspension and debarment procedures, 36 CFR parts 1207 and 1209 respectively. The rule will affect NHPRC applicants and grantees.

EFFECTIVE DATES: May 25, 1990.

FOR FURTHER INFORMATION CONTACT: John Constance or Nancy Allard at 202–501–5110 (FTS 241–5110).

SUPPLEMENTARY INFORMATION: The National Archives and Records Administration (NARA) published a notice of proposed rulemaking on August 8, 1989 (54 FR 32455). Two comments were received on the proposed rule. In response to the comments, we have made two changes in this final rule. In § 1206.16(a), we have added a provision that supplemental publication of documentary sources may be considered when suitable preservation of the data can be assured. This modification will allow publication in other than book and microform format when appropriate. We have also added a definition of "State-funded agency" in § 1206.2.

Collection of Information

NARA has received approval from the Office of Management and Budget for applicants for NHPRC grants to submit a NARA-developed form, NA Form 17001, Budget Form, instead of the Standard Form 424A, Budget Information—Non-Construction Programs, used in many other Federal grant programs. The OMB approval number is 3095–0004, with an expiration date of September 30, 1992.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a

significant impact on small business entities.

List of Subjects in 36 CFR Part 1206

Grant programs—Archives and records, Grant administration.

For the reasons set forth in the preamble, part 1206 of title 36 of the Code of Federal Regulations is amended as follows:

PART 1206—NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

1. The authority citation of part 1206 continues to read as follows:

Authority: 44 U.S.C. 2104(a); 44 U.S.C. 2501–2506.

2. Subparts A, B, and C are redesignated as subparts B, C, and D, and existing §§ 1206.1 through 1206.6 are designated "Subpart A—General." The table of contents is revised to read as follows:

Subpart A—General

Sec.
1206.1 Scope of part.
1206.2 Definitions.
1206.4 Purpose of the Commission.
1206.6 Programs of the Commission.

Subpart B—Publications Program

1206.10 General.
1206.12 Scope and purpose.
1206.14 Organization.
1206.16 Publication projects.
1206.18 Subsidies for printing costs.
1206.20 Microform publication standards.

Subpart C—Records Program

1206.30 General.
1206.32 Scope and purpose.
1206.34 Organization.
1206.36 State historical records coordinator.
1206.37 Deputy State historical records coordinator.
1206.38 State historical records advisory board.

Subpart D—Grant Procedures

1206.50 Types of grants.
1206.52 Grant limitations.
1206.54 Who may apply.
1206.56 When to apply.
1206.58 How to apply.
1206.66 Review and evaluation of grant proposals.
1206.68 Grant administration responsibilities.
1206.70 Grant instrument.
1206.78 Grant reports.
1206.80 Safety precautions.
1206.82 Acknowledgement.
1206.94 Compliance with Governmentwide requirements.

3. Section 1206.2 is amended by revising paragraphs (b) and (c) and adding paragraphs (d) through (g) to read as follows:

§ 1206.2 Definitions.

* * * * *

(b) The term *historical records* means record material having permanent or enduring value regardless of physical form or characteristics, including but not limited to manuscripts, personal papers, official records, maps, and audiovisual materials.

(c) In §§ 1206.36 and 1206.38, the term *State* means all 50 States of the Union, plus the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Northern Mariana Islands, and the Trust Territories of the Pacific.

(d) In § 1206.36(a), the term *State-funded agency* means any historical or archival agency that receives a regular State appropriation.

(e) The term *State projects* means records program projects directed by organizations operating within and involving records or activities within one State. Records or activities of such projects will typically be under the administrative control of the organization applying for the grant. The records or activities need not relate to the history of the State.

(f) The term *regional projects* means records program projects involving records or activities in more than one State in a region. Regional projects include those undertaken by regional archival groups or consortia.

(g) The term *national projects* means records program projects involving records or activities in several regions or in widely separated States. In general, the location of the records and/or the site of grant-funded activities will determine the category of submission.

4. Section 1206.4 is revised to read as follows:

§ 1206.4 Purpose of the Commission.

The National Historical Publications and Records Commission makes plans, estimates, and recommendations regarding the preservation and use of historical records that may be important for an understanding and appreciation of the history of the United States. It also cooperates with and encourages appropriate Federal, State, and local agencies and nongovernmental institutions in collecting and preserving and, when it considers it desirable, in editing and publishing the records of outstanding citizens, groups, or institutions and other important documents. On recommendation of the Commission, the Archivist of the United States makes grants to State and local agencies and to non-profit organizations and institutions and to individuals in support of these programs.

5. Section 1206.6 is revised to read as follows:

§ 1206.6 Programs of the Commission.

The Commission operates primarily through a publications program (subpart B) and a records program (subpart C).

6. Redesignated subpart B consisting of §§ 1206.10 through 1206.20 is revised to read as follows:

Subpart B—Publications Program

§ 1206.10 General.

This subpart describes the scope, purpose, and organization of the publications program and prescribes requirements applicable to book and microform publication projects. Grant application and administration procedures are given in subpart D of this part.

§ 1206.12 Scope and purpose.

The publications program is intended to ensure the dissemination and accessibility of documentary source material important to the study and understanding of U.S. history. Projects should therefore be based upon material of widespread interest among scholars, students, and informed citizens. Documents should have historical value and interest that transcend local and State boundaries.

§ 1206.14 Organization.

The Executive Director, the Director of the Publications Program, and the staff of the Commission administer the program under the guidance of the Commission and the immediate administrative direction of its chairman, the Archivist of the United States.

§ 1206.16 Publication projects.

(a) Each publication project shall include either the papers of a U.S. leader in a significant phase of life in the United States or documents relating to some outstanding event or to some topic or theme of national significance in U.S. history. These projects shall consist of collecting, compiling, editing, and publishing, either selectively or comprehensively, the papers or documents. Publication may be in the form of book or microform. Supplemental publication of documentary sources may also be considered when suitable preservation of the data can be assured. One copy of each book publication should be deposited with the National Historical Publications and Records Commission (NP), Washington, DC 20408.

(b) For microform projects, the grantee shall make positive prints and all finding aids available to institutions,

scholars, or students through interlibrary loan and for purchase. Ten complimentary copies of guides and indexes produced by the projects shall be sent to the Commission.

§ 1206.18 Subsidies for printing costs.

(a) The Commission will consider grant applications from university and other nonprofit presses for the subvention of part of the costs of manufacturing and disseminating volumes that have been formally endorsed by the Commission. Grants not exceeding $12,000 per volume are awarded by NARA upon recommendation of the Commission to promote the widest possible use of Commission-sponsored documentary editions.

(b) The granting of a subvention shall be used to encourage the highest standards in the production of volumes, particularly the quality of paper and ink.

(c) The Commission shall receive 15 complimentary copies of each published volume for which a subvention grant is made.

§ 1206.20 Microform publication standards.

Technical standards for NHPRC-sponsored microform projects are stated in the brochure *National Historical Publications and Records Commission: Microform Guidelines,* which will be supplied to applicants upon request and to grantee institutions at the time a grant is made for a microform project. The Commission may, from time to time, revise these standards, but any changes to the standards will not apply to microform projects already in progress at the time the revision is issued.

7. Redesignated subpart C consisting of §§ 1206.30 through 1206.38 is revised to read as follows:

Subpart C—Records Program

§ 1206.30 General.

This subpart describes the scope, purpose, and organization of the records program. Grant application and administration procedures are given in subpart D of this part.

§ 1206.32 Scope and purpose.

Through its records program, the National Historical Publications and Records Commission encourages a greater effort at all levels of government and by private organizations to preserve and make available for use those records, generated in every facet of life, that further an understanding and appreciation of U.S. history. In the public sector, these historical records document significant activities of State, county, municipal, and other units of government. In the private sector, historical records include manuscripts, personal papers, and family or corporate archives that are maintained by a variety of general repositories as well as materials in special collections relating to particular fields of study, including the arts, business, education, ethnic and minority groups, immigration, labor, politics, professional services, religion, science, urban affairs, and women. In addition to recommending the supporting of projects relating directly to a body of records, the Commission may also recommend that NARA support projects to advance the state of the art, to promote cooperative efforts among institutions and organizations, and to improve the knowledge, performance, and professional skills of those who work with historical records.

§ 1206.34 Organization.

The Executive Director, Director of the Records Program, and the staff of the Commission administer the records program under the guidance of the Commission and the immediate administrative direction of its chairman, the Archivist of the United States.

§ 1206.36 State historical records coordinator.

(a) The governor of each State desiring to participate in the program shall appoint a State historical records coordinator (coordinator), who shall be the full-time professional official in charge of either the State archival agency or the State-funded historical agency. If the State has both agencies the official in charge who is not appointed coordinator shall be a member of the State historical records advisory board. The coordinator is appointed to a four-year term with the possibility of renewal. The coordinator shall serve as chairman of the State historical records advisory board and shall be the central coordinating officer for the historical records grant program in the State. The person appointed will not be deemed to be an official or employee of the Federal Government and will receive no Federal compensation for such service. The pamphlet *Guidelines for State Historical Records Coordinators and State Historical Records Advisory Boards,* which is available from the Commission and from State historical records coordinators, provides further information on the role of the coordinator.

(b) In the absence of instructions to the contrary, the NHPRC may continue to recognize the coordinator for a period of six months beyond the expiration of his/her term. After six months, if the governor has not made an appointment, the NHPRC shall recognize an acting coordinator selected by the State board until the governor appoints a coordinator. In the event of the resignation of the coordinator or other inability to serve, a deputy coordinator, if one has been designated, will serve as acting State coordinator until the governor makes an appointment or for six months, whichever is shorter. After six months or in the absence of a deputy coordinator, the NHPRC will recognize an acting coordinator in order to conduct the necessary business of the board.

§ 1206.37 Deputy State historical records coordinator.

A deputy State historical records coordinator may be designated to assist in carrying out the duties and responsibilities of the coordinator and to serve as an acting coordinator at the coordinator's direction or upon the coordinator's resignation or other inability to serve.

§ 1206.38 State historical records advisory board.

(a) The governor of each State desiring to participate in the program shall appoint a State historical records advisory board (board) consisting of at least seven members, including the State historical records coordinator, who chairs the board. A majority of the members shall have recognized experience in the administration of government records, historical records, or archives. The board should be as broadly representative as possible of the public and private archives, records offices, and research institutions and organizations in the State. Board members will not be deemed to be officials or employees of the Federal Government and will receive no Federal compensation for their service on the board. They are appointed for three years with the possibility of renewal; terms are staggered so that one-third of the board is newly appointed or reappointed each year. If the board is not established in State law, members' terms continue until replacements are appointed. The board may adopt standards for attendance and may declare membership positions open if those standards are not met

(b) The board is the central advisory body for historical records planning and for projects developed and carried out within the State. Specifically, the board may perform such duties as sponsoring and publishing surveys of the conditions and needs of historical records in the State; soliciting or developing proposals

for projects to be carried out in the State with NHPRC grants; reviewing records proposals by institutions in the State and making recommendations about these to the Commission; developing, revising, and submitting to the Commission State priorities for historical records projects following guidelines developed by the Commission; and reviewing, through reports and otherwise, the operation and progress of records projects in the State financed by NHPRC grants.

8. Redesignated subpart D consisting of §§ 1206.50 through 1206.94 is revised to read as follows:

Subpart D—Grant Procedures

§ 1206.50 Types of grants.

(a) *General.* The Archivist of the United States, after considering the advice and recommendations of the Commission, may make three types of NHPRC grants: Outright grants, matching grants, and combined grants.

(b) *Outright grants.* An application for an outright grant requests an NHPRC grant for the entire cost of a project, minus the share of the cost borne by the applicant. The maximum possible cost sharing is encouraged in every proposal, and the level of cost sharing will be an important factor in the Commission's recommendation on most types of proposals.

(c) *Matching grants.* An application for a matching grant should be made when an applicant has prospects of securing financial support from a third party or, in the case of a State or local government agency, new funds from the institution's own appropriation source are provided expressly for the project proposed in the application. Upon NARA approval of a matching grant request, the applicant shall present written documentation certifying that matching funds have been provided for the project by the non-Federal source. In the case of a State or local government agency, the matching requirement may also be met through matching funds from the State or local government provided that it can be demonstrated to the Commission's satisfaction that the matching amount has been provided above and beyond funds previously allocated or planned for the agency's budget and that the funds are set aside exclusively to support the project proposed for an NHPRC grant. Applicants need not, however, have money in hand to make a matching grant request; they need only assure the Commission that they have reasonable prospects of obtaining the needed amounts. Federal matching funds may be released only after the proposal is recommended by the Commission and approved by NARA and after documentation has been submitted to the Commission demonstrating that the matching funds have been obtained from the non-Federal source.

(d) *Combined grants.* A combined grant comprises both outright funds and matching funds. When the funds an applicant can raise plus the equivalent amount of an NHPRC grant do not equal the required budget, the difference is requested in outright funds. For example, if the applicant needs $75,000 and is able to raise $25,000 in gifts or in a new appropriation for the project, a combined grant of $25,000 outright and $25,000 in matching funds for a total of $50,000 should be requested from the Commission. Rules governing the release of matching funds in matching grants also govern the release of matching funds in combined grants.

§ 1206.52 Grant limitations.

Grant limitations are described in publications and records program guidelines pamphlets available on request from the Commission.

§ 1206.54 Who may apply.

The Commission will consider applications from State and local government agencies, nonprofit organizations and institutions, and, under certain conditions, from individuals. Proposals under the records program for State projects will be accepted only from applicants in States in which a State historical records coordinator and a State historical records advisory board have been appointed. This requirement does not apply to regional or national projects.

§ 1206.56 When to apply.

Grant proposals are considered during Commission meetings held three times during the year. For current applications deadlines contact the staff of the appropriate Commission program or State historical records coordinators (for records grant proposals). Some State boards have established pre-submission review deadlines for proposals under the records program; further information is available from State coordinators.

§ 1206.58 How to apply.

(a) *Contact with NHPRC staff.* The Commission encourages applicants to discuss proposals through correspondence, by phone, or in person with Commission staff and/or, in the case of records proposals, with the appropriate State historical records coordinator before the proposal is submitted and at all stages of development of the proposal.

(b) *Application forms.* Applicants for NHPRC grants shall use Standard Form 424, Application for Federal Assistance, and NA Form 17001, Budget Form (OMB Control Number 3095–0004). Both forms are available from the Commission. Project proposals and related correspondence should be sent to the National Historical Publications and Records Commission (NP), Washington, DC 20408.

(c) *Assurances and certifications.* All grant applications to the Commission must include the following assurances and certifications signed by an authorized certifying official of the applicant: Standard Form 424B, Assurance: Non-Construction Programs; the Certification Regarding Suspension, Debarment, and Other Responsibility Matters specified in part 1209, appendix B; and the Certification Regarding Drug-free Workplace Requirements specified in part 1209, appendix C, of this chapter. Assurance and certification language is included in the program pamphlets.

(d) *Program guidelines pamphlets.* Supplementary information for applicants is contained in the pamphlets, *Records Program Guidelines and Procedures: Applications and Grants,* and *Publications Program Guidelines and Procedures: Applications and Grants,* which are available from the Commission upon request. The records program guidelines pamphlet is also available from State historical records coordinators. These pamphlets include copies of the application form and certifications, guidelines on the preparation of project budgets and program narrative statements, and other guidance on applying for and administering NHPRC grants.

§ 1206.66 Review and evaluation of grant proposals.

(a) *Records grant proposals.* For records grant proposals, State historical records advisory boards review and evaluate proposals for State projects and forward recommendations for action to the Commission. Boards may decide that certain proposals are incomplete or require further development; in these instances proposals may be returned to the applicant by the board with a recommendation for revision and resubmission in a future funding cycle. The Commission staff shall be informed of the recommendations. All records grant proposals for which recommendations for Commission action are received from State boards and regional, national, and State board-sponsored proposals received directly

by the Commission are reviewed by the Commission staff for completeness, conformity with application requirements and relevance to the objectives of the grant program. Regional and national proposals and proposals submitted by boards on their own behalf may also be referred by the Commission staff to selected State historical records coordinators, members of boards, or others for appropriate review and evaluation of the projects. Following review and evaluation, proposals are referred to the Commission at regular meetings.

(b) *Publications grant proposals.* The Commission staff reviews publication grant proposals for completeness, conformity with application requirements, and relevance to the objectives of the grant program. Proposals are sent to specialists in American history for review and recommendations. The recommendations are considered by the full Commission at regular meetings.

(c) *Subvention grant applications.* Applications for subvention grants are reviewed by a panel of persons knowledgeable in the publishing field, which reports to the Commission its findings and recommendations.

§ 1206.68 Grant administration responsibilities.

Primary responsibility for the administration of grants is shared by the grantee institution and the project director designated by the institution. Grants shall be administered in conformance with the regulations in parts 1207 and 1209 of this chapter.

§ 1206.70 Grant instrument.

The grant award instrument is a letter from the Archivist of the United States to the grantee. The letter and attachments specify terms of the grant.

§ 1206.78 Grant reports.

Financial status reports and narrative progress reports are required for all grants. Standard Form 269 or 269A, Financial Status Report, shall be used for all financial reports. Reports are due 30 days after the end of each six-month period. Final reports are due within 90 days after the expiration or termination of the grant period. Grants with a duration of six months or less require a final report only. Grant projects that have been funded continuously for three years or more shall report annually. All other grant projects shall report semiannually. Additional rules on financial and performance reports are found in §§ 1207.40 and 1207.41 of this chapter.

§ 1206.80 Safety precautions.

NARA and the Commission cannot assume any liability for accidents, illnesses, or claims arising out of any work undertaken with the assistance of the grant.

§ 1206.82 Acknowledgment.

Grantee institutions, grant directors, or grant staff personnel may publish results of any work supported by an NHPRC grant without review by the Commission. Publications or other products resulting from the project, shall, however, acknowledge the assistance of the NHPRC grant.

§ 1206.94 Compliance with Govermentwide requirements.

In addition to the grant application and grant administration requirements outlined in this part 1206, grantees are responsible for complying with applicable Governmentwide requirements contained in parts 1207 and 1209 of this chapter.

Dated: May 7, 1990.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 90–12228 Filed 5–24–90; 8:45 am]

BILLING CODE 7515-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1, 2, and 17

RIN 2900–AE65

Information Law Delegations of Authority to General Counsel and Deputy General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs is amending its information law regulations to delegate authority to the General Counsel and the Deputy General Counsel to make final Departmental decisions on appeals under 5 U.S.C. 552 (The Freedom of Information Act), 5 U.S.C. 552a (The Privacy Act of 1974), 38 U.S.C. 3301, and 38 U.S.C. 3305. The Office of the General Counsel has been extensively involved in the preparation of final Departmental decisions on appeals under these authorities since the decisions require legal analysis. This new delegation of authority should allow the Department to be more responsive to the public.

EFFECTIVE DATE: May 25, 1990.

FOR FURTHER INFORMATION CONTACT: Marjorie M. Leandri, Records Management Service (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2454.

SUPPLEMENTARY INFORMATION: VA finds that advance publication for notice and public comment is not required. The regulatory amendments here involved are consistent with the Secretary's lawful ability to delegate his authority in providing final Departmental decisions on appeals on information law issues. The amendments merely reflect a general change in Departmental policy regarding who may responsibly issue such final decisions, and neither impose new obligations nor have a substantial impact on those individuals dealing with the Department. Such amendments affect only existing Departmental procedures and practices which are not substantive in their effect. Thus, in accordance with the provisions of 38 CFR 1.12, advance publication in the **Federal Register** is not necessary. Accordingly, the amendments in the foregoing regulations are now published as final.

These final regulatory amendments do not meet the criteria for a major rule as that term is defined by Executive Order 12291, Federal Regulation. These regulatory amendments will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices and will not have any other significant adverse effects on the economy.

The Secretary hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C., sections 601–612. Pursuant to 5 U.S.C., section 605(b), these regulations are therefore exempt from the regulatory analysis requirements of 5 U.S.C., sections 603 and 604. The reason for this certification is that the involved regulations apply only to delegations of authority specifying who will make final Departmental decisions on appeals under information laws, and impose no regulatory burden on small entities.

There are no applicable Catalog of Federal Domestic Assistance Numbers.

List of Subjects

38 CFR Part 1

Administrative practice and procedure, Cemeteries, Claims, Flags, Freedom of information, Government contracts, Government employees, Infants and children, Inventions and patents, Investigations, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping

requirements, Seals and insignia, Security measures, Wages.

38 CFR Part 2

Authority delegations (Government agencies)

38 CFR Part 17

Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: May 11, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Parts 1, 2, and 17 are amended to read as follows:

PART 1—[AMENDED]

The authority citation for §§ 1.500 to 1.527 continues to read as follows.

Authority: Sections 1.500 to 1.527 issued under 72 Stat. 1114, 1236, as amended; 38 U.S.C. 210,3301.

§ 1.527 [Amended]

1. In § 1.527, paragraph (b) is amended by replacing the word "Secretary" with the words "General Counsel" and paragraph (c) is amended by replacing the words "Secretary or the Deputy Secretary" with the words "General Counsel or the Deputy General Counsel".

1a. The authority citation for §§ 1.550 to 1.559 continues to read as follows:

Authority: Sections 1.550 to 1.559 issued under 72 Stat. 1114; 38 U.S.C. 210.

§ 1.557 [Amended]

2. In § 1.557, paragraph (a) is amended by replacing the word "Secretary" with the words "General Counsel" and paragraph (b) is amended by replacing the words "Secretary or Deputy Secretary" with the words "General Counsel or the Deputy General Counsel".

2a. The authority citation for § 1.577 continues to read as follows:

(Authority 5 U.S.C. 552a(f)(5)) (38 U.S.C. 210(c)).

§ 1.557 [Amended]

3. In § 1.577, paragraph (d) is amended by replacing the words "Secretary of Veterans Affairs" with the words "General Counsel".

3a. The authority citation for § 1.580 continues to read as follows:

(Authority: 38 U.S.C. 210(c)).

§ 1.580 [Amended]

4. In § 1.580, paragraph (a) is amended by replacing the word "Secretary" with the words "General Counsel" and paragraph (b) is amended by replacing the words "Secretary or Deputy Secretary" with the words "General Counsel or the Deputy General Counsel".

PART 2—[AMENDED]

1. In § 2.6(e) a new paragraph (12) is added to read as follows:

§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 212(a)).

* * * * *

(12) The General Counsel and the Deputy General Counsel are authorized to make final Departmental decisions on appeals under the Freedom of Information Act, the Privacy Act, 38 U.S.C. 3301, and 38 U.S.C. 3305.

(Authority: 38 U.S.C. 212)

* * * * *

PART 17—[AMENDED]

1. § 17.524 is revised to read as follows:

§ 17.524 Appeal of decision to deny disclosure.

When a request for records or documents subject to these regulations is denied by the VA medical facility director, medical district director, regional director or Chief Medical Director, the VA official denying the request will notify the requester of the right to appeal this decision to the General Counsel of the Department of Veterans Affairs within 60 days. The final Department decision will be made by the General Counsel or the Deputy General Counsel.

(Authority: 38 U.S.C. 3305)

[FR Doc. 90-12114 Filed 5-24-90; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3712-6]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana and Texas; Corrections to Identification of Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule, correction.

SUMMARY: This rule corrects errors previously made in the identification of the Louisiana State Implementation Plan (SIP) at 40 CFR 52.970(c) and in the identification of the Texas State Implementation Plan (SIP) at 40 CFR 52.2270(c).

EFFECTIVE DATE: This action will become effective on May 25, 1990.

ADDRESSES: Written comments on this action should be addressed to Thomas Diggs, Chief, Planning Section, at the following address: U.S. Environmental Protection Agency, Air Programs Branch (6T-A), First Interstate Bank Building, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Copies of documents relevant to today's notice may be examined at the above location or at any of the following locations:

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460;

Louisiana Department of Environmental Quality, 625 N. 4th Street, 8th Floor, Baton Rouge, Louisiana 70804-4096;

Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

If you wish to review these documents, please contact the person named below to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Bill Deese at (214) 655-7214 or FTS 255-7214.

SUPPLEMENTARY INFORMATION: The identification of the Louisiana State Implementation Plan (SIP) found in 40 CFR 52.970 contains two paragraphs designated (c)(46). The source of the error is discussed in the Editorial Note between the two (c)(46) paragraphs in the July 1, 1989, edition of 40 CFR part 52, and is not elaborated on here. The text of the second paragraph 52.970(c)(46) is identical to the text of paragraph 52.970(c)(47). Therefore, EPA is correcting the error by removing the second paragraph 52.970(c)(46).

The identification of the Texas State Implementation Plan (SIP) found in 40 CFR 52.2270 contains three errors: Two paragraphs designated (c)(32); two paragraphs designated (c)(50); and two paragraphs designated (c)(66). The source of each error is discussed in Editorial Notes between duplicate paragraph numbers in the July 1, 1989, edition of 40 CFR part 52. This notice does not elaborate on the sources of the errors. This rule corrects these errors in 40 CFR part 52, subpart SS, by making the following changes:

- The second paragraph 52.2270(c)(32) is redesignated 52.2270(c)(34);
- Paragraph 52.2270(c)(35) will continue to be reserved;
- Paragraphs 52.2270(c)(51) through 52.2270(c)(55) are redesignated 52.2270(c)(52) through 52.2270(c)(56);
- The second paragraph 52.2270(c)(5) is redesignated 52.2270(c)(51);
- Paragraphs 52.2270(c)(57) and 52.2270(c)(58) will continue to be reserved;
- The second paragraph 52.2270(c)(66) is redesignated 52.2270(c)(67); and
- Paragraphs 52.2270(c)(68) and 52.2270(c)(69) are being reserved in this action.

Paragraphs 52.2270(c)(67), (68), and (69) had not previously been used or reserved. Paragraph 52.2270(c)(70) was added to 40 CFR part 52 in a **Federal Register** notice published April 13, 1990, at 55 FR 13904. Paragraph (c)(71) is assigned to a rule currently in Region 6 and EPA Headquarters processing.

EPA finds that there is good cause for exempting this action from prior notice and comment pursuant to 5 U.S.C. 553(d)(3). The changes are noncontroversial and EPA does not anticipate any public interest, other substantive SIP actions would not be delayed, and these changes could be reflected in the July 1, 1990, version of 40 CFR part 52. Therefore, EPA has concluded that notice and comment on this rule would be impracticable, unnecessary, and contrary to the public interest. The public should be advised that this action is effective on the date of publication of this **Federal Register** notice.

Final Action

Today's rule corrects an error in the identification of the Louisiana State Implementation Plan found at 40 CFR 52.970 by removing the second paragraph 52.970(c)(46).

Today's rule corrects three errors in the identification of the Texas State Implementation Plan found at 40 CFR 52.2270. The corrections are as follows: the second paragraph 52.2270(c)(32) is redesignated 52.2270(c)(34); paragraphs 52.2270(c)(51) through 52.2270(c)(55) and redesignated 52.2270(c)(52) through 52.2270(c)(56); the second paragraph 52.2270(c)(50) is redesignated 52.2270(c)(51); the second paragraph 52.2270(c)(66) is redesignated 52.2270(c)(67); and paragraphs 52.2270(c)(68) and 52.2270(c)(69) are being reserved.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 24, 1990. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Air pollution control.

Dated: May 18, 1990.

Joe D. Winkle,

Acting Regional Administrator.

PART 52—[AMENDED]

40 CFR part 52, subparts T and SS, is amended as follows:

Subparts T and SS—Louisiana and Texas

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

Authority: 42 U.S.C. 7401–7642.

§ 52.970 [Amended]

2. Section 52.970 is amended by removing the second paragraph (c)(46).

§ 52.2270 [Amended]

3. Section 52.2270 is amended as follows: the second paragraph 52.2270(c)(32) is redesignated 52.2270(c)(34); paragraphs 52.2270(c)(51) through 52.2270(c)(55) are redesignated 52.2270(c)(52) through 52.2270(c)(56); the second paragraph 52.2270(c)(50) is redesignated 52.2270(c)(51); the second paragraph 52.2270(c)(66) is redesignated 52.2270(c)(67); and paragraphs 52.2270(c)(68) and 52.2270(c)(69) are reserved.

[FR Doc. 90–12232 Filed 5–24–90; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[PP 9F3701/R1072; FRL–3739–7]

Pesticide Tolerances for Primisulfuron-Methyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the herbicide primisulfuron-methyl (3-[4,6-bis-(difluoromethoxy)-pyrimidin-2-yl]-1-(2-methoxycarbonylphenylsulfonyl) urea) in or on corn (forage) at 0.10 part per million (ppm); corn (fodder) at 0.10 ppm; corn (grain) at 0.02 ppm; corn (sweet) (kernels plus cobs with husks removed) at 0.10 ppm; milk at 0.02 ppm; meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.10 ppm; poultry fat, meat, and meat byproducts at 0.10 ppm; and eggs at 0.10 ppm.

DATES: This regulation becomes effective May 25, 1990.

ADDRESSES: Written objections, identified by the document control number, [PP9F3701/R1072], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Acting Product Manager (PM) 23, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1830.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 22, 1989 (54 FR 7597), EPA issued a notice which announced that Ciba-Geigy Corp, Agricultural Division, P.O. Box 18300, Greensboro, NC 27419, proposed that 40 CFR part 180 be amended by establishing a regulation to permit residues of the herbicide 3-[4,6-bis-(difluoromethoxy)-pyrimidin-2-yl]-1-(2-methoxycarbonylphenyl sulfonyl) urea (primisulfuron-methyl) in or on corn (forage) at 0.10 ppm; corn (fodder) at 0.10 ppm; corn (grain) at 0.02 ppm; corn (sweet) (kernels plus cobs with husks removed) at 0.10 ppm; milk at 0.02 ppm; meat, fat, meat byproducts, kidney, and liver of cattle, goats, hogs, horses, and sheep at 0.10 ppm; poultry fat, kidney, liver, meat, and meat byproducts at 0.10 ppm; and eggs at 0.10 ppm.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

1. Plant and animal metabolism studies.

2. A rat oral lethal dose (LD_{50}) with an LD_{50} of greater than 5,050 milligrams/kilogram (mg/kg) of body weight.

3. A 13-week dog feeding study with a no-observed-effect level (NOEL) of 0.625 mg/kg/day.

4. A 13-week rat feeding study with a NOEL of 15.0 mg/kg/day.

5. A rabbit teratology with a developmental NOEL > 600 mg/kg/day (HDT).

6. A rat teratology study with a developmental NOEL of 100 mg/kg/day; a second teratology study with a developmental NOEL > 100 mg/kg/day (HDT). Developmental effects were delayed skeletal development with incomplete or lack of ossification of several bones. The developmental effect occurred at 500 mg/kg/day. A potential for teratogenic effects was not demonstrated by these studies.

7. A rat reproduction study with a reproductive NOEL of 50 mg/kg/day.

8. A 1-year dog feeding study with a NOEL of 25 mg/kg/day.

9. A 2-year rat chronic feeding/oncogenicity study with a NOEL of 14 mg/kg/day with no oncogenic potential observed under the conditions of the study at doses up to and including 467 mg/kg/day (HDT).

10. An 80-week mouse oncogenicity study demonstrated positive oncogenicity at 1,428.5/1,000 mg/kg/day (HDT); the NOEL for the nononcogenic endpoint of concern was 40.2 mg/kg/day in males and < 1.7 mg/kg/day in females. The dosages where increased number of tumors were observed were at or above the maximum tolerated dosage (MTD) (based on weight gains that were more than 10 percent below concurrent controls and increased mortality). Therefore, a potential for oncogenic effects was not demonstrated by this study.

11. *In vitro Salmonella* mutagenicity assay, negative.

12. A chromosome aberration study, negative.

13. A DNA repair, rat hepatocytes, mutagenicity assay, negative.

14. A DNA repair, human fibroblasts, mutagenicity assay, negative.

Based on the lowest effect level (LEL) of 1.72 mg/kg/day in an 80-week mouse-feeding study and a 300-fold safety factor, the acceptable daily intake (ADI) has been set at 0.006 mg/kg/day. The effect seen at the LEL was an increase in absolute and relative liver weights in female mice. A factor of 100 was used to account for the inter- and intraspecies differences, and an added uncertainty factor of 3 was used to account for the marginal effect observed in the low-dose females in this study. The tolerances established by this final rule have a theoretical maximum residue contribution of 0.000571 mg/kg/day and would utilize 9.5 percent of the ADI. These are the only tolerances that have been established for primisulfuron-methyl.

There are no regulatory actions pending against the registration of primisulfuron-methyl. The metabolism of primisulfuron-methyl in plants and animals is adequately understood for purposes of the tolerances set forth below. An analytical method, liquid chromatography, is available for enforcement purposes. Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from:

Calvin Furlow, Public Information Branch, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 242, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703-557-4432.

Based on the information cited above, the Agency has determined that establishing tolerances for residues of the pesticide in or on the listed commodities will protect the public health. Therefore, the tolerances are established as set forth below.

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-54, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: May 11, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

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

b. By adding new § 180.452, to read as follows:

§ 180.452 Primisulfuron-methyl; tolerances for residues.

Tolerances are established for residues of primisulfuron-methyl (3-[4,6-bis-(difluoromethoxy)-pyrimidin-2-yl]-1-(2-methoxycarbonylphenylsulfonyl) urea) in or on the following raw agricultural commodities.

Commodities	Parts per million
Cattle, fat	0.10
Cattle, meat	0.10
Cattle, mbyp	0.10
Corn, fodder	0.10
Corn, forage	0.10
Corn, fresh (including sweet kernels plus cobs with husks removed)	0.10
Corn, grain	0.02
Eggs	0.10
Goats, fat	0.10
Goats, meat	0.10
Goats, mbyp	0.10
Hogs, fat	0.10
Hogs, meat	0.10
Hogs, mbyp	0.10
Horses, fat	0.10
Horses, meat	0.10
Horses, mbyp	0.10
Milk	0.02
Poultry, fat	0.10
Poultry, meat	0.10
Poultry, mbyp	0.10
Sheep, fat	0.10
Sheep, meat	0.10
Sheep, mbyp	0.10

[FR Doc. 90-12219 Filed 5-24-90; 8:45 am]

BILLING CODE 6560-50-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 31, 71, and 91

[CGD 87-089]

RIN 2115-AD03

Cargo Gear Inspection and Testing Intervals

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations on the interval for inspection and testing of cargo gear. This change extends the interval to five years from the presently required four years. This action is taken to be consistent with standards of many other countries so as to not place United States flag vessels at a competitive disadvantage by requiring more frequent inspection.

EFFECTIVE DATE: June 25, 1990.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Stephen L. Johnson, Ship Design Branch, Office of Marine Safety, Security and Environmental Protection, (202) 267–2997.

SUPPLEMENTARY INFORMATION: On February 6, 1989, a notice of proposed rulemaking, entitled Cargo Gear Inspection and Testing Intervals, was published in the **Federal Register** (54 FR 5642). The Coast Guard received six letters commenting on the proposed rulemaking. A public hearing was not requested and one was not held.

Drafting Information

The principal persons involved in drafting this rulemaking are Lieutenant Commander Stephen Johnson, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Background

Until the last few years most countries with shipping laws required shipboard cargo gear to be proof tested and thoroughly examined quadrennially. In 1979 the General Conference of the International Labour Organization (ILO) adopted the Occupational Safety and Health (Dock Work) Convention, 1979. Article 22 of the Convention requires lifting appliances forming part of a ship's equipment to be tested at least once in every five years.

This action has caused many countries to extend the required interval of testing to five years and allow ships with five year testing certification to operate in their ports. An annual savings of testing costs of twenty percent is realized by shipowners opting to test at five year intervals rather than quadrennially. This change in the regulations will allow U.S. shipowners to take this option and realize the same savings that their foreign competitors can obtain.

This change will also facilitate the scheduling of testing during shipyard visits for drydocking inspections now required twice within five years.

Discussion of Comments and Changes

Two of the six comments were from shipping companies, one was from a ship agent, and one was from a ship operator who were all in support of the proposal. The other two comments were from the American Bureau of Shipping (ABS) and the International Cargo Gear Bureau (ICGB).

These two organizations have been authorized by the Coast Guard to certify shipboard cargo gear on Coast Guard inspected vessels. ABS was in full support of the proposal, but ICGB was not and raised several questions.

ICGB questioned the conclusion that "U.S. vessel owners either have to schedule extra shipyard visits or conduct testing more often than quadrennially if they are to coincide with drydockings" and made the observation that "shipboard cargo gear tests are not universally scheduled to be coincidental with drydockings, and are not universally arranged at shipyards." ABS made the comment that the five year interval will permit harmonization with major class surveys and statutory inspections. Two of the other respondents also commented that this would be an advantage of the proposal. The point made by ICGB is valid and the position made in the NPRM may have been overstated; however, it should be advantageous to some owners to have the intervals of such tests and inspections coincide.

ICGB questioned the statement in the preamble that "the international standard interval for cargo gear testing is being changed to five years" and made the observation that dock authorities around the world vary in their requirements and enforcement. ICGB also observed that the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) regulations specify a four year proofload testing cycle for shipboard cargo gear. It was also observed that developments at ILO indicate a trend towards more frequent load testing requirements rather than extension of required intervals because the previous ILO requirements did not specify a testing interval.

The number of countries in the world that enforce quadrennial cargo gear testing requirements is relatively small compared to the number of countries that do not. Shipowners and cargo certifying organizations must be aware of which countries enforce the different test periods. Owners of vessels that do not visit countries enforcing quadrennial test intervals should have the opportunity to test at five year intervals. Owners of vessels that visit those countries that still enforce quadrennial test intervals requirements may still have to test quadrennially and should consult with their cargo gear certifying authority to determine whether or not quadrennial testing is necessary for their particular operations. The purpose of this rulemaking is to give vessel owners more flexibility to compete in international markets without compromising the level of safety of cargo gear operations. The OSHA vessel cargo gear rules are currently under revision (RIN 1218–AA56).

ICGB expressed surprise at the estimates on number of quadrennial tests conducted on U.S. vessels and the total cost of $5 million annually. Other comments received also indicate the totals to be grossly overestimated. The number of quadrennial tests conducted each year is approximately 50. However, the cost per ship of quadrennial testing is significantly more than the previously estimated $5,000 and may be as much as $25,000. The total annual cost to U.S. shipowners is now estimated to be several hundred thousand dollars or on the order of one tenth of the original estimate. The annual savings to U.S. shipowners is now estimated to be approximately $200,000.

E.O. 12291 and DOT Regulatory Policies and Procedures

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that a full regulatory evaluation is unnecessary.

The following comprises a summary of the estimated costs savings to be associated with this final rule. On the order of 50 quadrennial cargo gear load tests costing approximately $20,000 each are performed each year on U.S. flag vessels. Implementation of these changes may reduce the number of tests performed yearly by up to 20% which would reduce the cost to U.S. vessel owners by a total of approximately $200,000 per year. These figures are based on information received since the NPRM was published and reflect appropriate adjustments to the preliminary estimates in the NPRM.

Regulatory Flexibility Act

The impact of this final rule is not significant. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this final rule will not have

a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking places no new or additional information collection or recordkeeping requirements upon the public.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

Those actions performed as a part of Coast Guard operations to carry out statutory authority in the areas of maritime safety which do not normally have a significant effect on the quality of the human environment are categorically excluded in accordance with Section 2.B.2., of Commandant Instruction M16475.1B. The Coast Guard has considered the environmental impact of the final rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. A Categorical Exclusion Determination Statement has been prepared and included in the rulemaking docket.

List of Subjects

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 46 CFR parts 31, 71, and 91 are amended as follows:

PART 31—[AMENDED]

1. The authority citation for part 31 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 5115, 8105; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

§ 31.37–1 [Amended]

2. In § 31.37–1(d), the numeral "4" is removed and the word "five" is added in its place.

§ 31.37–5 [Amended]

3. In § 31.37–5(a), the word "quadrennial" is removed and the words "fifth year" are added in its place.

§ 31.37–40 [Amended]

4. In §§ 31.37–40 (a) and (c), the word "four" is removed and the word "five" is added in its place.

PART 71—[AMENDED]

§ 71.47–1 [Amended]

5. The authority citation for part 71 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

§ 71.47–1 [Amended]

6. In § 71.47–1(d), the numeral "4" is removed and the word "five" is added in its place.

§ 71.47–5 [Amended]

7. In § 71.47–5(a), the word "quadrennial" is removed and the words "fifth year" are added in its place.

§ 71.47–40 [Amended]

8. In §§ 71.47–40 (a) and (c), the word "four" is removed and the word "five" is added in its place.

PART 91—[AMENDED]

9. The authority citation for part 91 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 793; 49 CFR 1.46.

§ 91.37–1 [Amended]

10. In § 91.37–1(d), the numeral "4" is removed and the word "five" is added in its place.

§ 91.37–5 [Amended]

11. In § 91.37–5(a), the word "quadrennial" is removed and the words "fifth year" are added in its place.

§ 91.37–40 [Amended]

12. In §§ 91.37–40 (a) and (c), the word "four" is removed and the word "five" is added in its place.

Dated: May 4, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90–12177 Filed 5–24–90; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[General Docket No. 86–337; FCC 90–150]

An Automatic Transmitter Identification System for Radio Transmitting Equipment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action requires that all video satellite uplink transmissions, licensed under part 25, be encoded with a signal to identify the station. It specifies that a subcarrier based system will be used to transmit the identification. The need for better radio spectrum management to control interference, allow flexibility to deal with new technology and standardize the proliferating number of pseudo-automatic identification systems now coming into use make this item necessary. The intended effect is improved radio spectrum management.

EFFECTIVE DATE: March 1, 1991.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John R. Hudak, Telephone: (202) 632–6977.

SUPPLEMENTARY INFORMATION: The regulatory history of this item is as follows: Notice of Proposed Rulemaking and Notice of Inquiry in Docket 86–337, FCC 86–356, Adopted August 7, 1986, and Relased August 19, 1986, 51 FR 32223, September 10, 1986. Further Notice of Proposed Rulemaking in Docket 86–337, FCC 87–213, Adopted June 10, 1987, and Released July 9, 1987, 52 FR 26538, July 15, 1987.

Summary of Final Rule

1. By this action the Commission requires that effective March 1, 1991, all satellite video uplink radio transmissions include an Automatic Transmitter Identification System (ATIS). It will be a continuous signal with Morse Code identification modulated onto a subcarrier of 7.1 MHz. Should an interference problem occur the ATIS information can be detected and it will immediately provide the identity of the signal and a telephone number through which to contact the station operator.

2. For stations using transmitting equipment manufactured on or after March 1, 1991, the ATIS equipment must be integrated into the transmitter chain

in a method that cannot easily be defeated. Stations using equipment manufactured prior to March 1, 1991, must also employ ATIS, but it may be installed in a somewhat less secure manner.

3. A general waiver of the subcarrier based ATIS is provided for stations presently employing an identification signal on SID AMOL. This form of identification will be grandfathered so long as the station utilizes transmitting equipment manufactured prior to March 1, 1991.

4. Establishment of ATIS was originally proposed in the Phase II Final Report of the FCC Advisory Committee on Reduced Orbital Spacing. The great majority of commenters support ATIS. However, the technical methodology to employ has been in dispute. After reviewing various technical proposals, the Commission has concluded that a single standard is needed and that a subcarrier based system is the preferred approach. Specifications of the subcarrier system are set forth in this First Report and Order as listed in the Rule Changes.

5. The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this action 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.

List of Subjects in 47 CFR Part 25

Communications equipment, Satellites.

Rule Changes

PART 25—AMENDED

Title 47 of the CFR part 25 is amended as follows:

1. The authority citation for part 25 continues to read as follows:

Authority: Secs. 4(i) and 303(r) of the Communications Act of 1934, as amended.

2. Section 25.206 is revised to read as follows:

§ 25.206 Station identification.

The requirement for transmission of station identification is waived for all radio stations licensed under this part with the exception of satellite uplinks carrying broadband video information which are required to incorporate ATIS in accordance with the provisions set forth under § 25.308 of these Rules.

3. Section 25.308 is added to read as follows:

§ 25.308 Automatic Transmitter Identification System (ATIS).

All satellite uplink transmissions carrying broadband video information shall be identified through the use of an automatic transmitter identification system as specified below.

(a) Effective March 1, 1991, all satellite video uplink facilities shall be equipped with an ATIS endcoder meeting the specifications set forth in paragraph (d) of this section.

(b) All video uplink facilities utilizing a transmitter manufactured on or after March 1, 1991 shall be equipped with an ATIS encoder meeting the performance specifications set forth in paragraph (d) of this section and the encoder shall be integrated into the uplink transmitter chain in a method that cannot easily be defeated.

(c) The ATIS signal shall be a separate subcarrier which is automatically activated whenever any RF emissions occur. The ATIS information shall continuously repeat.

(d) The ATIS signal shall consist of the following:

(1) A subcarrier signal generated at a frequency of 7.1 MHz +/− 25 KHz and injected at a level no less than −26 dB (referenced to the unmodulated carrier). The subcarrier deviation shall not exceed 25 kHz peak deviation.

(2) The protocol shall be International Morse Code keyed by a 1200 Hz +/− 800 Hz tone representing a mark and a message rate of 15 to 25 words per minute. The tone shall frequency modulate the subcarrier signal.

(3) The ATIS signal as a minimum shall consist of the following:

(i) The FCC assigned earth station call sign;

(ii) A telephone number providing immediate access to personnel capable of resolving ongoing interference or coordination problems with the station;

(iii) A unique ten digit serial number of random number code programmed into the ATIS device in a permanent manner such that it cannot be readily changed by the operator on duty;

(iv) Additional information may be included within the ATIS data stream provided the total message length, including ATIS, does not exceed 30 seconds.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90–12229 Filed 5–24–90; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 55, No. 102
Friday, May 25, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213, 305, 316, 317, 351, 831, 842, 870, and 890

Providing Benefits for Certain Temporary Appointees

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise its regulations governing health benefits, life insurance, and retirement to extend eligibility for coverage to employees serving under temporary appointments, when such appointments are specifically intended to lead to conversion to permanent appointments and are needed to fulfill an eligibility requirement for the conversion. The revised regulations would also permit such employees to be treated as nontemporary for reduction in force purposes. These changes would improve the government's ability to recruit candidates for jobs that are not truly temporary and would provide equitable treatment for all employees who must receive a provisional temporary appointment, regardless of the specific length of that appointment.

DATES: Comments must be received on or before July 24, 1990.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director for Career Entry and Employee Development, Office of Personnel Management, room 6F08, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 606–0960.

SUPPLEMENTARY INFORMATION: Under OPM's regulations, employees whose appointments are limited to 1 year or less are not eligible for coverage under the Civil Service Retirement System (CSRS), the Federal Employees Retirement System (FERS), or the Federal Employees' Group Life Insurance Program (FEGLI). Temporary employees are not eligible to participate in the Federal Employees Health Benefits Program (FEHBP) until they complete 1 year of service and, even then, do not receive Government contributions toward the premium. Employees whose appointments are limited to 1 year or less are generally in tenure group 0 (i.e., they are not competing employees) during a reduction in force. The limited benefits reflect the short-term nature of most temporary appointments, which do not entail the degree of commitment by either the agency or the employee that is characteristic of continuing employment. In a few situations, however, a temporary appointment is made, not because the tenure of the job is either short-term or uncertain, but rather because a provisional appointment is necessary to recruit or to qualify a candidate for continuing employment.

Such situations may occur when eligibility for the permanent appointment is contingent upon time-consuming licensure or clearance procedures which are outside the employing agency's control. In order to meet urgent hiring needs or to compete with non-Federal employers, Federal agencies must often offer candidates immediate employment. The most common example of this use of temporary appointments is in the Department of Veterans Affairs, which uses such appointments to recruit nurses pending State certification or registration and completion of necessary verification of references. Less commonly, temporary appointments may be used during a change of Presidential administration or change of agency head to permit orderly transition while proposed appointees are awaiting White House approval and/or Senate confirmation.

Temporary appointments may also be made for the express purpose of conversion to permanent employment when the authority for the permanent appointment actually requires the preliminary or trial appointment. The most common examples of this situation are temporary appointments of veterans with compensable service-connected disabilities of 30 percent or more and 700-hour trial appointments of severely handicapped individuals. The disabled veterans are eligible for noncompetitive appointment under 5 U.S.C. 3112; but, because the law refers to an appointment "leading to conversion to career or career-conditional employment," they must receive an initial temporary appointment in order to be eligible for conversion. Severely handicapped individuals are eligible for nontemporary Schedule A appointments under 5 CFR 213.3102(u) only if they are certified to the particular position by a State vocational rehabilitation agency or the Department of Veterans Affairs or, for those recruited from other sources, if they complete a trial appointment of 700 hours (approximately 3 months).

The common feature of all these situations is that the appointees are recruited from the outset for permanent, not temporary, employment. The initial temporary appointments are not needed to permit evaluation of the appointees' on-the-job performance. That purpose is served by the probationary or trial period which is required for all new appointees, including those who receive permanent appointments. Rather the temporary appointments (to be designated in these regulations as provisional appointments) are merely a device to effect the permanent appointments.

Denying benefits to appointees in these situations may create recruiting difficulties for Federal agencies, particularly in shortage occupations where they must compete with non-Federal employers. Denying benefits may also create inequity for the appointees compared to others in similar situations, including those whose provisional appointments may be made for periods longer than 1 year.

For example, the appointing authority applicable to nurses pending State registration provides for 1-year appointments, while that applicable to law school graduates pending admission to the bar provides for 14-month appointments. Thus, in the same situation, attorneys are eligible for benefits while nurses are not. Similarly, veterans hired under the veterans readjustment authority receive 2-year initial appointments and are eligible for benefits immediately, while those hired under the authority in 5 U.S.C. 3112 generally receive 1-year initial appointments and must wait until conversion to be covered, even if all other conditions are identical.

Employees serving under provisional appointments also need to be

distinguished from other temporary appointees during a reduction in force. Ordinarily, employees whose appointments are limited to 1 year or less are in tenure group 0 and are not considered competing employees in RIF. Employees whose appointments have time limits longer than 1 year, or who have completed 1 year of continuous service under temporary appointments, are in tenure group III. Group 0 is intended for temporary employees who serve at the will of the agency. Group III is for nontemporary nonstatus employees, including those whose provisional appointments are made for periods longer than 1 year. That group should include all employees who are offered and accept positions with the written understanding that the provisional appointments—regardless of length—will be converted to permanent as soon as necessary procedures are completed. Inclusion of the provisional appointees in tenure group III would afford them procedural protections and appeal rights more appropriate for employees recruited into permanent positions.

To relieve these difficulties for agencies and appointees, OPM proposes to extend eligibility for life insurance, health benefits, and retirement coverage to temporary appointees and to permit the appointees; inclusion in tenure group III when: The temporary appointments are expressly intended to lead to conversion upon satisfactory completion of required licensure, clearance or approval processes, and this intent is documented in writing; the appointee has satisfied all other requirements for permanent appointment; and appropriate appointing and budgetary authority exists for the permanent appointment. The revised regulations would not apply to situations in which continuing positions are filled on a temporary basis because of uncertainty of funding or because the appointees are not within reach for permanent appointment on the appropriate civil service register or agency applicant supply file. Employees who accept such appointments have no assurance that their appointments will become permanent and, thus, are temporary employees in fact, as well as in name.

The language of the proposed regulations would cover all appointments that meet the stated conditions, whether or not the authorities are specifically listed. We would, however, be interested in knowing of additional situations in which temporary appointments are used on such a basis. We ask that agencies which are using such provisional appointments include in their comments on the regulations a description of the positions being filled and the specific authorities being used.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations affect only the way in which Federal agencies appoint and compensate certain employees.

List of Subjects

5 CFR Parts 213, 305, and 317

Government employees.

5 CFR Part 316

Government employees, Veterans.

5 CFR Part 351

Administrative practice and procedure, Government employees.

5 CFR Part 831 and 842

Administrative practice and procedure, Claims, Firefighters, Government employees, Handicapped, Law enforcement officers, Retirement.

5 CFR Part 870

Administrative practice and procedure, Government employees, Life insurance, Retirement, Workers' compensation.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement, Claims.

Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to amend 5 CFR parts 231, 305, 316, 317, 351, 831, 842, 870, and 890 as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, 8337(h) and 8457.

2. In § 213.3302, paragraph (b) is revised to read as follows:

§ 213.3302 Temporary Schedule C positions during a presidential transition, as a result of changes in department or agency heads, or at the time of a creation of a new department or agency.

* * * * *

(b) Individual appointments under this authority may be made for 120 days, with one additional extension of 120 days. These positions must be of a confidential or policy-determining character and are subject to instructions issued by OPM. Appointments made under this provision may be deemed provisional appointments for purposes of the regulations set out in parts 351, 831, 842, 870, and 890 of this chapter if they meet the criteria set out in § 316.401 of this chapter.

PART 305—EXECUTIVE ASSIGNMENT SYSTEM

3. The authority citation for part 305 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 3324; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; E.O. 11315, 3 CFR 1966 Comp., p. 165.

4. In § 305.509, paragraphs (a) and (b) are revised to read as follows:

§ 305.509 Limited executive assignments.

(a) *Authorization.* OPM may authorize an agency to fill a position by limited executive assignment when:

(1) The position is expected to be of limited duration; or

(2) The agency establishes an unusual need for urgent staffing that cannot adequately be met under the procedures. required for career or noncareer executive assignments.

(b) *Time limit.* OPM shall specify a time limit within which an agency may use an authority for limited executive assignment, and may revoke the authority at any time. Appointments authorized under this provision for a period of 1 year or less may be deemed provisional appoinments for purposes of the regulations set out in parts 351, 831, 842, 870, and 890 of this chapter if they meet the criteria set out in § 316.401 of this chapter.

* * * * *

PART 316—TEMPORARY AND TERM EMPLOYMENT

5. The authority citation for part 316 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, and E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); § 316.302 also issued under 5 U.S.C. 3304(c), 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585; § 316.402 also issued under 5 U.S.C. 3304(c) and 3312, 22 U.S.C. 2506 (93 Stat. 371), E.O. 12137, 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585.

6. § 316.401 is revised to read as follows:

§ 316.401 Purpose and duration.

(a) *Purpose.* OPM may authorize an agency to make a temporary limited appointment to meet an administrative need, which may be either:

(1) A need for temporary employment, such as to fill a temporary position or a continuing position for a temporary period; or

(2) A need for a provisional appointment leading to permanent appointment when a position must be filled more quickly than would be possible under the procedures required for nontemporary appointment or when such a provisional appointment is a requirement of the applicable authority. An agency making an appointment under this provision must have a specific intention to convert the appointee to a nontemporary appointment under appropriate authority before the expiration of the temporary appointment, must have current budgetary and appointing authority for the nontemporary appointment (assuming satisfactory completion of the required procedures), must state this intention in any written offer of employment and document this intention as part of the permanent record of the initial appointment in accordance with instructions issued by OPM. Appointments which may be treated as provisional appointments under this paragraph may be made under any appropriate authority, including, but not limited to:

(i) Noncompetitive temporary appointments of disabled veterans under § 316.402(b)(2), when the appointments are intended to afford eligiblity for conversion in accordance with § 315.707 of this chapter and section 3112 of title 5, United States Code;

(ii) Temporary appointments of nurses in the Department of Veterans Affairs, when the appointments are made under the provisions of section 4114 of title 38, United States Code, with the intention of converting the appointees to continuing appointments as soon as the appointees obtain required State certification or registration and/or the agency completes necessary verification of references;

(iii) Identical Temporary Schedule C and New Temporary Schedule C appointments made under § 213.3302 of this chapter, when the appointees are to be converted to nontemporary Schedule C appointments upon OPM approval and completion of necessary clearances;

(iv) Limited executive assignments made under § 305.509 of this chapter and Senior Executive Service limited term and limited emergency appointments made under § 317.601 of this chapter, when the appointees are to be converted to nontemporary appointments in the Executive Assignment System or the Senior Executive Service or to nontemporary Presidential appointments, upon further action, such as OPM approval, White House clearance, and/or confirmation by the Senate; and

(v) Temporary appointments of severely physically handicapped individuals, when such appointments are required to demonstrate qualifications for nontemporary appointment under § 213.3102(u) of this chapter, and when the appointees will be converted to such nontemporary appointment upon successful performance in the trial position.

(b) *Duration.* An agency may make a temporary appointment for a definite period of 1 year or less. In some cases, a time limit is specified in the applicable regulation or OPM authoritzation.

PART 317—APPOINTMENT, REASSIGNMENT, TRANSFER AND REINSTATEMENT IN THE SENIOR EXECUTIVE SERVICE

7. The authority citation for part 317 continues to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3395, 3397, 3593, and 3595.

8. In § 317.602, paragraph (a) is revised to read as follows:

§ 317.602 Conditions of appointment.

(a) A limited appointment may be made only to a general position. Appointments authorized under this provision may be deemed provisional appointments for purposes of the regulations set out in parts 831, 842, 870, and 890 of this chapter if they meet the criteria set out in a 316.401 of this chapter.

* * * * *

PART 351—REDUCTION IN FORCE

9. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1301, 3502, 3503.

10. In § 351.502, paragraph (b)(3) is revised to read as follows:

§ 351.501 Order of retention—competitive service.

* * * * *

(b) * * *

(3) Group III includes all employees serving under indefinite appointments, temporary appointments pending establishment of register, status quo appointment, and any other nonstatus nontemporary appointment, as well as appointments which meet the definition of provisional appointments contained in § 316.401 of this chapter.

* * * * *

PART 831—RETIREMENT

11. The authority citation for part 831 is added to read as follows, and the subpart authority citations are removed:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.503 also issued under sec 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.621 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251; Subpart S also issued under 5 U.S.C. 8345(k); Subpart V also issued under 5 U.S.C. 8343a and sec. 6001, Pub. L. 100–203.

12. In § 831.201, paragraph (b) is amended by removing the word "or" at the end of paragraph (b)(3), by removing the period at the end of paragraph (b)(4) and adding the words "; or" in its place, and by adding a new paragraph (b)(5) to read as follows:

§ 831.201 Exclusions from retirement coverage.

* * * * *

(b) * * *

(5) The appointment meets the definition of a provisional appointment contained in § 316.401 of this chapter.

* * * * *

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

13. The authority citation for subpart A of part 842 continues to read as follows:

Authority: 5 U.S.C. 8461; § 842.105 also issued under 5 U.S.C. 8402(c)(1); § 842.106 also issued under 5 U.S.C. 8402(c)(1).

14. In § 842.105, paragraph (a)(1) is revised to read as follows:

§ 842.105 Regulatory exclusions.

(a) * * *

(1) Employees serving under appointments limited to 1 year or less, unless such appointments meet the definition of provisional appointments contained in § 316.401 of this chapter; and

* * * * *

PART 870—BASIC LIFE INSURANCE

15. The authority citation for part 870 continues to read as follows:

Authority: 5 U.S.C. 8716.

16. In § 870.202, paragraph (a)(1) is revised to read as follows:

§ 870.202 Exclusions.

(a) * * *

(1) An employee serving under an appointment limited to 1 year or less, except:

(i) An employee so appointed for full-time employment or part-time employment with a regular tour of duty without break in service or after a separation of 3 days or less, following service in which he/she was insured;

(ii) An acting postmaster;

(iii) A Presidential appointee appointed to fill an unexpired term; and

(iv) An appointee whose appointment meets the definition of provisional appointment set out in § 316.401 of this chapter.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

17. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104 amd Pub. L. 100–654; § 890.803 also issued under sec. 303 of Pub. L. 99–569, 100 Stat. 3190, sec. 188 of Pub. L. 100–204, 101 Stat. 1331, and sec. 204 of Pub. L. 100–238, 101 Stat. 1744; Subparts J and K also issued under title I of Pub. L. 100–654.

18. In § 890.102, paragraph (c)(1) is revised to read as follows:

§ 890.102 Coverage.

* * * * *

(c) * * *

(1) An employee serving under an appointment limited to 1 year or less, except an acting postmaster, a Presidential appointee appointed to fill an unexpired term and an appointee whose appointment meets the definition of provisional appointment set out in § 316.401 of this chapter.

[FR Doc. 90–12204 Filed 5–24–90; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[Docket No. FV–90–162]

Idaho-Eastern Oregon Onions; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 958 for the 1990–91 fiscal period. Authorization of this budget would permit the Idaho-Eastern Oregon Onion Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by June 4, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–447–2020.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 103 and Order No. 958, both as amended (7 CFR Part 958), regulating the handling of onions grown in designated counties of Idaho and Malheur County, Oregon. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referered to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 32 handlers of Idaho-Eastern Oregon onions under this marketing order, and 337 onion producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of onion producers and handlers may be classified as small entities.

The budget of expenses for the 1990–92 fiscal period was prepared by the Idaho-Eastern Oregon Onion Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of Idaho-Eastern Oregon onions. They are familiar with the committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Idaho-Eastern Oregon onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses. A recommended budget and rate of assessment is usually acted upon before the season starts, and expenses are incurred on a continuous basis.

The committee met on April 24, 1990, and unanimously recommended a 1990–91 budget of $833,214.32, $249,866.68 less than the previous year. Major reductions were made in the research, promotion and advertising, export, contingency and reserve, travel, miscellaneous, and capital improvements portions of the budget, and the compliance investigator category was eliminated. These reductions offset increases in various categories, which include the salaries of the manager, assistant manager, and secretaries, and increases for office supplies and joint expenses. The committee also unanimously recommended an assessment rate of $0.11 per hundredweight of onions, $0.02 more than last year. This rate, when applied to anticipated fresh market shipments of 7.2 million hundredweight, would yield $792,000 in assessment

income. This, along with $41,214.32 in interest income and from the committee's authorized reserves, would be adequate for budgeted expenses. The projected reserve at the end of the 1990–91 fiscal period is $305.737.86, which would be carried over into the next fiscal period. This amount is within the maximum permitted by the order on one fiscal period's expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessment on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Interested persons are provided 10 days in which to file comments with respect to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 958

Marketing agreements, onions, reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 958 be amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

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

2. Section 958.234 is added to read as follows:

§ 958.234 Expenses and assessment rate.

Expenses of $833,214.32 by the Idaho-Eastern Oregon Onion Committee are authorized and an assessment rate of $0.11 per hundredweight of onions is established for the fiscal period ending June 30, 1991. Unexpected funds may be carried over as a reserve.

Dated: May 22, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–12199 Filed 5–24–90; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Parts 1001, 1002 and 1004

[Docket Nos. AO–14–A62 and AO–14–A62–R01 AO–71–A77 AO–71–A77–R01, and AO–160–A65 and AO–160–A65–R01; AMS–88–105 and DA–89–028]

Milk in the New England, New York-New Jersey and Middle Atlantic 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 changes in the New England, New York-New Jersey, and Middle Atlantic Federal milk orders based on industry proposals considered at a public hearing held June 27–July 21, 1988; continued November 14–16, 1988; and re-opened August 22, 1989. For all three orders, the decision recommends adopting 3-class pricing provisions that are uniform among the three northeast orders and between these orders and other Federal milk orders, and the same method of determining Class II prices that is used in other orders. These changes will assure greater equity in intermarket sales of milk.

For the New England order (Order 1), changes are recommended that would allow producer-handlers to receive diverted producer milk from pooled handlers and would eliminate the postmark date as a basis for determining whether late payment charges are due on handler payments to the producer-settlement fund.

Changes recommended for the New York-New Jersey order (Order 2) would establish minimum Class I utilization requirements for pool plants and bulk tank units, and adopt proposals dealing with the qualification of producer milk for pooling. Amendments that would adjust Order 2 transportation allowances to more closely relate the location value of milk to the costs incurred in transporting milk from farms and country plants to the market's major consumption centers are also recommended.

A recommended change to the Middle Atlantic milk order (Order 4) would price diverted milk at the location to which it is diverted.

DATES: Comments are due on or before July 9, 1990.

ADDRESSES: Comments (seven copies) should be filed with the Hearing Clerk, room 1081, 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. The amendments would promote orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued June 7, 1988; published June 20, 1988 (53 FR 21825).

Supplemental Notice of Hearing: Issued September 29, 1988; published October 4, 1988 (53 FR 38963).

Notice of re-opened Hearing: Issued August 10, 1989; published August 16, 1989 (54 FR 33709). (To consider changes in Class II pricing for 40 orders.)

Partial Recommended Decision: Issued September 20, 1980; published September 26, 1989 (54 FR 39377).

Partial Final Decision: Issued December 12, 1989; published December 18, 1989 (54 FR 51749).

Order Amending the New York-New Jersey Order: Issued January 25, 1990; published January 31, 1990 (55 FR 3198).

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 New England, New York-New Jersey, and Middle Atlantic marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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 45th day after publication of this decision in the **Federal Register**. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Syracuse, New York, on June 27-July 1, July 5–8 and July 18–21, 1988; at Manchester, New Hampshire, on July 11–14, 1988; at Philadelphia, Pennsylvania, on November 14–16, 1988; and at Alexandria, Virginia, on August 22, 1989, pursuant to a notice of hearing issued June 7, 1988 (53 FR 21825), a supplemental notice of hearing issued September 29, 1988 (53 FR 38963), and a notice of re-opened hearing issued August 10, 1989 (54 FR 33709).

The material issues on the record of hearing relate to:

Proposals to amend all three orders
1. Classes of utilization.
a. Adoption of 3-Class (uniform) classification.
b. Class I and the fluid milk product definition.
c. Fluid cream product definition.
d. Class II price.
e. Seasonal price adjustors.
f. Uniform announcement of class prices and butterfat differential.
g. Conforming changes.

Proposals to amend Orders 1 and 2
2. Pooling standards.
a. Health authority approval.
b. Minimum shipping requirements.
c. Qualification of producer milk for pooling.
3. Seasonal payment plans.
4. Location pricing, zone pricing and transportation credits.
a. Order 2.
b. Order 1.

Proposals to amend Order 1 only
5. Producer-handler receipts of pool milk.
6. Charges on overdue accounts.

Proposals to amend Order 2 only
7. Partial payments to producers and to cooperatives, and the dates by which certain reports, announcements and payments should be made to accelerate payments to producers and accommodate economic conditions resulting from Pennsylvania and New York State law.

Proposals to amend Orders 2 and 4 only
8. Partial payments to producers and to cooperatives, and the dates by which certain reports, announcements and payments should be made for the purpose of further accelerating payments to producers.

Proposal to amend Order 4 only
9. Pricing diverted producer milk.

Issues No. 7 and 8 were dealt with in a partial recommended decision issued September 20, 1989 (54 FR 39377), a partial final decision issued December 12, 1989 (54 FR 51749), and a final order issued January 25, 1990 (55 FR 3198). Only Issues No. 1 through 6 and Issue No. 9 are addressed in this decision.

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. Classes of utilization.

a. *Adoption of 3-Class (uniform) classification.* Each of the three orders under consideration in this proceeding should provide for the same basic classification plan that exists in most other Federal order markets. As adopted herein, each order would provide for three classes of utilization, with the milk uses included in each class being the same for each order. As far as possible, and consistent with the idiosyncrasies of the orders, the same basic procedure would be used under each order for classifying milk transferred or diverted from pool plants to other plants, and for allocating a handler's receipts to the handler's utilization to determine the classification of producer milk. Each order would use the same Class II and Class III price formulas, with Class III prices adjusted by each order's present seasonal adjustors. The classification provisions adopted in this decision were, with some minor differences, adopted for 39 Federal orders in 1974, and have been incorporated in a number of other orders during the intervening period.

The present classification provisions of the three orders provide for two classes of use, while nearly all of the other Federal milk orders classify milk in three classes. In the Northeast orders, as in other orders, Class I is composed primarily of fluid milk products, which are defined in part "b." under this issue. Under the New England, New York-New Jersey and Middle Atlantic orders (Orders 1, 2 and 4), all soft and hard manufactured products are grouped together in Class II. Under most other orders, however, cream products and soft manufactured products such as yogurt, cottage cheese and ice cream are considered Class II, while butter, milk powder and hard cheese are classified as Class III.

The Northeast orders' Class I prices are determined, as are other orders' Class I prices, by adding a Class I price differential to the basic formula price for the second preceding month. The Class II prices for Orders 1, 2 and 4 currently are determined by adjusting the basic formula price for the month by seasonal adjustors, which range in value from a minus 12 cents to a plus 12 cents. In other orders, Class III prices are the same as the basic formula price, with no seasonal adjustment. Class II prices in other orders are computed pursuant to a formula intended to result in a Class II price that exceeds the Class III price level by an average of 10 cents. The computation of Class II prices for the Northeast orders will be discussed later under this issue in part "d". Class III prices for the three orders will be the same as the present Class II prices.

A group of cooperative associations that represent a majority of the producers whose milk is pooled under the New England and Middle Atlantic orders, and a substantial number of producers whose milk is pooled under the New York-New Jersey order, proposed that the classification provisions of the three orders be changed to incorporate three classes of use instead of two. Proponents of a three-class pricing system argued that the products currently classified as Class II under Orders 1, 2 and 4 do not all have the same time and form utility, and therefore should not have the same value. The cooperatives did not, however, agree on the appropriate classification of some products.

A witness representing Eastern Milk Producers, a cooperative association representing 3,400 northeast dairy farmers who supply milk to five Federal order markets; eight cooperative associations affiliated with Eastern; and Agri-Mark, Inc., the principal cooperative association representing producers whose milk is pooled under Order 1; testified as proponent of a three-class pricing system consistent with the uniform classification provisions in most other orders. The Eastern/Agri-Mark witness stated that 36 of the 43 Federal milk orders in effect at the time of the hearing classify milk as proposed by Eastern/Agri-Mark. According to the witness, the uniform classification provisions should also be incorporated into the three Northeast orders to assure competitive equity between the Northeast marketing areas and other Federal order marketing areas. The witness explained that the local character of the Northeast milk markets disappeared long ago, as intermarket and interregional distribution of nonfluid dairy products became common. He said that even soft manufactured products, which had been locally distributed, now compete with products classified and priced under other orders at a higher price.

The Eastern/Agri-Mark representative testified that milk used in the following products should be classified as Class II: Fluid cream products, any product with

6 percent nonmilk fat that resembles fluid cream products, and packaged inventory of those products; yogurt, cottage cheese, milkshake and ice cream mixes containing 20 percent total solids, and frozen dessert mixes containing 20 percent solids; sour cream products, concentrated milk in bulk fluid form, infant or dietary formulas packaged in hermetically sealed or aseptic containers, custard, puddings, pancake mixes and buttermilk biscuit mixes; and bulk milk and cream disposed of to commercial food processing establishments. The witness explained that handlers demand high-quality milk on a regular basis for use in these manufactured products. Typically, he stated, these products are processed at fluid milk plants or in specialized plants distinct from those at which hard products are manufactured, and therefore should bear part of the cost necessary to attract an adequate supply of milk. The Eastern/Agri-Mark witness testified that there is little relationship between the amount of reserve milk on the market and the quantity of milk used to produce such products, due to the products' limited storage life and the need to process them on a regular basis.

The uses of milk proposed by Eastern/Agri-Mark for Class III are also the same as in most other Federal orders. These products and uses are: Cheese, butter, dry milk, concentrated milk used to produce Class III products, evaporated or condensed milk, inventories, livestock feed, dumped milk and shrinkage. The witness testified that the hard manufactured products absorb milk supplies produced for, or in excess of, the needs of the fluid market. Further, he stated, the products can be stored for long periods and therefore do not need to be made uniformly throughout the year. The Eastern/Agri-Mark representative concluded that, because the hard manufactured products compete on a national basis with similar products made from unregulated milk supplies, the price of milk used to make those products should be closely aligned with prices paid by processors of manufacturing grade milk.

A representative of Pennmarva, a federation of cooperative associations representing a majority of the producers whose milk is pooled under the Middle Atlantic order, testified that three-class pricing will recognize current marketing conditions in the Northeast and promote orderly marketing by providing a reasonable Class II differential to producers. In general, he stated, producer milk used to produce products that are relatively more perishable and less storable would tend to have a higher value under the proposed classification plans. The witness added that products that can be stored are more likely to compete over a greater geographical area, while products in liquid form or in consumer packages have more value than products in solid or bulk form.

The Pennmarva witness testified that, rather than follow the uniform classification provisions of most other orders, the three Northeast orders should classify only butter, nonfat dry milk and natural cheddar cheese as Class III. He explained that these products are eligible for open-ended purchases by the Commodity Credit Corporation (CCC) under the price support program, and described the products as balancing and providing an outlet for the reserve supplies of Orders 1, 2 and 4. The witness explained that adoption of Pennmarva's proposal would recognize that soft cheeses, Italian cheeses and whole milk powder have a greater value than the residual uses of milk, and should be priced in the new intermediate Class II. The Pennmarva witness justified such classification by noting that many of the products proposed for a new intermediate class are perishable, and that their production is much less seasonal than that of the market's truly residual products. Further, the witness argued, the classification and pricing provisions in other Federal orders were not implemented to address current marketing conditions in the Northeast milk marketing areas, and they do not address those conditions.

Two other proposals dealing with the classification of milk in thee three Northeastern orders were contained in the hearing notice. One, from the Eastern Connecticut Dairy Committee, was similar to the Pennmarva proposal, and was not supported by any testimony. The other, by Oak Tree Farm Dairy, a proprietary distributing plant operator, was similar to the Eastern/Agri-Mark proposal, with the exception of classifying milk used in candy as Class III rather than Class II. There was no testimony from proponent supporting the proposal.

The proposals to adopt a three-class pricing system for the three Northeast marketing orders were supported by several handler representatives and witnesses representing dairy farmer interests. A witness for Dean Foods, which operates manufacturing plants that receive milk from producers regulated under Order 2 and Order 4, testified that Dean competes with New York handlers for sales of cottage cheese and sour cream in the areas around its plants in Illinois, Kentucky, Indiana, Michigan, Florida and Tennessee, which are subject to the intermediate Class II price under their local orders. He conceded that the existence of two-class pricing in the three Northeast orders may not create disorderly marketing conditions in the Northeast, but asserted that it certainly does so in areas where local handlers are subject to higher costs for milk than are their competitors from the Northeast. The witness stated that any changes in the uniform classification provisions should be made on a nationwide basis, and not just in one region.

Several producers and a cooperative association representative testified in favor or a three-class pricing system, primarily because it would have the effect of enhancing producer income. Because adoption of the Pennmarva proposal would increase the classification and pool value of a large portion of the market's current Class II use, thereby increasing returns to producers to a greater degree than would the Eastern/Agri-Mark proposal, the producers generally favored the Pennmarva proposal. The cooperative association witness testified that adoption of the Pennmarva proposal should not cause competitive inequities between handlers manufacturing Italian cheeses in the Northeast and in other parts of the U.S. The witness pointed out that in April 1988 Italian cheese manufacturers in Wisconsin were paying 64 cents over the Minnesota-Wisconsin price (M-W), to buy milk while manufacturers in Minnesota were paying 51 cents over the M-W. He stated that a Class II 10-cent differential over the Class III price in the Northeast therefore would not unduly increase the cost of manufacturing Italian cheese in the Northeast over the cost of making such products elsewhere.

Representatives of Leprino Foods Company and Sorrento Cheese both supported adoption of a three-class pricing system that would be consistent with those of other orders, but opposed the classification proposals that would include soft cheeses and Italian cheese in Class II instead of Class III. Both witnesses testified that, contrary to the Pennmarva witness' testimony, the Leprino and Sorrento cheese plants experience wide variations in the supply of milk available to them, both seasonally and during the week. The Sorrento witness stated that Sorrento receives 60–70 percent of its milk supplies on weekends when demand for milk by fluid handlers is low, and purchases significantly increased

amounts of milk during the spring flush. The Leprino representative testified that Leprino's plants experience a dramatic monthly variation in milk supply, with a seasonal low of 72.5 percent capacity and a seasonal high of 133.1 percent, and serve a major balancing role for the market.

Both of the cheese manufacturers' witnesses emphasized that their companies sell a large percentage of their output in areas of the U.S. outside the Northeast, and must compete with handlers who are subject to other orders' lowest class price (Class III). The Sorrento representative stated that 80 percent of the cheese manufactured by Sorrento is sold in 28 other states, including Florida and California. He pointed out that if the Pennmarva classification proposal were adopted Sorrento would be paying for milk used in Mozzarella cheese than would any of its national competitors.

Witnesses representing Hershey Chocolate, U.S.A., and Nestle Company testified that three-class pricing for the Northeast orders should not be adopted if whole milk powder and milk used in the manufacture of milk chocolate were to be classified as Class II, rather than being left in the lowest-price classification, as those uses are at present. The witness for Hershey argued that in a three-class pricing system milk used to make milk chocolate should be classified as Class III because that use has characteristics of other products in the lowest use class. He stated that the manufacture of milk chocolate plays a significant role in balancing the market. Further, he explained, the seasonality of milk purchases for use in candy does not reflect seasonal consumer demand, milk chocolate is not produced near the market's consumption center, and intermediate products manufactured from milk, sugar and cocoa can be stored for more than one year before being manufactured into finished products. The Hershey representative testified that milk receipts used in the manufacture of milk chocolate must be classified with other hard products, such as nonfat dry milk and cheese, if the use of fluid milk in the manufacture of milk chocolate is to remain viable in the Northeast. He stated that such classification is necessary to maintain a competitive balance among milk chocolate and whole milk powder manufacturers, observing that milk chocolate is produced primarily in areas where the milk used to produce it is priced in the lowest class. The Hershey witness proposed amending the proposal to adopt the uniform classification provisions to include milk used to make milk chocolate in Class III instead of Class II, but testified that Hershey would prefer to retain the two-class pricing system in the Northeast.

A witness representing Nestle also testified in favor of a two-class pricing system, and stated that Nestle would be adversely affected by the adoption of either of the three-class proposals. The witness explained that an increase in the cost of the company's raw product would result in a competitive disadvantage because all but one of its competitors (Hershey), use dry milk powder in the manufacture of milk chocolate. A witness testifying on behalf of H.P. Hood agreed that milk used in candy manufacture should be classified in Class III because it competes with butter and milk powder for that use.

Representatives of a number of handlers, including two cooperative associations, opposed adoption of a three-class pricing system. A spokesman for Dairylea, a large Order 2 cooperative association, testified that there is a long tradition of two-class pricing in the Northeast and that milk handlers have planned their operations accordingly. He observed that the blend price enhancement resulting from three-class pricing would be minimal, and that it is more important to assure continued outlets for producer milk in the large regional soft products industry. The witness estimated that the Eastern/Agri-Mark proposal would increase producer returns by only 2 cents, while handler costs would increase by 8 cents per hundredweight. The Dairylea witness testified that if a three-class pricing system is to be adopted for the three Northeast orders, the Pennmarva proposal would be more appropriate to the region since milk purchases by cheddar cheese manufacturers are more seasonal than milk production, while purchases by Italian cheese manufacturers are less seasonal. A dairy farmer member of Lowville Milk Producers Dairy Cooperative testified that the three-class proposals for the Northeast orders should not be adopted because classified pricing is outdated and has outlived its usefulness.

Witnesses representing two distributing plant operators and the New Jersey Milk Dealers Association opposed the proposals to adopt three-class pricing. However, in the event of the adoption of three-class pricing, two of the witnesses favored the Pennmarva proposal. A witness for Crowley Foods, Inc., a handler operating two distributing plants and two manufacturing plants regulated under Order 2, stated that the effect of three-class pricing on the blend price paid to producers would be minimal. He also observed that the proposed Class II price computation has caused wide variations that he characterized as unacceptable in Class II prices under other orders. The witness stated that such price volatility would make it impossible for Federal order manufacturing plant operators to compete with handlers regulated under the two-class New York State order. The Crowley witness testified that of the two proposed three-class pricing proposals, the Pennmarva proposal would better enhance dairy farmers' income, and would put all cheese other than cheddar, which is market-clearing, in one category.

The president of Weeks Dairy Foods, a fluid milk handler located in Concord, New Hampshire, and pooled under Order 1, testified that three-class pricing would increase Weeks' costs of manufacturing ice cream and impair its competitive ability. The witness explained that two of its principal competitors in the ice cream business are located in the State of Maine and unregulated by both the Federal order and the Maine State order. He expressed concern that one or both of these competitors might gain a competitive advantage if Weeks Dairy were required to pay a higher intermediate Class II price for the milk and cream supply it needs for ice cream. The witness described the ice cream business as a seasonal use of milk, with significantly more sales in the months of May through September than during the rest of the year.

A witness representing the New Jersey Milk Dealers Association opposed the adoption of three-class pricing in the basis that it is unnecessary and would not improve milk marketing in the Northeast. He asserted that there is no need for the Northeast orders to adopt a three-class pricing system just because it has been incorporated in the other Federal orders. The Association's witness based most of his opposition to adoption of the uniform classification provisions on the difficulties surrounding announcement of the Class II price during 1987 for the orders with uniform classification provisions. The witness testified that if three-class pricing were adopted, the Pennmarva proposal would be preferable to the Eastern/Agri-Mark proposal because the production and sales of Italian and soft cheeses more nearly follow production and sales patterns of cottage cheese, yogurt and sour cream than those of the market's truly surplus products. He described the Italian and soft cheeses as a very

substantial part of the market that performs a very limited balancing function.

Witnesses representing four manufacturing plant operators opposed the proposals to adopt a three-class pricing plan for the Northeast orders. All four of the witnesses stressed the wide variations in the Class II formula price effective in the uniform classification markets as a major reason for opposing the proposals. The determination of an appropriate Class II price is discussed at length later under this issue in section "d."

A representative of Empire Cheese, Inc., a subsidiary of the H.P. Hood Company that operates manufacturing plants pooled under Orders 1 and 2, testified that Empire Cheese distributes Italian cheese nationally, competing with manufacturers located in the Upper Midwest and on the West Coast. The witness explained that pricing Italian cheeses in an intermediate Class II under the Northeast orders would seriously impair the ability of Empire Cheese to compete with handlers regulated under other orders, which price such products in Class III. He also expressed his opposition to three-class pricing on the basis that the Hood Company, which operates several distributing and manufacturing plants regulated under Order 1, produces ice cream mix and cottage cheese that would be subject to the proposed intermediate Class II price.

A witness representing Dietrich's Dairy testified that Dietrich's operates two Pennsylvania manufacturing plants that use reserve milk from Federal Orders 2 and 4 to make specialty whole milk powders that are used in the manufacture of milk chocolate. The witness opposed adoption of a three-class pricing system on the basis that it could be used by producer organizations to impose premiums on milk used in the proposed intermediate class in the same way that premiums currently are collected on milk used in Class I. He also asserted that provisions uniform with those of other orders should not be incorporated into the Northeast orders solely for the sake of uniformity, and that the unique marketing conditions of the local or regional market, such as farm point pricing under Order 2, should be considered.

The Dietrich's Dairy witness argued that if three-class pricing is adopted for the three Northeast orders, the Eastern/Agri-Mark proposal would be less onerous than the Pennmarva proposal, which would classify whole milk powder in the proposed intermediate Class II. The witness objected that the Pennmarva proposal would give skim milk powder manufacturers preferential price treatment over whole milk powder manufacturers despite the physical similarities of the two products and the fact that other orders price them in the same class. He also observed that Dietrich's use of much larger volumes of milk in the spring season of flush production and during the winter holidays than at times when milk supplies are scarcer is an indication that whole milk powder is one of the reserve uses of the market.

A representative of Friendship Dairies, Inc. (Friendship), testified that the Eastern/Agri-Mark proposal would be preferable to the Pennmarva proposal, but that both are completely unsuitable for the markets. He explained that in Federal Order 2, the manufacture of cottage cheese, sour cream and yogurt traditionally have balanced the market in the same way the proposed Class III products have, and should be priced in the same class. The witness stated that Friendship would be placed at a disadvantage in competing not only with non-federally regulated handlers, such as those pooled under the Western New York State order, but with handlers regulated under other Federal orders. He explained that the protein content of milk produced in the southern tier of counties in New York is inferior to other areas, and that the resulting yields of products such as cottage cheese would not allow the manufacturer to recover the increased costs associated with pricing the milk used in such products in the proposed higher intermediate Class II.

A witness representing Kraft, Inc., testified that Kraft produces cottage cheese, ice cream, yogurt, sour cream and cream cheese at its plants in the Northeast, and markets these products outside the region, as well as inside. According to the witness, two-thirds of the cottage cheese produced by Kraft at three plants in the Northeast is marketed outside the region. The witness stated that the purpose of the long tradition of only two classes in the Northeast orders has been to maintain a competitive manufacturing industry that assures a viable outlet for dairy farmers' milk. He stated that adoption of three-class pricing will place Northeast dairy product manufacturers at a competitive disadvantage with handlers regulated under the Western New York State order. He also observed that competitors from outside the region already compete effectively with Northeast handlers for sales in the Northeast. If the cost of manufacturing the proposed intermediate Class II products is increased, the witness testified, Northeast handlers would be operating at a competitive disadvantage compared to handlers in other regions.

The Kraft representative explained that the costs of accommodating seasonality of supply are higher in the Northeast than in the Upper Midwest because of the necessity of operating plants at less than capacity when production is tight. The Kraft witness also described milk produced in the Northeast as having a lower protein content than milk produced elsewhere, and stated that the greater product yield enjoyed by handlers in other regions would enable them to move their products great distances to compete with Kraft's products without using up that advantage. A further factor that operates to place Northeast handlers at a competitive disadvantage with other regions, he stated, are hauling costs. The witness explained that handlers transporting dairy products out of the Northeast have a freight disadvantage compared to handlers in other regions in addition to having to pay hauling subsidies in order to procure the milk of Order 2 producers.

Although both of the 3-class pricing proposals would classify milk used in buttermilk biscuit mix in Class II, an alternative proposal by a witness for the H. P. Hood Company, Inc., would classify milk used in such products as Class III. The witness explained that Class III would be the appropriate classification because dry milk powder could be used instead of fresh buttermilk to make biscuits.

The classification plans of the three Northwest Federal milk orders should be changed to better reflect changes that have taken place in the marketing of milk and dairy products since these orders were promulgated. When the three Northeast orders were promulgated, the classification plans adopted reflected the marketing conditions and practices prevailing in each of the local areas at the time the provisions were adopted. Because local conditions and practices differed somewhat between the three Northeast markets and between these markets and other Federal order markets at the times the orders were promulgated, the classification plans in the three orders differ from each other to some extent, and from the rest of the Federal milk orders to a greater extent. As long as the Northeast markets remained relatively isolated from other Federal order markets, marketing problems resulting from the differences in the various classification plans were minimal.

The record of this proceeding shows clearly that the "local" character of the Northeast milk markets has changed

greatly. Movements of large volumes of dairy products between the three Northeast markets, and between these markets and others, have become commonplace as handlers and producers seek additional sources and outlets for milk. Such milk movements have been encouraged or facilitated by such developments as inspection reciprocity between health jurisdictions, improved highway networks and transportation equipment, conversion from can hauling to farm bulk tanks, development of regional cooperatives, new processing and packaging techniques, and concentration of processing and packaging operations in large specialized facilities. There are numerous examples in the record of handlers in one marketing area procuring milk supplies from producers in another, and of handlers selling their finished products not only throughout the Northeast, but throughout the United States.

Uniformity of classification and pricing provisions between milk orders is a valid reason for changing the classification provisions of the three Northeast orders. The purpose of such uniformity is to assure orderly marketing conditions through equity in intermarket competition between handlers and not uniformity for its own sake, as charged by several witnesses opposing adoption of the uniform classification provisions.

Handlers that are regulated under different orders that contain differing provisions for the classification and pricing of milk used in the production of dairy products distributed across a broad area in which the handlers all compete are certain to be given either a competitive advantage or disadvantage by those differing provisions. A situation in which all of the other Federal milk orders that classify milk used in manufactured dairy products do so in a uniform manner that differs from the Northeast orders is unacceptable.

Handlers that will be affected by the amended classification provisions expressed concern that paying a higher price than their unregulated competitors pay for milk used in cream products, ice cream and cottage cheese would disadvantage them competitively. The record contains no evidence of any large volume of unregulated milk in the Northeast available to allow unregulated competitors a significant competitive advantage. In fact, the record does reflect a level of competition between handlers for milk supplies that would make it very difficult for any unregulated handler to obtain an adequate supply of milk at a price lower than the order price. Similar concerns were expressed about competition with handlers regulated under the Western New York State order. As in the case of competition with unregulated handlers, it is likely that handlers regulated under the State order would find their supply of milk vulnerable if they did not pay a price for milk equivalents to that paid by Federal order handlers. In any case, the provisions appropriate for three Federal orders regulating milk used in manufactured products that are distributed over large portions of the United States should not be determined by the provisions of a State order effective over a limited area and regulating only a small fraction of the amount of milk regulated by the three Northeast Federal orders.

Opponents of uniform classification for the Northeast also complained that they would be be disadvantaged in competition with handlers in the Midwest because of the relatively lower protein content of milk produced in the Northeast. Although the protein content of producer milk affects the amount of product yielded by the manufacturing process, the quality of the milk influences the ability of its protein content to increase product yield. There is some testimony in the record that the quality of milk in the Northeast is higher than in the Midwest. Further, the study that shows differences by region in the percentages of protein in producer milk also indicated that there are differences in protein content between areas of the Midwest. Presumably, these differences within the Midwest affect handlers who are close competitors, but who pay the same prices for milk used in the same products. However, there was no indication that such differences in the protein content of producer milk between the Midwest areas result in any competitive disruption.

In addition to equalizing intermarket competition, a primary reason for adopting the uniform classification provisions is that they better reflect the differing values for dairy products in terms of time and form utility. The findings and conclusions of the decisions adopting the uniform classification provisions for 39 Federal milk orders in 1974 were notices officially during this proceeding, and are incorporated in full in this decision.

Class I milk is that disposed of in the form of fluid products used as beverages. These products have the shortest shelf life of all dairy products, and therefore must be processed and distributed on a fairly constant basis. An adequate supply of high-quality milk must be available for the processing of fluid products at all times in order to assure that consumers' demand for these products can be met. These qualities of the fluid milk market require that milk used in fluid milk products be priced at a higher level than other uses of milk.

Generally, the "soft" products, such as cream products, yogurt, ice cream and cottage cheese, are more perishable than the "hard" manufactured products such as butter, cheese and dry milk, and cannot be stored for long periods of time. For these reasons, the products to be classified in the intermediate Class II generally are distributed over a smaller geographical area than are the market's residual, or surplus, products. It is reasonable to recognize the higher value associated with the "soft" manufacured products because handlers require a more constant and generally higher-quality supply of milk for use in Class II or "soft" manufactured products than they do for the manufacture of Class III or "hard" manufactured dairy products.

Proposals to adopt modified uniform classification provisions that would price Italian and soft cheeses and whole milk powder as Class II instead of Class III, and price milk used in the production of milk chocolate as Class III instead of Class II, should be denied. Regardless of some rather persuasive arguments that Italian and soft cheeses and whole milk powder are more perishable and have a greater value than butter, American cheese and nonfat dry milk which the Commodity Credit Corporation (CCC) purchases to operate the dairy price support program, these products compete in a national market. Therefore, the milk used to make such products in the Northeast should not be priced at a higher level than under all of the other Federal orders in the United States. If such changes to the uniform classification provisions were to be made they should be made uniformly in all orders, not just on a regional basis.

The record of this proceeding does not support making an exception from the uniform classification provisions of milk disposed of to a commercial food processing establishment. The candy manufacturers who testified advocated Class III classification of milk used to make milk chocolate, rather than the Class II classification of the uniform provisions. Although the witnesses stated that nonfat dry milk and butter, which would be Class III products, may be used in candy-making instead of fresh whole milk, thereby eliminating a market for producers' milk, the witnesses overlooked the costs of manufacturing butter and dry milk

powder from fresh milk. Those costs would have to be recovered by the manufacturers of the butter and powder, and would nearly always exceed the average difference between the Class II and Class III prices. Therefore, the candy manufacturers would be subject to lower costs if they continue to use fresh whole milk priced as an intermediate Class II product in the manufacture of milk chocolate than they would if they bought butter and nonfat dry milk for that purpose. Because Order 2 has some pool handlers who would be considered commercial food processors under other orders, it will be necessary to specify in the order's Class II definition that milk used to make candy, soup or other food items in pool plants will be Class II.

Skim milk and butterfat used to make buttermilk biscuit mix should likewise be classified as Class II rather than Class III. As in the case of dry milk powder used to make candy, the manufacture of dry milk from fresh milk classified as Class III for the purpose of making buttermilk biscuits would also involve a cost additional to the cost of the Class III milk. Although fast food restaurants of the kind that use buttermilk biscuit mix are not considered commercial food processors, their use of a milk product as an ingredient in making other food items is similar. Therefore, milk used in buttermilk biscuit mix should be classified as Class II.

Because of the large volume and variety of manufactured products produced in Order 2 pool plants, the list of products named in the Class II classification provision includes some products not listed in the "uniform" classification provisions. The classification of these additional products, however, will be no different under the three Northeast orders than it would be under a "uniform classification" order.

b. *Class I and the fluid milk product definition.* Class I milk under the three Northeast Federal orders should include all products designated as "fluid milk products." The fluid milk product definitions of the orders should include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milk shake and ice milk mixes containing less than 20 percent total solids. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

In addition, Class I milk should include all skim milk and butterfat disposed of in the form of any other fluid or frozen milk product (if not specifically designated as a Class II or Class III use) that contains by weight at least 80 percent water and 6.5 percent nonfat milk solids, and less than 10 percent butterfat and 20 percent total solids.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Class I milk should not include skim milk or butterfat disposed of in the form of evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any products that contain by weight less than 6.5 percent nonfat milk solids, or whey.

Class I milk should also include any skim milk and butterfat not specifically accounted for in Class II or Class III, other than skrinkage permitted a Class III classification.

Adoption of a uniform fluid milk product definition will not result in any significant changes in classification in the three Northeast orders. Most of the products listed above for inclusion in Class I are now included in the fluid milk product definitions under all three orders. However, Order 2 currently excludes "sterilized milk products in hermitically-sealed containers" from the fluid milk product definition, and therefore classifies ultra-high temperature (UHT) milk packaged in foil-lined containers as Class II. Under the fluid milk product definition adopted herein, UHT milk would be included in Class I.

Ending inventories of packaged fluid milk products, which currently are included in Class I will be changed to Class III. As a result, such inventories would be subject in the following month to reclassification in a higher class, as determined through the allocation of a handler's receipts to its utilization. A charge to the handler at the difference between the Class III price for the preceding month and the Class I price for the current month would apply to any reclassified inventory.

For the first month that the revised classification plan is effective, a pool credit equal to the difference between the preceding month's Class I price and lowest class price should apply to inventories priced at the preceding month's Class I price. If a higher classification results through the allocation procedure, the appropriate reclassification charge would apply.

Proposals to amend the orders' fluid milk product definitions included a proposal by the marketing areas' principal cooperative associations to adopt the fluid milk product definition common to most other orders. The witness for the cooperatives testified that several products are classified differently between the three Northeast orders, creating competitive difficulties for the handlers regulated under one order but competing for sales with handlers regulated under another of the Northeast orders, or with handlers regulated under other Federal orders outside of the region. The cooperatives' spokesman stated that the form in which and purpose for which milk products are distributed is the most important consideration in determining their classification. The witness observed that additional criteria might be included in the definition to assure that products such as a lowfat (four percent butterfat) product resembling sour cream would be classified as a Class II product rather than Class I.

Several other proposals to amend the orders' fluid milk product definition were included in the hearing notice. Two of the proposals were not supported by any testimony, and will not be considered further. A proposal by Farmland Dairies, Inc., would include UHT milk, cream in consumer packages, and ice cream and milkshake mix in the Order 2 fluid milk product definition. The witness testifying on behalf of Farmland stated that these products are closer to fluid than not, and are not produced from reserve supplies. He pointed out that a product called "shake-ups", which would not fall within the uniform fluid milk product definition, is produced for fluid consumption, and should therefore be Class I.

Friendship Dairies, Inc., proposed that the Order 2 fluid milk product definition be amended to include products with a "ph" greater than 4.6. The Friendship witness testified that classifying products by the use of scientific means such as a test for acidity would allow and encourage the sale of new and innovative sour milk products without uncertainties about their classification. He stated that products intended to substitute for conventional Class I products should be classified as Class I. The witness explained that Friendship's

proposal would result in changes in uniform classification of buttermilk from Class I to Class II, and of half-and-half from Class II to Class I.

Alternatives to the proposed uniform fluid milk product definition were suggested by a witness representing the H.P. Hood Company, a large handler regulated under the New England order. The alternatives would exclude lowfat sour cream, light (or lowfat) eggnog, and "shake-ups" from the fluid milk product definition. A brief filed by Hood supported the goal of uniformity in classification, observing that its lack has resulted in disorderly marketing conditions.

A brief filed on behalf of the Grocery and Specialty Products Division of Borden, Inc., stated that Borden processes ultra-high temperature (UHT) milk and packages it in hermetically sealed foil-lined paper containers. The handler is regulated under Order 2, where UHT milk is not considered a fluid milk product. The brief stated that UHT milk should not be considered a fluid milk product because it is storable, and therefore does not conform to the same "time utility" that characterizes fluid milk products. The brief further stated that the argument that UHT milk be considered fluid because it competes as a beverage with fluid milk products is invalid because formulas especially prepared for infant feeding or dietary use, milkshake and low-solids products are specifically excluded from the fluid milk product definition but also compete as beverages with fluid milk products.

Adoption of the Farmland proposal would place Northeast processors of soft manufactured products at a disadvantage with their competitors in other marketing areas. Ice cream mix and milkshake mixes containing 20 percent or more total solids generally are not considered fluid milk products and do not compete as beverages with the products typically classified as Class I. Therefore, they should not be included in the fluid milk products definitions of the Northeast orders.

Although the Friendship Dairy proposal would adopt the scientific means of a "ph" test to define fluid milk products, it also eliminates the scientific criteria of butterfat and solids nonfat content that are included in the proposal for a uniform fluid milk product definition. The Friendship witness' concern about the time-consuming procedure required for USDA to consider appeals to the classification of a new product in Class I should be alleviated by specifying that fluid milk products be fluid. Those who testified relative to the proposal to include a product's "ph" factor in the criteria for defining fluid milk products agreed that a low "ph" (or high acidity) corresponds with a product that is semi-solid, rather than a beverage. However, buttermilk, which clearly is a liquid, apparently would be excluded from the fluid milk product definition on the basis of it "ph" factor.

If a milk product containing less than 20 percent solids and 10 percent butterfact is sold to be consumed as a beverage it can be considered to be in competition with other fluid milk products, and should be priced in the same class. Buttermilk, therefore, should continue to be considered a fluid milk product. Proponent's speculation that reducing the classification and price of buttermilk would help revive the product's consumption is not persuasive. The price reduction on a quart of buttermilk that would likely result from such a reduction in classification would be approximately 5 cents.

The alternatives to the uniform fluid milk product definition proposed by the Hood witness should be adopted in a modified form. Under the definition adopted herein, lowfat sour cream will be included in a description of products to be included in the intermediate Class II. "Shake-ups", according to the composition of the product described by the Hood witness, will exceed the order's maximum limit of 20 percent total solids in fluid milk products, and therefore would be classified in Class II rather than Class I. Lowfat eggnog or eggnog drink, however, does not meet the description of a manufactured eggnog. It is a flavored milk drink, and should be classified as a fluid milk product, as are other flavored milk drinks.

Although the proposed fluid milk product definition excludes milk "aseptically packaged and hermetically sealed in foil-lined paper containers", UHT milk should be included in the fluid milk product definition. The sterilization of fluid milk products may change their "time utility", but does not change the form or purpose of such products. As in the case of the unsterilized fluid milk products which they resemble, such sterilized products are disposed of in fluid form for consumption as beverages. They are generally intended for use in place of their unsterilized counterparts and are thus competing for the same customers.

c. *Fluid cream product definition.* As proposed by Agri-Mark and Eastern Milk Producers, cooperative associations that represent a substantial number of producers whose milk is pooled under the three Northeast orders, the orders should include a fluid cream product definition, as is contained in most other Federal milk orders. "Fluid cream product" would mean cream (other than plastic cream or frozen cream) or a mixture of cream and milk or skim milk containing 10 percent or more butterfat. The definition will help to assure that classification of such products is uniform between the three Northeast marketing areas and between these marketing areas and others regulated by other Federal orders.

The fluid cream definition proposed by proponents varies in some details from the uniform fluid cream product definition. Some of the items listed in the proposed definition are also listed in the description of the products proposed to be included in Class II milk, but are not included in the fluid cream product definitions of other orders. Although these products will not be included in the fluid cream definition, they will be listed as Class II uses. Because of particular reporting and accounting requirements connected with the products listed in the fluid cream product definition, the definition adopted for the three Northeast orders will not include some of the products normally listed in the uniform fluid cream product definition. All of the products included in the proposed fluid cream product definition and in the uniform fluid cream product definition will be classified as Class II in the amended orders.

A brief filed by the H.P. Hood Company, Inc. supported the goal of uniformity and suggested that the fluid cream product definition include a reference to "skim milk and butterfat used to produce other products which resemble" the items specified as fluid cream products. A brief filed on behalf of Kraft, Inc., Pollio Dairy Products Corporation and Friendship Dairies, Inc., noted that the substitution of new artificial fat products for butterfat in products intended to compete with cream products should not result in those products being considered "fluid milk products."

It is unnecessary to add to the fluid cream product definition any language that would include in the definition products that resemble fluid cream products but contain a fat substitute. Such products would be included in Class II as products "containing 6 percent or more nonmilk fat (or oil) that resemble a fluid cream product."

d. *Class II price.* The price applied to milk classified in the intermediate Class II classification adopted for the Northeast orders in this decision should be the same as in almost all of the other orders, as recently amended. The Class II price for each month would be

announced on or before the 15th day of the preceding month. The Class II price would be computed on the basis of a formula designed to result in an average price level 10 cents above the Class III, or basic formula, price.

The cooperative association proponents of three-class pricing (Eastern Milk Producers Association, Agri-Mark and the Pennmarva Federation), proposed that the provisions for determining the Class II price under the three Northeast orders be the same as the Class II price provisions for 36 other Federal orders. The provisions proposed at the time of the initial hearing would provide a procedure for determining a tentative Class II price for the month and announcing it on the 15th day of the previous month. To ensure that the Class II price is not less than the Class III price for that month, the procedure provides for an upward adjustment of the tentative Class II price to the level of the Class III price, if necessary, on the 5th day after the pricing month, when the Class III price is announced. The witnesses for the cooperatives testified that adoption of Class II price provisions that are uniform between orders is necessary to provide price alignment between marketing areas because the products to be priced are distributed over a number of Federal marketing order areas. The cooperative witnesses observed that the uniform Class II pricing provisions have resulted in prices that have exceeded significantly their intended differential of 10 cents over the Class III price. A witness representing Agri-Mark and Eastern testified that the cooperatives would not object to a Class II price determined by simply adding 10 cents to the basic formula price, or Minnesota-Wisconsin (M–W) price, and eliminating the advance announcement feature of the price. In the post-hearing brief filed by Pennmarva, the Order 4 cooperative federation also advocated a Class II price determined by adding 10 cents to the Class III price.

Two proposals to increase the level of Class II prices were included in the notice of hearing for this proceeding. The Eastern Connecticut Dairy Committee proposed that Class II prices be increased to more accurately reflect their true value to processors, but did not propose any specific price level or differential over the Class III price. There was no testimony supporting the Committee's proposal, and it will not be considered further in this decision. A proposal by Oak Tree Dairy would have provided for a Class II differential over the Class III price of at least 50 cents, but not more than 60 cents. The Dairy's witness explained that processors obtain a higher product yield in soft cheeses than in hard cheeses, and that the value of the additional product represents at least 40 cents per hundredweight of the milk used to produce it.

Many of the milk handlers that are regulated under the three Northeast orders protested that adoption of the uniform Class II pricing provisions would incorporate the same extreme variations from the M–W, and resulting adjustments to the tentative Class II price, in the three Northeast orders that have been experienced by other Federal orders. Handler representatives testified that the advantage of announcing the Class II price in advance of the month for which it is effective is outweighed by the unpredictability of the changes to the tentative Class II price when the M–W is changing rapidly.

A dairy farmer supported the proposal to increase the Class II differential to 50–60 cents over the Class III price on the basis that it would enhance returns to producers. A dairy plant operator opposed adoption of the proposal because it would misalign the prices of milk used in Class II products under the Northeast orders and under other Federal orders.

This proceeding to amend the three Northeast orders was reopened to include these orders in a proceeding that considered proposed changes to the uniform Class II pricing provisions of nearly all Federal orders. The hearing to consider industry proposals was held August 22, 1989, at Alexandria, Virginia. Most of the witnesses testified that some form of a proposal by the Milk Industry Foundation (MIF) and International Ice Cream Association (IICA) should be adopted in order to eliminate the upward revision of the tentative Class II price in months when the Class III price would otherwise exceed the Class II price. MIF is a national trade association representing some 1,000 dairy processing plants nationwide and accounts for about 80 percent of the fluid milk and related products produced in the United States. IICA is a trade association that represents about 210 member companies who distribute about 85 percent of the ice cream and related frozen desserts consumed in the United States.

The MIF/IICA witness stated that his testimony on the need for the proposed amendments did not refer to the three Northeast orders. However, a witness testifying on behalf of Agri-Mark, Dairylea and Eastern Milk Producers Association, cooperative associations that represent about 9,000 of the approximately 26,400 producers whose milk is pooled under Orders 1, 2 and 4, stated that amendments to the uniform Class II price provisions of the other 37 orders should be included in the three Northeast orders. The cooperatives' representative testified that it is necessary for the three Northeast orders to have the same Class II price provisions that exist in the other Federal orders for the purpose of achieving and maintaining competitive equity among all of the handlers marketing Class II manufactured dairy products over an area comprising a number of Federal milk marketing order areas.

The witness for the northeast cooperatives and a representative of the National Milk Producers' Federation, an organization representing most of the dairy farmer cooperatives in the United States, proposed a modification of the MIF/IICA proposal. The modification would include the entire difference between the announced Class II price and the Class III price for the month in the computation of the next Class II price to be determined. This modification was intended to minimize any impact upon producer returns that might result from elimination of the final Class II price announcement. With this change, there would be minimal delay in returning to producers the full value of their milk at the prescribed Class II price level. Both the NMPF and Agri-Mark, et al., supported adoption of the MIF/IICA proposal if it was modified as they suggested.

A witness for Morningstar Foods, which operates a number of dairy plants including, at the time of the hearing, two distributing plants regulated under Order 4, testified in favor of the proposed change. A spokesman for the National Farmers Organization (NFO) stated that the proposal to amend the uniform Class II pricing provisions would result in Class II prices below Class III prices in some months, and advocated a higher level of Class II prices. A brief filed on behalf of Kraft, Inc., Pollio Dairy Products Corporation, Sorrento Cheese and Friendship Dairies, Inc., manufacturing plant operators under Order 2, stated that periods of substantial deviation from the Class II target level of the M–W price plus 10 cents would place Federal order handlers at a severe disadvantage to handlers regulated under the Western New York State order with respect to milk procurement, milk sales, or both. The brief argues that an advance Class II pricing formula should not be included in the three Northeast orders even if three-class pricing is adopted. A brief

filed by Ready Food Products of Philadelphia, Pennsylvania, a partially regulated handler that processes cream products and obtains milk supplies from handlers fully regulated under Order 4, supported adoption of the MIF proposal.

The MIF/IICA proposal, as proposed to be modified by the National Milk Producers Federation, was adopted for 36 Federal orders in a recommended decision issued October 31, 1989 (54 FR 46904), a tentative decision issued November 8, 1989 (54 FR 47527) and an interim final order issued November 28, 1989 (54 FR 49955). A final decision was issued for the 36 orders on March 23, 1990 (55 FR 11599). The amended orders are now awaiting final producer approval. The same Class II pricing provisions should be incorporated in the three Northeast orders in order to assure milk handlers who compete between regions of the United States that they are paying the same price as their competitors for the raw milk used to produce their products. Although handlers regulated under the Western New York State order may be subject to lower prices for milk used in some products, it is not reasonable to allow the provisions of a local order that prices only three-fourths of a billion pounds of Class II milk per year to dictate the provisions of three Federal orders that annually price more than 12½ billion pounds of Class II milk that is distributed throughout the eastern one-third of the United States.

The Class II pricing method adopted herein will place the same value on milk used in the new intermediate Class II under the three Northeast orders as Class II milk has under other orders. The Class II price will eliminate retroactive Class II milk pricing, but not, as many Northeast handlers feared, at the cost of having to adjust a tentative announced price to the level of the announced M–W price. The intended 10-cent average Class II differential over the Class III price should be achieved more consistently under the adopted Class II price provisions than under those originally proposed for the three orders.

e. *Seasonal price adjustors.* The seasonal adjustors currently applied to Class II prices for producer milk should be retained, but only to adjust Class III prices. These price adjustors range from a minus 12 cents in May to a plus 10 cents in August in the New England and New York-New Jersey milk orders, and from a minus 10 cents in May to a plus 12 cents in August in the Middle Atlantic order. The seasonal price adjustors are intended to encourage manufacturing plant operators to buy more milk to use in making the market's surplus dairy products during the spring months when milk supplies are plentiful. The adjustors also encourage manufacturers to buy less milk, thereby releasing it for fluid use, during the fall months when milk production is seasonally low and demand for fluid products is high.

For the most part, those hearing participants who addressed the issue of seasonal price adjustors favored retaining them, but only on the lowest-priced class. The Pennmarva witness, however, proposed that the adjustors be applied to both the Class II and Class III prices on the basis that they should continue to be used to encourage the use of milk for other than fluid use in spring, rather than fall. He also noted that if the seasonal adjustors were used to adjust only Class III prices, the difference between Class II and Class III prices would widen in the spring and narrow in the fall.

Representatives of Eastern Milk Producers, Dairylea Cooperative, Inc., and Dietrich's Dairy favored the application of the seasonal adjustors only to the Class III price. The Eastern witness testified that the seasonal adjustments to the lowest-class price are necessary to encourage the appropriate use of seasonal variations in supply, and to complement the seasonality in producer prices to encourage supply patterns to conform to the fluid needs of the market. The witness explained that the seasonal price adjustors have been an integral part of the nonfluid price structure of the market for many years, and should be retained. The Eastern representative testified that the adjustors should apply only to the Class III price because the proposed Class II products do not balance the market's milk supply. The Dairylea witness testified that while it is logical to retain the seasonal adjustments to the Class III price because of the market-balancing nature of the proposed Class III products, production of the proposed Class II products reflects about the same seasonal pattern as milk production and therefore should not be subject to seasonal price adjustments.

Witnesses favoring elimination of the seasonal price adjustors testified on behalf of the National Farmers Organization (NFO), a cooperative association representing producers whose milk is pooled on all three orders; the New Jersey Milk Industry Association, an organization representing a number of New Jersey distributing plants; and Leprino Cheese, a manufacturing plant operator. The NFO representative pointed out that the adjustors do not exist in any other Federal orders and observed that the seasonality of supply and demand is a factor in determining the Minnesota-Wisconsin price, upon which Federal order prices are based. He also stated that the adjustors reduce total returns to producers. The Leprino Cheese representative supported elimination of the adjustors for the purpose of competitive consistency between orders. A witness for Hershey Chocolate, U.S.A., found no fault with the existence of seasonal price adjustors in the order as long as the value of the affected class of milk is not altered over the course of the year.

A brief filed on behalf of Morningstar Foods, a handler that operated two pool distributing plants regulated under Order 4 at the time of the hearing, observed that the seasonal adjustments to the present Order 4 Class II price result in a price that is 2 cents higher all year than the Order 1 and Order 2 Class II prices. The brief characterized as absurd a change in the order for the purpose of making it uniform while leaving in place non-uniform prices for the lowest class of use.

The seasonal price adjustors should continue to apply to the markets' lowest-class price. The products classified in Class III under the uniform classification provisions are storable enough to allow their manufacture during the markets' seasons of surplus production and their sale during seasons when production is lower. The rates of adjustment are designed to average out over the course of a year so that the actual value of milk used in the markets' surplus products over the year is unchanged. For this reason, the seasonal adjustors do not reduce returns to producers by any significant amount over the course of a year. During 1987, for instance, the seasonal adjustments to the Order 2 Class II price reduced producer returns by sixteen one-hundredths of one cent.

If applied only to the proposed Class III products, the seasonal adjustors should have little, if any, effect on intermarket competition. The price of milk used in such products will, over the course of a year, be no different than the price manufacturers in other orders pay for milk used in the same products. Manufacturing plant operators in the Northeast will continue to be encouraged to use milk when supplies are abundant, and release it for use in the fluid market when milk production is seasonally low. Because of the relative perishability of the proposed Class II products, however, processors of those products must have a regular supply of milk and do not have the flexibility to

make cottage cheese, for example, in May and sell it in October. Therefore, the seasonal price adjustors should not apply to Class II prices under the amended orders.

The current levels of seasonal adjustments in the three Northeast orders should be unchanged. The differences in seasonal adjustments between Orders 2 and 4 are longstanding, not having been amended since 1971. There is no testimony in the record of this proceeding to explain why the amounts of seasonal adjustment are not entirely uniform between the orders or to describe any marketing problems that have resulted from the differences. Because a number of products now included in the lowest-priced class will be reduced, it can be expected that the impact of the minor difference in seasonal adjustments will be reduced accordingly.

f. *Uniform announcement of class prices and butterfat differential.* As proposed by Pennmarva Milk Producers Federation and supported by the witness representing Eastern Milk Producers Cooperative Association, Inc., and Agri-Mark, Inc., the three Northeast orders should contain uniform provisions instructing the market administrator to announce class prices and the butterfat differential. The announcement requirements would be the same as those in other orders to assure uniformity. There was very little testimony regarding the cooperatives' proposal, and none opposing it. In addition to including the announcement requirements for class prices and the butterfat differential in a separate new section under the New York-New Jersey order, the new section should also include the announcement requirements for product prices currently contained in the order. The announcement requirements for the uniform price should also be moved to a new section of the New York-New Jersey order, following the section describing computation of the uniform price. These changes will assist any persons dealing with all three orders to find these various price announcement provisions in a standard location.

g. *Conforming changes.* Adoption of the uniform classification provisions for the three northeast orders will require a number of conforming changes that were neither proposed nor specifically discussed in the record of this proceeding. However, a proposal by USDA to make any changes necessary to implement amendments resulting from the proceeding was included in the hearing record, and addressed at the hearing. The conforming changes necessary to implement uniform classification provisions in these orders vary significantly between the three orders involved, depending on the structure of the orders' provisions at the time of the hearing. In all three of the orders, provisions dealing with shrinkage and the classification of transfers and diversions were amended. These changes were necessary in order to accommodate 3-class pricing, and were part of the original uniform classification decisions. In addition, the allocation or assignment provisions of all three orders needed to be changed in accordance with 3-class pricing. Reporting provisions and price computation procedures were also changed as necessary to incorporate uniform classification.

The format of Order 4 is more easily adaptable to the uniform classification provisions than those of the other two orders, and conforming changes in Order 4 are therefore less extensive. The format of Order 1 is changed considerably in the attached order language. However, these changes are not intended to, and should not, result in any substantive changes, such as changes in the regulatory status of market participants or in obligations to the pool, beyond those required by 3-class pricing.

The provisions of Order 2 differ considerably from those of the other two orders, and from all other Federal orders. In terms of the adoption of 3-class pricing, the particular provisions of Order 2 that inhibit adoption of uniform provisions and format are the division of Class I into Classes I–A and I–B, farm point pricing, and delivery of most producer milk in bulk tank units. The hearing record contains no testimony on the need to change any of these provisions, and 3-class pricing can be adopted for Order 2 without making any such changes. However, some Order 2 section numbers are changed for the purpose of closer alignment of the format of Order 2 with other orders, and to correct the enumeration of sections such as §§ 1002.50a and 1002.88a. If there is any desire to further modify the provisions of Order 2 to bring it into closer conformity with other Federal orders, another amendatory proceeding will be necessary at a later date.

2. Pooling Standards

(a) *Health Authority Approval.* The New York-New Jersey order (Order 2) should be amended to provide for suspending in a timely manner the designations of regular pool plants that have lost their health approval. The decision also adopts provisions that establish a procedure to suspend the designations of regular pool plants that discontinue operations.

Currently, Order 2 provides that pool plant designations be automatically suspended on August 1 each year for plants that on June 15 are not approved by the appropriate regulatory agency as a source of milk for the marketing area. The order does not provide a method to remove the designations of regular pool plants that discontinue operations (quit receiving milk and/or remove the processing equipment).

The procedural changes adopted herein were proposed by three cooperatives (Agri-Mark, Dairylea and Eastern) that furnish more than 30 percent of the milk for the Order 2 market. There was no opposition to the proposed changes. Only one person, other than the witness for proponents, testified regarding this matter and his suggested modification will be dealt with at the end of the findings on this issue.

Proponents testified that the changes are needed to expedite the suspension of a plant's designated pool status if the plant loses its health approval. They also contended that the order should provide a procedure to remove pool plant designations for plants which are not functioning as milk plants on a current basis.

To demonstrate the need for its proposed changes, the witness for proponents a cited the following two examples. The former Dairylea fluid milk plant at Goshen, New York, was closed for about two years before it was sold to Sorrento Cheese Company. The plant was used as a transfer station for several months after its processing operations were discontinued, but even those activities ceased prior to the side of the property. When Dairylea sold the plant, it asked the New York State regulatory authorities to quit making inspections and the plant's health approval was terminated in December 1980. Since the plant did not have health approval on June 15, 1981, the plant's designated pool status was removed on August 1 of that year. However, since the plant's pool designation was not removed for quite some time after the plant had ceased operations, another person could have used the plant's designated status to operate as an Order 2 handler and qualify milk for pooling under the order.

Proponents' witness related a similar situation where a plant's designation for pool status was not removed even though the plant had gone out of business. Schepps Cheese Company bought a plant located at West Burlington, Pennsylvania, which had

been operated as a milk receiving station. Although the plant was closed and the milk handling equipment had been removed several years earlier, the plant's pool designation was continued because its health approval had not been removed by the Commonwealth of Pennsylvania. Since the plant's pool designation had not been terminated, Schepps automatically became the operator of an Order 2 designated poll plant and was eligible to qualify milk for pooling under that order upon purchase of the plant.

Proponents were particularly concerned that small fluid milk operators could go out of business in the future and sell their plants to manufacturing processors who could use the designated pool status of such plants to qualify milk for pooling under Order 2. Proponent expressed the opinion that, although the order allows pool plant designations to be transferred from one person to another in certain circumstances, situations such as those identified in proponents' testimony could result in disorderly marketing. For these reasons, the cooperatives proposed that pool plant designations be terminated when plants lose their health approval or quit operating as milk plants.

It is evident from the foregoing that the current Order 2 provisions lack sufficient guidelines in some cases with respect to removing the designations of regular pool plants. Although the adoption of minimum performance standards for Order 2 market suppliers, discussed under another issue in this decision, will resolve some of the concerns identified by proponents with respect to this issue, the proposal of Agri-Mark, Dairylea and Eastern to correct the deficiencies in the order's current provisions for removing the "regular pool plant" designation should be adopted. As proposed, such designations would be forfeited for any plant that fails to meet the order's plant definition, has not received pool milk during the immediately preceding 12 months, or does not have current health approval. Such changes will tend to assure a continuation of orderly marketing under Order 2.

Order 2 now allows 15 days' temporary lack of health authority approval as an exception to suspension of the regular pool plant designation in order to allow a handler time to correct temporary problems relating to health approval. This 15-day grace period was also included in proponents' proposal. A representative of Dietrich's Milk Products Company testified that 15 days is an inadequate period for regaining such approval. He cited the case of a load of unapproved milk that had lost its U.S. Public Health Service rating and therefore could not be received at his plant. The Dietrich's witness stated that it took almost 30 days to get the milk re-inspected and re-approved for marketing. Based on this experience, Dietrich suggested that handler be allowed 30 days, rather than 15, to get health problems corrected and the plant re-inspected and re-approved as a source of milk for the marketing area. The Dietrich incident appears to concern the approval of milk produced by dairy farmers, which involves farm inspections, while the proposed by the three cooperatives relates to plant approvals. Since no testimony was presented to show that correcting temporary health problems in plants involves the same amount of time as rectifying similar farm problems, the record does not provide a basis to make the change advanced by Dietrich. Continuation of the shorter 15-day period should motivate handlers to correct health problems in their plants expeditiously.

(b) *Minimum shipping requirements.* Order 2 should be amended to require that handlers operating designated pool plants and bulk tank units dispose of minimum percentages of their associated milk supplies in Class I-A in the months oof September through January in order to maintain their pooling designations. Specifically, such handlers would be required to dispose of 10 percent of their milk receipts for Class I purposes during each of the months of September through November and 5 percent in the months of December and January.

The proposal to establish uniform pooling standards for market suppliers under the New England order (Order 1) and Order 2 is denied, as is a proposal to lower the shipping standards for Order 1 supply plants. A related handler proposal that is designed to allow shipping handlers under Order 2 to recover their direct costs from receiving handlers when suppliers are making required shippments to fluid milk plants is also denied.

Under the terms of Order 1, in each of the months of August and December a supply plant is required to ship 15 percent of its receipts of milk from dairy farmers to pool distributing plants to qualify the supply plant as a pool plant. For each of the months of September through November, an Order 1 pool supply plant must ship 25 percent of its receipts to fluid milk plants. The order provides for unit pooling of supply plants whereby a group of plants may combine their operations for the purpose of meeting the applicable shipping percentages. It also includes a provision that permits cooperatives to operate supply/balancing plants that are located in the marketing area as pool plants without meeting monthly performance standards.

The qualification of milk for pool status under Order 2 differs significantly from Order 1 and from most other Federal milk orders. The milk produced by Order 2 dairy farmers is pooled primarily by designation rather than on the more traditional basis whereby plants qualify milk for pool status by meeting minimum monthly performance standards. The Order 2 milk supply is pooled by handlers who operate designated regular pool plants and declared pool units. Such designated plants and units are required to meet monthly performance standards for pooling only if the market administrator finds it necessary to establish temporary required Class I utilization percentages to assure that Order 2 handlers will supply sufficient quantities of bulk farm milk for the Class I fluid market. This determination by the market administrator is refered to as a "call".

Plants located in New York, New Jersey and Pennsylvania are designated "regular pool plants" under Order 2 on the basis of their geographic location, and then only after meeting performance standards as "temporary pool plants" for 12 consecutive months. In each of the months of January through March and July through December, a "temporary pool plant" must have 25 percent or more of its milk receipts from dairy farmers (including units) classified as Class I–A in the marketing area or on the basis of transfers to pool plants. For the months of April through June, varying Class I utilization percentages must be met by such a plant. Once "regular pool plant" status is attained, designated regular pool plants are not required to meet monthly performance standards in order to pool milk.

With certain exceptions, bulk tank units may be operated and pooled by regular pool plant operators and qualified cooperatives. If the dairy farms of the producers included on the handlers' declared pool unit are located in New York, New Jersey, Pennsylvania or certain counties in Massachusetts and Vermont, the primary production area for Order 2, the unit is not required to meet monthly performance standards.

The Dairy Industry Institute of New York (the Institute), an organization of 10 fluid milk processors and distributors located in the New York City metropolitan area, proposed that, as a

condition of maintaining designated pool status, regular pool plants and declared bulk tank units be required to assure that minimum percentages of their milk supplies be classified as Class I–A in the months when milk supplies are short relative to Class I needs. The Institute's proposal would require such plants and units to dispose of 25 percent of their milk receipts from dairy farmers as Class I–A in each of the months of September through November, and 15 percent of such receipts in each of the months of August, December and January. The Institute's representative testified that performance standards are needed to assure the orderly movement of farm milk from pooled supply plants, manufacturing plants and bulk tank units to distributing plants for processing into Class I fluid milk products. The handlers were hopeful that incorporating performance standards in Order 2 would reduce the handling or "give-up" charges presently being paid by fluid processors and would improve the position of fluid milk processors in competing for milk supplies with manufacturing plant operators whose payments for milk are subsidized with funds from the marketwide pool which are provided by fluid processors and, ultimately, by consumers.

Dellwood Foods, Inc., a member of the Institute, abandoned its hearing notice proposals to amend Order 2 by requiring handlers to comply with a 15-percent shipping standard and by eliminating the authority of the market administrator to require regular pool plants and pool units to meet specific Class I–A utilization percentages. Dellwood then supported the Institute's testimony and position on this issue.

Oak Tree Farm Dairy, Inc., an Order 2 handler whose fluid mill plant is located in the 1–10 mile zone, proposed performance standards that would apply year-round at higher percentage levels than those proposed by the Institute. Under the Oak Tree proposals, handlers operating regular pool plants, bulk tank units and temporary pool plants would be required to have 30 percent of their receipts from dairy farmers priced in Class I–A during the 3-month period of September through November, 20 percent in the months of January, February, July, August and December and 10 percent in the 4-month period of March through June. If the Class I–A utilization of the handler's dairy farmer receipts was 45 percent or more in the immediately preceding September through November period, the handler would not be required to meet the Class I utilization standard in the following months of March through June.

The Oak Tree witness testified that the handler has had problems buying milk at fair, reasonable and competitive prices for fluid packaging at his Long Island plant. The witness entered a recent billing invoice to show how much the handler had to pay to obtain milk. The witness expressed the handler's hope that the adoption of performance standards for Order 2 pool handlers would make more milk available to handlers who are packaging fluid milk products.

Several fluid milk processors supported the adoption of performance standards for Order 2 pool plants and bulk tank units. Spokesmen for the New Jersey Milk Industry Association, representing 16 distributing plant operators regulated under Orders 2 and 4, Dairylea Cooperative, Inc., and Farmland Dairies, Inc., supported the adoption of such standards. There was a consensus among the distributing plant operators that any handler which benefits from regulation under an order by receiving equalization payments from the producer-settlement fund, which are provided by Class I operators, should be required to demonstrate its responsibility to the fluid market by making certain that the fluid needs of such operators are fully satisfied, especially during pools when the market's milk production is low relative to Class I demand.

Adoption of mandatory performance standards for pooling milk under Order 2 was opposed by four Order 2 producer groups (Allied Federated Cooperatives, Lowville Milk Producers Cooperative, National Farmers Organization and Oneida-Lewis Milk Producers Cooperative, Inc.) and an individual dairy farmer whose milk is marketed by the National Farmers Organization (NFO). These producer representatives were particularly concerned that requiring pool plants and units to meet minimum Class I utilization standards in the short milk production months would make it difficult for them to negotiate over-order prices for their shipments to fluid plants in those months.

An Oneida-Lewis representative testified that the cooperative would have difficulty meeting the proposed performance standards because its milk is supplied to a Class II processor. The Lowville Milk Producers Cooperative witness contended that the adoption of mandatory performance standards is an inefficient way of furnishing milk for the fluid market and would result in extra handling costs that must be paid by consumers.

NFO and Allied took the position that the market's Class I needs are being furnished under the Order's present order provisions, which have worked effectively. A witness for NFO also contended that adoption of minimum Class I utilization standards for plants and units would result in uneconomic movements of milk from distant zones simply to qualify the milk for pooling. In addition, he stated, such standard would create inequities because many major fluid processors also have large Class II manufacturing operations. NFO took the position that handlers with both Class I and Class II operations want other parties to supply the fluid milk needs for their Class I operations so that they will be able to keep more of their own milk supplies for their own (more lucrative) manufacturing plants. A post-hearing brief filed by NFO stated that these handlers can meet their own milk supply needs and should do so without artificial assistance from the order.

Dietrich's Milk Products, Inc., Empire Cheese Inc., Friendship Dairies, Inc., Kraft Inc., Leprino Foods Company and Pollio Dairy Products Corporation, six Order 2 proprietary handlers who primarily are engaged in manufacturing Class II dairy products, also testified in opposition to the adoption of mandatory performance standards for pooling milk under Order 2. The handlers took the position that Order 2 manufacturing handlers play a significant role of marketwide benefit by balancing the market's seasonal and weekend surpluses. They testified that such handlers receive unwanted excess milk at their manufacturing plants in the spring and provide supplemental milk to fluid milk plants in the fall.

Witnesses for the plant operators indicated that the present Order 2 pooling system of using plant and unit designations in conjunction with the provisions which authorize the market administrator to establish minimum Class I use standards is the most efficient method available to supply the market's fluid needs. Witnesses for the manufacturing plant operators testified that these provisions have served the market well over the years and that a continuation of such pooling procedures would be preferable to imposing mandatory performance requirements on handlers.

The manufacturing handlers contended that the performance levels proposed by the Institute and Oak Tree Farm Dairy exceed the market's needs and would therefore result in uneconomic milk handling practices. They also claimed that requiring market suppliers to meet minimum pooling

standards would exert downward pressure on handling charges that suppliers would be able to pass on to fluid processors who buy supplemental milk, and that the proposed fixed mandatory performance requirements would not provide the necessary flexibility to meet the market's changing supply-demand conditions.

Some of the handlers advanced suggestions intended to improve any regulatory provisions concerning pooling standards that are adopted as a result of this hearing proceeding. The Dietrich witness suggested that the minimum standards apply only for the months of August through November. Representatives for Dietrich and Kraft also suggested that shipping percentages in the range of 5 to 8 percent would be more appropriate than 15 to 30 percent. Dietrich, Friendship and Kraft asked that groups of handlers be allowed to have their operations considered on a combined basis for the propose of pool qualification. Witnesses for Dietrich and Kraft suggested that the market administrator or the Director of the Dairy Division be given the authority to adjust the performance standards if marketing conditions change.

In a post-hearing brief filed by Agri-Mark, the cooperative contended that the performance proposals advanced by the Institute and Oak Tree should be denied because proponents did not provide sufficient market evidence to justify the proposed changes. The cooperative claimed that proponents relied on decisions for the Chicago and Upper Midwest marketing areas, where proponents testified that shipping standards had replaced call provisions, to justify the proposed changes in Order 2. Agri-Mark also referred to proponents' testimony that the proposals were designed, at least in part, to eliminate difference between blend prices under the various orders in the northeast by causing handlers to shift milk from regulation under Order 2 to Order 1. Such a shift would cause Order 2 producer prices to increase and Order 1 prices to producers to be reduced as a result of pooling some of the Order 2 surplus milk under Order 1. In Agri-Mark's opinion, these arguments advanced by proponents completely distort the purpose and justification for performance standards under Federal orders.

The New York-New Jersey order should be amended to require all handlers who operate designated pool plants and bulk tank units to dispose of minimum percentages of their receipts of milk from dairy farmers for Class I purposes on the months of short milk production (September through January). In addition, the market administrator would have the authority to "call" for a higher or lower level of shipments for Class I use if, on the basis of a handler meeting, the required percentages of Class I use were found to be inadequate or excessive for the purpose of supplying the market's fluid milk needs.

Under the order's current provisions, it is possible for manufacturing handlers to avoid providing any milk for Class I purposes unless the market administrator establishes temporary pooling standards for handlers by issuing a "call". A situation in which some pool plants and bulk tank units dispose of a percentage of their receipts from dairy farmers in Class I that significantly exceeds that marketwide average of Class I use while other pooled handlers do not have any of their milk associated with the Class I market is not an equitable arrangement for any of the market's participants. Distributing plant operators who must pay excessive handling or give-up charges to obtain supplemental milk to operate their plants are competitively disadvantaged relative to other distributing plant operators who are able to obtain adequate milk supplies, often from their own manufacturing operations, at reasonable and customary prices.

In addition, manufacturing handlers who ship milk to fluid packaging plants may incur costs of unused manufacturing capacity and transportation costs not covered by the order that are not incurred by those who retain all of their milk supplies for processing. As a result, shipping handlers are disadvantaged relative to their non-shipping counterparts, not only because of such higher costs, but also in terms of their ability to attract and retain an adequate supply of producer milk. Because handlers who carry the burden of supplying milk to the fluid market have higher costs than those who do not, their ability to pay producers as high a price as non-shipping handlers are able to pay is impaired. This situation results in inequitable returns to dairy farmers. It is evident from the record of this proceeding that such unfavorable marketing circumstances are prevalent in the Order 2 market.

Therefore, in order to continue participating in the marketwide pool, maintain their designated pool status and thus subsidize their payments to dairy farmers with the Order 2 blend price, handlers who operate designated pool plants and units should demonstrate their willingness and ability to supply milk on a continuing basis for the higher-valued uses which generate the blend price. Although the cost of shipping milk to a fluid processing plant may exceed the returns for such shipments in some cases, it is not a proper basis to allow handlers and producers who have no association with the fluid market to enjoy the benefits of participating in the marketwide pool and receiving the blend price that is generated by fluid milk sales.

In addition to fostering equitable treatment under regulation, the adoption of minimum performance standards for pooling should remove doubts that distributing plant operators may have about whether the milk associated with manufacturing plants will be available for shipment to distributing plants in the months of short milk production. Also, the changes adopted herein will encourage the development of new supply relationships and/or cultivate and extend those already existing between designated pool handlers and fluid milk plants serving the Order 2 market.

Minimum Class I utilization standards for handlers should apply during the months of September through January. The record evidence fails to demonstrate the need for year-round performance requirements, as proposed by Oak Tree Farm Dairy. The record does show, however, that milk supplies relative to the market's Class I needs are short during the months of September through January. Generally, the Class I utilization by Order 2 handlers in each of these five months exceeds the market's annual average Class I use and represents about 40 to 45 percent of the market's pooled milk.

For the months of February through August, information in the record shows that the Class I utilization by handlers is below the market's annual average Class I use and fluctuates generally in the range of 35 to 40 percent. Although both the Institute and Oak Tree Farm Dairy suggested that performance requirements apply in August, the market data do not demonstrate a need for imposing Class I requirements on handlers in August even though milk supplies may be somewhat tighter at the end of the month as the new school year begins. Actually, the percentage of pool milk used in Class I under Order 2 was greater in February than in August for each year of 1985–1988. In view of the foregoing, August is excluded from the performance period which most appropriately should be limited to the five months of September through January.

The evidence also shows that the market's supply/demand balance is

tightest in the months of September through November, as witnesses for both Oak Tree and the Institute testified. For that reason, higher performance levels would apply to each of these three months. The required Class I use percentage for the months of September through November should be 10 percent, with a 5-percent requirement during the months of December and January. These levels of required shipments will assure that all milk suppliers in the New York-New Jersey market maintain some association with the market for fluid milk, but should not require large volumes of unnecessary and expensive shipments solely for the purpose of qualifying milk for pooling.

Some market suppliers contended that any performance standards adopted for this market should be established in terms of the percentage of a handler's milk that is shipped to fluid milk plants rather than as a percentage of a handler's receipts from dairy farmers that is used in Class I–A. They argued that since some handlers manufacture dairy products at their distributing plants in connection with their Class I operations, only part of the total amount of milk transferred to such plants would be assigned to Class I. If some of a handler's shipments to a distributing plant are classified as other than Class I–A, handlers supplying the milk would have to ship more than the required percentages of their dairy farmer receipts to distributing plants to assure that they meet the order's Class I utilization standard.

However, to the extent that the receiving distributing plant has sufficient Class I use, the milk received at such plant from a pool plant or pool unit may be assigned to Class I by the plant operator. The current Order 2 allocation provisions concerning such transfers give the receiving plant operators considerable discretion in classifying milk receipts from units and plants. Such flexibility also gives shipping handlers an opportunity to lock in a Class I classification with the receiving distributing plant operator when the terms of the sale are decided and prior to the time the milk is actually moved.

The ability of shipping handlers to gain the agreement of receiving handlers that the milk they transfer to distributing plants will be assigned to Class I should allay the concerns of such handlers in dealing with the minimum Class I use standards adopted herein. The current Order 2 performance standards for temporary pool plants specify a given level of Class I use. Also, handlers are familiar with standards based on Class I use because the minimum standards for designated plants and units are announced on that basis when the market administrator issues a "call" for additional milk shipments.

Most of the arguments advanced by those opposing the adoption of performance standards focused on the principle of efficiency. Opponents argued that it is inefficient to move milk from distant zones for fluid use when there are nearby supplies of milk available to meet such needs. However, one of the more significant costs of supplying the fluid market, according to both proponents and opponents of performance standards, is the opportunity cost of the milk when it is not available for processing at the manufacturing plant because of its delivery to a fluid milk plant. In such cases, the manufacturing plant must operate at a lower capacity level, increasing the plant's cost per unit of output. Such so-called "give-up" costs that are associated with shipping milk to fluid milk plants fall as heavily on a manufacturing plant operator located near the New York City metropolitan area as they do on a handler whose manufacturing plant is located in upstate New York and more than 350 miles from the city.

The transportation costs of moving such milk, of course, would be greater for the handler moving the milk from upstate New York. The changes adopted herein under issue 4, which increase the transportation rate for adjusting Class I prices for location, should enable handlers to recover more of the costs associated with transporting milk for Class I use. The increased transportation differential rate should ameliorate somewhat the differences in cost between furnishing milk to the plant of a fluid handler in New York City with milk from nearby sources and moving it to the city from more distant areas of the milkshed.

Opponents also argued that if manufacturing handlers are forced to ship milk to qualify it for pooling under Order 2, they will not be able to charge distributing plant operators as much for the milk that is shipped. Data in this record show that for the Class I milk purchased by Oak Tree Farm Dairy from Queensboro Farms, Inc., in January 1988, over-order charges (including handling and premiums) of $2.12 per hundredweight were applicable. Evidence adduced at the 1987 call meetings, which is also part of this record, shows that Order 2 handlers had been paying up to $2.50 per hundredweight in over-order charges for spot shipments of milk. However, handling charges effective in some other marketing areas, where handlers are required to meet performance standards, are not significantly lower. (Official notice is taken of the price data on Table 36 of Dairy Market Statistics 1988 Annual Summary.) This information would seem to imply that the existence of performance standards in a regulated market does not necessarily have the effect of depressing over-order handling charges.

Several handlers who testified against performance standards took the position that if pooling requirements are imposed on Order 2 handlers they should be allowed to combine their operations for the purpose of meeting the minimum standards. They stated that the order should give handlers the necessary flexibility to operate efficiently in marketing and pooling the milk of dairy farmers.

The flexibility afforded handlers under the bulk tank unit provisions of the Order 2 will minimize most of the handling and hauling inefficiencies involved in requiring Order 2 handlers to meet minimum Class I utilization percentages. Nearly all of the Order 2 milk supply is pooled through bulk tank units. Such milk is received by the responsible handler when it is picked up at the farm. The current bulk tank unit provisions provide considerable flexibility for handlers who wish to establish, maintain and be responsible for pooling the milk received by such units.

The need for regular pool plant and pool unit operators to have their operations considered on a combined basis for the purpose of meeting the required utilization percentage will not be as important to handlers as they stated in testimony because the required performance levels adopted herein are considerably below those proposed. For instance, meeting minimum Class I use standards of 5 and 10 percent for five months rather than 15 and 25 percent for six months should make it considerably easier for handlers to qualify their milk for pooling. However, the order would allow handlers operating bulk tank units to combine the units and operate them as one unit under the direction of one of the handlers. In this way, handlers could use a form of combination for the purpose of meeting pooling requirements.

As proposed, the designated pool status of plants and bulk tank units would be canceled if they fail to meet the performance standards adopted herein. The rules that handlers must follow to get the milk of such plants and units reinstated for pooling purposes

would be the same as those which currently apply if one or more plants or units fails to meet the minimum Class I utilization percentage announced by the market administrator under the terms of the current Order 2 provisions.

If a designated pool plant fails to meet the minimum Class I utilization standard in any month, the plant's designation would be canceled and the plant would not be eligible for pool plant status through the following June 30. On July 1, the plant would be eligible for pooling as a temporary pool plant. If such plant met the performance requirements as a temporary pool plant for twelve consecutive months, the handler could apply to the market administrator to get the plant once again designated as a regular pool plant. Similarly, if a bulk tank unit fails to meet the minimum Class I utilization requirement the unit's pool designation would be canceled and the unit would be depooled through the following June 30. On July 1 the unit could be reinstated as a declared pool unit. During the period that the plant or bulk tank unit is depooled, any Class I milk of such plant or unit would be priced and equalized in accordance with the provisions relating to partial pool plants or partial pool units from the effective date of cancellation through the subsequent June 30.

The 5- and 10-percent levels of required Class I use by handlers adopted herein will assure that handlers will share more equitably the responsibility of furnishing milk for Class I purposes. At the same time, such percentages are not so high as to require that large volumes of milk be moved unnecessarily solely to qualify it for pooling.

It is evident from the hearing record that adoption of the minimum Class I use standards for handlers at the levels adopted herein will not provide adequate supplies of milk to the fluid market during the five qualifying months when more than 40 percent of the market's milk is normally needed for Class I purposes. However, much of the milk needed for fluid use is already controlled by the fluid milk processors who use the milk. In addition, it is expected that supply commitments between shippers and distributing plant operators will fill the gap between required and necessary shipments.

As a provision for occasions when such commitments do not assure needed levels of supply, the market administrator will retain the authority to issue a "call" for needed milk supplies. The authority for a "call", while effective for assuring that temporary needs for additoinal shipments are met, should not take the place of basic shipping requirements. The procedure for issuing a "call" requires the market administrator to hold meetings, usually on an urgent basis, involving all of the handlers in the market to determine the desirable utilization of all milk shipments. The use of this procedure on other than an irregular basis is unnecessarily burdensome and expensive. Adoption of minimal shipping requirements and the resulting relationships expected to form between suppliers and fluid processors should result in more orderly marketing conditions.

Dietrich and Kraft were concerned that adoption of mandatory performance standards would not provide the necessary flexibility to deal with changing supply/demand conditions. They suggested that the market administrator or the Director of the Dairy Division be given the authority to revise the performance standards if marketing circumstances change. The current provisions of Order 2 that give the market administrator the authority to establish a desirable level of Class I use of milk received from dairy farmers also give the market administrator the authority and discretion he needs to respond to changing supply/demand conditions by raising or lowering the minimum Class I utilization percentages adopted here in if he finds that an adjustment is warranted.

It is not necessary to modify the required Class I utilization percentage for temporary pool plants to agree with the percentages adopted for regular pool plants, as proposed by Oak Tree. These temporary pool plant utilization percentage apply principally for an initial 12-month period during which handlers are qualifying their plants for designation as "regular pool plants". For that reason, the standards apply year-round at higher performance levels. The standards adopted in this decision apply during five months of each year only to handlers operating designated pool plants and units. The standards serve the purpose of maintaining handlers' permanent pool designations, and are set at considerably lower performance levels than the temporary pool plant standards. It is not necessary for regular and temporary pool plants to be subject to the same required Class I use percentage. Therefore, no changes are needed in the current performance requirements for temporary pool plants.

One additional proposal related to the pooling standards for Order 2 market suppliers was considered at the hearing. Friendship Dairies, Inc., an Order 2 handler primarily engaged in manufacturing Class II products, proposed that a handler's pool designation for plants and/or bulk tank units not be subject to suspension or cancellation for failure to meet the minimum pooling requirements if the handler is able to convince the market administrator that fluid operators refused to buy milk because they consider the price too high. The handler explained that a fair price for milk deliveries to fluid processing plants could be significantly higher than the order's Class I price because it would inlcude allowances for certain handling costs.

Proponent contended that supplying handlers should be permitted to recover the entire direct cost of making required shipments of milk to fluid milk plants. To accomplish this, the witness for Friendship contended that the order should establish a basic "floor price" under which shipping handlers would be excused from meeting the order's minimum operating requirements without jeopardizing their pool designations. As proposed, the floor price would reflect the location value of milk at the purchasing fluid milk plant plus the shipping handler's extra expenses associated with gathering the milk, premiums that are paid to producers or cooperatives, and transporting costs not paid for by producers.

In support of its proposal, Friendship testified that during the fall of 1984 and the winter of 1985, all of the milk it offered for sale was accepted by fluid plants. However, the prices Friendship received for such milk were only slightly above the Order 2 minimum Class I prices and did not begin to compensate the handler for the related costs involved in making such shipments.

Proponent further argued that fluid handlers are using the present order provisions to obtain supplemental milk supplies from market shippers at prices that are below the cost of shipping the milk. It was Friendship's contention that fluid operators contract with suppliers for an amount of milk that will meet their absolute minimum needs during the spring months of high milk production and relatively low demand, and then depend on other handlers to balance their needs at times when more milk is needed. The witness stated that when the short milk production season occurs, fluid milk processors claim to have a supply shortage and ask the market administrator to impose Class I utilization requirements on handlers. He argued that fluid milk dealers tend to exaggerate their supply shortfalls, and that their estimates about how many loads of milk they will need far exceed what they actually buy. As a result, the

Friendship representative stated, minimum performance standards for pooling are invoked, more milk becomes available, and fluid dealers are able to avoid high handling charges for their supplemental supplies.

Other than the information provided by Friendship, the testimony regarding this proposal is rather limited. Oneida-Lewis indicated its support for the proposal but provided no additional reasons why the changes are needed and identified no specific operational problems that the cooperative has encountered that would be corrected by the adoption of this proposal.

Although no one testified against the Friendship proposal at the hearing, several interested parties indicated their opposition to it in briefs. Those opposing the proposal generally contended that this proposal was an attempt on the part of a manufacturing handler to circumvent the intent of the performance requirements by avoiding shipments to fluid processors and reserving the handler's milk supply for processing at its own plant.

Several concerns about the adoption of such a proposal were identified at the hearing through cross examination of the proponent witness. One anticipated problem would result when handlers supplying the market determine the level of price at which a handler may avoid shipments based on his or her operating costs. In this case, other handlers would not offer to sell milk at any lower prices. There would be no reason for handlers to attempt to reduce their costs by operating more efficiently because the order would provide allowances to cover any costs incurred. It was generally agreed that prices at which supplemental milk would be offered in these circumstances would tend to gravitate to the level of the handler with the highest cost of operation.

The hearing participants also argued that adoption of the Friendship proposal would frustrate the intent of the pooling requirements by, in effect, establishing price ceilings for milk shipments based on whatever marketing costs handlers are able to justify. The opponents of Friendship's proposal argued that if the mechanism were adopted for Order 2, it would be possible for all handlers to justify the prices at which they offer to sell milk to fluid processors without being required to ship.

The Friendship proposal is denied. There should be no recognition of the costs of such activities as assembling the milk and premiums paid to producers in determining the shipping requirements. The compensation for such activities is best left outside the scope of the order provisions and determined on the basis of competition in the marketplace or through negotiations between the buyers and sellers of milk.

In addition to the problems identified at the hearing, proponent admitted that the administration of the order would be more complicated if his proposal were adopted. However, the witness took the position that the proposal is workable and should be adopted. The determinations required by the market administrator in identifying, defining and quantifying the appropriateness of a handler's cost figures for the activities for which Friendship proposes shipping handlers be compensated would involve extensive time and effort. Any additional costs to administer these additional rules would have to be paid for by regulated handlers.

The costs of performing the activities for which Friendship proposes assured re-imbursement vary widely among and within regulated markets. A determination of whether such cost figures, which cover several various aspects of milk marketing, are reasonable and therefore appropriate would be almost impossible in view of the extent of their variability, both on an intra- and inter-market basis. Such determinations would be overly burdensome.

Proponent implies in his testimony that handlers are forced to ship their milk to the fluid market and are required to meet the order's minimum performance standards. They are in fact forced to do neither. The decision to ship milk is left with the market supplier. A handler must meet the minimum performance standard by demonstrating an association with the market's Class I sales only if the shipper wishes to participate in the markewide pool and share in its Class I sales. Although Friendship may not recover all of its direct costs on the portion (about 15 percent) of its milk that is sold to the fluid market, the benefits realized by the handler from being able to pool all of its milk and receiving credit for it at the Order 2 uniform prices should more than offset any losses associated with making shipments.

In addition to proposing that Order 2 handlers be required to meet performance requirements in certain months, the Institute submitted a corollary proposal that would provide uniform pooling standards for Order 1 and 2 market suppliers. To align the qualifying seasons under the two orders, the Institute modified its hearing notice proposal for Order 2 by dropping the month of January as a qualifying month. As modified, the same proposed qualifying season of August-December would apply to market suppliers under both Orders 1 and 2. Also, as proposed, the performance percentages under both orders would be identical: 15 percent in August and December and 25 percent for the months of September through November. The Institute asked that the Secretary review the record data and determine whether proponent's proposed performance levels were justified. Proponent requested that if the investigation shows that different percentage levels than those proposed appear to be more appropriate, identical percentages under both orders be adopted at levels different than those proposed.

A spokesman for the Institute argued that the performance requirements for Order 1 and 2 market shippers should be identified so that they will be more favorably aligned with the pooling requirements provided under the Middle Atlantic order, in addition to those included in other Federal milk orders. The witness also contended that these coordinating changes are needed to foster competition for milk supplies between Order 1 and 2 handlers in a procurement area that is common to both markets. Proponent claimed that the extensive overlap of the milk procurement areas for these two markets makes it very important that the performance requirements for all suppliers operating in the region be the same so that a shipper's decision to market the milk of dairy farmers under one order rather than the other would be based on economics rather than the relative ease of qualifying the milk for pool status under one market rather than the other.

Generally, the fluid milk processors identified in previous findings as supporters of the Institute's proposal to impose performance standards on Order 2 market suppliers also endorsed its proposal that shipping requirements in Orders 1 and 2 be the same, and gave the same reasons advanced by the Institute. In addition, the fluid milk processors' representatives suggested that adoption of uniform standards for shippers supplying these two markets may provide the benefit of equalizing the blend prices for the two markets as Order 2 handlers operating manufacturing plants and having equal access to both markets can be expected to shift the regulation of their plants to Order 1 to improve their pay prices to producers.

The dairy farmers, cooperatives and proprietary manufacturing plant operators identified earlier as opposing the adoption of mandatory performance standards for Order 2 shippers did not

specifically address the Institute's proposal to make shipping standards for Orders 1 and 2 uniform.

In a post-hearing brief, Agri-Mark, Inc., a cooperative association that controls about one-half of the supply of milk for the Order 1 market, objected to the uniform shipping standard proposal for both Order 1 and Order 2 advanced by the Institute. The cooperative's representative contended that the level of performance required of Order 2 handlers should be based solely on the amount of milk needed to supply the Class I needs of that market. He rejected the idea that the level of shipping performance required of Order 1 handlers be determined in any way by the performance standards required of Order 2 handlers. Agri-Mark contended that if the pooling provisions of Orders 1 and 2 are not tailored to fit the unique needs of the individual markets, the orders will not be capable of responding to marketing conditions in each market.

The proposal by the Institute to provide uniform pooling standards for Orders 1 and 2 should not be adopted for two reasons. First, proponent's intent cannot be accomplished by adopting the changes proposed. As already indicated, there are wide structural differences in the pooling provisions of these two orders. Under Order 2 most of the milk is pooled by handlers operating designated pool plants and bulk tank units that are not required to meet minimum performance standards. Under Order 1, plants and cooperatives generally must meet minimum performance standards to qualify their milk for pooling each month. Regardless, uniformity cannot be achieved by adopting the same minimum percentage for supply plant operators under Order 1 and handlers operating pool plants and bulk tank units under Order 2. Order 1 supply plants qualify on the basis of shipments to distributing plants while Order 2 handlers generally are subject to minimum Class I utilization requirements only when the market administrator determines that fluid milk plants need more milk. Also, there are other pooling provisions in these two orders that affect the ability of market suppliers to qualify milk for pool status. There were no proposals considered at this hearing to eliminate these differences.

Furthermore, marketing conditions under these two orders do not justify uniform performance standards. The performance standards for market suppliers under a Federal milk order normally are dependent on the Class I utilization of producer milk. Usually, a market with a high percentage of Class I utilization has a relatively high shipping requirement for suppliers regulated under that order, while a market with a low percentage of Class I use has a lower minimum standard for such handlers. There is a significant difference in the percentage of Class I use of the milk produced by dairy farmers under these two orders. Record information shows that since 1984 the Class I utilization of pooled milk in Order 1 has been 12 to 15 percentage points higher than in Order 2, a situation which results in higher performance standards in Order 1 than in Order 2. Accordingly, the Institute's proposal for uniform performance standards for pool plants regulated under Orders 1 and 2 is denied.

The National Farmers Organization (NFO) proposed that the shipping standards for Order 1 supply plants be reduced. The cooperative modified its proposal at the hearing. Under the modified proposal, supply plants would be required to ship 10 percent of their receipts from dairy farmers to pool distributing plants in the months of August through December to qualify the supply plants as pool plants. The proposed changes would lower the performance standards for such plants by 15 percentage points (from 25 to 10 percent) in the months of September through November and by 5 percentage points (from 15 to 10 percent) for the months of August and December. NFO also proposed that Order 1 be amended to give the Director of the Dairy Division or the market administrator the authority to return the shipping percentages to their present levels if he finds that marketing conditions warrant such changes.

NFO contended that marketing conditions have changed since the present pooling standards for Order 1 supply plants were adopted. Proponent testified that since there are only half as many distributing plants regulated under Order 1 as there were 10 years ago and 75 percent of the market's Class I sales are accounted for by eight large distributing plants, there is less opportunity for small supply organizations to qualify their milk for pool participation. To qualify all of its Order 1 milk for pooling, proponent witness testified, NFO has from time to time sold milk to distributing plants and then bought some of it back from the distributing plant operators. Such inefficient milk handling practices could be avoided, the NFO representative claimed, if the shipping standards were lowered as the cooperative proposed.

There was no testimony to support NFO's proposal to reduce the shipping standards for supply plants. There was, however, considerable opposition to such a change. Agri-Mark, Inc., and the Green Mountain Federation, two producer organizations that supply about three-fourths of the milk pooled under Order 1, opposed NFO's proposal as did Cumberland Farms and Marcus Dairy, two Order 1 distributing plant operators. The Dairy Industry Institute of New York, which proposed uniform performance standards for market suppliers under Orders 1 and 2, also opposed NFO's proposal.

Opponents argued that it would be inappropriate to lower the Order 1 performance standards for supply plants because of declining milk production in the region and increasing Class I utilization of pool milk by handlers. They also contended that the proposed changes could jeopardize the ability of fluid milk operators to obtain an adequate supply of milk for fluid packaging.

The NFO proposal should not be adopted. As indicated by the opponents of such changes, the market's supply/demand situation does not support a reduction in the performance standards for supply plants at this time. Market data show that the annual average Class I use of pool milk by Order 1 handlers increased by one percentage point (from 52 percent) each year during the four-year period of 1985–1988. These data do not justify a reduction in the performance standards, and therefore the NFO proposal should be denied.

Since NFO's proposal to reduce the shipping standards for Order 1 supply plants is denied, the cooperative's complementary proposal to give the market administrator or the Director of the Dairy Division the discretionary authority to raise the shipping performance standards to the level of those currently in effect requires no further discussion or consideration.

A market's minimum pooling standards are not established to assure that all handlers are operating above the minimum levels. They represent the minimum levels at which handlers must operate if they wish to participate in the marketwide pool and share in the market's Class I sales. The minimum levels will affect the market's handlers differently. Some will operate far above the order's minimum requirements and others will have difficulty meeting the minimum levels. However, the inability of a single handler to meet the market's minimum standard does not automatically justify a reduction of the pooling standard. The order is not intended to guarantee handlers a market for their milk or participation in the

marketwide pool. Rather, the minimum levels of performance establish standards which handlers must achieve to pool their milk. It is only when handlers choose to participate in the marketwide pool that they must meet the order's minimum performance standards.

(c) *Qualification of producer milk for pooling.* Order 2 should be amended by replacing the requirement that each producer's milk be delivered to a pool plant or a plant from which Class I–A milk is distributed in the marketing area on one day during the first month the producer's milk is pooled with a requirement that each producer produces milk approved for fluid consumption by a duly constituted regulatory agency. A handler proposal which was neither supported by the proponent nor testified to by any other participant at the hearing, to include in the Order 2 pool any milk that does not qualify for pooling under another Federal order, is not considered further. A proposal by NFO to increase the amount of milk that may be moved directly from producers' farms to manufacturing plants and retain pool status under Order 1 is denied.

Oder 2 currently requires that when a bulk tank handler adds a new producer to his or her pooled units he or she must deliver the milk of that producer to a pool plant or a plant that has Class I–A route distribution in the marketing area on one day during the first month that the new producer's milk is pooled by the unit operator. This "touch-base" requirement also applies to producers who shift from one handler to another even though the dairy farmer's milk was pooled previously under Order 2 by a handler who was so regulated.

The changes relating to delivery requirements by milk producers were proposed by Agri-Mark, Dairylea and Eastern, three dairy farmer cooperatives that represent more than 30 percent of the producers whose milk is pooled under Order 2. Proponents testified that the producer delivery requirement should be deleted from the provisions relating to bulk tank units. At the same time, they stated, the producer definition should be expanded to include only the milk of dairy farmers that is approved for fluid consumption by a duly constituted regulatory agency, and the pool milk definition should be revised to exclude any milk that is not approved by such a regulatory authority. Proponents contended that the proposed changes will allow handlers to operate more efficiently by eliminating many uneconomic milk movements while accomplishing the objective served by the "touch-base" provision.

The hearing testimony on this issue is rather limited. Brief statements in support of the proposals were made at the hearing by three Order 2 handlers (NFO, Conesus Milk Producers Cooperative Association, Inc., and Empire Cheese, Inc.). These handlers testified in favor of the elimination of the touch-base requirement and contended that such action will give Order 2 handlers the flexibility to operate more efficiently. Several other interested parties supported the proposed changes in briefs filed after the hearing. There was no opposition to the proposals.

Proponents' witness, a Dairylea representative, testified that the touch-base requirement was included in Order 2 to demonstrate that a dairy farmer's milk had the necessary health approval to be sold and used in the marketing area for fluid purposes. He also indicated that the State regulations covering milk inspections have changed dramatically over the years and that now before a handler picks up a dairy farmer's milk the producer's milk must be approved by the regulatory agency which has jurisdiction over milk quality issues. Proponents contended that in certain cases the producer delivery requirement has caused economic hardships for Order 2 handlers. The cooperatives' witness cited two examples to indicate the types of economic problems marketing organizations have encountered because of the requirement.

In one example given by the witness, when Dairylea wishes to add to its bulk tank unit a new producer who is situated near its nonpool manufacturing plant at Adams, New York, the cooperative must deliver the milk of that dairy farmer on one day of the first month to its fluid processing plant in Syracuse or to some other pool plant. If the cooperative fails to do this, the producer's milk is not eligible for pooling. Such movements cost the association both in terms of the time and extra hauling that is involved. In addition, failure to deliver the producer's milk to a pool plant in the first month the producer is on the market would be costly to the cooperative because Dairylea would lose the difference between the Order 2 blend price and the Class II price on the amount of milk that is not eligible for pooling.

The witness also testified that Dairylea has incurred similar losses because of this requirement when one of its affiliated member cooperatives, whose milk is reported to the market administrator and pooled by Dairylea, takes on a new producer but fails to notify the cooperative who is the responsible handler. Here again, Dairylea either loses the difference in the amount of money it costs to haul the producer's milk to a pool plant instead of a nearby manufacturing plant on one day during the first month, or loses the equalization payment on the milk that is not eligible for pool status if the producer's milk is not delivered to a pool plant during the month. Proponents hope to avoid such losses with the adoption of their proposed amendments.

The record shows that there are extensive State and Federal regulations in place to determine whether a dairy farmer's milk is eligible for fluid consumption and thus eligible to be pooled under Order 2. It shows that the States of New York, New Jersey, and Pennsylvania, which comprise most of the Order 2 procurement area, have extensive regulations to assure that only high-quality milk is being produced and shipped to the fluid market. All three States follow the Pasteurized Milk Ordinance issued by the U.S. Public Health Service (USPHS). Also, each of the States has a training program for its milk inspectors. Only after the successful completion of the training program are such persons certified as licensed milk inspectors for the respective State.

Another evaluation of the area's milk quality is done by the USPHS. These ratings are performed routinely about once every 18 months and may be performed randomly at any time. The milk regulations covering the three-State area also require that advance notice be given to the appropriate regulatory authorities if a producer shifts deliveries from one handler to another. In New York, the appropriate regulatory authorities must be notified at least 72 hours before a change in marketing agents occurs so that the responsible agency has enough time to complete its investigation. Pennsylvania and New Jersey only require 24-hour advance notice be given to the appropriate health authorities because they accept the health ratings issued by the other two States.

The evidence supporting the changes proposed by the cooperatives is overwhelming and those changes are adopted herein. As proponents contended, removal of the producer delivery requirement will eliminate the need for handlers to incur extra hauling costs merely to satisfy the producer touch-base requirement. Furthermore, the two corrollary changes proposed by

Agri-Mark, Dairylea and Eastern in the definitions of pool milk and producer will accomplish the intent of the touch-base requirement in that such changes will insure that only milk which meets the quality requirements of a duly constituted regulatory agency will be eligible for pooling under Order 2.

NFO proposed that Order 1 handlers be permitted to move a greater percentage of their milk supplies than is currently allowed under the order's producer milk definition directly from producers' farms to manufacturing plants. Specifically, the cooperative proposed that the percentage of a handler's receipts that may be delivered directly to nonpool plants be increased by 15 percentage points each month (from 35 to 50 percent in the months of September through November and from 45 to 60 percent during the months of December through August).

NFO testified that its proposal to increase the amount that handlers may ship directly from the farm to manufacturing plants is a complementary change to its proposal to decrease the shipping standards for Order 1 supply plants. The cooperative's witness testified that the order's present diversion limits are overly restrictive and cause market inefficiencies. To assure that all of its milk is eligible for pooling each month, the witness stated, NFO receives at its pool supply plants milk from dairy farmers that is ultimately destined for manufacturing plants. Proponent indicated that many, if not all, of such uneconomic movements and milk handling practices could be eliminated if the diversion allowances were increased as proposed by NFO.

As was the case with NFO's supply plant proposal, there was no support for the cooperative's proposal to increase the diversion allowances for Order 1 producer milk. The interested parties who opposed lower shipping requirements (Agri-Mark, the Green Mountain Federation, Cumberland Farms and Marcus Dairy) also opposed higher diversion allowances, primarily because such a change could jeopardize the availability of milk supplies at fluid plants.

Opponents to NFO's proposal stated that the current supply of milk in the New England market does not assure pooled handlers of all the milk they want, and that relaxation of diversion limits could create problems in assuring an adequate supply for the fluid milk market. Given the market's Class I utilization percentage of around 60 percent during the markets months of low production and relatively high demand for Class I use, it would not be reasonable to allow diversions of 50 percent of the market's milk supply to be diverted to nonpool manufacturing plants during the months of September through November.

Since marketing conditions in New England do not justify any increase in the limits on diversions of producer milk to nonpool plants and NFO's complementary proposal to reduce supply plant shipping requirements is denied earlier in this decision, the proposal to increase diversion limits is also denied.

3. *Seasonal payment plans.* No change should be made in the seasonal incentive plans for paying producers supplying the New England (Order 1) and New York-New Jersey (Order 2) markets on the basis of this record.

Presently, Orders 1 and 2 provide identical "Louisville", or "take-out pay-back", seasonal payment plants. Under these plans money is withheld from payments to producers supplying the markets during the relatively high production months through deductions in the computation of uniform prices. In both orders, the amounts deduced are 20 cents per hundredweight in March, 30 cents in April and 40 cents during May and June. The funds withheld for the months of March through June are returned to dairy farmers supplying the markets by means of additions to the marketwide pools during the months of relatively lower milk production. Twenty-five percent of the aggregate amount of money withheld is returned in August, 30 percent in September and October and the remaining funds plus accrued interest are paid back to dairy farmers in November. The plans were adopted under the two orders to encourage level milk production throughout the year.

Agri-Mark, Inc., Dairylea, Inc., and Eastern Milk Producers, Inc., three cooperatives whose members supply a large portion of the milk pooled under Orders 1 and 2, proposed that the current seasonal incentive plans for paying producers under the orders be replaced with seasonal base-excess plans. The cooperatives' spokesman testified that this change is needed because a seasonal base-excess plan would be more effective than the current payment plan in moderating seasonal variations in milk production in the two markets. The proposals considered at the hearing included detailed provisions to implement seasonal payment plans under the two orders. The proposals would establish August-November as the base-forming months and the other eight months as base-paying months, and define excess milk deliveries by individual dairy farmers. The proposals provide a method to compute bases for individual dairy farmers whose milk was received by pool handlers, by plants that become pool plants during or after the beginning of the base-forming period, and by handlers regulated under more than one of the three northeast orders. They also provide for a minimum base allocation for producers without established bases, and for those whose amount of higher-valued base milk would be greater if computed by using the minimum percentage allocation than by using their established bases.

Under the proposed seasonal base plan, a blended or uniform price would be computed by dividing the total value of the pool by the hundredweight of producer milk pooled. The excess price would then be determined by subtracting $1.00 from the blended or uniform price, and the value of excess milk in the pool would be calculated by multiplying the hundredweight of excess milk by the excess price. The base price would then be calculated by dividing the difference between the value of all of the producer milk in the pool at the blended or uniform price and the value of excess milk in the pool by the hundredweight of base milk. Accordingly, producers having a higher than average percentage of base milk would receive a higher price per hundredweight for their production than producers with a lower than average percentage of base milk.

The proposed base-excess payment plans also inlcude various rules that relate to the establishment and transfer of bases. Briefly stated, an average daily base would be computed for a producer on the basis of milk deliveries to the market during the months of August through November. This base would be used to make payments to the dairy farmers during the months of January through July and December of the next year. For milk deliveries up to the amount of the average daily base computed for a dairy farmer, the producer would receive the higher uniform price for base milk. For deliveries in excess of assigned bases, producers would receive a lower uniform price.

In addition to proponents' basic contention that the proposed base-excess plans would be more effective than the current Louisville plans in leveling seasonal variations in milk production under Orders 1 and 2, the witness for proponent cooperatives offered several other reasons for supporting the proposals. He testified that since there is less milk available in these markets now, it is more important that the milk produced be made available for the highest class of use by

providing a monetary incentive for dairy farmers to produce milk when the fluid demand for it is greatest. According to the witness, such an adjustment by producers would alleviate the problems Class I handlers have experienced in obtaining milk during the fall months. Proponent also claimed that leveling the seasonality of milk production would match more closely the amount of milk produced by dairy farmers with the amount demanded by processors, and thereby make the entire industry more efficient by lowering the cost of procuring additional supplies in the fall and disposing of surplus milk in the spring.

The proponent witness further argued that shifting production from spring to fall would increase the total income of dairy farmers because they would produce more milk in the fall, when milk prices are highest. In addition, he stated, by eliminating the current "take-out" from the uniform price computation in the spring, farmers' cash flow positions would be improved when farming expenses are greatest.

The spokesman for the three proponent cooperatives acknowledged that milk production for the New England market has leveled off considerably under the payment provisions of the current Louisville plan. He insisted, however, that the base-excess plan is needed in Order 1 as a maintenance program to assure that the market's milk production will continue its relatively level pattern rather than revert to a more seasonal pattern.

In a post-hearing brief filed by Agri-Mark, the cooperative argued that base-excess plans are needed more when milk supplies are scarce, as they are now, than when they are more than adequate, in order to distribute the available supplies evenly throughout the year.

The three cooperatives' base-excess proposals for Orders 1 and 2 were supported at the hearing by only one other producer group (Pennmarva Dairymen's Federation). Pennmarva consists of four individual cooperative associations: Atlantic Dairy Cooperative; Dairymen, Inc.; Maryland and Virginia Milk Producers Cooperative Association; and Valley of Virginia Milk Producers Association. These four cooperatives market most of their members' milk under the Middle Atlantic order (Order 4).

None of the Pennmarva cooperatives markets milk under Order 1, and only one of the member-cooperatives (Atlantic) markets a small amount of producer milk on Order 2 each month. For that reason, the Pennmarva spokesman limited his support to adoption of a base plan under Order 2. Pennmarva's witness testified that Order 4 producers have operated under a base-excess program since March 1971. He testified that the plan has been effective in leveling milk production throughout the year and by so doing has ensured orderly marketing. The witness contended that the same results would be achieved if the proposed base-excess plan were provided for Order 2 producers.

The National Farmers Organization (NFO), a national cooperative association which represents about 320 dairy farmers who supply 18 million pounds of milk per month for the Order 2 market and about 250 producers who supply 14 million pounds of milk per month to the Order 1 market, also testified with respect to the proposed base plan.

NFO agreed in principle that base-excess plans should be designed to encourage level milk deliveries by producers throughout the year, but objected to using such plans to penalize dairy farmers for producing too much milk. For these reasons, NFO testified that it could support the base plans proposed for Orders 1 and 2 only if two modifications were incorporated into the amendatory language. First of all, NFO proposed that handlers pay a 15-cent surcharge on all class uses of milk to be paid to producers for their base milk deliveries. NFO claimed that producers need this additional money to cover some of the expenses associated with gearing their dairy herds toward fall milk production.

Secondly, the cooperative proposed that new milk production units be assigned market average bases and that producers who have been delivering their milk to other markets be assigned full bases from their prior production histories rather than paying such producers on the basis of fixed percentages that vary by month. A New York farmer whose milk is marketed by NFO testified in support of the Order 2 base plan proposal as modified by his association.

Another New York dairy farmer speaking on behalf of Canajoharie Milk Producers, Inc. (Canajoharie), which represents 70 family farmers who supply about 4 million pounds of milk per month for the Order 2 market, opposed the proposals to provide base-excess plans under Orders 1 and 2 and testified that replacing the present payment plans with base-excess plans would represent a dramatic change for producers covered under the two orders. He claimed that it would be inappropriate to change payment plans now and pay lower prices to producers for milk deliveries in excess of their assigned bases because such changes would tend to aggravate the deficit milk supply situation the region is experiencing.

The producer argued that a change to base-excess payment plans in these two markets would: (1) Impose extensive computational duties on the market administrator and thereby increase the cost to handlers of administering the order; (2) increase the breeding and feeding expenses of dairy farmers who attempt to increase fall production; (3) reduce or eliminate the present practice of handlers who pay premiums to dairy farmers for fall deliveries to attract greater volumes of milk; and (4) be the first step of a supply management system that ultimately would result in some type of quota program for the Northeast.

As an alternative to shifting from the present Louisville plans to base-excess plans in paying producers under Orders 1 and 2, the Canajoharie witness proposed that the current plans be updated so that the "take-out" rates reflect the same percentage of the blend prices now as they did when the rates were established at their present levels. In connection with its proposals, the cooperative witness suggested that the take-out rates be increased to the updated levels gradually over the next five years. At such time, he stated, the effectiveness of such modifications could be reviewed and the continuation of the programs evaluated at a public meeting.

A spokesman for Allied Federated Co-ops, Inc. (Allied), a federation of 22 individual cooperatives including Canajoharie that market the milk of some 1400 New York dairy farmers whose milk is pooled primarily under Order 2, also presented testimony opposing the proposed base-excess plans. He stated that there are no marketing problems associated with the present payment plans and that the supply/demand balance in these two markets has improved considerably since the present seasonal incentive plans were adopted. The Allied spokesman took the position that it would be inappropriate to adopt payment plans that would penalize dairy farmers for increasing production at a time when additional milk supplies are needed to furnish the fluid requirements of the markets' distributing plants. For these reasons, the witness supported Canajoharie's proposal to update the current payment plans by increasing the take-out rates.

Three other members of Allied (South New Berlin Milk Cooperative, Inc., Northern New York Bulk Milk Producers

Cooperative, Inc., and Preble Milk Cooperative Association, Inc.) supported the testimony presented by Canajoharie.

A witness for Lowville Producers Dairy Cooperative, Inc. (Lowville), an independent New York cooperative representing about 287 dairy farmers who pool 23 million pounds of milk under Order 2 each month, testified in opposition to the base plan proposal of the three cooperatives and to the Canajoharie proposals to modify the present payment plan. Since Lowville's milk is marketed under Order 2, the witness' testimony focused on the changes proposed for that market. The cooperative opposed the changes because the rewards to its member dairy farmers would not be sufficient to offset the higher costs associated with trying to obtain greater fall milk production from their dairy herds. The Lowville witness took the position that the present payment plan has operated to promote seasonally level milk deliveries, and that handlers who need more milk in the fall months of the year may obtain it by offering premium prices to dairy farmers.

Another independent New York cooperative association, Oneida-Lewis Milk Producers Cooperative, Inc., which pools about 2.5 million pounds of milk per month produced by its 24 member dairy farmers under Order 2, also opposed the proposed changes in the current payment provisions of Order 2. The cooperative was primarily concerned with the proposals to amend Order 2 because Oneida-Lewis markets its milk under that order. The cooperative's witness gave several reasons for opposing the base plan. He contended that the proponent cooperatives did not educate producers adequately about the effect of the base program on their monetary returns. It was his opinion that dairy farmers should understand how a base plan works before they are paid under such a program. He also claimed that the cost to farmers who manage their herds to produce greater milk deliveries in the fall would be greater than the benefits they would receive by doing so. In that regard, he estimated that a typical Northeast diary farmer who sells one million pounds of milk annually and whose marketings vary seasonally could lose as much as $1700 to $2000 a year under the proposed base-excess plan.

He argued that the three proponent cooperatives represent less than half of the producers supplying the two markets and contended that if any one of proponent cooperatives wants to reduce the seasonal variation of its members' milk production, the cooperative may operate its own base-excess plan without imposing such a program on all dairy farmers covered under the order. The Oneida-Lewis representative testified that the current payment plan has reduced the market's seasonal variation significantly over the years. He also indicated that in certain cases processors have paid premiums to dairy farmers in the fall months of the year to attract any additional milk they may need. The witness contended that the current payment plan supplemented with the optional payment practices that are available to handlers have served the market well in the past and should be adequate in the future. For these reasons, the Oneida-Lewis spokesman asked that the current payment provisions of Order 2 be continued without change.

A dairy farmer whose milk is marketed by Oneida-Lewis also testified on this issue at the hearing. Although she did not oppose the base plan specifically, she found no need for such a payment plan in Order 2. The witness took the position that New York dairy farmers need greater pooled values for their milk deliveries rather than a new method to divide the same amount of money. She was particularly concerned that processors might quit paying fall premiums to producers if the base-excess plan were adopted for the Order 2 market.

With respect to the New England market, the president of the Green Mountain Federation, which consists of four individual cooperatives (Cabot Farmers' Cooperative Creamery Company, Independent Dairymen's Cooperative Association, Massachusetts Cooperative Milk Producers Federation and St. Albans Cooperative Creamery) that market the milk of about 1200 dairy farmers whose milk is pooled under Order 1, presented the Federation's overall position with respect to the proposed base-excess plan for that market. In addition, spokesmen for three of the Federation's member cooperatives testified individually. Essentially, they opposed the proposals to replace the Louisville plan with a seasonal base-excess plan and the Canajoharie proposal to update the order's present payment plan. The Federation's witness asked that the current payment provisions continue to be used in paying Order 1 dairy farmers.

The Federation's witness testified that the order's present payment plan has been effective in leveling the market's milk production and that no changes in the payment provisions are necessary at this time. He testified that adoption of a base program for the Order 1 market would be an unwarranted extension of Federal regulation and would result in higher administrative costs to handlers. He contended that since this program would not increase the amount of milk produced, it would not be appropriate to adopt such a program for this particular market at the present time because supplies have been barely adequate to meet the needs of processors. The Federation opposed the Canajoharie proposal because such action would cause cash-flow problems for dairy farmers in the spring months of the year when farming expenses are higher and milk prices are lower.

Three witnesses representing St. Albans Cooperative, one of the Federation's member cooperatives, also testified in opposition to the proposed changes to the current payment provisions of Order 1. One witness testified that additional milk supplies are needed by Order 1 processors on a year-round basis to meet the market's increasing demand and contended that monetary incentives are needed now to encourage dairy farmers to produce more milk for the Order 1 market rather than applying lower prices to the excess milk deliveries of producers, as proposed.

A St. Albans' spokesman argued that this is not an appropriate time to adopt a base plan for the Order 1 market. The witness contended that since the proposed plan does not increase the market's pooled value of milk, it is ill-conceived because it provides no additional money to cover the extra breeding and feeding costs that dairy farmers would incur in gearing their herds toward greater milk production in the fall months of the year. Because of the higher costs that would be required, he stated, the net returns of some producers actually would be lower under the proposed base-excess plan than they would be if the present payment plan were continued. The cooperative spokesman contended that level milk production benefits manufacturing processors more than it does fluid milk operators. Since dairy farmers cannot make a profit producing milk at the lowest class price level, he explained, they actually would be better off if less of the market's milk supply were used for manufacturing purposes because the blend prices they receive would be higher.

A St. Albans' witness further claimed that base plans can be operated more effectively if cooperative associations run their own programs because each cooperative can tailor its payment program to address the unique

marketing conditions facing the organization. The witness stated that if the base plan is provided under the order, all of the market's producers would be included in its operation, even though individual cooperatives may face different operational problems. He also argued that it is much easier and faster for the cooperative to revise its own base plan at a board meeting in response to changes in marketing conditions than it is to amend the order's base-excess provisions under the required formal rulemaking procedures.

According to a St. Albans' witness, the cooperative adopted its own so-called "double Louisville" payment plan in 1979 to supplement the plan in the order. Under the supplemental plan, the cooperative deducted one dollar per hundredweight from payments to producers for the months of April through June, and about one-fourth of the total amount deducted was added back in paying producers during each of the following months of August through November. According to the witness, the cooperative discontinued its payment plan in 1987 to enhance the cash flow of its members during the spring months and to encourage additional milk production to meet the market's expanding demand. The witness stated that increasing the take-out amounts under the present Louisville plan, as Canajoharie proposed, would only discourage any potential increases in milk production and therefore should be denied.

A representative of Cabot Farmers' Cooperative Creamery Company opposed the base plan proposal for Order 1 and testified that the payment practices of handlers (cooperative and proprietary) in that market have created sufficient incentives to result in seasonally level milk production. He stated that these regulated parties have the ability to create and promote favorable marketing circumstances in the future. The witness contended that Order 1's existing Louisville payment plan, in conjunction with the payment practices of handlers, has established a stable regulatory environment for producers and handlers, and that the market's present supply-demand conditions do not warrant changing to the proposed base-excess plan advanced by the three proponent cooperatives or the higher take-out rates proposed by Canajoharie.

The representative of Massachusetts Cooperative Milk Producers Federation also opposed the base-excess plan and took the position that its adoption would force milk producers out of business. The cooperative primarily objected to the application of the one dollar penalty on excess milk and claimed that its application would result in lower overall prices to farmers, who would then decide to quit milking cows.

Four handlers (Cumberland Farms, Dietrich's Milk Products, Farmland Dairies and Marcus Dairy) who are regulated under Orders 1 and 2 testified with respect to the proposals to replace the present seasonal incentive plans in those markets with base-excess plans. For the most part, the handlers took the position that since these proposals affect returns to dairy farmers and do not affect the cost of milk to handlers, the viewpoints of milk producers are more relevant than those of processors.

Cumberland Farms operates distributing plants regulated under both Order 1 and Order 2, and opposed the proposals for a seasonal base-excess plan. The handler expressed concern primarily with the provision of the proposed base plan that penalizes dairy farmers one dollar per hundredweight for deliveries over their assigned bases and reduces their income in the months of the year when their expenses are highest. He contended that a lower net income in such months could ultimately force many producers out of business and jeopardize the handler's ability to attract and retain adequate milk supplies for his plants. He further claimed that since milk supplies under Orders 1 and 2 have not been excessive during the Spring months in any of the past four years there is no reason to penalize dairy farmers for producing more milk in such months.

A Dietrich's Milk Products witness testified that Orders 1 and 2 should provide strong seasonal incentive plans. The handler operates two manufacturing outlets, one of which is pooled under Order 2, that are used regularly to dispose of the reserve milk supplies associated with the Order 2 and Order 4 markets. The Dietrich's witness supported the base-excess plan proposed by the three cooperatives because the plan's eight month base-paying period would complement the payment program the handler uses. He stated that the proposed base plans are designed to allow dairy farmers to increase production during the base-forming months by paying producers the market's blended prices rather than base and excess prices in such months. The Dietrich's spokesman also supported, as an alternative, the Canajoharie proposal to update the take-out amounts under the present Louisville plans for the two markets if the Department found that such a change would be more effective than the base-excess plans in promoting level producers milk deliveries throughout the year.

Farmland Dairies, the operator of an Order 2 fluid milk plant at Wallington, New Jersey, did not take a position at the hearing either for or against the proposals to change the present payment plans under Orders 1 and 2. In a post-hearing brief, however, the handler cited the testimony of several dairy farmers and contended that the record shows that base-excess plans are not needed in these markets. The brief argued that if any changes in the present payment plans are found to be necessary, modification of the present Louisville plans should be adequate. The handler's brief stated that the record of this proceeding shows that the difficulties and expenses incurred by dairy farmers in attempting to increase milk production in the fall months of the year were underestimated by proponents, and that the proponent cooperatives did not adequately inform producers about the proposals and their impacts on dairy farmers.

A witness for Marcus Dairy, the operator of an Order 1 distributing plant, testified in support of some type of seasonal incentive plan to level out milk production. He claimed that adoption of a base-excess plan would complicate the mechanics of computing his producer payroll because numerous additional mathematical calculations would be involved. Since fewer such tasks are required under the Louisville plan, the Marcus witness favored the alternative proposal, advanced by Canajoharie, to update the take-out and pay-back amounts under the present Louisville plans for the two markets.

The evidence adduced at the hearing clearly indicates that there are wide differences of opinion among interested parties regarding the proposals to revise the producer payment provisions of Orders 1 and 2, either by replacing the Louisville plans with base-excess plans, or by updating the take-out amounts of the current Louisville plans in the orders. With the exception of the evidence presented by the three proponent cooperatives to support a change to seasonal base-excess plans for Orders 1 and 2, a number of interested parties, including individual dairy farmers, cooperatives and milk dealers, testified in opposition to such a change for numerous varying reasons, described above.

Both types of seasonal payment plans (Louisville and base-excess) provide incentives to attain a desired level pattern of milk production. Both types of payment plans are specifically

authorized by the Agricultural Marketing Agreement Act. However, there is no conclusive evidence in the record of this proceeding from which to conclude that one plan would be more effective than the other in leveling out seasonal variation in milk deliveries under these two orders. In the final analysis, the question of which seasonal plan should be used must be decided primarily on the basis of the wishes of the producers affected. It is evident from the record that neither the base-excess plans proposed by the three cooperatives nor the alternate Canajoharie proposal to revise the present Louisville plans is favored by an overwhelming majority of the producers supplying these markets. The three cooperatives proposing the change from the Louisville plans to the seasonal base-excess plans in these two markets represent less than 50 percent of the Order 1 market and only slightly more than 30 percent of the Order 2 market.

While the base plan opponents did not represent all of the remaining producers they represent a sizable percentage of the producers supplying each of the two markets. The Green Mountain Federation, which represents about one-fourth of the fairy farmers supplying the Order 1 market, opposed the change proposed by the three cooperatives for that market and Allied Federated Cooperatives, which represents about 10 percent of the Order 2 producers, opposed the change for that market. Although the degree of opposition to the base plan from Order 2 producers may not be enough to justify denying the base-excess proposal for Order 2, there is enough opposition from Order 1 producers to justify denying the proposal for that order. Given the overlapping procurement areas for the two orders and the competition for milk supplies between Order 1 and Order 2 handlers, the proposed base-excess plan should not be adopted for either order if it is not adopted for both.

The record of this proceeding does not support proponents' claim that the Order 4 seasonal base-excess plan is the cause of lower seasonal variations in milk production in the Middle Atlantic market than in the Order 1 and Order 2 markets. Although the degree of seasonal variation in the Middle Atlantic market is less than in the New England and New York-New Jersey markets, that difference existed before the adoption of either the Order 4 seasonal base-excess plan or the current rates of take-out in the Order 1 and Order 2 Louisville plans. In fact, as several witnesses opposing the proposed seasonal base-excess plans in these markets contended and the record establishes, the variations in seasonal production patterns in the Order 1 and Order 2 markets have declined markedly since the take-out rates were increased to the present level in 1972. The demonstrably lower degree of seasonal variation in Order 4, however, is as likely as not to be a result of institutional factors that were not considered in the analysis of this record or in the development of proponents' testimony. In any case, the record does not support a conclusion that a seasonal base-excess payment plan for Order 1 and Order 2 would be more effective in reducing seasonal production variations than the current Louisville payment plan.

The Canajoharie proposal to increase the take-out amounts under the current Louisville plans would cause cash-flow problems for dairy farmers in the spring months of the year when farming expenses are high, as several witnesses who objected to such proposed changes pointed out. If the take-out rates were adjusted to reflect the same percentage of present blend prices in these markets as they did when the rates became effective, the rates would have to be doubled because blend prices under these orders generally are about twice what they were in 1972. Deductions of these magnitudes from payments to producers in certain months could be expected to cause cash-flow problems for some dairy farmers.

Also, such changes would create price alignment problems between Orders 1, 2 and 4 and the Eastern Ohio-Western Pennsylvania Order (Order 36). This issue has long been of great concern to both handlers and producers. Numerous hearings, including this one, have addressed the problem of interorder price alignment and its effect on orderly marketing through the shifting of producers between the three northeastern markets. Doubling the take-out and pay-back rates under the payment plans of Orders 1 and 2 would cause specific alignment problems in producer pay prices among neighboring dairy farmers in overlapping procurement areas involving the Middle Atlantic, New York-New Jersey and Eastern Ohio-Western Pennsylvania Federal orders. Also, if blend prices are reduced by 80 cents per hundredweight in May and June, blend prices paid to producers located in outlying zones of the Order 2 market could be less than the market's lowest class price.

For the reasons stated herein, it is concluded that the current seasonal payment plans under Orders 1 and 2 should not be revised. The proposals to replace the present Louisville plans with base-excess plans and to increase the Louisville payment plan "take-out" rates are hereby denied.

In connection with the base-excess plan proposals of Agri-Mark, Dairylea and Eastern, Pennmarva submitted a proposal to revise the method of computing bases for producers whose milk deliveries are split between Orders 2 and 4 during the base-forming period. Since the base-excess proposals are not adopted herein, Pennmarva's coordinating change is unnecessary and no further action on the proposal is warranted.

The three proponent cooperatives also asked that the dates by which handlers must submit producer payrolls be advanced by five days under Orders 1 and 2. The primary reason for moving the reporting deadlines ahead was so that the market administrator would have the information to compute bases for individual dairy farmers. Since the base-excess plans are not adopted herein, there is no real need to advance the date by which handlers must submit their producer payrolls, and the proposal is hereby denied.

A proposal by Canajoharie to require Order 1 and Order 2 handlers who are paying producers to furnish them with the rate of deductions and subsequent additions in the payments for the months when the Louisville plan is in operation should also be denied. Although several hearing participants supported the proposal by stating that not all producers are fully aware of how their payments are affected by the Louisville plan, such a requirement would place an unnecessary and burdensome reporting requirement on handlers.

The impact of the Louisville plan on the blend or uniform price paid to producers is included in the market administrator's market information bulletins in both orders. Since the information is already available to all producers, there is no reason to require handlers to supply it.

4. Location pricing, zone pricing and transportation credits.

a. *Order 2. Modification of transportation allowances.* The New York-New Jersey order provisions providing transportation allowances should be adjusted to more closely relate the location value of milk under the order to the costs incurred in transporting milk from farms and country plants to distributing plants in the major consumption centers of the market. The present transportation differential rates of 2.2 cents per hundredweight for each "inside" 10-mile

zone that is less distant than the 201–210 mile zone and 1.5 cents per hundredweight for each "oustside" 10-mile zone that is more distant than the 201–210 mile zone should be changed to 2.5 cents per hundredweight for each 10-mile zone inside and outside the 201–210 mile zone. In addition, the 15-cent fixed transportation differential on Class I and uniform prices applicable within the 1–70 mile zone should be increased to 22 cents. The present Class II transportation differential rate of 1 cent per 25-mile zone should remain unchanged inside the 201–210 mile zone and be eliminated outside the 201–210 mile zone. To compensate for the increased transportation allowance between the 201–210 mile zone and the New York City metropolitan area, the Class I price differential at the 201–210 mile zone should be reduced from $2.55 to $2.42.

A proposal that handlers located within the metropolitan New York City area be allowed a pool credit for Class I milk delivered to their plants for the purpose of defraying additional hauling charges should not be adopted.

A proposal by Kraft, Inc., to allow transportation credits to handlers who ship milk to fluid milk distributing plants was withdrawn by Kraft at the hearing, and was not supported by any testimony. The proposal will not be considered further in this decision.

Present transportation provisions. The order currently provides that milk from bulk tank producers (99.8 percent of the milk in the market) is priced essentially at the location of the farms where it is picked up in a tank truck (and thereby received) by handlers. Farms in each township are included in a price zone based on the distance, in 10-mile increments, between the township and the nearest of several basing points in the metropolitan New York City area. For pooling, accounting and pricing purposes, handlers establish farms in bulk tank units. Milk transferred from a bulk tank unit is clasified in the unit according to its use at the plants to which it is transferred during the month. The handler operating the bulk tank unit accounts for the milk in the unit at its classified use value for the location of the unit. The price zone location of the unit is the weighted average zone location of the volume of milk received from farms in the unit.

Separate transportation differential rates apply to Class I and Class II prices. Prices are adjusted from the 201–210 mile zone. The Class I milk price is increased 2.2 cents for each 10-mile zone less distant than the 201–210 mile zone and reduced 1.5 cents for each 10-mile zone more distant than the 201–210 mile zone. The Class II milk price is increased 1 cent for each 25-mile zone less distant than the 201–210 mile zone and decreased 1 cent for each 25-mile zone more distant than the 201–225 mile zone, with the adjustment limited to minus 8 cents for all locations in the 401 and over mile zone. The uniform price to producers is adjusted the same as the Class I milk price.

In addition to the zone transportation differentials, a fixed transportation differential of 15 cents per hundredweight is applicable to milk received from farms in the 1–10 mile zone through the 61–70 mile zone, and to Class I milk received at plants in the 1–70 mile zone.

Transportation allowances are provided under the order for farm-to-first plant hauling of bulk tank milk. A pool transportation credit to handlers of 15 cents per hundredweight is provided on milk received by a handler in a bulk tank unit. Also, handlers are permitted to charge producers or their cooperatives a tank truck service charge for any farm-to-first plant hauling costs not recovered through other transportation allowances. Such a charge must be reduced by the amount that the class use location value of the milk at the plant of first receipt exceeds its class use location value at the location of the producer's bulk tank unit.

Summary of hearing proposals. Several proposals to adopt provisions that would relate more closely the location value of milk under the order to the actual cost of hauling milk, and allow handlers to more fully recover the cost of moving milk to city locations, were considered at the hearing. A witness for Friendship Dairies, Inc. (Friendship), a proprietary handler operating a manufacturing plant in the 301–310 mile zone, proposed that transportation differential rates to handlers for Class I milk be increased to 3.3 cents per hundredweight per 10-mile zone both inside and outside the 201—210 mile zone. He also proposed that the rates of adjustment to the uniform price paid to producers remain at 2.2 cents per hundredweight per 10-mile zone inside the 201–210 mile zone, and 1.5 cents outside the 201–210 mile zone. The witness testified that the 3.3-cent rate is derived from a price quotation given Friendship by a contract hauler for hauling milk from the 301–310 mile zone to the metropolitan New York City area. He emphasized that it is important for the order's transportation allowances to cover the handler's cost of hauling milk in order to assure that an adequate supply of milk can be brought into the metropolitan area. However, he stated, there is no need to change the relative value of producer milk in different zones. The witness noted that an increase in the transportation differentials applied to producers' uniform prices would result in a reduction in prices paid to producers located in zones remote from the center of the market's population.

The Friendship witness testified that the handler's proposal would have the effect of increasing the Class I price at the 1–10 mile zone by 22 cents per hundredweight, an amount that he conceded might misalign Class I prices between Order 2 and the New England and Middle Atlantic milk order markets (Orders 1 and 4). However, he stated, he did not believe that a 22-cent difference would be substantial enough to cause alignment problems. The witness estimated that Friendship's proposal would cause a 1-cent per hundredweight increase in the uniform price paid to producers. He contrasted that result with the effect of using the same schedule of transportation differentials for both handlers and producers by stating that if Class I and uniform prices are adjusted by the same rates, the uniform price paid to near-in producers would increase, but by less than the net reduction in uniform prices to farther-out producers.

The witness commented that Friendship favors retention of the present zone adjustments on Class II milk. He stated that the plus differentials within the 201–210 mile zone enhance producer returns and create a disincentive for close-in handlers to manufacture Class II products. The witness also testified that the minus Class II differentials outside the 201–210 mile zone assist handlers in moving milk to the city from distant country locations, and that their removal would cause problems for Friendship in competing for sales of Class II products with plants regulated under the Western New York State order, which maintains its Class II price at 5 cents per hundredweight below the level of the Minnesota-Wisconsin price. Currently, the Class II price in the zone in which Friendship Dairy is located is 1 cent per hundredweight higher than the Western New York State order price.

Friendship Dairy proposed that the order be amended to require the market administrator to adjust annually the transportation differential rates applied to Class I milk to reflect the actual cost of shipping milk from farm locations to fluid milk plants, as that cost changes over time. The handler also proposed that the Class I price be announced at the city, or 1–10 mile zone, location rather than at the 201–210 mile zone.

Friendship's witness stated that such a change would reduce confusion caused by pricing milk at the 201–210 mile zone under Order 2 while other orders price milk at the principal cities in the marketing area.

The New Jersey Milk Industry Association, Inc. (the Association), proposed changes to the order's location adjustment provisions that would increase the zone adjustment to 2.5 cents per hundredweight both inside and outside the 201–210 mile zone, eliminate zone differentials on Class II milk, and increase the fixed transportation differential from 15 cents to 22 cents, moving the effective area of the differential to the 1–150 mile zone. The Association is a trade association of handlers who distribute approximately 85 percent of the fluid milk consumed in New Jersey, and a substantial amount in Pennsylvania and New York State under Orders 2 and 4.

The witness representing the Association testified that the present location adjustment structure of Order 2 causes price disparities between Orders 1 and 2 that make it possible for Order 1 handlers to pay the same Class I prices for milk that Order 2 handlers pay while paying higher blend prices to producers located fairly close to metropolitan fluid milk consumption centers in Order 2. As a result of this misalignment between Order 1 and Order 2 pay prices, the witness stated, Order 2 handlers are forced to pay premiums over the minimum order prices to obtain a milk supply traditionally associated with Order 2.

The Association witness supported the proposed increase in the location adjustment rate to 2.5 cents per hundredweight per 10 miles by pointing out that it is slightly less than the actual variable hauling cost of 2.63 cents plus 25.87 cents per hundredweight fixed cost, as determined by the market administrator's office. Furthermore, he stated, extending the 2.5-cent rate beyond the 201–210 mile zone would align the location adjustment rates for Class I milk under Order 2 with those contained in Order 1 for the same area. The witness supported the Association's proposal that the fixed transportation differential be increased from 15 cents to 22 cents and be effective at all locations within the 1–150 mile zone rather than the 1–70 mile zone by stating that such a structure would be similar to the 22-cent break between the 131–140 and 141–150 mile zones under Order 1. He also testified that as a result of such a change, blend prices to Order 2 producers located within the 150-mile zone would increase, and be better aligned with blend prices paid to Order 1 producers in the same area. The witness stated that increasing the extent of the fixed transportation differential zone and the prices applicable to producers located within it would enable Order 2 fluid milk handlers to improve their procurement and maintenance of close-in sources of milk.

The Association witness supported the elimination of zone price differentials on Class II milk by observing that milk used for manufacturing in zones beyond the 201–210 mile zone is priced more attractively to handlers under Order 2 than milk located similarly but priced under Order 1 or Order 4. The witness stated that the minus differential on Class II milk may attract to the pool and retain some handlers operating manufacturing plants who otherwise might be regulated under another order.

The Dairy Institute of New York (the Institute), which consists of fluid milk processors and distributors with business interests centered in metropolitan New York City, proposed a pool credit to handlers on Class I milk delivered to locations within the metropolitan New York City area. The witness for the Institute testified that a credit would be appropriate because of additional transportation and other costs, such as labor, taxes and insurance, that are incurred in moving milk into some parts of the 1–10 mile zone because of the area's heavily populated and congested nature. The witness described the area inside the 1–10 mile zone as about 40 by 100 miles, delineated by the 10 basing points which define the inner edge of the 1–10 mile zone. He stated that handlers at locations to which milk is delivered over the George Washington and Tappan Zee Bridges must pay 3 cents per hundredweight over the 1–10 mile zone price to cover transportation costs. In addition, he said, milk delivered to Queens, Brooklyn and Long Island incurs an additional 4-cent per hundredweithg expense. According to the Institute's witness, these additional expenses, when combined with the costs of hauling milk past the 1–10 mile zone basing points to the locations of metro-area handlers' plants, should result in larger credits than those proposed by the Institute in the hearing notice. Instead of the proposed credits of 5 cents for locations in the Bronx and Westchester County, 10 cents for the rest of New York and Nassau County, and 15 cents for Suffolk County locations, the witness advocated that the credits adopted for the respective areas be 7.5, 15 and 25 cents.

The Institute representative argued that because handlers whose plants are located in the inner metropolitan area currently pay over-order prices to cover the greater cost of hauling milk to their plants, a credit from the pool is needed to offset those additional hauling charges. The witness stated that competition from nearby handlers who are able to obtain milk supplies at lower cost makes such a pool credit necessary so that the metropolitan handlers' costs of procuring milk can be covered without being passed on to consumers. He explained that a change to less-restricted licensing of handlers allowed to sell milk in New York City has changed competitive relationships between handlers within the metropolitan area and those located just outside of the City. The witness estimated that the blend price paid to producers would be reduced by 2 cents per hundredweight if the originally-proposed pool credits were adopted, or by 3 cents if the amounts of pool credits proposed at the hearing were adopted.

Friendship Dairy's proposal to announce Class I and blend prices at the 1–10 mile zone instead of at the 201–210 mile zone was supported by a witness representing Oneida-Lewis Milk Producers, a small cooperative association whose members' milk is pooled under the order. The cooperative's witness stated that announcing the prices effective at the market's population center rather than where the milk is produced would make Order 2 more like other Federal orders, and would make Order 2 prices more easily comparable to prices announced under other orders. No other support for or opposition to the proposal was expressed.

Although prices under most Federal orders are announced at the location of the markets' population centers, the New York-New Jersey and New England orders have long been exceptions to that practice. Participants in both of these neighboring northeast markets are accustomed to seeing prices announced at the 201–210 mile zone (Zone 21 in New England), and comparing those prices rather than the prices effective at New York City and Boston. Given the overlapping nature of the two markets' supply areas, the present system makes it easier for producers to determine which order offers them the higher price (after considering the Order 2 15-cent transportation credit), and enables handlers to more readily compare the prices they are paying to producers with their competitors' pay prices. A change in the location for which prices are announced was proposed only for the

New York-New Jersey order, and not for the New England order. Because these two marketing areas continue to share a large production area, it would not be reasonable to change the basis for announcing prices for one market without changing the other. In addition, market participants in the New York-New Jersey area have long been accustomed to having Order 2 prices announced at the 201–210 mile zone. Under these circumstances, a change of the base zone to the 1–10 mile zone would probably be more confusing than the present system, and should not be adopted at this time.

Friendship's proposal to update location adjustment rates on prices applicable to Class I milk to 3.3 cents per 10-mile zone while leaving the present adjustment rates on blend prices to producers at their present levels should not be adopted. The proposal was supported by witnesses representing Oneida-Lewis Milk Producers and the National Farmers Organization (NFO), cooperative associations representing dairy farmers whose milk is pooled under the order; and Kraft, Inc., a proprietary cheese plant operator with nonmember producers. The NFO witness expressed his organization's opposition to any proposal that would change farm zone prices in Order 2, and supported additional transportation allowances between handler locations for the purpose of recovering actual costs of moving milk to fluid processing plants. However, he stated, when the 15-cent hauling credit on all milk is considered, the proposed 3.3-cent location adjustment rate is too high. The Kraft witness supported the concept of increasing the adjustment rates to the Class I price without changing location adjustments on producer milk because such a change would facilitate the movement of milk directly from farms to the fluid market without changing historical producer price relationships.

A witness representing Farmland Dairies, Inc., opposed Friendship's proposal to amend the order's location adjustment provisions. The Farmland witness stated that Friendship's location pricing proposals would create an advantage for manufacturing plants to obtain milk from locations nearer the city than they currently do, and would require fluid plants to go to more remote locations to obtain adequate supplies of milk. He asserted that the allowed hauling deductions would be inadequate to reimburse the fluid handler for the negative economics of the situation.

The rates used to adjust Class I and uniform prices for location should be the same. In both instances, the location adjustment rate is used to approximate the cost of hauling milk and thereby reflect its relative value at different locations. There is no testimony or data in the record of this proceeding that suggests any economic basis for establishing different rates for adjusting the values of milk at handlers' and producers' locations. The only reason given for such differentiation was that updating adjustments to blend prices, as well as to Class I prices, would reduce prices paid to producers located far outside the market's consumption centers and thereby change historical producer price relationships. However, changes in the order's location adjustment rates are intended to reflect current costs of getting milk from farms to the fluid market, not to actually change those costs. Therefore, increases in the costs of marketing have already changed the relative location values of milk. Failure to reflect those changes by adjusting both prices paid by handlers and prices paid to producers would result in an inequitable redistribution of pool proceeds to producers distant from the market's center.

Friendship's proposed increase of the Class I location adjustment rate to 3.3 cents per hundredweight was supported by the witness representing Oneida-Lewis Milk Producers and opposed by the NFO witness. The NFO witness stated that the 3.3-cent rate is too high when the 15-cent hauling credit on all milk is considered. The witness expressed misgivings that, in some cases, location adjustments based on a 3.3-cent rate would exceed the actual hauling cost. The Kraft witness also characterized the proposed 3.3-cent rate as too high.

Order modifications. The 2.5-cent rate proposed by the New Jersey Milk Industry Association is much closer than Friendship's proposed rate to actual hauling costs as determined by the market administrator's office, and should be adopted. The market administrator's witness cited a 1984 study of hauling costs for the New York-New Jersey marketing area that showed a variable hauling cost of 2.63 cents per hundredweight per 10 miles, and a fixed hauling cost of 25.87 cents per hundredweight. The witness explained that hauling costs had not changed substantially between 1984 and 1988. A location adjustment rate increase from 2.2 cents to 2.5 cents per 10 miles, with an increase in the fixed transportation differential from 15 cents to 22 cents will cover most of the cost of hauling producer milk without overcompensating handlers for such movements. In addition, the increased rates will provide a more uniform impact on Order 2 and Order 1 producers relative to their distance from the consumption centers of their markets.

The 2.5-cent adjustment rate adopted for zones inside the 201–210 mile zone should be continued outside the 201–210 mile zone as well. Continuation of the full adjustment rate beyond the 201–210 mile zone was opposed by many of the persons and organizations represented at the hearing. Those witnesses opposing increased negative adjustments to producer blend prices represented Oneida-Lewis Milk Producers, Conesus Producers Cooperative. Lowville Producers Cooperative, Allied Federated Cooperatives, the Hood Company (Empire Cheese), Dietrich's Dairy, Kraft, Inc., and Friendship Dairies, Inc. These cooperative associations and proprietary handlers have members and producers located in the zones in which blend prices would be reduced. Most of the milk produced beyond the 201–210 mile zone is used in manufacturing plants and classified in the market's lowest class of use. However, marketwide statistics show that in 1987, 20 percent of the producer milk pooled in units located outside the 201–210 mile zone was used in Class I. The supply of milk pooled on units located within 200 miles of New York City could fulfill all of the Class I needs of the market, but it is apparent from the marketwide statistics that considerably less than all of the milk produced in the close-in zones is used in Class I. In fact, less than half of the milk pooled in units within 100 miles of the 1–10 mile zone is used in fluid milk.

There is no indication in the record of this proceeding that hauling costs decline outside the 201–210 mile zone, or beyond 400 miles. Milk clearly is customarily hauled from distant zones for fluid use, and the order currently fails to allow for the full cost of such hauling. Given the difficulty, documented in the hearing record, that distributing plants in the market have experienced in obtaining needed supplies of milk for fluid use, it is important to ensure that all of the provisions of the order that are intended to encourage the movement of milk to the fluid market will have that effect. Assuring that location adjustment rates from distant zones to the market's center are adequate to cover hauling costs will become imperative when shipping requirements for pool eligibility are adopted.

Although the impact on producer returns of increasing minus location adjustments outside the 201–210 mile zone will probably be negative, it is very unlikely that returns to producers located in the distant zones would decline as sharply as some witnesses testified. One producer, who indicated that the present adjustment as the location of his pool unit is −13 cents, stated that if a higher negative rate were adopted the adjustment to this blind price would increase to −30 cents. In fact, the change in negative zone adjustments would cause such a producer's adjustment to change from −13.5 cents to −22.5 cents, or a reduction of 9 cents in his blend price. At the same time, however, the amount of the allowable hauling charge that may be deducted from the producer's payout at the blend price would be reduced by 16 cents if his milk were delivered to a plant in the 1–10 mile zone.

A witness for Dietrich's Dairy testified against increasing the minus location adjustment rate outside the 201–210 mile zone on the basis that such an increase would cause a misalignment of blend prices paid to producers pooled under Order 2, and under Orders 1 and 36. The hearing record indicates that handlers regulated under Order 1 and Order 2 compete actively for milk supplies. Very little testimony was offered in reference to procurement competition between Order 2 and Order 36, and there is no evidence that Order 2 and Order 36 handlers obtain their supplies from milksheds that are intermingled to the degree the Order 1 and Order 2 milksheds are intermingled. Location adjustments are not an appropriate device to achieve equality of blend prices. However, between Order 2 and Order 1, blend price adjustments that depend on distance from the markets' consumption centers should be uniformly applied to assure that the order under which producer milk is pooled is the order under which it has the greater value. Producer prices under Order 1 have for some time been adjusted at the same rate per zone (2.5 cents) outside Zone 21 as have prices inside Zone 21. If the effect on producer prices of distance from the market center is to be uniform between the two adjoining orders, Order 2 should be amended to provide generally the same location adjustment schedule as the one that exists in Order 1.

The order should not be amended to require the market administrator to adjust the transportation differential rates annually, as Friendship proposed. If such adjustments were to be made without corresponding changes in the Class I price differential at the 201–210 mile zone, Class I price misalignment between the major consumption centers of Orders 1, 2 and 4 could create serious disorderly marketing conditions. Changes affecting price levels should be considered at public hearings, where all market participants have an opportunity to air their views.

The New Jersey Milk Industry Association's proposal to increase the amount of the 15-cent fixed transportation differential to 22 cents should be adopted. However, the Association's proposal to change the effective area of the differential from 70 miles to 150 miles from the basing points should not be adopted. The reasons given by proponent for increasing the rate and extending the area over which it is effective were improvements in the alignment of blend prices under Order 2 with those paid to producers under Orders 1 and 4, and in the resulting success of Order 2 fluid milk handlers in procuring supplies of milk.

The proposal to increase the Order 2 fixed transportation differential and expand the area over which it is effective was opposed by witnesses representing Marcus Dairy, an Order 1 pool distributing plant operator, and the National Farmers Organization (NFO), a cooperative association with members whose milk is pooled under Order 2. The Marcus Dairy witness opposed the Association proposal because it would attract milk supplies currently pooled under Order 1 to Order 2. He stated that such a result would be counter to the purpose of the order, which is to attract milk to the fluid market. The NFO representative explained that the cooperative would not object to an increase in the fixed transportation differential if it were paid only to dairy farmers actually shipping milk into the 1–150 mile zone for Class I use, but that not all producers merely located within 150 miles of the market's center should receive the benefit of the proposed increase.

The purpose of the present fixed transportation differential is to reflect the fixed cost of transportation in the Class I for both direct-shipped and reloaded milk. The hauling cost analysis described by the market administrator's representative resulted in a fixed hauling cost of 25.87 cents. Therefore, an increase in the allowance for this component of total hauling costs to 22 cents will better enable milk to move from distant locations to the metropolitan area for use in fluid milk products. The fixed transportation differential should remain at a level slightly below the actual fixed hauling cost, however, to avoid encouragement of any unnecessary movements of milk. The 22-cent rate will also result in similar transportation allowances for producer milk moved from the common production areas of Order 1 and Order 2 to the consumption centers of those markets.

The area over which the fixed transportation differential is applicable should not be expanded to cover all of the area within 150 miles of the market's basing points. Contrary to proponent's testimony, there is no evidence that such an expansion would encourage greater Class I use of milk produced within the 1–150 mile zones. Producers located within 71–150 miles of metropolitan New York City would receive a higher blend price, but if they shipped milk to plants within the 0–70 mile zone they could be charged a like additional amount for hauling since the fixed hauling reflected in the Class I and blend prices would be moved out to 150 miles rather than at 70 miles.

In addition to failing to have the desired effect of attracting nearby supplies of producer milk, adoption of the proposed expansion of the area covered by the fixed transportation differential would have a deleterious impact on Class I price alignment between fluid milk handlers regulated under Order 2. Under the present location adjustment structure, fluid milk handlers included in the area covered by the fixed transportation differential are located at least 70 miles from the nearest fluid processing plant that is outside the 1–70 mile zone. The plants in the 11–20 and 31–40 mile zones are located in New Jersey, or south of the metropolitan area, while the next plant distant from the basing points is in the 71–80 mile zone directly north of metropolitan New York City at Kingston, New York. The fluid milk plant nearest to Kingston and inside the 1–70 mile zone, then, are in the 1–10 mile zone, or at least 66 miles away. The existence of the fixed transportation differential at the 70-mile zone apparently has worked well since the order was last amended in 1981.

Establishing a significant price difference at 150 miles, instead of 70 miles from the basing points would create a much different competitive situation. Fluid processing plants at Menands and Albany, New York, are located in the 131–140 mile zone, or inside the proposed effective area of the 22-cent fixed transportation differential. Processing plants located in Saratoga Springs and Amsterdam, New York, are located in the 161–170 mile zone, outside

of the area proposed to be affected by the fixed transportation differential, but only about 30 miles from their probable competitors in the 131–140 mile zone. The Class I price difference between these locations that would result from the Association's proposal would be 29.5 cents per hundredweight, or almost 1 cent per mile. A price difference of nearly 30 cents over such a short distance clearly would lead to an unfair competitive situation and result in disorderly marketing. Therefore, the fixed transportation differential should not be moved to 150 miles from the basing points.

At the hearing, the Dairylea witness proposed that the fixed transportation differential be incorporated in the location adjustment schedule at 180 miles from the basing points. He supported the proposal by stating that while the 140-mile distance from Boston of the fixed transportation differential under Order 1 is appropriate for that market, a 180-mile distance from the Order 2 market's consumption center would include most fluid handlers and cover most of the area in which both Order 1 and Order 2 handlers procure milk. In addition, he stated, most of the Order 2 reloading facilities are located beyond 180 miles from the basing points.

The Dairylea modification of the New Jersey Milk Industry Association's proposal to increase the distance over which the fixed transportation differential is effective suffers from the same defect as the original proposal. The record shows that there are 7 fluid milk processing plants located outside the 171–180-mile zone, and some of these plants are located near enough to fluid processing plants in the 151–170-mile zones to result in competitive inequities due to Class I price differences. For instance, the distance from Amsterdam, New York, to Utica, New York, is 62 miles. Given a 22-cent fixed transportation differential in addition to the 5-zone difference in location at 2.5 cents per zone, there would be a 34.5-cent price difference between these two locations, or a transportation allowance of more than 5.5 cents per 10 miles.

The distance between Binghamton, New York, and Syracuse, New York, is 73 miles. There are 8 zones difference between the two locations, which would make a 20-cent difference in their applicable Class I prices when the 2.5-cents per 10-mile rate is applied. When added to a 22-cent fixed transportation differential, the Class I price difference between the two locations would become 42 cents, or a transportation allowance rate of approximately 5.75 cents per hundredweight per 10 miles.

Imposition of a 22-cent fixed transportation differential at 180 miles from the basing points would result in price differences at these actual pool plant locations that would cover more than twice the variable hauling cost of milk, and would almost certainly cause competitive disruptions for handlers whose plants are located just inside and just outside of the price break.

Under both the New England and New York-New Jersey orders, the fixed transportation differentials serve the same purpose of encouraging producer milk to move to fluid milk processing plants for use in the higher-valued Class I products. However, the differing structures of the two markets are bound to frustrate any attempt to incorporate the Order 1 location pricing structure in Order 2. In the New England marketing area, all of the distributing plants are located within the first 14 zones and most of the supply plants are located outside Zone 14. Therefore, any producer milk delivered to plants located within the first 14 zones, where the 22-cent fixed transportation differential is applicable, is delivered for use primarily in fluid milk processing plants.

In the New York-New Jersey marketing area, fluid milk processing plants are located throughout the marketing area, from the 1–10 mile zone to the 231–240 mile zone. Manufacturing plants and transferring plants are located between the 121–130 mile zone and the 361–370 mile zone. There is no clearcut dividing line between the two types of plants, as there is in New England. Because producers pooled under Order 2 are paid on the basis of the zone location of their bulk tank units (farm-point pricing) rather than according to the location at which their milk is delivered, placement of the 22-cent fixed transportation differential at any zone inside of which there are manufacturing plants would tend to offset the incentive for producer milk to be moved to fluid processing plants in the market's center. As noted earlier, placement of the differential at just about any zone other than its present location would cause severe competitive disruptions between fluid milk handlers in nearby zones. The only other effect of changing the fixed transportation differential to 150 or 180 miles from the basing points would be to enhance by 22 cents per hundredweight the prices paid to producers located within 70–150 or 70–180 miles of the basing points. If the 150-mile distance were selected, the value of over 17 percent of the producer milk pooled under the order would be enhanced. If the differential were moved to 180 miles from the basing points, the value of 33 percent of the producer milk in Order 2 would be subject to a 22-cent higher price. Since the total value of the pool would be unlikely to change very much, the value of producer milk located farther from the metropolitan area would decline by a comparable amount.

Therefore, because an expansion of the area affected by the fixed transportation differential would not provide any incentives to increase the flow of milk to fluid processing plants and would unnecessarily reduce payments to producers located outside the proposed area, the differential should remain effective within the 1–70 mile zones, at its new higher rate.

Although the New Jersey Milk Industry Association proposed that adjustments to Class II prices on the basis of location be eliminated, only the minus Class II location adjustments should be removed from the order. (References to Class II location adjustments in this discussion also refer to Class III under the amended order.) The Association's witness stated that the minus Class II location adjustments allow manufacturing plant operators outside the 201–210 mile zone a regulated price advantage on the milk they use to make Class II products, and cause the pool to return to producers less than the full value of their milk. Furthermore, he stated, elimination of the zone differentials on Class II milk will result in better price alignment with Orders 1 and 4. In the event 3-class pricing were to be adopted for the New York-New Jersey order, the witness testified, there should be no zone differentials on either Class II or Class III milk.

The Association's proposal to eliminate Class II location differentials from the order was supported by Oneida-Lewis Milk Producers, Leprino Foods Company and Dietrich's Milk Products, Inc. The witnesses supporting the proposal testified that milk used in manufactured dairy products should be priced uniformly between orders to maintain inter-order competitive equity.

Elimination of the Class II location differentials was opposed by Dairylea Cooperative, Inc., Kraft, Inc., and Friendship Dairies, Inc. The Kraft, Inc., witness stated that the purpose of the Class II location differentials is to encourage manufacturing handlers to locate their plants in the market's outer zones and encourage milk produced in the inner zones to move to fluid processing plants. He testified that without minus Class II location

differentials, manufacturing plant operators would experience a competitive disadvantage compared to close-in manufacturing plants because the Class II price difference between zones helps to cover the transportation cost of manufactured products.

The witness representing Friendship Dairies, Inc., opposed elimination of the Class II location differentials on the basis that such an action would enable fluid milk handlers to use supplies of milk close to the market's center for manufactured products while reaching further into the milkshed for Class I milk. The Dairylea representative stated that elimination of the Class II location differentials would disrupt the alignment of Class II milk prices between Order 2 and Order 4. As a remedy, he suggested that the 6-cent Order 4 direct delivery differential, applicable to all producer milk delivered to locations within 55 miles of Philadelphia, Pennsylvania, be changed to apply only to milk delivered for Class I use.

Most of the concerns relating to elimination of the Class II location differentials can be addressed by eliminating only the minus adjustments. Since the price of Class II (and Class III) milk used inside the 201–210 mile zone would still increase for locations closer to the metropolitan area, manufacturing plant operators would still have an incentive to locate their operations in the market's outer zones. At the same time, maintaining plus location differentials on Class II and Class III milk used inside the 201–210 mile zone will encourage the use of close-in supplies in fluid products instead of manufactured products. The plus Class II and Class III location adjustments will also assure price alignment between Orders 2 and 4 for milk used in manufactured products. The notice of hearing contained no proposal to amend the Order 4 direct delivery differential to apply only to milk used in Class I, and there is no information in the record of this proceeding upon which to base such a change. Therefore, it is appropriate to retain the portion of the Order 2 location adjustment schedule that assures that prices for Class II (and Class III) milk used at plants in the vicinities of New York City and Philadelphia will not place the handlers of either order at a competitive advantage or disadvantage with handlers regulated under the other order.

The argument that the minus Class II location differentials are necessary to maintain competitive equity between manufacturing operations in the areas outside the 201–210 mile zone and those inside the 201–210 mile zone is not persuasive. Locations inside the 201–210 mile zone will still be subject to higher prices for milk used in Class II and Class III. At any rate, Class II and Class III products are generally distributed over a much wider geographical area than are fluid milk products. The national nature of competition between handlers manufacturing Class III products, and the regional nature of competition between handlers manufacturing Class II products, dictates that milk used in those products be subject to comparable prices.

Although Class II prices under the nearby Western New York Marketing Area are currently 5 cents lower than Order 2 Class II prices, this difference should not result in any severe competitive problems for Order 2 handlers. The volume of milk pooled under the Western New York order is only slightly more than 10 percent of the volume pooled under Order 2, with a corresponding percentage of milk used in Class II. Determining the provisions of Order 2 on the basis of the provisions of an order regulating marketing within a much smaller marketing area would be unreasonable.

The addition of 13 cents to the Class I price difference between the 201–210 and 1–10 mile zones would result in a $3.27 Class I price at the 1–10 mile zone instead of the current $3.14 Class I price unless the Class I price differential at the 201–210 mile zone is changed. Because it is important that the Class I price at the 1–10 mile zone not disrupt price alignment between Order 2 and Order 4, the Order 2 Class I price differential at the 201–210 mile zone should be reduced from $2.55 to $2.42.

The current Class I price differential effective to handlers located within 55 miles of Philadelphia and regulated under Order 4 is $3.09, including the 6-cent direct delivery differential under that order. The nearest Order 2 basing point to Philadelphia is Elizabeth, New Jersey, 76 miles from Philadelphia. If the Order 2 Class I price differential were not reduced to compensate for the increased transportation allowance, the Order 2 Class I price differential at the 21–30-mile zone would be $3.22. The same location 21 miles south of Elizabeth, New Jersey, would be within 55 miles of Philadelphia, and subject to a $3.09 Class I price differential under Order 4. A 13-cent Class I price difference certainly would effect competitive relationships between handlers similarly located, and could cause fluid milk handlers to adopt changes in their operations that would assure them regulation under Order 4 rather than under Order 2. The loss of handlers with large volumes of Class I sales would have a significant negative impact on the blend prices paid to producers whose milk is pooled under Order 2.

A reduction of 13 cents in the Class I differential at the 201–210-mile zone will result in maintaining the present Class I price differential of $3.14 at the 1–10-mile zone. In addition, the Class I price differential at the 21–30-mile zone would be $3.09, or the same price that would be effective at a similar location under Order 4. A 10-cent increase in the Order 1 Class I differential was proposed by an Agri-Mark witness to assure continued alignment between Order 1 and Order 2. Failure to increase the Class I price level at the Order 2 1–10-mile zone would make unnecessary any change in the Order 1 Class I price differential.

A proposal by the Dairy Institute of New York to allow pool transportation credits to handlers located inside the 1–10-mile zone should not be adopted. The proposal would allow transportation credits to be paid out of the pool to handlers in metropolitan New York City to compensate them for additional transportation and other costs the Institute's witness stated are incurred in moving milk into the 1–10-mile zone. The amounts of the proposed credits, as modified at the hearing, are 7.5 cents for locations in the Bronx and Westchester County, 15 cents in the rest of New York City and Nassau County, and 25 cents in Suffolk County. The witness described these areas as heavily populated and congested, and stated that the cost of hauling milk within the areas proposed to be affected by pool credits is inflated by additional costs for insurance, taxes, labor, distribution costs and bridge tolls. He complained that handlers in the inner metropolitan area are currently paying over-order prices for hauling charges and transportation subsidies and therefore experience a competitive disadvantage in comparison with nearby handlers also located with the 1–10-mile zone but subject to lower costs in procuring milk.

The pool transportation credit was opposed by a number of handlers and an individual dairy farmer. Most of those commenting opposed the addition of such credits on the basis that they would reduce the blend price paid to producers. In addition, witnesses for Marcus Dairy, a distributing plant operator regulated under Order 1, and Farmland Dairies, Inc., an Order 2 handler, commented that adoption of the credits would create a trade barrier in the metropolitan area by reducing the cost of milk to metro-area handlers but

not to their competitors located just outside the area over which pool credits would be effective. The Farmland witness added that deliveries of milk to northern New Jersey locations also involve unique transportation costs, since that area is highly congested, there are detours for bridges under repair, and toll costs apply in moving milk into northern New Jersey as well as into New York City. He also pointed out that produces would pay not only once for transporting milk to the metropolitan area, but would pay a second time through the reduction of their blend prices as a result of the proposed pool credit. The witness proposed that a direct delivery charge be imposed on all milk received at the locations specified in proponents' proposal, at the same rates proposed by proponent. Witnesses for Dietrich's Milk Products, Inc., and National Farmers Organization also commented that if higher costs are incurred in supplying a particular area of the market, those extra costs should be reflected in addition to the Class I price paid by handlers located in that area instead of being reduced through deductions from producer returns.

A witness representing Friendship Dairies, Inc., pointed out that the proposed pool credits would not benefit the producers who actually bear the cost of hauling. The handler also testified that some products such as concentrated fruit juices and liquid sugars may be back-hauled to outlying locations from the metropolitan area to defray the cost of transporting milk into the city. A dairy farmer who testified stated that additional costs to handlers should be covered by the marketplace, and not by producers.

Witnesses for two cooperatives associations, Dairylea Cooperative, Inc., and Oneida-Lewis Milk Producers, testified that the proposed pool transportation credit had merit and should be considered. The Dairylea witness noted that the order currently ignores the extra cost of moving milk beyond the basing points, and that those extra costs should be considered. The Oneida-Lewis Milk Producers witness observed that cooperatives selling milk to the metropolitan area would benefit from such sales, while cooperatives which do not move their milk into the city for fluid use would still have to bear some of the cost of supplying the fluid market.

The proposed metropolitan-area pool transportation credit should not be incorporated in the New York-New Jersey milk order. Establishing such a credit on the additional costs of moving bulk milk inside the basing points of the metropolitan area would not be appropriate. If the order were to be changed to incorporate additional transportation costs to handlers located within a particular area, such a change would more logically be made by increasing transportation allowance between the market's production areas and those destinations with which the higher costs are associated.

Proponent's assertion that they are competitively disadvantaged by having a pay the same price for Class I milk as other handlers located within the 1–10-mile zone is not credible. The extra costs incurred in moving packaged milk into the metropolitan area by handlers located just outside the proposed pool credit zones would be the same extra costs referred to by proponents in support of the proposed pool transportation credit. Furthermore, the cost of moving packaged milk is generally higher than the cost of moving bulk milk and therefore would cause proponent's competitors to be subject to higher costs than proponent's for milk distributed within the metropolitan area.

The additional costs cited by proponents that exceed increased transportation costs, such as higher costs of labor and insurance at metropolitan locations, are not expenses that should be deducted from producer returns. Such costs are part of a handler's expense of continuing in business at a particular location and would more appropriately be recovered in prices charged to consumers for processed milk.

Although proponent's arguments and data in support of a pool credit would justify increases in the transportation differentials effective at locations within the New York City metropolitan area, the record does not reflect just what those increases should be. Proponent witness amended the original proposal by increasing the proposed rates of the pool transportation credit significantly (by at least 50 percent). Aside from the costs of bridge tolls and mileage from Hackensack (the basing point characterized as the nearest to the milkshed for the metropolitan area), it is unclear just what costs are intended to be covered by the proposed pool credit. It is also unclear whether all bulk milk moves through the vicinity of Hackensack to reach metro-area handlers, or if the distance of the metropolitan plants from some other basing point(s) should also be considered. Accordingly, neither pool transportation credits nor additional transportation differentials for New York City locations should be adopted.

b. *Order 1.* Proposals to change the zone designation of portions of Fairfield and New Haven Counties, Connecticut, should not be adopted. Marcus Dairy, a proprietary handler pooled under the New England milk order and located at Danbury, Connecticut, proposed that locations in Fairfield County, Connecticut, that are within 15 miles of the New York-Connecticut border and north of the towns of Wilton, Weston, Easton and Trumbull, be redesignated from Zone 5 to Zone 10. Such action would result in a 12.5-cent per hundredweight reduction in the price Marcus Dairy would be obligated to pay for producer milk used in Class I. The blend price paid to dairy farmers delivering milk to Marcus Dairy would also be reduced by 12.5 cents per hundredweight on all of their deliveries to Danbury.

The Marcus Dairy witness stated that the distance from Danbury, Connecticut, to Boston, Massachusetts, is 165 miles and that Danbury therefore should be in Zone 17 rather than Zone 5. He characterized the proposed change to Zone 10 as a compromise. The handler advocated adoption of the proposal on the basis that Danbury is not really close to any population centers, and must distribute packaged milk over a distance of 30 to 60 miles to reach the closest population areas. He testified that, in contrast, milk travels only a short distance of 80 miles or so from farms to reach the plant. The witness argued that because Danbury is located relatively close to its production area, but not within a major population center, Danbury should be considered, and priced as, a country location. Further, the witness testified, earlier decisions that resulted in a Zone 5 designation for the Danbury location assumed that bulk milk moves solely from west to east. He stated that a lot of the milk pooled under Order 1 also moves from north to south.

The Marcus Dairy representative testified that approximately 50 percent of its producer milk receipts are from its own independent producers, located primarily in eastern New York State, with the other half of the handler's milk supply obtained from Eastern Milk Producers Association and the National Farmers Organization, two cooperative associations. He expressed little concern that reducing prices paid to producers by 12.5 cents per hundredweight would create any problems in attracting an adequate supply of milk to the Danbury location. The witness stated that the Order 1 blend prices paid by Marcus Dairy to its producers represent a premium over

prices paid to Order 2 producers located in the same area as Marcus Dairy's producers. He indicated that it is possible that milk procured for the Danbury plant might continue to require payments in excess of the Order 2 price if the Order 1 price at Danbury were reduced, but stated that the existence of such premiums depends on variable supply and demand conditions.

Opposition to the Marcus Dairy proposal was widespread. The National Farmers Organization representative opposed the proposal because of its negative impact on prices paid to producers. A witness for Agri-Mark stated that adoption of the proposal would have an adverse effect on price alignment between handlers regulated under Order 1. A Dairylea witness stated that the same Class I price should prevail at Danbury under both Order 1 and Order 2 to assure price alignment since Marcus Dairy is soliciting customers in the Hudson Valley in competition with Order 2 handlers. A witness for Farmland argued that adoption of the proposal would distort price alignment between Order 1 and Order 2 handlers by reducing the cost of milk to Order 1 handlers competing with Order 2 handlers. A brief filed on behalf of the New York Dairy Industry Institute noted that, contrary to claims by the Marcus witness that the plant location is more of a country location than a city location, Danbury is part of the New York Metropolitan Area designated by the Census Bureau, and should be considered as part of that contiguous heavily populated area.

As in the previous instances in which representatives of Marcus Dairy have argued that Danbury, Connecticut, belongs in a lower-priced zone, the proposal to change the zoning of a very small portion of Fairfield County from Zone 5 to Zone 10 should be denied. Proponent has produced no new arguments or evidence that would warrant changing a decision that was issued in 1981 and re-examined in 1983 (in decisions of which official notice was taken in the record of this proceeding). Contrary to proponent's assertion that the previous decisions did not recognize that a large share of the market's producer milk moves from north to south, as well as from west to east, that fact is a prominent feature of both prior decisions. Before 1978, all of Connecticut, Massachusetts (except Berkshire County) and Rhode Island were included in a single price zone. A key finding in a 1978 decision on location pricing in Order 1 was that New York State (west of Boston/Providence) was becoming a significant source of production pooled under the New England order, in addition to production from Vermont (north of Boston/Providence). The decision concluded that the shift in the market's production area should be reflected in price adjustments westward as well as northward.

According to the 1983 decisions, which incorporated part of the 1978 decision, "Western Connecticut was established as a lower-priced zone than Boston/Providence because 'as the market shifts to greater dependence on supplies of milk from New York, it will become increasingly important to maintain a high enough price in the eastern consumption areas to attract this milk from beyond the consumption centers in the western portions of Connecticut and Massachusetts' (43 FR 45523). Greater downward price adjustments were found necessary for western Massachusetts as that area was closer than western Connecticut to the Vermont production area, as well as being much nearer than Boston/Providence to New York. There is no evidence in the present record to support a conclusion that the price difference between western Connecticut and Boston/Providence is not great enough to attract needed supplies of milk from beyond western Connecticut and Massachusetts to Boston/Providence." (48 FR 29528)

Although the percentage of milk produced in New York and pooled under the New England order has increased since 1981, the source of the New York milk in Order 1 has continued to shift to the north and west. Order 1 milk production from the eastern tier of counties on the border of New York State with Connecticut and Massachusetts declined by 23 percent from 1981 to 1987. At the same time, the amount of milk produced in New York counties located west of the eastern tier of counties and north of Delaware, Greene and Columbia Counties, and pooled under the New England order was 3 times greater in December 1987 than in December 1981. It is apparent from this shift in the production area for Order 1 that the New York State milk supply for New England handlers is increasingly coming from greater distances to the north and west of the New England market. Also during the time period of 1981 to 1987, milk production declined in every Connecticut county, for the state as a whole, and as a percentage of the total production pooled under Order 1.

These trends of declining production in the areas nearest Danbury make the argument that Danbury is a "country" location in the midst of a major milk-producing area even less persuasive than it has been in earlier proceedings dealing with this issue. As stated in the 1983 decision on this issue, "In prior decisions, Hartford, which is approximately 60 miles from Danbury, has been described as a population center in the sense of being the largest city in the heavily populated area of southwestern Connecticut. Hartford is, however, not located in the center of the area, but at its northeast corner. According to the 1980 census, Fairfield County, in which Danbury is located, is the second most populous Connecticut county, after Hartford County, by only a very small margin. New Haven County, located between Fairfield and Hartford Counties, falls in third place by less than 50,000 people. Southwestern Connecticut is, as one witness described it, a fairly contiguous metropolitan area, and plants throughout southwestern Connecticut must compete for milk supplies produced in 'country' locations in Vermont and New York where the bulk of the market's milk supply is produced." (48 FR 29528)

A proposal by the Dairy Institute of New York to increase the Class I price at locations in the Connecticut counties of Fairfield and New Haven by changing the zone designation from Zone 5 to Zone 4 also should not be adopted. The Institute's witness predicated support for the proposal upon adoption of a proposed amendment to the Order 2 location adjustment schedule. As proposed, that amendment would have resulted in a nearly 12-cent increase in the Order 2 Class I price at the Danbury, Connecticut location. This increase would have caused a significant change in the Class I price relationships of Order 1 and Order 2 at Danbury. However, the Institute's proposal did not take into account the need to reduce the Order 2 Class I differential at the 201–210 mile zone in order to maintain inter-order price alignment between New York City, Philadelphia and Boston. Because the Class I differential at the 201–210 mile zone would be reduced as a result of this decision in order to avoid significant Class I price increases under Order 2 at the 1–10 mile zone, the Class I price differential for the Order 2 41–50 mile zone will not be increased by 11.8 cents, but will be reduced by 1.2 cents. The amount of this change in the difference between the Order 1 and Order 2 Class I price differentials in western Connecticut should result in no significant price misalignment. Therefore, the proposal to change the currently designated Zone 5 to Zone 4 is denied.

Two technical corrections of amendments made as a result of a 1981 decision concerning the location pricing provisions of Order 1 should be made at this time. The 1981 decision stated that "The zone location of any plant located outside the specific zones previously listed should be determined on the basis of its highway mileage from Boston. In general, this area encompasses the territory north and west of the zones specified. Since plants located outside the specified zones are generally on a direct line between the major production and consumption areas, they should be zoned on a straight mileage basis" (46 FR 55876). However, the order language accompanying that decision failed to implement completely the intent of the decision. Therefore, the language in § 1001.52 providing for the computation of location adjustments at Massachusetts plants located outside the designated zones on the basis of their mileage from Boston should be included at this time.

The January 1, 1982, amendments also omitted Warren Township in Worcester County, Massachusetts, from the definition of Zone 5. Geographically, Warren Township is situated in the middle of the Zone 5 territory in Massachusetts. There are no milk plants in Warren Township that would be affected by inclusion in Zone 5, but the territory obviously should be included in that zone. Therefore, the definition of Zone 5 is amended to include Warren Township.

5. **Producer-handler receipts of pool milk.** The New England order (Order 1) should be amended to allow producer-handlers to buy milk that is diverted to their plants directly from the farms of producers by cooperative association bulk tank handlers or by pool plant operators.

Generally, producer-handlers have been granted an exemption from the pricing and pooling provisions of Federal milk orders at least partially on the basis that they not purchase milk from other dairy farmers. Under the present Order 1 provisions, producer-handlers may supplement the milk produced on their own farms only with receipts of fluid milk products that are transferred to them from pool plants. This limitation on receipts by producer-handlers, which has been in effect under Order 1 since the inception of the merged order for the New England market on April 1, 1976, was provided to insure the integrity of regulation. Small producer-handlers (producing or distributing less than 4,300 pounds of milk per day) may buy unlimited amounts from pool plants. Purchases by larger operators may not exceed 2 percent of the milk produced on their own farms.

The proposal to allow producer-handlers to buy direct-shipped milk by diversion from pool handlers was advanced by Brookside Farm Dairy (Brookside), a small Order 1 producer-handler who is located in the vicinity of Westminister, Massachusetts. The Brookside spokesman modified his proposal as published in the hearing notice to allow cooperative associations and pool plant operators to divert producer milk to the plants of producer-handlers. He testified that allowing such handlers to deliver milk to producer-handlers directly from the farms of producers, rather than requiring the milk to be received at pool plants and then transferred to the plants of the producer-handlers, would eliminate costly plant handling and uneconomic milk movements.

Brookside's witness testified that certain aspects of marketing milk under Order 1 have changed over the years. In the past, he stated, milk picked up and delivered in cans from producers' farms was received at numerous country receiving and transfer plants that were used to assemble distant milk supplies for shipment to city bottling plants. The witness testified that milk needed to be moved in this way to establish accurate weights and butterfat tests for payment purposes. According to the witness, the widespread use of farm tank calibration charts and on-farm sampling have made it possible to establish weights and tests for each farmer's milk at the farm. In addition, he said, bulk tank hauling has resulted in the closure of many of the smaller country plants where milk was assembled and reloaded. The witness contended that the closure of these plants, combined with the trend toward fewer and larger processing plants, has limited his access to supplemental fluid milk products which he occasionally needs to satisfy his customer's demand in excess of his production.

The witness testified that, in effect, there is now only one plant from which he may buy supplemental milk. To so do, he said, he must pay to have small amounts of milk moved 75 miles, even though at least three milk trucks picking up the milk of individual farmers go by his farm each week. The witness stated that he is charged about $.70–$1.00 per hundredweight more for his supplemental milk receipts because they must be moved through transfer plants where the milk is unloaded, received and reloaded before it may be shipped to his plant. According to Brookside's witness, moving the milk through a transfer plant also causes the milk's quality to deteriorate because it takes longer to deliver the milk and the milk is pumpted two more times than it would be if it were delivered directly to his plant.

The record evidence on this issue was limited to the information presented at the hearing by proponent (Brookside) and a statement of support for the proposal by Agri-Mark, a cooperative that supplies approximately half of the producer milk for the Order 1 market. There was no opposition to the proposed change.

The changes proposed by Brookside to allow producer-handlers to receive their supplemental milk needs by transfer or diversion should be adopted. These changes should eliminate costly plant handling and uneconomic milk movements without changing the total amounts of milk that such operators may buy.

Changing the way in which Order 1 handlers may supply supplemental milk to producer-handlers will not affect the marketwide pool because the milk will be classified in Class I regardless of whether it is moved by diversion or by transfer. Classifying all such milk movements in Class I compensates producers for carrying the necessary reserve milk supplies associated with such deliveries. Accordingly, it is appropriate to allow producer-handlers to receive milk that is moved directly from the farms of producers by pool plant operators or by cooperatives handling bulk tank milk up to the applicable limits specified on such purchases under Order 1.

6. *Charges on overdue accounts.* The New England order (Order 1) should be amended to eliminate the postmark date as a basis for determining whether handler payments to the producer-settlement fund have been made on time and thus are not subject to late payment charges.

Order 1 currently provides that handler payments which are received by the market administrator after the 20th day of the month in envelopes that are postmarked on or before the 18th day of such month shall be deemed to have been received by the 20th and paid on time. Therefore, payments mailed and postmarked by the 18th are not subject to late-payment fees regardless of when they are received by the market administrator.

The proposal to eliminate use of the postmark date for the purpose of making such determinations was advanced by Agri-Mark, Inc. (Agri-Mark), a cooperative association of dairy farmers who supply nearly half of the producer

milk for the Order 1 market. A spokesman for the proponent cooperative testified that unless the market administrator has received all of the money due from handlers to pay their obligations to the producer-settlement fund by the 20th, he is unable to carry out certain of his assigned administrative duties. First, he is unable to effectuate marketwide pooling by making the required payments due to handlers from the producer-settlement fund on the 20th because he cannot be sure when moneys will be paid into the fund by the handlers from whom moneys are due. Second, he is not certain that payments which have not been received by the 20th will be considered past due and subject to late-payment charges, because they may have been mailed on the 18th but not received by the 20th.

The Order 1 market administrator supported the Agri-Mark proposal. He testified that the postmark deadline causes him administrative problems that are associated with clearing the pool. He also claimed that the mailing deadline causes enforcement problems that are unnecessarily burdensome in determining whether a handler's payment is late and thus subject to late-payment charges. He claimed that elimination of the mailing deadline, as Agri-Mark proposed, would greatly ease the performance of his administrative duties.

The market administrator further testified that when the mailing deadline was adopted under Order 1, it was reasonable to expect first-class mail to be delivered to the market administrator in two days from any location within the marketing area. Because of this, the administrative problems associated with enforcing the late-payment provisions and clearing the pool essentially were non-existent. He took the position that since two-day mail delivery can no longer be counted on, and faster and more efficient methods of payment are available to handlers, the postmark deadline should be deleted from the order provisions.

The record evidence on this issue was limited to the testimony offered by a witness for proponent and a supporting statement by the market administrator. There were no opposing views presented at the hearing or in briefs.

The uncontested Agri-Mark proposal to cease consideration of the postmark date in deciding whether handlers have made their producer-settlement fund payments on time should be adopted. This change will facilitate the administration of the order along the lines that were specifically addressed in testimony presented by proponent and the market administrator.

Elimination of the postmark date should encourage handlers to pay their pool obligations, which are due and payable by the 18th and subject to late changes if they are not received by the market administrator by the 20th, more promptly. To assure that their payments are received on time and not subject to late charges, handlers are likely to rely more often on the latest technology in making their payments (electronic bank transfers of money). These changes should speed up the flow of money to the producer-settlement fund and enable the market administrator to make the required payments from the producer-settlement fund by the specified deadline on the 20th. It also should make it easier for the market administrator to enforce the late payment provisions by removing the need to check postmark dates on envelopes containing handler payments.

Under the amended Order 1 provisions concerning late payments, handlers will be required to pay their producer-settlement fund obligations for the month, in addition to any adjustments resulting from the verification of their reports and payments for prior months, on or before the 18th day of the month. If these payments have not been received by the market administrator by the close of business on the 20th, they will be subject to late charges. Any such unpaid handler balances will be increased by 1 percent on that date and on the same day of each succeeding month until they are paid. The 1 percent increases in ensuing months will apply to unpaid account balances of handlers at close of business on the 20th, and will include any previously assessed late payment fees.

9. *Pricing diverted producer milk.* The Middle Atlantic order (Order 4) should be amended to provide that producer milk diverted from a pool plant to another plant (pool or nonpool) should be priced at the location of the plant where the milk being priced is received.

Under the current provisions of Order 4, diverted producer milk is priced at the location of the plant from which the milk is diverted, and where it is normally received. However, if lower adjusted prices apply at the location of the plants where the diverted producer milk is actually received, the milk is priced at the location of the plant to which diverted and the lower location values for such milk are credited to producers.

This pricing procedure for diverted milk has been provided under Order 4 since the inception of the Middle Atlantic order on August 1, 1970. It was adopted to discourage manufacturing plant handlers from associating as much milk as possible with city distributing plants and then regularly receiving the milk at the manufacturing plants as diverted milk. When the milk is priced at the city plant from which the milk is diverted, distant producers receive the uniform prices that apply at city plants when in fact their milk usually is moving to a nearby manufacturing plant. The current pricing technique of assigning the lower of the prices applicable at the divertee or divertor plant to diversions of producer milk was provided to insure that the pool would not subsidize the costs of transporting milk when, in fact, such costs were not incurred.

Pennmarva Dairymen's Federation (Pennmarva), an organization of cooperative associations that supply about 90 percent of the market's milk, proposed that the present method of pricing Order 4 diverted producer milk be changed. The witness for proponent claimed that the change is needed because milk is diverted from pool plants in various lower-priced zones, resulting in non-uniform pricing of Order 4 diverted milk at a number of nonpool plants. By pricing diverted milk at the location of the nonpool plant where the milk is received as Pennmarva proposes, uniform prices for diverted producer milk will apply at a given nonpool plant location.

In support of its proposal, Pennmarva's witness cited examples in which different prices apply to diverted producer milk that is received at the same nonpool plant. Under the current order provisions, producer milk that is diverted from a pool plant in Sunbury, Pennsylvania, subject to a location adjustment of minus 19.5 cents, to a nonpool plant at Reading, Pennsylvania, subject to a location adjustment of minus 9 cents, is priced at the plant from which diverted because the location value for milk at the divertor pool plant is lower than at the nonpool plant receiving the milk. Conversely, if the milk is diverted to the nonpool plant at Reading from a pool plant in the base zone at Fort Washington, Pennsylvania, the milk would be priced at the location of the nonpool plant to which the milk is diverted because a lower location value for milk applies at the receiving nonpool plant than at the diverting pool plant.

Pennmarva's witness contended that the order provisions for pricing diverted producer milk do not reflect current marketing conditions in the Order 4 market. In the past, he stated, the market's excess milk supplies associated with city distributing plants

generally were disposed of at distant manufacturing plants in the market's outlying procurement areas, where lower location values for milk apply. However, the 1975 expansion of the Order 4 marketing area resulted in the full regulation of several fluid milk processing plants in the Harrisburg, York and Lancaster areas of Pennsylvania. The supplies of milk that are not needed for bottling purposes at these plants are sometimes disposed of at nearby manufacturing plants located closer to the Order 4 market center pricing points than the Class I plants from which the milk is diverted. Under the order's current location pricing provisions for diverted milk, the greater location values at the closer-in manufacturing plants where the milk is received are not reflected in the returns to dairy farmers. Pennmarva contended that such a pricing penalty does not facilitate the orderly disposition of the market's reserve milk supplies.

The Pennmarva proposal to price all milk diverted to nonpool plants at the location of the plant at which the milk is actually received should be adopted. There was no opposition to the proposed change, either at the hearing or in briefs. The testimony on this issue is limited to the data and arguments presented by proponent in support of its proposal at the hearing and in briefs. In addition, a statement was made at the hearing in support of the proposal by the operator of a nonpool manufacturing plant at Reading.

The Order 4 market structure and the operating practices of handlers have changed considerably since 1970 when this method for pricing diversions was adopted. There are fewer but larger fluid milk plants. Also, the larger plant operators receive most of their milk needs during the mid-week days of Tuesday through Thursday. Because of these changes, greater reserve milk supplies are now associated with the Order 4 market. Therefore, it is even more important now than in the past that the order provisions facilitate the orderly disposition of the market's milk supplies which exceed the needs of such Class I bottlers.

The order's location pricing provisions recognize the greater value of milk at plants in or near the principal population centers in the marketing area than at other plant locations. In view of the location value of milk, it is inconsistent to assign several different location values to producer milk received at a single nonpool plant for manufacturing during the same month, depending on the location of the plant from which it is diverted.

Although the Pennmarva proposal addressed only the pricing of diversions from pool plants to nonpool plants, all diversions from a pool plant to another plant (pool or nonpool) should be priced at the location of the plant where the milk being priced is received. Under the present provisions of Order 4, the same location pricing provisions apply to diversions to pool plants and nonpool plants. As discussed earlier, the current method of pricing diverted milk can result in different Class I and uniform prices applying to producer milk diverted to the same pool plant from pool plants located in various lower-priced zones during the same month. The proposed amendment should be applied to diversions to pool plants as well as to diversions to nonpool plants to remove the possibility of any such pricing inconsistencies.

Pennmarva asked that its pricing proposal for diverted milk be dealt with on an expedited basis so that the decision on this matter would not be delayed until all of the more controversial and non-technical issues are decided. It is evident that the situation of non-uniform prices for producer milk diverted to pool and nonpool plants has existed for several years. Hence, there is no basis to conclude from the information presented on this record that the pricing inconsistencies are resulting in disorderly marketing to such an extent that this matter needs to be dealt with on an emergency basis. Accordingly, proponent's request for expedited action is denied.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the New England, New York-New Jersey, and Middle Atlantic 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 agreements and the orders, 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 areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, 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.

Recommended Marketing Agreements and Order Amending the Orders

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the New England, New York-New Jersey and Middle Atlantic marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1001, 1002 and 1004

Milk marketing orders, Milk, Dairy products.

1. The authority citation for 7 CFR parts 1001, 1002 and 1004 continues to read as follows:

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

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

2. Section 1001.5 is revised to read as follows:

§ 1001.5 Distributing plant.

Distributing plant means a processing and packaging plant

3. Section 1001.6 is revised to read as follows:

§ 1001.6 Supply plant.

Supply plant means a plant at which facilities are maintained and used for washing and sanitizing cans and to which milk is moved from dairy farmers' farms in cans and is there accepted, weighed or measured, sampled, and cooled, or it is a plant to which milk is moved from dairy farmer's farms in tank trucks.

4. Section 1001.7 is revised to read as follows:

§ 1001.7 Pool plant.

Except as provided in paragraph (d) of this section "pool plant" means:

(a) A distributing plant from which:

(1) Not less than 40 percent of its total receipts of fluid milk products (except filled milk) in any month, or in either of the 2 preceding months, are disposed of as Class I (except filled milk); and

(2) Route disposition (except filled milk) in the marketing area in the month:

(i) Is not less than 10 percent of its total receipts of fluid milk products (except filled milk);

(ii) Exceeds its route disposition in any other Federal marketing area; and

(iii) Exceeds 700 quarts on any day or a daily average of 300 quarts.

(b) A supply plant which meets the conditions specified in (1), (2), or (3) of this paragraph. Receipts and disposition of filled milk shall be excluded in determining whether a plant has met these conditions. For the purposes of this paragraph, milk received at a plant from a cooperative association in its capacity as a handler under § 1001.9(d) shall be considered as having been received at that plant from dairy farmers' farms.

(1) It is a plant from which in any month of August and December at least 15 percent, and in any month of September through November at least 25 percent, of its total receipts of milk from dairy farmers' farms is shipped as fluid milk products, other than as diverted milk, to pool distributing plants.

(2) For any month of August through December, it is one of a group of plants that meets the conditions specified in this paragraph.

(i) The handler's written request for continuation of pool supply plant status, which the plant held under the handler's operation in the preceding month, is received by the market administrator on or before the 16th day of the month.

(ii) The group of plants, considered as a unit, meets the shipping requirements specified in paragraph (b) of this section.

(iii) To qualify as a pool supply plant under this paragraph in December of any year, the plant, considered individually, shall have shipped at least 5 percent of its total receipts of milk from dairy farmers' farms as fluid milk products, other than as diverted milk, to pool distributing plants in one of the months of August through December of that year.

(iv) In the event of the failure of a group of plants to meet fully the requirements of paragraph (b)(2)(ii) of this section, termination of pool supply plant status shall be limited to the least number of plants which will result in the remaining supply plants meeting the requirements of paragraph (b)(2)(ii) of this section. If such termination becomes necessary, the handler shall be permitted to designate which plants shall continue to have pool plants status for the month.

(v) For the purposes of this paragraph, any supply plant operated by a cooperative association that is also a handler under § 1001.9(d) may be considered as one of a group of plants. In that event, the group's total receipts of milk from dairy farmers' farm shall be the total of such receipts by the association other than at any of its plants that is not one of the group, and the group's qualifying shipments shall consist of the qualifying shipments from the plants in the group plus the quantity of milk moved by the association in its capacity as a handler under § 1001.9(d) from farms of its members to pool distributing plants.

(3) For any month of January through July, it is a plant from which at least 15 percent of its total receipts of milk from dairy farmer's farms is shipped as fluid milk products, other than as diverted milk, to pool distributing plants or it is a plant that meets the requirements for automatic pool plant status specified in this paragraph. The automatic pool plant status of a plant shall be revoked for any month for which the market administrator has received the handler's written request for revocation on or before the 16th day of that month. In that event, the plant shall not have automatic pool plants status in any subsequent month of the current January through July period.

(i) The plant was a pool supply plant under this order in each of the preceding months of August through December; or

(ii) The plant was a pool supply plant under this order in at least two of the preceding months of August through December and would have been such a plant in all other months in that period had it not been a pool plant under the New York-New Jersey Federal order.

(4) No plant shall be a pool supply plant in any month in which it is operated as:

(i) A pool distributing plant; or

(ii) A regulated plant under another Federal order if its Class I disposition of fluid milk products, except filled milk, in the marketing area regulated by that order exceeds its shipments of fluid milk products, except filled milk, to pool distributing plants under this order.

(c) Each plant, other than a plant operated as a pool distributing plant or a pool supply plant, that is located in the marketing area and operated by a cooperative association shall be a pool plant in any month in which its route disposition does not exceed 2 percent of its total receipts of fluid milk products. Receipts and disposition of filled milk shall be excluded in determining whether a plant has met these conditions.

(d) The term "pool plant" shall not apply to the following plants:

(1) An exempt distributing plant under § 1001.8(e);

(2) The plant of a producer-handler under any Federal order;

(3) A plant designated as a regular pool plant under the New York-New Jersey Federal order; or

(4) Any plant for which the market administrator determines that a specified proportion or quantity of the receipts from dairy farmers and of milk from sources handled at a plant is not available for Class I use because there is in force an unconditional contract for the plant to supply fluid milk products for Class II or Class III use, the plant shall not be a pool plant for the month in which the market administrator notifies the handler of the determination and for any subsequent month in which the contract is in force for any part of the month.

5. Section 1001.8 is revised to read as follows:

§ 1001.8 Nonpool plant.

Nonpool plant means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) *Other order plant* means a pool plant under another Federal order or any other plant at which all fluid milk products handled become subject to the classification and pricing provisions of another Federal order.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) *Partially regulated distributing plant* means a nonpool plant that is not a regulated plant under another Federal order, a producer-handler plant, or an exempt distributing plant, and from which there is route disposition in the marketing area during the month.

(d) *Unregulated supply plant* means a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant from which fluid milk products are shipped during the month to a pool plant.

(e) *Exempt distributing plant* means:

(1) 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 700 quarts on any day or a daily average of 300 quarts.

(2) A plant that is operated by a governmental agency and from which there is route disposition in the marketing area.

6. Section 1001.9 is amended by revising paragraph (d) to read as follows:

§ 1001.9 Handler.

* * * * *

(d) Any cooperative association with respect to the milk that is moved from farms in tank trucks operated by, or under contract to, the association to pool plants or as diverted milk to nonpool plants for the account of, and at the direction of, the association. The association shall be considered as the handler who received the milk from the dairy farmers. However, the cooperative association shall not be the handler with respect to the milk moved from any farm if the association and the operator of the pool plant to which milk from such farm is moved both submit a request in writing, on or before the due date for filing the monthly reports of receipts and utilization, that the operator of the pool plant be considered as the handler who received the milk from the dairy farmer, and the pool plant operator's request states that he is purchasing the milk from such farm on the basis of the farm bulk tank measurement readings and the butterfat tests of samples of the milk taken from the farm bulk tank.

7. Section 1001.10 is revised to read as follows:

§ 1001.10 Producer-handler.

Producer-handler means any person who, during the month, is both a dairy farmer and a handler and who meets all of the following conditions:

(a) Provides as the person's own enterprise and at the person's own risk the maintenance, care, and management of the dairy herd and other resources and facilities that are used to produce milk, to process and package such milk at the producer-handler's own plant, and to distribute it as route disposition.

(b) The person's own route disposition constitutes the majority of the route disposition from the plant.

(c) The quantity of route disposition in the marketing area from the person's plant is greater than in any other Federal marketing area.

(d) The producer-handler receives no fluid milk products except from such handler's own production and from pool handlers, either by transfer or diversion pursuant to § 1001.15. If the producer-handler's receipts from own production and the total route disposition from the producer-handler's plant each exceed 4,300 pounds per day for the month, the producer-handler's receipts from pool plants are not in excess of 2 percent of receipts from own production. For the purposes of this paragraph, the producer-handler's receipts of fluid milk products shall include receipts from plants of other persons at all retail and wholesale outlets that are located in a Federal marketing area and operated by the producer-handler, an affiliate, or any person who controls or is controlled by the producer-handler.

8. Section 1001.12 is amended by revising paragraphs (e) and (f) to read as follows:

§ 1001.12 Producer.

* * * * *

(e) A dairy farmer who is a governmental agency that is operating an exempt distributing plant under § 1001.8(e)(2);

(f) A dairy farmer with respect to salvage product assigned under § 1001.44(a)(7)(ii);

* * * * *

9. Section 1001.14 is revised to read as follows:

§ 1001.14 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 § 1001.40(b)(1) from any source other than producers, handlers described in § 1001.9(d), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1001.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1001.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, coverted 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 § 1001.40(b)(1)) for which the handler fails to establish a disposition.

10. Section 1001.15 is amended by revising the first sentence of the introductory text of paragraph (a) and the first sentence of the introductory text of paragraph (b) to read as follows:

§ 1001.15 Diverted milk.

* * * * *

(a) Milk that a handler in its capacity as the operator of a pool plant reports as having been moved from a dairy farmer's farm to the pool plant, but which the handler caused to be moved from the farm to another plant, if the handler specifically reports such movement to the other plant as a movement of diverted milk, and the conditions of paragraph (a) (1) or (2) of this section have been met. * * *

(b) Milk that a cooperative association in its capacity as a handler under § 1001.9(d) caused to be moved from a dairy farmer's farm to a nonpool plant if the association specifically reports the movement to such plant as a movement of diverted milk, and the conditions of paragraph (b) (1) or (2) of this section have been met.* * *

* * * * *

11. In Section 1001.16, paragraphs (a) and (b) are revised to read as follows:

§ 1001.16 Exempt milk.

* * * * *

(a) Fluid milk products received at a pool plant in bulk from a nonpool plant to be processed and packaged, for which an equivalent quantity of packaged fluid milk products is returned to the operator of the nonpool plant during the same month, if the receipt of bulk fluid milk products and return of packaged fluid milk products occur during an interval in which the facilities of the nonpool plant at which the fluid milk products are usually processed and packaged are temporarily unusable because of fire, flood, storm, or similar extraordinary circumstances completely beyond the nonpool plant operator's control;

(b) Packaged fluid milk products received at a pool plant from a nonpool plant in return for an equivalent quantity of bulk fluid milk products moved from a pool plant for processing and packaging during the same month, if the movement of bulk fluid milk products and receipt of packaged fluid milk products occur during an interval in which the facilities of the pool plant at which the fluid milk products are

usually processed and packaged are temporarily unusable because of fire, flood, storm, or similar extraordinary circumstances completely beyond the pool plant operator's control;

* * * * *

12. Section 1001.17 is revised to read as follows:

§ 1001.17 Fluid milk product.

(a) Except as provided in paragraph (b) of this section "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers or aseptically packaged and hermetically sealed in foil-lined paper 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.

13. Section 1001.18 is revised to read as follows:

§ 1001.18 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream) or a mixture of cream and milk or skim milk containing 10 percent or more butterfat, with or without the addition or other ingredients.

14. A new § 1001.21 is added to read as follows:

§ 1001.21 Product prices.

The prices specified in this section as computed and published by the Director of the Dairy Division, Agricultural Marketing Service, shall be used in calculating the basic Class II formula price pursuant to § 1001.51(b), and the term "work-day" as used herein shall mean each Monday through Friday that is not a national holiday.

(a) *Butter price* means the simple average of the prices per pound of approved (92-score) butter on the Chicago Mercantile Exchange for the work-days during the first 15 days of the month, using the price reported each week as the price for the day of the report, and for each succeeding work-day until the next price is reported.

(b) *Cheddar cheese price* means the simple average for the work-days during the first 15 days of the month, of the prices per pound of cheddar cheese in 40-pound blocks on the National Cheese Exchange (Green Bay, WI). The price reported for each week shall be used as the price for the day on which reported, and for each succeeding work-day until the next price is reported.

(c) *Nonfat dry milk price* means the simple average of the prices per pound of nonfat dry milk for the work-days during the first 15 days of the month computed as follows:

(1) Use the prices (using the midpoint of any price range as one price) reported each week for high heat, low heat and approved nonfat dry milk, respectively, for the Central States production area;

(2) Compute a simple average of the weekly prices for the three types of nonfat dry milk in paragraph (c)(1) of this section. Such average shall be the daily price for the day on which the prices were reported and for each preceding work-day until the day such prices were previously reported; and

(3) Add the prices determined in paragraph (c)(2) of this section for the work-days during the first 15 days of the month and compute the simple average thereof.

(d) *Edible whey price* means the simple average of the prices per pound of edible whey powder for the Central States production area for the work-days during the first 15 days of the month. The prices used shall be the price (using the midpoint of any price range as one price) reported each week as the daily price for the day on which reported, and for each preceding work-day until the day such price was previously reported.

15. Section 1001.30 is revised to read as follows:

§ 1001.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, or not later than the 10th day if the report is delivered in person to the office of the market administrator, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of the handler's pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk (including the specific quantities of diverted milk and receipts from the handler's own production);

(2) Receipts of milk from cooperative associations in their capacity as handlers under § 1001.9(d);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 101.40(b)(1);

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 101.9(d) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Bulk milk received at a handler's pool plant from a cooperative association in its capacity as the operator of a pool plant or as a handler under § 1001.9(d), if such milk was rejected by the handler subsequent to such handler's receipt of the milk on the basis that it was not of marketable quality at the time the milk was delivered to the handler's plant, and such milk was removed from the plant in bulk form by the cooperative association and was replaced with other milk from the association. Except for purposes of this paragraph and § 1001.31(b), such milk that was so removed from the handler's plant shall be treated for all other purposes of the order as though it had not been delivered to and received at the handler's plant.

(e) Each handler not specified in paragraph (a) through (c) of this section shall report with respect to the handler's receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

16. Section 1001.31 is revised to read as follows:

§ 1001.31 Other reports of receipts and utilization.

(a) Each handler who dumps fluid milk products at a pool plant shall:

(1) Give the market administrator, at the request and in accordance with instructions of the market administrator, advance notice of the handler's intention to dump such products and the quantities involved; and

(2) Submit to the market administrator at the time and in the manner prescribed by the market administrator such detailed reports of dumpage as the market administrator requests.

(b) Each handler who intends to have a receipt of unmarketable milk replaced with other milk in the manner described under § 1001.30(d) shall give the market administrator, at the request and in accordance with instructions of the market administrator, advance notice of the handler's intention to have such milk replaced.

(c) In addition to the reports required pursuant to paragraphs (a) and (b) of this section and §§ 1001.30 and 1001.32, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

17. Section 1001.40 is revised to read as follows:

§ 1001.40 Classes of utilization.

Except as provided in § 1001.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1001.30 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 paragraph (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product or eggnog, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce;

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, pot cheese, farmers cheese, and their by-products (whey);

(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, anhydrous milkfat, aerated cream, sour cream and sour half and half, and sour cream mixtures containing nonmilk items;

(v) Custards, puddings, pancake mixes and buttermilk biscuit mixes, yogurt and any other semi-solid product resembling a Class II product and containing less than 10 percent butterfat;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers; and

(vii) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public.

(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) and its by-products (whey);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In fluid milk products or in any product specified in paragraph (b)(1) of this section that is destroyed or lost under extraordinary circumstances;

(6) In skim milk in any modified fluid milk product or in any product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1001.17; and

(7) In shrinkage assigned pursuant to § 1001.41(a) to the receipts specified in § 1001.41(a)(2) and in shrinkage specified in § 1001.41(b) and (c).

18. Section 1001.41 is revised to read as follows:

§ 1001.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1001.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1001.9(d));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1001.(9) and in milk diverted to such plant from another pool plant, except that if the opeator 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 from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined

from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III 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), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1001.9(d), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

19. Section 1001.42 is revised to read as follows:

§ 1001.42 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. In either class, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk and butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1001.44(a)(12) and the corresponding step of § 1001.44(b).

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1001.44(a)(7) or the corresponding step of § 1001.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1001.44(a)(11) or (12) or the corresponding steps of § 1001.44(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 adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified in Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other 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 § 1001.40.

(c) *Transfers and diversions to producer-handlers and to exempt distributing plants.* Skim milk or butterfat in the following forms that is transferred or diverted from a pool plant to a producer-handler under this or any other Federal order or to an exempt distributing plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose the transferees' utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i)(A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2)(ii) through (viii) of this section:

(A) The transferor-handler or divertor-handler claims such classification in its report of receipts and utilization filed pursuant to § 1001.30 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 milk for such nonpool plant; and

(B) To such nonpool plant's receipts of milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of 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 utililzation 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 paragraph (d)(2) of this section.

20. Section 1001.43 is revised to read as follows:

§ 1001.43 General classification rules.

In determining the classification of producer milk pursuant to § 1001.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1001.30 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 § 1001.9(d) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1001.40, 1001.41, and 1001.42;

(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 § 1001.9(d) shall be determined separately from the operations of any pool plant operated by such cooperative; and

(d) If receipts from more than one pool plant are to be assigned, the receipts shall be assigned in sequence according to the zone locations of the plants, beginning with the plant in the lowest-numbered zone for assignments to Class I milk and beginning with the plant in the highest numbered zone for assignments to Class III milk; and

(e) Receipts of other source milk from more than one plant shall be assigned in sequence according to the zone locations of the plants, beginning with the plant in the lowest-numbered zone for assignments to Class I milk and beginning with the plant in the highest-numbered zone for assignments to Class III milk.

21. Section 1001.44 is revised to read as follows:

§ 1001.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1001.9(a) for each of the handler's pool plants separately and of each handler described in § 1001.9(d) by allocating the handler's receipts of skim milk and butterfat to the handler's utilization pursuant to paragraphs (a) through (c) of this section.

(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 § 1001.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in:

(i) 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; and

(ii) Receipts of exempt milk;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1001.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1001.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of

the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1001.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1001.40(b)(1) that was not subtracted pursuant to paragraphs (a)(4), (5), and (6) of this section;

(ii) Receipts from dairy farmers of fluid milk products which are rejected and segregated in the handler's normal operation for receiving milk, and which receipts are accepted and disposed of by the handler as salvage product rather than as milk;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2)(i) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from another order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(vii) Receipts of fluid milk products (other than exempt milk) from a local or State government which has elected nonproducer status for the month pursuant to § 1001.16(c); and

(viii) Receipts of fluid milk products from dairy farmers for other markets;

(8) Subtracting the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined excess 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 pounds of skim milk remaining in Class I at this allocation step (exclusive of transfers between pool plants of the same handler) at all 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)(7)(vi) of this section; and

(C) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants remaining at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from another order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1001.40(b)(1), in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i), (7)(v) and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to paragraph (a)(11) of this section 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 paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount

(decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products tranferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii) and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(A) The estimated utilization of skim milk of all handlers in each class, as announced for the month pursuant to § 1001.45(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 proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from other pool plants according to the classification of such products pursuant to § 1001.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and in receipts from handlers under § 1001.9(d), 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)(14) of this section and the corresponding step of paragraph (b) of this section.

22. Section 1001.45 is revised to read as follows:

§ 1001.45 Market administrator's reports and announcements concerning classification.

(a) Whenever required for the purpose of allocating receipts from a regulated plant or handler under another Federal order pursuant to § 1001.44(a)(12) and the corresponding step of § 1001.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from another order plant, the class to which such receipts are allocated pursuant to § 1001.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to another order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

§§ 1001.46, 1001.47, 1001.48 [Removed and Reserved]

23. Sections 1001.46, 1001.47 and 1001.48 are removed and reserved.

24. Section 1001.50 is revised to read as follows:

§ 1001.50 Class prices.

Subject to the provisions of § 1001.52, the class prices per hundredweight of milk for the month shall be as follows:

(a) *Class I price.* The Class I price in Zone 21 shall be the basic formula price for the second preceding month plus $2.52. The differential value for Zone 1 shall be $3.24.

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1001.51(b) for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the

basic formula prices computed pursuant to § 1001.51(a) and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1001.51(b).

(c) *Class III price.* Subject to the adjustment set forth below for the applicable month, the Class III price shall be the basic formula price for the month.

Month	Amount
January	+$0.03
February	+.02
March	−.05
April	−.09
May	−.12
June	−.11
July	+.03
August	+.10
September	+.06
October	+.06
November	+.06
December	+.06

25. Section 1001.51 is revised to read as follows:

§ 1001.51 Basic formula prices.

(a) The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

(b) The "basic Class II formula price" for the month shall be the basic formula price for the second preceding month plus or minus the amount computed pursuant to paragraphs (b) (1) through (4) of this section.

(1) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1001.21 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(i) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(A) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese.

(B) 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

(C) 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.

(ii) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(A) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(B) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(2) 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.

(3) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b)(2) 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 (b)(3) (i) and (ii) of this section:

(i) Combine the total protection of American cheese for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics 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

(ii) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the 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.

(4) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b)(2) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (b)(3) of this section.

26. Section 1001.52 is amended by revising paragraph (a)(4)(ii) and adding a new paragraph (d) to read as follows:

§ 1001.52 Plant location adjustments.

* * * * *

(a) * * *

(4) * * *

(ii) The Massachusetts counties of Hampden (only the townships of Brimfield, Holland, Monson, Palmer and Wales), Hampshire (only the township of Ware) and Worcester (only the townships of Brookfield, East Brookfield, Hardwick, New Braintree, North Brookfield, Oakham, Spencer, Sturbridge, Warren and West Brookfield).

* * * * *

(d) The zone location of each plant in the State of Massachusetts (except Berkshire County) that is outside the areas specified in paragraph (a) of this section shall be based upon its highway mileage distance to Boston, Massachusetts. The distance for each plant shall be the mileage between Boston, Massachusetts, and the named point nearest to the plant, measured to the greatest extent possible over roads designated as principal roads, on the road maps specified in paragraph (e) of this section.

* * * * *

27. Section 1001.53 is amended by revising the introductory text, removing and reserving paragraph (e), and revising paragraphs (f), (g), and (h)(1) to read as follows:

§ 1001.53 Determination of applicable zone locations for pricing purposes.

In computing the value of fluid milk products at class prices under §§ 1001.60 and 1001.61, the handler's producer-settlement fund debits and credits under § 1001.71, the minimum amounts payable to producers under § 1001.73, and the minimum amounts payable to cooperative associations under § 1001.74, the location adjustments specified in § 1001.52 for the zone location of the plant for which the computation is being made shall be used except that for the following items the adjustments for the zone locations specified shall be used:

* * * * *

(e) [Reserved]

(f) For receipts from unregulated supply plants assigned to Class I milk, the zone location of the plant from which the product was received;

(g) For any excess of beginning inventory assigned to Class I milk under § 1001.44(a)(5), (a)(7)(i), or (a)(9) over the quantities of producer milk and of milk from cooperative associations in their capacity as handlers under § 1001.9(d) assigned to Class II and Class III milk in the preceding month, the zone location of the pool plants from which an equivalent quantity of receipts of fluid milk products were assigned to Class II or Class III milk in the preceding month in sequence beginning with the plant in the lowest-numbered zone; and

(h) * * *

(l) After the assignments pursuant to § 1001.44(a)(12) for the transferee-plant, multiply the remaining pounds of Class I skim milk by 110 percent and the remaining pounds of Class I butterfat by 150 percent;

* * * * *

28. Section 1001.54 is revised to read as follows:

§ 1001.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1001.50(b).

29. Section 1001.60 is revised to read as follows:

§ 1001.60 Handler's value of milk for computing basic blended price.

For the purpose of computing the basic blended price, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants, and of each handler described in § 1001.9(d) with respect to milk that was not received at a pool plant, as directed in this section. The prices used shall be those for the applicable zone locations as determined under § 1001.53.

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1001.9(d) that were classified in each class as determined pursuant to § 1001.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1001.44(a)(14) and the corresponding step of § 1001.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1001.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class III 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 § 1001.44(a)(9) and the corresponding step of § 1001.44(b).

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1001.44(a)(7)(i) through (iv), (vii), and (viii) and the corresponding step of § 1001.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between 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 § 1001.44(a)(7)(v) and (vi) and the corresponding step of § 1001.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1001.44(a)(11) and the corresponding step of § 1001.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk products or product specified in § 1001.40(b) that was included in the handler's inventory at the end of the preceding month and classified and priced as Class I milk.

30. Section 1001.62 is redesignated as § 1001.63, and revised; § 1001.61 is redesignated as § 1001.62 and revised; and a new § 1001.61 is added, to read as follows:

§ 1001.61 Partially regulated distributing plant operator's value of milk for computing basic blended price.

For the purpose of computing the basic blended price, the market adminstrator shall determine for each month the value of milk distributed as route disposition in the marketing area by the operator of a partially regulated distributing plant, as follows:

(a) Subtract from the quantity of route disposition distributed in the marketing area by the partially regulated distributing plant operator the quantity of fluid milk products (except those described in paragraph (b) of this section) received at the plant during the month that is classified and priced as Class I milk or the equivalent thereof under any marketwide pool Federal order and that is not used to offset route disposition in any other marketing area, and multiply the result by the applicable Class I price;

(b) Multiply by the difference between the applicable Class I price and the Class III price for the month the quantity of filled milk distributed as route disposition in the marketing area from the partially regulated distributing plant which is not proved to have been made from other fresh fluid milk products; and

(c) Add the values determined pursuant to paragraphs (a) and (b) of this section.

§ 1001.62 Computation of basic blended price.

The market administrator shall compute the basic blended price per hundredweight applicable to milk received at plants located in zone 21 and containing 3.5 percent butterfat as follows:

(a) Combine into one total the values computed pursuant to §§ 1001.60 and 1001.61 for all handlers from whom the market administrator has received at the market administrator's office prior to the 11th day after the end of the month the reports for the month prescribed in § 1001.30 and the payment for the preceding month required under § 1001.72(a);

(b) Deduct the amount of the plus adjustments, and add the amount of the minus adjustments, that are applicable under §§ 1001.52 and 1001.53;

(c) Subtract for each of the months of March, April, May, and June an amount computed by multiplying the total hundredweight of producer milk included in these computations by 20 cents in March, 30 cents in April, and 40 cents in May and June;

(d) Add for the months of August, September, and October an amount representing 25 percent, 30 percent, and

30 percent, respectively, of the aggregate amount subtracted under paragraph (c) of this section for the prior period of March-June, and for November add the remainder of the amount subtracted under such paragraph (c) and the interest earned on the aggregate fund;

(e) Add an amount equal to not less than one-half of the unobligated balance of the producer-settlement fund at the close of business on the 10th day after the end of the month;

(f) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk;

(2) The total hundredweight for which a valve is computed pursuant to § 1001.60(f); and

(3) The total hundredweight for which a valve is computed pursuant to § 1001.61(a); and

(g) Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining a cash balance in the producer-settlement fund. The result shall be the basic blended price for the month.

§ 1001.63 Announcement of blended prices 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 13th day after the end of each month the zone blended prices resulting from the adjustment of the basic blended price for such month, as computed under § 1001.62, by the location adjustments set forth in § 1001.52.

§ 1001.70 [Amended]

31. Section 1001.70 is amended by changing all references to "§ 1001.61" to "§ 1001.62."

32. Section 1001.71 is amended by revising paragraphs (a)(1), (2), (3), and (4) to read as follows:

§ 1001.71 Handlers' producer-settlement fund debits and credits.

* * * * *

(a) * * *

(1) Multiply the quantities of producer milk, the quantities of fluid milk products received at the pool plant from cooperative associations in their capacity as handlers under § 1001.9(d), the quantities of other source fluid milk receipts at pool plants that were allocated to Class I pursuant to § 1001.44, and the quantities of route disposition in the marketing area by partially regulated distributing plants for which a value was determined pursuant to § 1001.61(a) by the basic blended price computed under § 1001.62 adjusted by any location adjustments applicable under §§ 1001.52 and 1001.53.

(2) For any cooperative association in its capacity as a handler under § 1001.9(d), multiply the quantities of milk moved to each pool plant by the basic blended price computed under § 1001.62 adjusted by any location adjustments applicable under §§ 1001.52 and 1001.53; and to the result add the value determined under § 1001.60.

(3) If the value of fluid milk products, as determined under § 1001.60 for any pool plant, under § 1001.61 for any partially regulated distributing plant, or under paragraph (a)(2) of this section for any cooperative association in its capacity as a handler under § 1001.9(d), is greater than the credit as determined under paragraph (a)(1) of this section, the difference shall be the producer-settlement fund debit for the plant or the cooperative association in its capacity as a handler under § 1001.9(d).

(4) If the value of fluid milk products, as determined under §§ 1001.60 or 1001.61 for any plant, or as determined under paragraph (a)(2) of this section for any cooperative association in its capacity as a handler under § 1001.9(d), is less than the credit as determined under paragraph (a)(1) of this section, the difference shall be the producer-settlement fund credit for the plant or the cooperative association in its capacity as a handler under § 1001.9(d).

* * * * *

§ 1001.73 [Amended]

33. In Section 1001.73, paragraph (a) is amended by changing the words "Class III" to "Class II", and paragraph (b) is amended by changing the reference to "§ 1001.61" to "1001.62."

35. Section 1001.78 is revised to read as follows:

§ 1001.74 [Amended]

34. In Section 1001.74, paragraph (d)(1) is amended by changing the words "Class II" to "Class III", paragraph (d)(2) is amended by changing the reference to "§§ 1001.44 and 1001.47" to "§ 1001.44", and paragraph (d)(3) is amended by changing the reference to "§ 1001.61" to "§ 1001.62."

§ 1001.78 Charges on overdue accounts.

Any producer-settlement fund account balance due from or to a handler under § 1001.72, § 1001.77, or § 1001.78, for which remittance has not been received in or paid from the market administrator's office by the close of business on the 20th day of any month, shall be increased one percent effective the following day.

36. Section 1001.85 is amended by revising paragraph (c) to read as follows:

§ 1001.85 Assessment for order administration.

* * * * *

(c) The quantity distributed as route disposition in the marketing area from a partially regulated distributing plant for which a value is determined under § 1001.61.

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37. Section 1002.6 is revised to read as follows:

§ 1002.6 Producer.

Producer means any dairy farmer who produces milk approved by a duly constituted regulatory agency for fluid consumption and who delivers pool milk as specified in § 1002.14 to a pool plant, a pool unit, a plant specified in § 1002.28(f)(2) which is a partial pool plant, or a partial pool unit whose pool designation was canceled for failure to meet the requirements specified in § 1002.26(a), except that it shall not include any such dairy farmer delivering to such partial pool plant or partial pool unit unless at least 50 percent of such dairy farmer's milk delivered to such plant or unit is pool milk pursuant to § 1002.14. Each dairy farmer delivering milk to a partial pool plant or a partial pool unit shall be considered to have delivered pool milk for such dairy farmer's proportionate share of total milk delivered by dairy farmers to such plant or unit.

38. Section 1002.14 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1002.14 Pool milk.

* * * * *

(a) Milk first received at a pool plant which otherwise would be considered producer milk under an other order if all of such milk is assigned to Class II or Class III pursuant to § 1002.45(a)(8) and the corresponding step of § 1002.45(b).

(b) Milk not approved by a duly constituted regulatory agency for fluid consumption.

* * * * *

39. Section 1002.15 is revised to read as follows:

§ 1002.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk

mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, or aseptically packaged and hermetically sealed in foil-lined paper 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.

40. A new § 1002.18 is added to read as follows:

§ 1002.18 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream) or a mixture of cream and milk or skim milk containing 10 percent or more butterfat, with or without the addition of other ingredients.

41. A new § 1002.19 is added to read as follows:

§ 1002.19 Product prices.

The prices specified in this section as computed and published by the Director of the Dairy Division, Agricultural Marketing Service, shall be used in calculating the basic Class II formula price pursuant to § 1002.51(b), and the term "work-day" as used herein shall mean each Monday through Friday that is not a national holiday.

(a) *Butter price* means the simple average of the prices per pound of approved (92-score) butter on the Chicago Mercantile Exchange for the work-days during the first 15 days of the month, using the price reported each week as the price for the day of the report, and for each succeeding work-day until the next price is reported.

(b) *Cheddar cheese price* means the simple average for the work-days during the first 15 days of the month, of the prices per pound of cheddar cheese in 40-pound blocks on the National Cheese Exchange (Green Bay, WI). The price reported for each week shall be used as the price for the day on which reported, and for each succeeding work-day until the next price is reported.

(c) *Nonfat dry milk price* means the simple average of the prices per pound of nonfat dry milk for the work-days during the first 15 days of the month computed as follows:

(1) Use the prices (using the midpoint of any price range as one price) reported each week for high heat, low heat and approved nonfat dry milk, respectively, for the Central States production area;

(2) Compute a simple average of the weekly prices for the three types of nonfat dry milk in paragraph (c)(1) of this section. Such average shall be the daily price for the day on which the prices were reported and for each preceding work-day until the day such prices were previously reported; and

(3) Add the prices determined in paragraph (c)(2) of this section for the work-days during the first 15 days of the month and compute the simple average thereof.

(d) *Edible whey price* means the simple average of the prices per pound of edible whey powder for the Central States production area for the work-days during the first 15 days of the month. The prices used shall be the price (using the midpoint of any price range as one price) reported each week as the daily price for the day on which reported, and for each preceding work-day until the day such price was previously reported.

42. Section 1002.22 is revised to read as follows:

§ 1002.22 Additional duties of the market administrator.

In addition to the duties specified in § 1000.3(c) of this chapter, the market administrator shall perform the following duties:

(a) Maintain a main office and such branch offices as may be necessary;

(b) Promptly notify a handler, upon receipt of the handler's written request therefor, of the market administrator's determination: as to whether one or more plants exist at a specified location, as to whether any specified item constitutes a part of the handler's plant, or as to which plant a specified item is a part in the event that the particular premises in question constitutes more than one plant: *Provided*, That if the request of the handler is for revision or affirmation of a previous determination, there is set forth in the request a statement of what the handler believes to be the changed conditions which make a new determination necessary. If a handler has been notified in writing of a determination with respect to an establishment operated by him, any revision of such determination shall not be effective prior to the date on which such handler is notified of the revised determination;

(c) Place the sums deducted under § 1002.61(d) and retained pursuant to § 1002.70 in an interest-bearing account or accounts in a bank or banks duly approved as a Federal depository for such sums or invest them in short-term United States Government securities;

(d) For the purpose of allocating receipts from other Federal order plants under § 1002.45(a)(14) and the corresponding step of § 1002.45(b), publicly announce the market administrator's estimate of the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in pool milk of all handlers. Such estimate shall be final for such purpose.

43. Section 1002.25 is amended by changing the reference "§ 1002.51" in the preamble to "§ 1002.52", changing all references to "§ 1002.89" in paragraphs (a)(2) and (a)(3) to "§ 1002.77", changing the reference "§ 1002.3" in paragraph (c)(5) to "§ 1002.30", changing the words "Class II" in paragraph (k)(1) to "Class II and Class III", changing the reference "paragraph (c)(3)" in paragraph (1) to "paragraph (c)(2)", and revising paragraphs (c) introductory text, (c) (1), and (h) to read as follows:

§ 1002.25 Bulk tank units.

* * * * *

(c) Except as set forth in paragraphs (c) (1) through (5) of this section, a handler may declare that a unit is to be operated as a pool unit and at any time may add a farm to a pool unit: *Provided*, That a handler pursuant to paragraph (a)(4) of this section may not add farms to a pool unit during the months of July through March unless such handler's Class I–A skim milk or butterfat utilization exceeds the total receipts of skim milk or butterfat, respectively, in milk from the pool unit, and in the latter case he may add only the smallest number of farms necessary to provide sufficient milk to cover such Class I–A utilization.

(1) If the unit is a declared nonpool unit or if the farm is a part of a declared nonpool unit of such handler, the unit or farm may be changed to a pool status, except as excluded from the pool milk definition pursuant to § 1002.14(d), only beginning the first day of a month upon notice to the market administrator by not later than the 10th day of such month. If the notice is filed after the 10th day of the month, the effective date shall be the first day of the following

month except as specified in paragraph (c)(5) of this section.

* * * * *

(h) Each handler shall report by not later than the 10th day of the month any changes in units during the preceding month and as of the first day of such month.

* * * * *

44. Section 1002.26 is amended by revising paragraph (a) to read as follows:

§ 1002.26 Operating requirements.

* * * * *

(a) Be willing to dispose of as Class I–A milk in the marketing area milk received at the plant or on the unit from dairy farmers and agree that if a plant designation is canceled for failure to meet this requirement, the Class I–A and Class I–B milk of such plant through the partial pool plant and partial pool unit provisions shall be priced and equalized from the effective date of cancellation through the following June 30;

* * * * *

45. Section 1002.27 is amended by changing all references to "§ 100.89" to "§ 1002.77", revising the language in paragraph (b) before the proviso, redesignating paragraphs (c) through (j) as paragraphs (d) through (k), revising redesignated paragraphs (d), (h) introductory text, (h) (2) and (3) and (i), and adding new paragraphs (c) and (l) to read as follows:

§ 1002.27 Suspension and cancellation of designation.

* * * * *

(b) The designation of any plant which in any month is not approved by a health authority as a source of milk for the marketing area shall be automatically suspended at the beginning of the second month following the month that the handler receives notice that the plant does not have health approval as a source of milk for the marketing area unless the absence of health approval is a temporary condition covering a period of not more than 15 days: * * *

(c) The designation of a plant pursuant to § 1002.24 shall be suspended at the beginning of the second month following any consecutive 12-month period in which the plant failed to receive any pool milk or at the beginning of the second month following a month in which there is a failure to maintain the facilities and equipment that constitute a plant pursuant to § 1002.8(a).

(d) The designation of any plant or unit shall be suspended, effective no sooner than 10 days nor later than 20 days after the date of mailing of notice, by registered letter, to the handler, whenever the market administrator, subject to the limitations set forth in paragraphs (h) and (j) of this section, finds on the basis of available information that the handler operating the plant or unit is not meeting the requirements set forth in § 1002.26: *Provided,* That, if the handler operating the plant or unit is not a cooperative association qualified pursuant to § 1002.77, the market administrator shall notify any qualified cooperative association which has any members who deliver milk to such plant or unit, and shall also notify individually all producers delivering to such plant or unit who are not members of such qualified cooperative association, of such suspension of designation.

* * * * *

(h) No pool plant or pool unit designation shall be suspended for failure to meet the requirements of § 1002.26(a) except under the following conditions or pursuant to paragraph (1) of this section:

(1) * * *

(2) There has been issued by the market administrator, following such meeting, and mailed to all handlers operating pool plants designated pursuant to § 1002.24 or pool units consisting of farms in the area specified in § 1002.25(e) the market administrator's determination of the desirable utilization of milk received from producers each month during all or a part of the period set forth in paragraph (h)(1) of this section. Such determination shall include a schedule setting forth, by months, the desired minimum percentage of pool milk received from producers to be utilized in specified classes. Such specified classes shall include Class I–A in the marketing area, and may include all or a part of other Class I–A and Class I–B.

(3) The market administrator finds on the basis of available information that the handler operating a plant or unit or the cooperative reporting a plant or unit is not utilizing milk received from producers in accordance with the minimum percentage set forth in the determination of the market administrator previously announced pursuant to paragraph (h)(2) of this section: *Provided,* That the suspension of the designation of a plant or unit may be made effective during the months of November and December if the market administrator finds that the handler is utilizing any milk received from producers in classes other than those set forth in the determination of the market administrator announced pursuant to paragraph (h)(2) of this section.

(i) The cancellation of pool plant or pool unit designation for failure to meet the requirements of § 1002.26(a) shall be subject to the following conditions:

(1) No pool plant or pool unit designation shall be canceled if the handler operating the plant or unit utilized the milk received by the handler from producers during the month in which the suspension is made effective in accordance with the minimum percentage set forth in the determination of the market administrator announced pursuant to paragraph (h)(2) or paragraph (1) of this section.

(2) No pool plant or pool unit designation shall be canceled if the handler operating the plant or unit utilized in the specified classes set forth in the determination of the market administrator announced pursuant to paragraph (h)(2) of this section a percentage of the total milk received by such handler from producers during the month in which the suspension is made effective which is not less than the percentage of the total pool milk reported by all handlers for such month to have been used in the specified classes.

(3) In the event that all milk received from producers at a plant or unit is reported to the market administrator by a cooperative association qualified pursuant to § 1002.77 and such association pays the producer for such milk, the pool plant or pool unit designation shall not be canceled if a percentage of all milk reported by such cooperative association is utilized in accordance with the minimum percentage set forth in the determination of the market administrator announced pursuant to paragraph (h)(2) of this section, or in accordance with the percentage set forth in paragraph (i)(2) of this section.

(4) Cancellation of designations shall be limited to those plants or units necessary to result in a utilization of milk received at the remaining pool plants and pool units operated by the handler, or reported by the cooperative, as the case may be, in accordance with the minimum percentage set forth in paragraph (1) of this section, or in the determination of the market administrator announced pursuant to paragraph (h)(2) of this section.

* * * * *

(l) The designation of any pool plant pursuant to § 1002.24 or any pool unit pursuant to § 1002.25(e) shall be canceled unless 5 percent or more of the pool milk received from producers at such plant or by such unit during each of the months of December and January, and 10 percent during each of the

months of September through November, is utilized as Class I–A milk unless the percentage has been revised pursuant to paragraph (h) of this section.

46. Section 1002.30 is amended by changing the reference "§ 1002.70" in paragraph (d) to "§ 1002.60", and by revising the first sentence of the introductory text and paragraph (b) to read as follows:

§ 1002.30 Reports of receipts and utilization.

Each handler, except a handler receiving own farm milk and not required to be listed pursuant either to § 1002.11 or 1002.12, shall report each month to the market administrator for the preceding month in the manner and on the forms prescribed by the market administrator with respect to each pool plant, partial pool plant, pool unit or partial pool unit operated by such person, the information set forth in paragraphs (a) through (d) of this section. * * *

* * * * *

(b) Inventories at the beginning and the end of the month of fluid milk products and products specified in § 1002.41(c)(1);

* * * * *

47. Section 1002.41 is revised to read as follows:

§ 1002.41 Classes of utilization.

Subject to the conditions set forth in §§ 1002.42 through 1002.46, the classes of utilization shall be as follows:

(a) *Class I–A milk.* Class I–A milk shall be all skim milk and butterfat:

(1) Disposed of as a fluid milk product, except as otherwise provided in paragraph (c) and (d) of this section:

(i) Inside the marketing area;

(ii) As route disposition in an other order marketing area;

(iii) To an other order plant and assigned under such other order to Class I;

(iv) In packaged form to an other order plant if such product is not defined as a fluid milk product under such other order; and

(v) To a partially regulated plant under an other order and there applied as an offset to Class I sales in any other order market;

(2) In shrinkage assigned to Class I–A pursuant to paragraph (d) of this section; and

(3) Not specifically accounted for as Class I–B, Class II or Class III milk.

(b) *Class I–B milk.* Class I–B milk shall be all skim milk and butterfat:

(1) Disposed of as a fluid milk product outside this or any other Federal marketing area, except for:

(i) Milk moved to a partially regulated plant under an other order and there applied as an offset to Class I sales in any other order market; and

(ii) Inventory of packaged fluid milk products at nonpool plants that are not other order plants.

(2) In shrinkage assigned to Class I–B pursuant to § 1002.42(c).

(c) *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, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product or eggnog, except as otherwise provided in paragraph (d) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (c)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, pot cheese, farmers cheese, and their by-products (whey);

(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 (d)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, anhydrous milkfat, aerated cream, sour cream and sour half and half, and sour cream mixtures containing nonmilk items;

(v) Custards, puddings, pancake mixes and buttermilk biscuit mixes, yogurt and any other semi-solid product resembling a Class II product and containing less than 10 percent butterfat;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers; and

(vii) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public.

(d) *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) and its by-products (whey);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (c)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (c)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (c)(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 or in any product specified in paragraph (c)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product defintion pursuant to § 1002.15;

(6) Contained in fluid milk products and products specified in paragraph (c)(1) of this section that are destroyed or lost by a handler in a vehicular accident, flood, fire, or in a similar occurrence beyond the handler's control, to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator; and

(7) In shrinkage assigned pursuant to § 1002.42(a) to the receipts specified in § 1002.42(a)(2) and in shrinkage specified in § 1002.42 (b) and (c).

48. Section 1002.42 is revised to read as follows:

§ 1002.42 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1002.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (5) 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 (5) 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 pool milk received from producers, in milk received from pool units, and in milk received from units other than pool units, exclusive of the quantity for which Class II or Class III utilization was requested by the handler;

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts of fluid milk products in bulk from other pool plants;

(3) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts of fluid milk products in bulk from plants other than those defined in § 1002.8 (b) or (d), excluding the quantity for which Class II or Class III classification is requested by the handler; and

(5) 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) through (4) of this section; and

(c) Shrinkage in excess of the amounts assigned to Class III pursuant to paragraphs (a) and (b) of this section shall be assigned pro rata to Class I–A and Class I–B in accordance with the respective volumes of skim milk and butterfat actually accounted for in each such class.

49. Section 1002.44 is revised to read as follows:

§ 1002.44 Transfers.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I–A milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class be limited to the amount of skim milk and butterfat, respectively, remaining in such class as the transferee-plant after the computations pursuant to § 1002.45(a)(16) and the corresponding step of § 1002.45(b).

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1002.45(a)(7) or the corresponding step of § 1002.45(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1002.45(a) (12) or (14) or the corresponding steps of § 1002.45(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers to other order plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner:

(1) If transferred as packaged fluid milk products, classification shall be in the classes (either Class I–A, II or III) 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 the transferor and the transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers 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 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–A, subject to adjustment at a later date;

(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–A 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 § 1002.41.

(c) *Transfers to producer-handlers.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I–A milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers to other nonpool plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I–A milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I–A milk, if transferred in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) The transferring handler claims classification pursuant to the assignment set forth in paragraph (d)(3) of this section in the handler's report submitted to the market administrator pursuant to § 1002.30 for the month within which such transaction occurred;

(ii) The operator of such transferee plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification;

(iii) In determining the nonpool plant's utilization for purposes of this section, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a second nonpool plant shall be classified pursuant to the same assignment procedure with respect to receipts and utilization at such second nonpool plant, except that classification of such transfers in Class I–A and I–B shall not be less than the quantities which would be assigned to those classes if the transfer of such products had been directly from a pool plant or pool unit.

(3) Skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at the transferree plant pursuant to paragraph (d)(2)(ii) of this section:

(i) Packaged receipts of fluid milk products from Federal order sources shall first be assigned to route disposition in Federal order marketing areas (assigning receipts to sales in the same market to the extent possible) and any residual shall be assigned to Class I–B route sales.

(ii) Such bulk transfers and other bulk receipts of fluid milk products at such transferee plant from pool plants and units and from other order plants shall next be assigned to any remaining route disposition in any Federal order marketing area. For this purpose receipts from each Federal order market shall first be assigned to remaining route sales in such marketing area and any remainder of such receipts shall be prorated with all Federal order receipts to remaining route disposition in all Federal order marketing areas.

(iii) Receipts from dairy farmers shall then be assigned to any remaining route sales in the marketing area.

(iv) Remaining receipts from dairy farmers and other unregulated other source receipts (excluding opening inventory) in th form of fluid milk products shall be assigned pro rata to Class I–B, Class II and Class III utilization at such plant to the extent of such utilization available at such plant and any remainder of such receipts shall be assigned pro rata to Class I–A bulk sales to plants regulated under this order and Class I bulk sales to plants regulated under other orders.

(v) Receipts of bulk fluid cream products from plants defined pursuant to § 1002.8 (b) and (d) shall be assigned pro rata among such plants to any remaining Class II and Class III utilization on a pro rata basis, then to any remaining Class I–A disposition and finally any Class I–B disposition.

(vi) Any remaining receipts of fluid milk products or bulk fluid cream products being assigned pursuant to this paragraph shall be assigned pro rata with remaining receipts from other order plants, first to remaining Class I–A utilization, then to Class I–B utilization, then to Class II utilization, and finally to Class III utilization at such plant: *Provided,* That if on inspection of the books and records of such plant the market administrator finds that there is insufficient utilization to cover such receipts, the remainder shall be classified as Class I–A.

(vii) Any remaining Class I–A route disposition in any Federal marketing area shall be subject to the pricing specified in § 1002.60(d)(2).

50. Section 1002.45 is revised to read as follows:

§ 1002.45 Allocation of skim milk and butterfat classified.

The classification of milk received from producers at each pool plant or pool unit for each handler shall be determined each month pursuant to paragraphs (a), (b), and (c) of this section: *Provided,* That for the purpose of establishing the pool status of any plant with Class I–A route disposition in the marketing area which is not a pool plant pursuant to § 1002.24, skim milk and butterfat in milk received at such plant directly from dairy farmers or units up to an amount sufficient to qualify such plant as a pool plant pursuant to § 1002.28 (a) or (b) shall be considered the source of such Class I–A route disposition of such plant and be subtracted from Class I–A prior to the application of the allocation sequence set forth in paragraphs (a) and (b) of this section, unless at the time of filing the handler's report pursuant to § 1002.30 the handler elects not have it so allocated.

(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 classified as Class III pursuant to § 1002.42(b);

(2) Subtract the pounds of skim milk received in packaged form from a producer-handler for marketing as certified fluid milk products from the total pounds of skim milk in Class I–A and Class I–B milk, respectively, in accordance with its proportionate disposition in such classes;

(3) Subtract from the remaining pounds of skim milk in Class III, 2 percent of the pounds of skim milk in packaged fluid milk products received from other order plants, and subtract the balance from Class I–A;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1002.41(c)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1002.41(c)(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 (a)(5) or comparable provisions of another Federal milk order in the immediately preceding month.

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in 1002.41(c), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in Class I–A, class II and Class III milk, in series beginning with Class III, the pounds of skim milk in:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1002.41(c)(1) that was not subtracted pursuant to paragraphs (a)(4), (5) and (6) of this section;

(ii) Receipts of fluid milk products not approved by a duly constituted health authority which are excepted from the pool milk definition pursuant to § 1002.14(b);

(iii) Receipts of fluid milk products from a producer-handler pursuant to an other order or a producer-handler defined pursuant to § 1002.12 (except pool milk designated in the preamble of § 1002.14).

(iv) Receipts of fluid milk products from a handler's plant at which milk is excepted from the pool milk definition pursuant to § 1002.14(h).

(v) Receipts of fluid milk products from a handler with own farm milk, which milk is excepted from the pool milk definition pursuant to § 1002.14(i).

(8) Subtract from the pounds of skim milk remaining in Class III milk the pounds of skim milk in receipts of other source milk in the form of fluid milk products from plants other than those defined in § 1002.8 (b) or (d) and units other than pool units for which the handler requests a Class III classification, but not in any case to exceed the pounds of skim milk remaining in such class;

(9) Subtract from the remaining pounds of skim milk in Class II or Class III milk the pounds of skim milk in bulk receipts of fluid milk products from other order plants not previously assigned and for which a Class II or Class III classification is requested by both the transferor and transferee handler in filing reports of receipts and utilization for the month with their respective market administrators, but not in any case to exceed the pounds of skim milk remaining in such class;

(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 § 1002.41(c)(1), in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(11) Add to the remaining pounds of skim milk in Class III the pounds subtracted pursuant to paragraph (a)(1) of this section;

(12)(i) Subtract pro rata from the pounds of skim milk remaining in Class I–B, Class II and Class III milk the remaining pounds of skim milk in receipts of other source milk in the form of fluid milk products from plants not defined pursuant to § 1002.8 (b) or (d) and from units other than pool units: *Provided,* That if the pounds of skim milk to be assigned pursuant to this paragraph (a)(12)(i) exceed the available pounds of skim milk in Class I–B, Class II, and Class III the handler shall designate the priority of sources to be assigned to such classes;

(ii) No assignment shall be made pursuant to this paragraph with respect to milk received from a plant not defined pursuant to § 1002.8 (b) or (d) in the 401 miles and over freight zone at a plant from which 50 percent or more of the gross receipts of skim milk and butterfat leaves the plant in the form of fluid milk products in consumer packages or dispenser inserts and is classified as Class I–A;

(13) Subtract pro rata from the remaining pounds of skim milk in each class the pounds of skim milk in receipts from dairy farmers and from the handler's own farm which are excepted from the pool milk definition pursuant to § 1002.14 (h) and (i);

(14) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products from other order plants not previously assigned pursuant to paragraph (a)(3) and (9) of this section:

(i) Subject to the provisions of this paragraph, such subtraction shall be pro rata to the pounds of skim milk in each class with respect to whichever of the following quantities represents the higher proportion of Class II and Class III milk combined:

(A) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1002.22(d); 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 (i) of this paragraph 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–A milk and Class I–B milk after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in (14)(ii) of this paragraph, should the computations pursuant to (14) (i) or (ii) of this paragraph result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I–A milk and Class I–B milk combined shall be decreased by a like amount, pro rata to remaining utilization in each such class. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in (ii) of this paragraph, should the computations pursuant to (i) or (ii) of this paragraph result in a quantity of skim milk to be subtracted from Class I–A milk or Class I–B milk that exceeds the pounds of skim milk remaining in that class, the pounds of skim milk in such class 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 in sequence beginning with the nearest other pool plant of such handler at which Class I–A or Class I–B utilization is available;

(15) If the plant at which assignment is being made is a plant from which 50 percent or more of the gross receipts of skim milk and butterfat in the form of fluid milk products left the plant in the form of fluid milk products in consumer packages or dispenser inserts and was classified as Class I–A, subtract pro rata from the remaining pounds of skim milk in each class the pounds of skim milk in receipts of fluid milk products from plants in the 401 miles and over freight zone, not defined pursuant to § 1002.8 (b) or (d);

(16) Subtract from the remaining pounds of skim milk in Class I–A milk the pounds of skim milk in remaining receipts from plants (except other order plants) or units the pool status of which has not yet been established and which receipts have not previously been assigned pursuant to paragraph 9a) (12) and (15) of this section;

(17) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk received in the form of fluid milk products and bulk fluid cream products from other pool plants and from pool units (not previously assigned pursuant to the preamble of this section), in accordance with the classification assigned by the transferee handler subject to the conditions of paragraph (a)(17) (i) through (iii) of this section:

(i) The skim milk so assigned to any class of utilization shall be limited to the amount thereof remaining in such class in the transferee plant;

(ii) If the transferor plant received during the month other source milk to be allocated pursuant to paragraph (a)(6) of this section the skim milk so transferred shall be classified so as to allocate the least possible Class I–A or I–B utilization to such other source milk; and

(iii) If the transferor handler received during the month other source milk to be allocated pursuant to paragraph (a)(12) of this section, the skim milk so transferred shall not be classified as Class I–A or I–B to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(18) Add to the remaining pounds of skim milk in Class I–A the pounds of skim milk received directly from dairy farmers or units which was deducted pursuant to the proviso in the preamble of this section;

(19) If the pounds of skim milk remaining in all classes exceeds the pounds of skim milk in receipts from producers 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";

§ 1002.50 [Redesignated as § 1002.51]

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class.

§ 1002.51 [Redesignated as § 1002.52]

§ 1002.50a [Redesignated as § 1002.50]

51. Section 1002.51 is redesignated as § 1002.52, § 1002.50 is redesignated as § 1002.51, and § 1002.50a is redesignated as § 1002.50.

52. Section 1002.50 is revised to read as follows:

§ 1002.50 Class prices.

For pool milk received during each month from dairy farmers or cooperative associations of producers, each handler shall pay per hundredweight not less than the prices set forth in this section, subject to the differentials and adjustments in §§ 1002.52 and 1002.81. Any handler who purchases or receives milk during any month from a cooperative association of producers but does not operate the plant or unit receiving this milk from producers shall pay the cooperative association on or before 2 days before the last day of the month if paid by check, or the last day of the month if paid in cash or cash equivalent, at not less than the lowest class price pursuant to this section for the preceding month for milk received from such cooperative during the first 15 days of the month, and shall pay the cooperative association on or before the 15th day of the following month the balance due for milk received during the month from such cooperative at not less than the class prices pursuant to this section subject to the differentials and adjustments set forth in §§ 1002.52 and 1002.81 applicable at the plant at which the milk is first received from the cooperative association. Such payments to a cooperative association shall be deemed not to have been made until the payments have been received by the cooperative association.

(a) *Class I–A price.* For Class I–A milk, the Class I price in the 201–210 mile freight zone shall be the basic formula price for the second preceding month plus $2.42. The differential value in the 1–10 mile freight zone shall be $3.14.

(b) *Class I–B price.* For Class I–B milk the price shall be the price for Class I–A milk.

(c) *Class II price.* For Class II milk, the price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1002.51(b) for the month plus the amount that the value computed pursuant to paragraph (c)(1) of this section exceeds the value computed pursuant to paragraph (c)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (c)(1) and (c)(2) of this section, was less than the Class III price for the second preceding month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1002.51(a) and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (c)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1002.51(b).

(d) *Class III price.* Subject to the adjustment set forth below for the applicable month, the Class III price shall be the basic formula price for the month.

Month	Amount	Month	Amount
January	+.03	July	+.03
February	+.02	August	+.10
March	−.05	September	+.06
April	−.09	October	+.06
May	−.12	November	+.06
June	−.11	December	+.06

53. Section 1002.51 is revised to read as follows:

§ 1002.51 Basic formula prices.

(a) The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

(b) The "basic Class II formula price" for the month shall be the basic formula price for the second preceding month plus or minus the amount computed pursuant to paragraphs (b) (1) through (4) of this section.

(1) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1002.19 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:

(i) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(A) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(B) 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

(C) 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.

(ii) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(A) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(B) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(2) 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.

(3) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b)(2) 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 (b)(3) (i) and (ii) of this section:

(i) Combine the total production of American cheese for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics 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 procution of American cheddar cheese; and

(ii) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the 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.

(4) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b)(2) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (b)(3) of this section.

54. Section 1002.52 is amended by changing the reference "§ 1002.50a" in the preamble to "§ 1002.50", changing the word "0.1" in paragraph (d) to "0.5", changing the words "Class II" in paragraphs (e) to "Class III", and revising paragraph (c) to read as follows:

§ 1002.52 Transportation differentials.

* * * * *

(c) The differential rates applicable at plants shall be as set forth in the following schedule:

A	B	C
Freight zone miles	Classes I–A and I–B	Classes II and III
	cents per cwt.	
1–10	+72.0	+8
11–20	+69.5	+8
21–25	+67.0	+8
26–30	+67.0	+7
31–40	+64.5	+7
41–50	+62.0	+7
51–60	+59.5	+6
61–70	+57.0	+6
71–75	+32.5	+6
76–80	+32.5	+5
81–90	+30.0	+5
91–100	+27.5	+5
101–110	+25.0	+4
111–120	+22.5	+4
121–125	+20.0	+4
126–130	+20.0	+3
131–140	+17.5	+3
141–150	+15.0	+3
151–160	+12.5	+2
161–170	+10.0	+2
171–175	+7.5	+2
176–180	+7.5	+1
181–190	+5.0	+1
191–200	+2.5	+1
201–210	0.0	0
211–220	−2.5	0
221–230	−5.0	0
231–240	−7.5	0
241–250	−10.0	0
251–260	−12.5	0
261–270	−15.0	0
271–280	−17.5	0
281–290	−20.0	0
291–399	−22.5	0
301–310	−25.0	0
311–320	−27.5	0
321–330	−30.0	0
331–340	−32.5	0
341–350	−35.0	0
351–360	−37.5	0
361–370	−40.0	0
371–380	−42.5	0
381–390	−45.0	0
391–400	−47.5	0

Continue adjusting Class I–A and I–B prices downward by 2.5 cents per 10-mile zone.

* * * * *

55. Section 1002.53 is revised to read as follows:

§ 1002.53 Producer-handler price differential.

For skim milk and butterfat received from a handler who is a producer-handler under this or any other order and is assigned to Class I–A pursuant to § 1002.45(a)(7)(iii), the transferee handler shall pay a differential equal to the difference between the Class I–A price and the Class III price both appropriately adjusted for differentials pursuant to § 1002.52.

56. Section 1002.55 is revised to read as follows:

§ 1002.55 Transportation credit on bulk unit pool milk.

For pool milk received by a handler in a pool or partial pool unit, a transportation credit at the rate of 15 cents per hundredweight shall be computed.

57. A new § 1002.56 is added to read as follows:

§ 1002.56 Announcement of class prices and producer butterfat differential.

The market administrator shall announce publicly:

(a) On or before the fifth day of each month, the following:

(1) The Class I price for the following month applicable at the 201–210 mile zone and at the 1–10 mile zone.

(2) The Class III price for the preceding month applicable at the 201–210 mile zone and at the 1–10 mile zone;

(3) The producer butterfat differential for the preceding month;

(4) The average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the preceding month;

(5) The simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the United States Department of Agriculture for the preceding month; and

(6) 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 by the United States Department of Agriculture for the period from the 26th day of the second preceding month through the 25th day of the preceding month.

(b) On or before the fifteenth day of each month, the Class II price for the following month.

§ 1002.70 [Redesignated as § 1002.60]

58. Section 1002.70 is redesignated as § 1002.60, and amended by changing all references to "§ 1002.51" to "§ 1002.52", changing the reference "§ 1002.45(a)(17)", in paragraph (a) to "§ 1002.45 (a)(19)", and revising paragraph (d) to read as follows:

§ 1002.60 Net pool obligation of handlers.

* * * * *

(d) Add the amounts computed in paragraph (d)(1) through (5) of this section:

(1) Multiply the pounds of overage deducted from each class pursuant to § 1002.45(a)(19) and the corresponding step of § 1002.45(b) by the applicable class price adjusted by the differentials pursuant to §§ 1002.52 and 1002.81;

(2) Multiply the difference between the applicable Class I–A and Class III prices, both adjusted by the applicable differential pursuant to § 1002.52, by the pounds of skim milk and butterfat in other source milk subtracted from Class I–A pursuant to § 1002.45(a)(7)(i) and the

corresponding step of § 1002.45(b) and by the pounds of skim milk and butterfat specified in § 1002.44(d)(3)(vii);

(3) Multiply the producer-handler price differential by the pounds of skim milk and butterfat subtracted from Class I–A pursuant to § 1002.45(a)(7)(ii) and the corresponding step of § 1002.45(b);

(4) Multiply the difference between the Class III price for the preceding month and the Class I–A price or the Class II price, as the case may be, for the current month, both applicable at the location of the nearest plant or unit from which an equivalent quantity of Class III milk was received in the preceding month, by the pounds of skim milk and butterfat subtracted from Class I–A and Class II pursuant to § 1002.45(a)(10) and the corresponding step of § 1002.45(b).

(5) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk products or product specified in § 1002.40(c) that was included in the handler's inventory at the end of the preceding month and classified and priced as Class I milk.

* * * * *

§ 1002.71 [Redesignated as § 1002.61]

59. Section 1002.71 is redesignated as § 1002.61 and amended by changing the references "§ 1002.84" in the preamble to "§ 1002.71", changing the reference "§ 1002.70" in paragraph (a) to "§ 1002.60", changing the reference "§ 1002.89" in paragraph (b) to "§ 1002.77", and redesignating paragraphs (b–1) through (g) as paragraph (c) through (h). In paragraph (e), the references to "paragraph (c)" are changed to "paragraph (d)", and in paragraph (h) the reference to "paragraph (f)" is changed to "paragraph (g)".

60. A new § 1002.62 is added to read as follows:

§ 1002.62 Announcement of uniform price.

The market administrator shall publicly announce, on or before the 14th day of each month, the uniform price for the preceding month pursuant to § 1002.61 applicable at the 201–210 mile zone and at the 1–10 mile zone pursuant to § 1002.82.

§§ 1002.83 through 1002.89 [Redesignated as §§ 1002.70 through 1002.71]

61. Sections 1002.83 through 1002.89 are redesignated as §§ 1002.70 through 1002.77.

62. Section 1002.70 is revised to read as follows:

§ 1002.70 Producer settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer settlement fund" into which he shall deposit all payments and out of which he shall make all payments pursuant to §§ 1002.72 through 1002.77. All amounts subtracted under § 1002.61(d), inclusive of interest earned thereon, shall remain therein as an obligated balance until it is withdrawn for the purpose of effectuating § 1002.61(e).

§ 1002.71 [Amended]

63. Section 1002.71 is amended by changing the reference "§ 1002.90" to "§ 1002.85".

§ 1002.72 [Amended]

64. Section 1002.72 is amended by changing the reference "§ 1002.84" to "§ 1002.71".

§ 1002.73 [Amended]

65. In Section 1002.73, paragraph (a) is amended by changing the reference "§ 1002.84" to "§ 1002.71', and the reference "§ 1002.85" to "§ 1002.72".

§ 1002.76 [Amended]

66. Section 1002.76 is amended by changing the reference "§§ 1002.85 and 1002.90" to "§§ 1002.72 and 1002.85".

67. Section 1002.77 is amended by removing paragraph (1).

68. Section 1002.82 is revised to read as follows:

§ 1002.82 Transportation differentials.

The transportation differential shall be plus or minus the appropriate differential shown in column B of the schedule in § 1002.52(c) for the zone of the plant to which the milk is delivered or in the case of farms included in units the zone of the township in which the milk is received.

§ 1002.90 [Redesignated as 1002.85]

69. Section 1002.90 is redesignated as § 1002.85 and amended by changing the reference "§ 1002.85" to "§ 1002.72", and changing the reference "§ 1002.70(d)(2)" to "§ 1002.60(d)(2)".

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

70. Section 1004.10 is amended by revising paragraph (d) to read as follows:

§ 1004.10 Producer-handler.

* * * * *

(d) Sections 1004.40 through 1004.45, 1004.50 through 1004.54, 1004.60 through 1004.62, 1004.70 through 1004.79, 1004.85 and 1004.86, and 1004.90 through 1004.95 shall not apply to a producer-handler.

71. Section 1004.11 is revised to read as follows:

§ 1004.11 Dairy farmer.

Dairy farmer means any person who produces milk which is delivered in bulk to a plant. A dairy farmer shall be a "dairy farmer for other markets" with respect to milk reported pursuant to § 1004.7(d)(4).

72. Section 1004.12 is amended by revising paragraphs (a), (e) and (f)(5) to read as follows:

§ 1004.12 Producer.

* * * * *

(a) A diary farmer with respect to milk which is received at a pool plant pursuant to § 1004.7(a), (b), or (e) directly from the farm.

* * * * *

(e) Milk which is diverted in accordance with the provisions of this section shall be deemed to have been received by the handler for whose account it is diverted at a pool plant at the location of the plant from which it is diverted, except that, for the purpose of applying location adjustments pursuant to §§ 1004.52 and 1004.75 and the direct-delivery differential pursuant to § 1004.79, milk which is diverted shall be considered to be received at the location of the palnt to which the milk is diverted.

* * * * *

(f) * * *

(5) Dairy farmer with respect to milk physicially received at a pool plant as diverted milk from an other order plant if all of the milk so received from such dairy farmer is assisgned to Class II or Class III and the milk is treated as producer milk under the provisions of such other order.

73. Section 1004.13 is amended by revising paragraph (a) to read as follows:

§ 1004.13 Producer milk.

* * * * *

(a) Received at a pool plant pursuant to § 1004.7(a), (b), or (e) directly from the farm.

* * * * *

74. Section 1004.14 is revised to read as follows:

§ 1004.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts in the form of fluid milk products and bulk products specified in § 1004.40(b)(1) from any source other

than producers, handlers described in § 1004.9(c), or pool plants;

(b) Receipts in packaged form from other plants or products specified in § 1004.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1004.40(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 § 1004.40(b)(1)) for which the handler fails to establish a disposition.

75. Section 1004.15 is revised to read as follows:

§ 1004.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers or aseptically packaged and hermetically sealed in foil-lined paper 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.

76. A new § 1004.16 is added to read as follows:

§ 1004.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream) or a mixture of cream and milk or skim milk containing 10 percent or more butterfat, with or without the addition of other ingredients.

77. A new Section 1004.21 is added to read as follows:

§ 1004.21 Product prices.

The prices specified in this section as computed as published by the Director of the Dairy Division, Agricultural Marketing Service, shall be used in calculating the basic Class II formula price pursuant to § 1004.51(b), and the term "work-day" as used herein shall mean each Monday through Friday that is not a national holiday.

(a) *Butter price* means the simple average of the prices per pound of approved (92-score) butter on the Chicago Mercantile Exchange for the work-days during the first 15 days of the month, using the price reported each week as the price for the day of the report, and for each succeeding work-day until the next price is reported.

(b) *Cheddar cheese price* means the simple average for the work-days during the first 15 days of the month, of the prices per pound of cheddar cheese in 40-pound blocks on the National Cheese Exchange (Green Bay, WI). The price reported for each week shall be used as the price for the day on which reported, and for each succeeding work-day until the next price is reported.

(c) *Nonfat dry milk price* means the simple average of the prices per pound of nonfat dry milk for the work-days during the first 15 days of the month computed as follows:

(1) Use the prices (using the midpoint of any price range as one price) reported each week for high heat, low heat and approved nonfat dry milk, respectively, for the Central States production area;

(2) Compute a simple average of the weekly prices for the three types of nonfat dry milk in paragraph (c)(1) of this section. Such average shall be the daily price for the day on which the prices were reported and for each proceding work-day until the day such prices were previously reported; and

(3) Add the prices determined in paragraph (c)(2) of this section for the work-days during the first 15 days of the month and compute the simple average thereof.

(d) *Edible whey price* means the simple average of the prices per pound of edible whey powder for the Central States production area for the work-days during the first 15 days of the month. The prices used shall be the price (using the midpoint of any price range as one price) reported each week as the daily price for the day on which reported, and for each preceding work-day until the day such price was previously reported.

78. In § 1004.30, paragraphs (a) (1), (2), and (3) are revised to read as follows:

§ 1004.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) The quantities of skim milk and butterfat contained in:

(i) Receipts of producer milk (including such handler's own production) and milk received from a cooperative association for which it is a handler pursuant to § 1004.9(c);

(ii) Receipts of fluid milk products and bulk fluid cream products from other pool plants; and

(iii) Receipts of other source milk;

(2) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1004.40(b)(1);

(3) The utilization or disposition of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately in-area route disposition, except filled milk, and filled milk route disposition in the area;

* * * * *

79. Section 1004.40 is revised to read as follows:

§ 1004.40 Classes of utilization.

Subject to the conditions set forth in §§ 1004.41 through 1004.44, all skim milk and butterfat required to be reported by a handler pursuant to §§ 1004.30 and 1004.32 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 paragraph (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of fluid cream products, eggnog, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product or eggnog, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section:

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, pot

cheese, farmers cheese, and their by-products (whey);

(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, anhydrous milkfat, aerated cream, sour cream and sour half and half, and sour cream mixtures containing nonmilk items;

(v) Custards, puddings, pancake mixes and buttermilk biscuit mixes, yogurt and any other semi-solid product resembling a Class II product and containing less than 10 percent butterfat; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers.

((vii) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public.

(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) and its by-products (whey);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1004.15; and

(6) In shrinkage assigned pursuant to § 1004.41(a) to the receipts specified in § 1004.41(a)(2) and in shrinkage specified in § 1004.41 (b) and (c).

80. Section 1004.41 is revised to read as follows:

§ 1004.41 Shrinkage.

For purposes of classification all skim milk and butterfat to be reported by a handler pursuant to § 1004.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; 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 and milk received from a handler described in § 1004.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1004.9(c) and in milk diverted to such plant from 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 from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage 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 tank lots of fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts from dairy farmers for other markets pursuant to § 1004.11 and receipts of 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 tank lots of fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1004.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

81. Section 1004.42 is revised to read as follows:

§ 1004.42 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. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1004.44(a)(12) and the corresponding step of § 1004.44(b);

(2) If the transferor-plant or divertee-plant received during the month other source milk to be allocated pursuant to § 1004.44(a)(7) or the corresponding step of § 1004.44(b), the skim milk or butterfat so transferred or diverted shall

be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1004.44(a)(11) or (12) or the corresponding steps of § 1004.44(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 the 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 adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1004.40.

(c) *Transfers to producer-handlers and transfers and diversions to exempt distributing plants operated by governmental agencies.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to an exempt distributing plant operated by a governmental agency shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant operated by a governmental agency shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i)(A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2)(ii) through (viii) of this section:

(A) The transferor-handler or divertor-handler claims such classification in its report of receipts and utilization filed pursuant to § 1004.30 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 milk for such nonpool plant; and

(B) To such nonpool plant's receipts of milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of 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 paragraph (d)(2) of this section.

82. Section 1004.43 is revised to read as follows:

§ 1004.43 General classification rules.

(a) Each month, the market administrator shall correct for mathematical and other obvious errors, the reports of receipts and utilization submitted pursuant to § 1004.30 (a), (b) and (d) by each handler and compute the total pounds of skim milk and butterfat, respectively, in each class at each of the plants of such handler, and the total pounds of skim milk and butterfat in each class which was received from producers by a cooperative association handler pursuant to § 1004.9 (b) and (c) and was not received at a pool plant.

(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 products plus all the water originally associated with such solids.

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1004.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

83. Section 1004.44 is revised to read as follows:

§ 1004.44 Classification of producer milk.

After making the computations pursuant to § 1004.43, the market administrator each month shall determine the classification of milk received from producers by each cooperative association handler pursuant to § 1004.9 (b) and (c) which was not received at a pool plant, and the classification of milk received from producers and from cooperative association handlers pursuant to § 1004.9(c) at each pool plant for each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1004.41(b);

(2) Subtract from the total pounds of skim milk in Class I, the pounds of skim milk in:

(i) 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; and

(ii) Receipts of exempt milk;

(3) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining, or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1004.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1004.40(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 (a)(5) or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1004.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1004.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products from dairy farmers for other markets pursuant to § 1004.11 and from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts (other than exempt milk) of fluid milk products from a handler pursuant to § 1004.9(e);

(v) Receipts of reconstituted skim milk in filled milk from unregulated supply plants;

(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 is not assigned under this step at a plant regulated under another market pool order;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i), (7)(v) and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii)(A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then

at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(A) Multiply by 1.25 the 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, from a cooperative association in its capacity as a handler pursuant to § 1004.9(c), and in receipts of bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(C) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants remaining at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1004.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III, the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, prorata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipt of fluid milk products from unregulated supply plants and from other order plants if not classified or priced pursuant to the order regulating such plants, that were not subtracted pursuant to paragraphs (a)(2)(i), (7)(v) and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to paragraph (a)(11) of this section 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 paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in remaining receipts of bulk fluid milk products from other plants (except receipts from other order plants not classified and priced pursuant to the order regulating such plants), that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12)(ii), (iii) and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(A) The estimated utilization of skim milk of all handlers in each class, as announced for the month pursuant to § 1004.45(b); 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 proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraphs (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraphs (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such

excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant and from a cooperative association in its capacity as a handler pursuant to § 1004.9(c) according to the classification assigned pursuant to § 1004.42(a); and

(14) If the 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)(14) of this section and the corresponding step of paragraph (b) of this section.

84. In Section 1004.45, paragraph (b) is amended by changing the reference to "§ 1004.44(a)(1)" to "§ 1004.44(a)(12)", and paragraphs (c) and (d) are revised to read as follows:

§ 1004.45 Market administrator's reports and announcements concerning classification.

* * * * *

(c) 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 § 1004.44 on the basis of such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such report; and

(d) 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 classification arising from the verification of such report.

85. Section 1004.50 is revised to read as follows:

§ 1004.50 Class prices.

Subject to the provisions of § 1004.52 the class prices per hundredweight of milk for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $3.03.

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1004.51(b) for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula price computed pursuant to § 1004.51(a) and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1004.51(b).

(c) Class III price. Subject to the adjustment set forth below for the applicable month, the Class III price shall be the basic formula price for the month.

Month:	Amount
January	+ $0.05
February	+ .04
March	− .03
April	− .07
May	− .10
June	− .09
July	+ .05
August	+ .12
September	+ .08
October	+ .08
November	+ .08
December	+ .08

86. Section 1004.51 is revised to read as follows:

§ 1004.51 Basic formula prices.

(a) The *basic formula price* shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

(b) The *basic Class II formula price* for the month shall be the basic formula price for the second preceding month plus or minus the amount computed pursuant to paragraphs (b)(1) through (4) of this section.

(1) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1004.21 and yield factors in effect under the Diary 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:

(i) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(A) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(B) 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

(C) 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.

(ii) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(A) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(B) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(2) 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.

(3) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b)(2) 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 (b)(3) (i) and (ii) of this section:

(i) Combine the total production of American cheese for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics 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

(ii) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the 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.

(4) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b)(2) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (b)(3) of this section.

87. Section 1004.52 is amended by deleting the word "pool" from paragraph (a).

88. Section 1004.53 is revised to read as follows:

§ 1004.53 Announcement of class prices and producer butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day of each month, the following:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month; and

(3) The producer butterfat differential for the preceding month.

(b) The fifteenth day of each month, the Class II price for the following month.

89. Section 1004.60 is revised to read as follows:

§ 1004.60 Handler's value of milk for computing uniform prices.

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 the handler's pool plants and of each handler described in § 1004.9 (b) and (c) as follows:

(a) Multiply the quantity of milk received from a cooperative association as a handler pursuant to § 1004.9(c) and allocated pursuant to § 1004.44(a)(13) and the corresponding step of § 1004.44(b) and the quantity of producer milk in each class, as computed pursuant to § 1004.44(c), by the applicable class prices (adjusted pursuant to § 1004.52);

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1004.44(a)(14) and the corresponding step of § 1004.44(b) by the applicable class prices adjusted by the applicable differentials pursuant to §§ 1004.52, 1004.74 and 1004.79;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1004.44(a)(9) and the corresponding step of § 1004.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1004.44(a)(7) (i) through (iv) and the corresponding step of § 1004.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant (but not less than the Class III price) and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1004.(a)(7) (v) and (vi) and the corresponding step of § 1004.44(b); and

(f) Add an amount equal to the value at the Class I price of skim milk and butterfat assigned to Class I pursuant to § 1004.44(a)(11) and the corresponding step of § 1004.44(b) (excluding receipts from partially-regulated distributing plants for which disposition a specific allocation is made to Federal order receipts from this or any other order) adjusted for the location of the nearest plant from which such types of receipts were received.

(g) For the first month that this paragraph is effective, subtract the amount obtained by multiplying the difference between the applicable Class I price and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1004.40(b) that was included in the plant's inventory at the end of the preceding month and classified and priced as Class I milk.

90. Section 1004.61 is amended by changing the reference to "§ 1004.60(e)" in paragraph (a) to "§ 1004.60(f)", revising paragraphs (a)(5) to (b) to read as follows, and by changing the reference "(b)(7)" in paragraph (c) to "(b)(5)".

§ 1004.61 Computation of weighted average price and uniform prices for base milk and excess milk.

(a) * * *

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure shall be the weighted average price for the month.

(b) Subject to paragraph (c) of this section, for each month the market administrator shall compute the uniform prices per hundredweight for base milk and excess milk, each of 3.5 percent butterfat content, f.o.b market, as follows:

(1) Compute the aggregate value of excess milk for all handlers included in the computations pursuant to paragraph (a) of this section as follows:

(i) Multiply the quantity of such milk which does not exceed the total quantity of producer milk received by such handlers assigned to Class III milk by the Class III milk price;

(ii) Multiply the remaining hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class II milk by the Class II price;

(iii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and round to the nearest cent. The result shall be the uniform price for excess milk.

(3) From the amount resulting from the computations of paragraphs (a) (1) through (3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract the aggregate value of excess milk determined in paragraph (b)(1) of this section;

(5) Divide the result obtained in paragraph (b)(4) of this section by the

total hundredweight of base milk for handlers included in the computations pursuant to paragraph (a) of this section and subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the uniform price for base milk.

* * * * *

91. In § 1004.71, paragraph (b)(2) is amended by changing the reference "§ 1004.60(e)" to "§ 1004.60(f)", and paragraph (c)(2) is revised to read as follows:

§ 1004.71 Payments to the producer-settlement fund.

* * * * *

(c) * * *

(2) Compute the value of the quantity assigned in paragraph (c)(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 and subtract its value at the Class III price.

92. In § 1004.73, paragraph (a)(1) is amended by changing the words "Class II" to "Class III".

93. Section 1004.75 is revised to read as follows:

§ 1004.75 Location differentials to producers and on nonpool milk.

(a) For milk received from producers and from cooperative association handlers pursuant to § 1004.9(c) at a plant located 55 miles or more from the city hall in Philadelphia, Pa., and also at least 75 miles from the nearer of the zero milestone in Washington, DC., or the city hall in Baltimore, Md. (all distances to be the shortest highway distance as determined by the market administrator), the uniform price for base milk computed pursuant to § 1004.61(b) shall be reduced 1.5 cents for each 10 miles distances or fraction thereof that such plant is from the nearest of such basing points.

(b) For purposes of computations pursuant to §§ 1004.71 and 1004.73 the weighted average price shall be reduced at the rate set forth in paragraph (a) of this section applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

94. Section 1004.76 is amended by revising paragraphs (a)(1)(i) and (b)(5) to read as follows:

§ 1004.76 Payments by a handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(1)(i) The obligation that would have been computed pursuant to § 1004.60 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, a cooperative association as a handler pursuant to § 1004.9(b), or another 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 another order plant shall be classified as Class III milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average 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. There shall be included in the obligation so computed a charge in the amount specified in § 1004.60(f) and a credit in the amount specified in § 1004.71(b)(2) 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 below in paragraph (a)(1)(ii) of this section; and

* * * * *

(b) * * *

(5) From the value of such milk at the Class I price, subtract its value at the weighted average 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 less the value of such milk at the Class III price (except that the Class I price and the weighted average price shall be adjusted for the location of the nonpool plant and shall not be less than the Class III price).

95. Section 1004.85 is amended by revising paragraph (a) to read as follows:

§ 1004.85 Assessment for order administration.

* * * * *

(a) Each handler (excluding a cooperative association in its capacity as a handler pursuant to § 1004.9(c), and a cooperative association as the operator of a pool plant with respect to milk transferrred in bulk to a pool plant) with respect to the handler's receipts of producer milk (including such handler's own-farm production, milk received from a cooperative association pursuant to § 1004.9(c), and milk transferred in bulk from a pool plan owned and operated by a cooperative association) and other source milk allocated to Class I pursant to § 1004.44(a) (7) and (11) and the corresponding step of § 1004.44(b), except such other source milk that is excluded from the computations pursuant to § 1004.60 (d) and (f);

* * * * *

§ 1004.92 [Amended]

96. Section 1004.92 is amended by removing the last sentence of paragraph (a) and reserving paragraph (e).

Signed at Washington, DC., on May 18, 1990.

Daniel Haley,

Administrator.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Share, Share Draft, and Share Certificate Accounts

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board proposed to revise § 701.35 of its Rules and Regulations ("Share, Share Draft, and Share Certificate Accounts") to clarify that dividends on member share accounts are based on available earnings and are not gauaranteed, and to require notice of this fact when accounts are opened and in any advertisements, solicitations or similar statements that set forth a dividend rate.

DATE: Comments on the proposed rule must be received on or before July 24, 1990.

ADDRESS: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, General Counsel, or Hattie M. Ulan, Associate General Counsel, 1776 G Street, NW., Washington, DC 20456, telephone: (202) 682-9630.

SUPPLEMENTARY INFORMATION: The most fundamental difference between credit unions and other depository institutions is that credit unions are member-owned cooperatives. Each member has one vote in electing the board of directors, and the return on the members' shares is based on the performance of the board in running the institution. Because dividends are based on earnings, they can not be guaranteed.

These key aspects of the operation of a credit union—member election of the board, and return on member savings based on board performance—reinforce

the member-service orientation of credit unions and help protect the credit union system against the sorts of outside influences, from majority stockholders, entrepreneuers and others, that have caused or contributed to problems in other segments of the financial services industry.

In order to preserve and further this imporant distinction, and to address occasional cases of improper guarantees, the NCUA Board proposed to reinstate a regulatory requirement that federal credit unions disclose that dividends are based on earnings and are not guaranteed.

The legal prohibition against guaranteeing dividends in advance is inherent in the cooperative structure of credit unions and is embedded in section 117 of the Federal Credit Union Act (12 U.S.C. 1763) which provides, in part:

> Dividends.—At such intervals as the board of directors may authorize, *and after provision for required reserves,* the board of directors *may declare a dividend* * * *. (Emphasis supplied.)

The Accounting Manual for Federal Credit Unions elaborates at paragraph 5160.2:

> A federal credit union may specify in advance or contract for a dividend rate on any type of share account. Since a federal credit union cannot honor such contracts if earnings are insufficient, it is recommended that officials exercise extreme caution * * *. Disclosures required by Part 701.35 of the National Credit Union Administration Rules and Regulations must be included in the agreement.

Prior to April, 1982, § 701.35 of NCUA's Regulations required FCU's to give notice to their members, in relevant advertisements and account agreements, that "[d]ividends are based on the credit union's earnings at the end of a dividend period and cannot be guaranteed."

In April, 1982, the NCUA deregulated § 701.35. (*See* 47 FR 17978, 4/27/82.) Although specific disclosure requirements were removed from the regulation, the preamble to the final rule stated.:

> Authorized dividends * * * are based on available earnings after the provision for required reserves, and as a matter of law may not be guaranteed in advance * * *. Subsection (b) of the final rule requires that Federal credit unions accurately represent the terms and conditions of their share, share draft and share certificate accounts * * *.

The revised regulatory language, at § 701.35(b), has remained unchanged since the 1982 deregulation. It presently provides:

> (b) A Federal credit union shall accurately represent the terms and conditions of its share, share draft, and share certificate accounts in all advertising, disclosures, or agreements, whether written or oral.

Thus, although the specific disclosure requirement was deregulated, it has consistently remained NCUA's interpretation that, based on relevant provisions of law, dividends are based on current and available undivided earnings and cannot be guaranteed.

Since deregulation of the disclosure requirement, the Board has become aware of a number of instances where credit unions have either provided an outright guarantee of dividends or contracted for a specified dividend rate without clarifying that dividends are dependent on available earnings.

In order to prevent further problems of this nature, and to preserve the important distinctions between credit union share accounts and deposit accounts in other institutions, the Board proposes to reinstate disclosure requirements as follows.

First, to ensure that members are properly advised, a new § 701.35(b)(2) is proposed, requiring that, at the time an account is opened, the accountholders receive a written notice that "dividends are based upon available earnings at the end of a dividend period and federal regulations prohibit the guarantee of dividends." Second, to avoid any misleading advertisements or solicitations, a new § 701.35(b)(3) is proposed, requiring that any advertisement, solicitation, or similar statement where a dividend is specified include "a clear and conspicuous notice * * * that dividends are based upon the credit union's earnings at the end of the dividend period and that the specified dividend rate will not be paid if available earnings are insufficient."

The proposed amendments would only apply to federal credit unions. The Board is inclined to address this issue as a matter of regulatory disclosure policy that should be left to the state regulators in the case of state-chartered credit unions. The Board welcomes contrasting views, however, and requests comment on whether these or similar requirements should be imposed on state-chartered credit unions as a condition of federal insurance.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the proposed amendments. if made final, would not have a significant impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The proposed regulation does contain a collection of information requirement. Section 701.35(b) requires federal credit unions to disclose certain information to its members. These collection requirements will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act. Writen comments and recommendations regarding the collection requirements should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503. Attn: Jerry Waxman.

Executive Order 12612

As discussed above, the proposed rule would only apply to federal credit unions. The Board does request comment, however, on whether the issue involves safety and soundness considerations that would warrant imposing the rule on all federally insured credit unions. If the rule were applied to federally insured, state-chartered credit unions, the Board would seek to accommodate any special circumstances where state credit union authority under state law varies from that of FCU's or state disclosure requirements already apply.

List of Subjects in 12 CFR Part 701

Credit unions, guaranteed dividends, share, share draft, share certificate accounts.

By the National Credit Union Administration Board on May 17, 1990.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR Part 701 as follows:

PART 701—[AMENDED]

1. The authority citation for part 701 continues to read as follows:

> **Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and Pub. L. 101–73.
>
> Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1981 and 42 U.S.C. 3601–3610.

2. Section 701.35(b) would be revised to read as follows:

§ 701.35 Share, share draft, and share certificate accounts.

* * * * *

(b)(1) A federal credit union shall accurately represent the terms and conditions of its share, share draft, and share certificate accounts in all

advertising, disclosures, or agreements, whether written or oral.

(2) At the time a federal credit union opens a share, share draft, or share certificate account, the holder of the account shall be provided with a written statement that dividends are based upon available earnings at the end of a dividend period and federal regulations prohibit the guarantee of dividends.

(3) In the case of any advertisement, announcement, solicitation, or similar statement where a dividend rate is specified, a clear and conspicuous notice shall be included that dividends are based upon the credit union's earnings at the end of the dividend period and that the specified dividend rate will not be paid if available earnings are insufficient.

* * * * *

[FR Doc. 90-12112 Filed 5-24-90; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-90-1475; FR-2487-P-01]

RIN 2502-AE51

Single Family Insurance Claim Settlements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: At present, there are no regulatory provisions specifying the time period within which mortgagees may submit applications for supplementary FHA insurance benefits. The Department has, however, instructed lenders to file these supplementary claims within one year from the date of the original insurance settlement. The instructions for such claims are contained in the Instructions for Single Family Application for Insurance Benefits, Form-HUD 27011. This rule proposes to change the one-year time frame to six months and to set forth in the Code of Federal Regulations the requirement that lenders conform to a six-month filing period for supplementary claims.

DATES: Comment Due Date: July 24, 1990.

ADDRESSES: Interested person are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-2575. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708-2084).

FOR FURTHER INFORMATION CONTACT: Joseph Bates, Jr., Acting Director, Single Family Servicing Division, Department of Housing and Urban Development, room 9180, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6672. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Currently, HUD pays approximately 90,000 single family mortgage insurance claims annually, and it is estimated that for Fiscal Year 1990 claim payments will exceed $5 billion. In addition, about 9,000 supplemental claims are processed each year. Many of these supplemental claims filed by lenders are for relatively small amounts.

The Department has determined that a significant number of the approximately 9,000 supplemental claims filed by mortgagees each year are attributable to careless or inadequate preparation when submitting the original claim. Each supplemental claim requires manual review, and the processing costs to HUD are high. In addition, HUD has had to retain the original claim file on site indefinitely to provide information for the processing of later supplementary claims. This also increases processing costs. For these reasons, HUD is proposing to limit payment of supplemental claims to those submitted within six months of the date of Form HUD-27011, part B, settlement. This would allow HUD to reduce some of these costs and would encourage mortgagees to reconcile their claims promptly. Exceptions would be allowed where a deficiency judgement is requested or required or where the Commisisoner otherwise expressly permits an extension of this time period.

The Department now provides administrative instructions to lenders requiring supplementary claims to be filed within one year of the date of the original insurance settlement. This information is contained in the Instructions for Single Family Application for Insurance Benefits, Form HUD-27011. This rule would formalize that requirement in the Code of Federal Regulations and would change the one-year period to six months.

The proposed reduction in time to file supplementary claims is supported by the results of several studies conducted or authorized by the Department, including those prepared by Irving Burton Associates. These studies indicated a need to reduce the length of time during which supplemental claims would be permitted. The Department believes that six months is an adequate time for completion of this follow-up claim process.

Procedural Requirements

Major Rule

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Findings and Certifications

Under 24 CFR 50.20, this rule is categorically excluded from the environmental review requirements arising out of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

Semiannual Agenda

This rule is listed in the Department's Semiannual Agenda of Regulations published on April 23, 1990 (55 FR 16226, 16240), under Executive Order 12291 and the Regulatory Flexibility Act at Sequence Number 952.

The Catalog of Federal Domestic Assistance program numbers are 14.117,

14.119, 14.120, 14.121, 14.122, 14.123, 14.133, 14.165 and 14.166.

Regulatory Flexibility Act

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would have only a minor impact on existing HUD procedures associated with mortgage insurance claims.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule do not have Federalism implications and, thus, are not subject to review under the Order. The rule is limited to revising, and formalizing in the Code of Federal Regulations, HUD's supplemental claim procedures. No significant programmatic or policy changes would result from its promulgation.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

List of Subjects in 24 CFR Part 203

Mortgage insurance.

PART 203—[AMENDED]

Accordingly, 24 CFR part 203 is proposed to be amended by adding §§ 203.401(c) and 203.404(c) to read as follows:

1. The authority citation for part 203 would be revised to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. Section 203.401 would be amended by adding a new paragraph (c) to read as follows:

§ 203.401 Amount of payment—conveyed properties and non-conveyed properties.

* * * * *

(c) The mortgagee may not file for any additional payments of its mortgage insurance claim after six months from payment by the Commissioner of the final payment except for:

(1) Cases where the Commissioner requests or requires a deficiency judgment.

(2) Other cases where the Commissioner determines it appropriate and expressly authorizes an extension of time.

For the purpose of this section, the term "final payment" shall mean, in the case of claims filed for conveyed properties, the payment under subpart B of this part which is made by the Commissioner based upon the submission by the mortgagee of all required documents and information filed pursuant to § 203.365 of this part. In the case of claims filed under claims without conveyance of title, "final payment" shall mean the payment which is made by the Commissioner based upon submission by the mortgagee of all required documents and information filed pursuant to §§ 203.368 and 203.401(b) of this part.

3. Section 203.404 would be amended by adding a new paragraph (c) to read as follows:

§ 203.404 Amount of payment—assigned mortgages.

* * * * *

(c) The mortgagee may not file for any additional payments of its mortgage insurance claim after six months from final payment by the Commissioner. For the purpose of this section, the term "final payment" shall mean the payment which is made by the Commissioner based upon the submission by the mortgagee of all required documents and information pursuant to § 203.351 of this part.

Dated: May 17, 1990.

Peter Monroe,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-12170 Filed 5-24-90; 8:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 251, 252, and 255

[Docket No. R-90-1486; FR-2331-P-01]

Additional Review Requirements for HUD Coinsurance Programs

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of proposed rule making.

SUMMARY: Pursuant to the court order of May 16, 1990, in *Housing Study Group* v. *Kemp*, (U.S. Dist. Ct., D.D.C., Civ. Action No. 90-0244), HUD is hereby republishing the rule-text portion of its March 27, 1990 interim rule entitled "Additional Review Requirements for HUD Coinsurance Programs." Today's document re-publishes the rule as a Notice of Proposed Rule Making. The comment period for this proposed rule provides additional time beyond the comment time provided in the interim rule. At the end of the additional 30-day comment period here being provided, HUD will consider all comments submitted by any persons during either comment period, before publishing a rule in final form, to take effect no sooner than thirty days after the final rule's publication.

DATES: *Comment due date:* July 24, 1990.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule (which is identical to the contents of the March 27, 1990 rule) to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 755-2575. Only public comments of six or fewer *total* pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will *not* be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 755-7084). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone 708-3055. (This is not a toll-free number)

SUPPLEMENTARY INFORMATION: On March 27, 1990, HUD published an interim final rule (55 FR 11342) designed to implement a system of precommitment review governing HUD's coinsurance programs under 24 CFR parts 251, 252 and 255. The purpose of the rule was to afford urgently needed protection for the FHA General Insurance Fund against excessive defaults in the coinsurance programs.

That rule had an announced effective date of April 26, 1990, and provided for a

30-day public comment period, closing on the same date. Comments were submitted to HUD during that period.

On April 25, 1990 a temporary restraining order was issued by the United States District Court for the District of Columbia (Civil Action No. 90–0244) restraining and enjoining HUD from giving effect to the March 27, 1990 interim final rule. On May 3, 1990, HUD moved the Court to clarify whether, in order to comply with the Court's rationale that "full notice and comment" were required, HUD was being required to start the rule making process over from the beginning, or whether the Department could rely on the fact that initial submission to Congress and a 30-day comment period had already occurred. On May 16, 1990, the Court granted HUD's motion for clarification by directing that "(HUD) shall publish a new notice, as a proposed rule, that extends the public comment period by 30 days, must allow any person or entity, including those who have previously submitted comments, to submit comments during that period, shall then consider all comments received during both periods, and then publish the rule in final form to take effect 30 days thereafter, in accordance with 42 U.S.C. § 3535(o). Until such time as (HUD) satisf(ies) these conditions, (HUD is) hereby enjoined from giving force or effect to the Interim Rule published at 55 FR 11,342 (March 27, 1990)." Slip op., at 16–17.

In response to this development, and without revoking the interim final rule, the effectiveness of which is currently enjoined, the Department today is republishing the identical rule-text portion of the March 27, 1990 rule as a notice of proposed rule making. HUD will consider the public comments already received on the March 27, 1990 rule as comments on the pending proposed rule. This action is intended to be without prejudice to HUD's position that the interim final rule published on March 27, 1990, entitled "Additional Review Requirements for HUD Coinsurance Programs," was validly promulgated as an interim rule.

The 30-day public comment period announced in the interim final rule (which expired April 26, 1990) is being extended until June 25, 1990. All interested persons, including persons who submitted comments in response to the interim rule, are invited to submit comments during the extension period. Interested persons are referred to the Supplementary Information published with the interim final rule on March 27, 1990, 55 FR 11342–46, for further information on the background and basis for this proposed rule, and that information and background is incorporated in today's document.

Following the close of the extended comment period, the Department will review the public comments, preparatory to the publication of a final rule. Any final rule published in this proceeding will not be made effective for a period of at least 30 days following the date of its publication.

List of Subjects in 24 CFR Parts 251, 252, and 255

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 251, 252, and 255 are proposed to be amended to read as follows:

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

1. The authority citation for 24 CFR part 251 would be revised to read as follows:

Authority: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z–9; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 251.301 is proposed to be amended by revising paragraphs (a) and (f), to read as follows:

§ 251.301 Processing and development responsibilities.

(a) The lender is responsible for the performance of all functions under this part, including acceptance and review of applications, issuance of commitments, inspections, and closing, except those functions specified in paragraphs (b), (d), and (e) of this section. With respect to the issuance of commitments, the lender shall meet the requirements of paragraph (f) of this section.

* * * * *

(f) The precommitment review procedure set forth in this paragraph applies to any application for mortgage coinsurance under this part for which a legally binding Conditional or Firm Commitment is proposed to be issued. This procedure applies to lenders with preliminary as well as full approval to process coinsurance applications and without regard to whether the lender is under probation.

(1) For each coinsurance application for which a legally binding commitment will be issued after (insert effective date), the lender shall, prior to commitment, submit to HUD headquarters and to the HUD field office with jurisdiction for the proposed project such exhibits and other information as has been specified in administrative instructions of the Commissioner. The lender shall not issue a commitment without written approval from the Commissioner. Field Offices shall not endorse any case covered by this precommitment review requirement unless the lender submits with the endorsement package evidence of the Commissioner's approval of the processing and evidence of compliance with any conditions imposed by the Commissioner.

(2) Extensions of commitments for projects which had outstanding legally binding commitments as of (insert effective date) are limited as follows:

(i) Firm commitments for insurance of advances may be granted two 60-day extensions;

(ii) Conditional commitments may be granted one 60-day extension;

(iii) Firm commitments for insurance upon completion may not be extended.

However, should any underwriting conclusions be altered and reflected in the extension, the project must be submitted for precommitment review in accordance with this paragraph. In the event an extension is required beyond those provided for in this paragraph, the case will be subject to the precommitment review process described in this paragraph.

(3) Reopened expired commitments are subject to precommitment review under this paragraph (f).

(4) HUD considers a commitment to be "legally binding" if:

(i) It conforms to the format prescribed in the appropriate HUD Handbook and contains only such modifications as have been approved by HUD in writing;

(ii) All required underwriting, analyses, reviews and approvals have been accomplished prior to issuance of the commitment;

(iii) It conforms to HUD requirements pertaining to initial term and extension;

(iv) It obligates the lender and HUD to proceed to the next stage (*i.e.*, firm commitment in the case of a conditional commitment, or endorsement in the case of a firm commitment) if the applicant mortgagor complies with all conditions of such commitment;

(v) It does not permit the lender to change unilaterally the conditions or terms of the commitment; and

(vi) It is signed by an official of the coinsuring lender who has been designated and authorized in accordance with HUD requirements.

* * * * *

3. Section 251.302(b) is proposed to be revised to read as follows:

§ 251.302 Processing and commitment.

* * * * *

(b) The lender may issue a Firm Commitment to coinsurance for completion of its review and after receipt of written evidence from HUD of—

(1) The acceptability of the project in the areas of responsibility retained by the Commissioner under § 251.301(b);

(2) A waiver, where needed, of the approved high-cost factor under § 251.203(a);

(3) Completion of any case review requirements of the Commissioner that are part of its lender approval process; and

(4) Compliance with the requirements of § 251.301(f).

* * * * *

PART 252—COINSURANCE OF MORTGAGES COVERING NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

4. The authority citation for 24 CFR part 252 would be revised to read as follows:

Authority: Secs. 211, 244, National Housing Act (122 U.S.C. 1715b, 1715z–9; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. Section 252.301 is proposed to be amended by revising paragraphs (a) and (f), to read as follows:

§ 252.301 Processing and development responsibilities.

(a) The lender is responsible for the performance of all functions under this part, including acceptance and review of applications, issuance of commitments, inspections, and closing, except those functions specified in paragraphs (b), (d), and (e) of this secction. With respect to the issuance of commitments, the lender shall meet the requirements of paragraph (f) of this section.

* * * * *

(f) The precommitment review procedure set forth in this paragraph applies to any application for mortgage coinsurance under this part for which a legally binding Conditional or Firm Commitment is proposed to be issued. This procedure applies to lenders with preliminary as well as full approval to process coinsurance applications and without regard to whether the lender is under probation.

(1) For each coinsurance application for which a legally binding commitment will be issued after (insert effective date), the lender shall, prior to commitment, submit to HUD headquarters and to the HUD field office with jurisdiction for the proposed project such exhibits and other information as has been specified in administrative instructions of the Commissioner. The lender shall not issue a commitment without written approval from the Commissioner. Field Officers shall not endorse any case covered by this precommitment review requirement unless the lender submits with the endorsement package evidence of the Commissioner's approval of the processing and evidence of compliance with any conditions imposed by the Commissioner.

(2) Extensions of commitments for projects which had outstanding legally binding commitments as of (insert effective date) are limited as follows:

(i) Conditional commitments for new construction or substantial rehabilitation may be granted one 60-day extension;

(ii) Firm commitments for insurance of advances for new construction or substantial rehabilitation may be granted two 60-day extensions;

(iii) Firm commitments for insurance upon completion may not be extended;

(iv) For existing projects, only one 90-day extension may be granted for a conditional commitment and only one 60-day extension may be granted for a firm commitment.

However, should any underwriting conclusions be altered and reflected in the extension, the project must be submitted for precommitment review in accordance with this paragraph. In the event an extension is required beyond those provided for in this paragraph, the case will be subject to the precommitment review process described in this paragraph.

(3) Reopened expired commitments are subject to precommitment review under this paragraph (f).

(4) HUD considers a commitment to be "legally binding" if:

(i) It conforms to the format prescribed in the appropriate HUD Handbook and contains only such modifications as have been approved by HUD in writing;

(ii) All required underwriting, analyses, reviews and approvals have been accomplished prior to issuance of the commitment;

(iii) It conforms to HUD requirements pertaining to initial term and extension);

(iv) It obligates the lender and HUD to proceed to the stage (*i.e.*, firm commitment in the case of a conditional commitment, or endorsement in the case of a firm commitment) if the applicant mortgagor complies with all conditions of such commitment;

(v) It does not permit the lender to change unilaterally the conditions or terms of the commitment; and

(vi) It is signed by an official of the coinsuring lender who has been designated and authorized in accordance with HUD requirements.

6. Section 252.302(b) is proposed to be revised to read as follows:

§ 252.302 Processing and commitment.

* * * * *

(b) The lender may issue a Firm Commitment to coinsurance after completion of its review and after receipt of written evidence from HUD of—

(1) The acceptability of the project in the areas of responsibility retained by the Commissioner under § 252.301(b);

(2) A waiver, where needed, of the approved high-cost factor under § 252.203(a);

(3) Completion of any case review requirements of the Commissioner that are part of its lender approval process; and

(4) Compliance with the requirements of § 252.301(f).

* * * * *

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

7. The authority citation for 24 CFR part 255 would be revised to read as follows:

Authority: Secs. 211, 214, National Housing Act (12 U.S.C. 1715b, 1715z–9; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. Section 255.301 is proposed to be amended by revising the section heading and by revising paragraphs (a) and (f), to read as follows:

§ 255.301 Processing and development responsibilities.

(a) The lender is responsible for the performance of all functions under this part, including acceptance and review of applications, issuance of commitments, inspections, and closing, except those functions specified in paragraphs (b), (d), and (e) of this section. With respect to the issuance of commitments, the lender shall meet the requirements of paragraph (f) of this section.

* * * * *

(f) The precommitment review procedure set forth in this paragraph applies to any application for mortgage coinsurance under this part for which a legally binding Conditional or Firm Commitment is proposed to be issued. This procedure applies to lenders with

preliminary as well as full approval to process coinsurance applications and without regard to whether the lender is under probation.

(1) For each coinsurance application for which a legally binding commitment will be issued after (insert effective date), the lender shall, prior to commitment, submit to HUD headquarters and to the HUD field office with jurisdiction for the proposed project such exhibits and other information as has been specified in administrative instructions of the Commissioner. The lender shall not issue a commitment without written approval from the Commissioner. Field Offices shall not endorse any case covered by this precommitment review requirement unless the lender submits with the endorsement package evidence of the Commissioner's approval of the processing and evidence of compliance with any conditions imposed by the Commissioner.

(2) Extensions of commitments for projects which had outstanding legally binding commitments as of (insert effective date) are limited as follows:

(i) Conditional commitments may be extended not to exceed 180 days from the date of original issuance;

(ii) Firm commitments may be granted two 60-day extensions.

However, should any underwriting conclusions be altered and reflected in the extension, the project must be submitted for precommitment review in accordance with this paragraph. In the event an extension is required beyond those provided for in this paragraph, the case will be subject to the precommitment review process described in this paragraph.

(3) Reopened expired commitments are subject to precommitment review under this paragraph (f).

(4) HUD considers a commitment to be "legally binding" if:

(i) It conforms to the format prescribed in the appropriate HUD Handbook and contains only such modifications as have been approved by HUD in writing;

(ii) All required underwriting, analyses, reviews and approvals have been accomplished prior to issuance of the commitment;

(iii) It conforms to HUD requirements pertaining to initial term and extension);

(iv) It obligates the lender and HUD to proceed to the next stage (*i.e.*, firm commitment in the case of a conditional commitment, or endorsement in the case of a firm commitment) if the applicant mortgagor complies with all conditions of such commitment;

(v) It does not permit the lender to change unilaterally the conditions or terms of the commitment; and

(vi) It is signed by an official of the coinsuring lender who has been designated and authorized in accordance with HUD requirements.

9. Section 255.302(b) is proposed to be revised to read as follows:

§ 255.302 Processing and commitment.

* * * * *

(b) The lender may issue a Firm Commitment to coinsure after completion of its review and after receipt of written evidence from HUD of—

(1) The acceptability of the project in the areas of responsibility retained by the Commissioner under § 255.301(b);

(2) A waiver, where needed, of the approved high-cost factor under § 255.203(a);

(3) Completion of any case review requirements of the Commissioner that are part of its lender approval process; and

(4) Compliance with the requirements of § 255.301(f).

* * * * *

Dated: May 21, 1990.

C. Austin Fitts,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-12243 Filed 5-24-90; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Ambulance Transfers

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment of rule.

SUMMARY: This proposed rule revises DoD 6010.8-R (32 CFR part 199) which implements the Civilian Health and Medical Program of the Uniformed Services. The rule allows inpatient cost-sharing for ambulance transfers between hospitals. This will preserve continuity of care and reduce out-of-pocket costs for active duty beneficiaries.

DATES: Written public comments must be received on or before June 25, 1990.

FOR FURTHER INFORMATION CONTACT: David E. Bennett, Office of Program Development, OCHAMPUS, Aurora, Colorado 80045-6900, telephone (303)-361-3537.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as part 199 of this title. DoD Regulation 6010.8-R was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

It was recently brought to our attention that military personnel assigned to medically isolated areas were experiencing excessive out-of-pocket expenses for ambulance transfers. These expenses were due to: (1) The outpatient cost-sharing of ambulance transfers; (2) the reimbursement methodology used in calculating the CHAMPUS allowed amount; and (3) the lack of participating providers in geographically isolated areas.

(1) Cost-Sharing

Under current regulation, all ambulance transfers are cost-shared on an outpatient basis. Dependents of active duty members are responsible for a $50 annual deductible and 20 percent of the CHAMPUS-determined allowable amount beyond the annual fiscal year deductible. Retirees and their dependents are subject to the same deductible as active duty dependents, but may pay 25 percent of the CHAMPUS-determined allowable amount. If the provider does not accept assignment on a claim, the beneficiary must also pay the difference between billed charges and the CHAMPUS-determined allowed amount.

(2) Reimbursement Methodology

The use of allowable charges in payment of medical and other health services furnished by physicians, medical groups, professional providers, independent laboratories, suppliers of ambulance services and suppliers of durable medical equipment, medical supplies, and prostheses is generally recognized by all third party payors, both private and governmental. The CHAMPUS allowable charge is the lowest of: (1) The actual billed charge; (2) the prevailing charge; or (3) the charge established by application of the Medicare Economic Index. The prevailing charges are developed on a statewide, non-specialty basis and are set at the 80th percentile of charges made for a given procedure during the base period. In other words, it is the charge at which 8 out of 10 CHAMPUS claims would have been paid in full for a particular procedure during the base

period. The allowable charge concept was established under chapter 55, title 10, United States Code, the statute under which CHAMPUS was authorized as a public health care program.

(3) Provider Participation

Excessive out-of-pocket costs have also been attributed to the lack of participating providers. Geographically isolated military installations often do not have the adjoining civilian community resources capable of providing a large volume of medical providers. Since the lack of participating providers potentially increases beneficiary liability, some feel that it is unfair to hold the beneficiary responsible for large costs not covered by CHAMPUS.

Unfortunately, the difficulty of locating participating providers is one constantly faced by CHAMPUS beneficiaries regardless of duty locations. Since providers (other than Medicare participating hospitals and a few other categories of institutional providers) can elect to participate on a claim-by-claim basis, OCHAMPUS has no authority to require acceptance of the amount allowed under the program as payment in full.

The following actions are being reviewed in an attempt to increase provider participation and reduce out-of-pocket costs for CHAMPUS beneficiaries:

(1) An effort on the part of local commanders to locate and convince providers to participate. Projected referrals or utilization may be incentives for participation in the program.

(2) The use of Partnership Program Agreements whenever possible.

(3) The use of the Air Force Evacuation System to transport patients to distant military medical facilities.

(4) The establishment of a Navy evacuation system for transportation of beneficiaries in remote areas. The increase in provider participation will require the commitment and active participation of base commanders, health benefit advisors (HBAs), and military medical personnel.

Although problems related to reimbursement methodology and provider participation cannot be changed by an amendment to 32 CFR part 199, we have decided to revise the cost-sharing provisions for transfers between hospitals. This proposed change in cost-sharing status for transfers between hospitals will alleviate some financial burden of ambulance transfers. Transfers between hospitals will be cost-shared on an inpatient basis. This is consistent with § 199.4(a)(4) which states,

> Status of patient controlling for purposes of cost-sharings. Benefits for covered services and supplies described in this chapter will be extended either on an inpatient or outpatient cost-sharing basis in accordance with the status of the patient at the time the covered services and supplies were provided * * * "

This would preserve continuity of care and reduce out-of-pocket costs for active duty dependents. Under the inpatient cost-sharing provisions, the transferred active duty dependent would only be responsible for the difference between billed charges and the CHAMPUS-determined allowable charge.

This change will have no impact on retirees and their dependents since their cost-share remains twenty-five percent whether a service is provided on an inpatient or outpatient basis. However, dwelling in remote areas is largely a matter of choice for this group, not warranting increases in program expenditures.

Under current policy, emergency room (ER) services are cost-shared as inpatient when an immediate inpatient admission for acute care follows the outpatient ER services. In order to be consident with this policy, medically necessary ambulance transfers from an ER to a hospital more capable of providing the required level of care will also be cost-shared on an inpatient basis.

Regulatory Procedures

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would result in an annual effect on the national economy of $100 million or more or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities.

This proposed rule is not a major rule under Order 12291. The changes set forth in this proposed rule are minor reivsions to existing regulation. In addition, this proposed rule will have very minor impact and not significantly affect a substantial number of small entities. In light of the above, no regulatory impact analysis is required.

This proposed rule does not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR part 199, is proposed to be amended as follows:

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. § 199.4, paragraph (d)(3)(v) Introductory text is revised and a note added following it to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(d) * * *

(3) * * *

(v) *Ambulance.* Civilian ambulance service to and between hospitals is covered when medically necessary in connection with otherwise covered services and supplies and a covered medical condition. Ambulance service is also covered for transfers to a Uniformed Service Medical Treatment Facility (USMTF). For the purpose of CHAMPUS payment, ambulance service is always an outpatient service (including in connection with maternity care) with the exception of transfers between hospitals which are cost-shared on an inpatient basis. Ambulance transfers from a hospital based emergency room to another hospital more capable of providing the required care will also be cost-shared on an inpatient basis.

Note: The inpatient cost-sharing provisions for ambulance transfers only apply to transfers between hospitals; i.e., acute care, general, and special hospitals; psychiatric hospitals; and long-term hospitals.

* * * * *

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–11060 Filed 5–24–90; 8:45 am]

BILLING CODE 3810–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 90–76]

Prior Coordination of Public Land Mobile Service Applications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This order grants a motion for extension of time filed by Telocator. Telocator has demonstrated good cause to warrant a grant of its request. This action is taken in order to give prospective commenters additional time to consider the engineering issues in this proceeding and in turn file helpful comments. The deadline for the filing of comments in this rulemaking proceeding is extended to May 14, 1990. The deadline for filing reply comments is extended to May 30, 1990. The proposed rule was published March 21, 1990 (55 FR 10475).

DATES: Comments must be submitted by May 14, 1990. Reply comments must be submitted by May 30, 1990.

ADDRESSES: Federal Communications Commission, 1919 M St. NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gerald Zuckerman, Mobile Services Division, Common Carrier Bureau, (202) 632–6450.

SUPPLEMENTARY INFORMATION:

Order

Adopted: May 3, 1990.
Released: May 7, 1990.

By the Chief, Common Carrier Bureau:

1. On May 1, 1990, Telocator requested an extension of time to May 14, 1990, in which to file comments on the Notice of Proposed Rulemaking in the above-referenced proceeding. Comments currently are due on or before May 7, 1990.

2. Telocator states that it has been conducting an in-depth review of the engineering issues raised by the Notice and that Telocator's members have been exploring various alternatives to the proposals. Telocator requests the extension of one week so that it can complete its engineering and internal review process and submit useful comments.

3. We find that good cause has been shown for a brief extension, the grant of which will not significantly delay this proceeding. Accordingly, the extension of time request *Is Granted* and comments on the prior coordination proposal from all parties are due on or before May 14, 1990. Moreover, in order to afford parties sufficient time to prepare reply comments, the time for filing replies *Is Extended* to May 30, 1990.

Federal Communications Commission.

Richard M. Firestone,

Chief, Common Carrier Bureau.

[FR Doc. 90–12145 Filed 5–25–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 80

[PR Docket No. 90–134]

Maritime Services; Amendment of the Maritime Services Rules (Part 80) To Increase the mileage Limit Contained in the General Exemption for Small Passenger Vessels Operated on Domestic Voyages

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Order extending time.

SUMMARY: This Order extends the comment and reply comment filing deadlines in PR Docket No. 90–134, as a result of a motion filed by the Radio Technical Commission for Maritime Services (RTCM). This additional time wil permit the RTCM to coordinate responses more effectively with members of the maritime community.

DATES: Comments are now due by June 25, 1990; reply comments by July 16, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eric Malinen, Private Radio Bureau, (202) 632–7175.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rule Making was published in the **Federal Register** on April 4, 1990 (55 FR 12535).

Adopted: May 18, 1990.
Released: May 21, 1990.

By the Chief, Private Radio Bureau.

1. On March 8, 1990, the Commission adopted a Notice of Proposed Rule Making in the above captioned matter. The specified filing deadlines for comments and reply comments were May 21, 1990, and June 5, 1990, respectively.

2. On May 14, 1990, the Radio Technical Commission for Maritime Services (RTCM) filed a motion asking us to permit it to file comments and reply comments on June 25, 1990, and July 16, 1990, respectively. The RTCM is a non-profit organization that seeks, among other things, to improve the efficiency and capability of marine communications. Its members include experts on the issues here. The RTCM states that the additional time requested will permit it to coordinate responses more effectively with members of the maritime community.

3. We find that the participation of the RTCM and others in this proceeding will serve the public interest, and that good cause exists to grant the RTCM's request. By extending the filing deadlines, we afford the RTCM and other interested parties a fuller opportunity for such participation.

4. Accordingly, IT IS ORDERED, pursuant to the authority set forth in Sections 0.331 and 1.46 of the Commission's Rules, 47 C.F.R. §§ 0.331, 1.46, that the RTCM's motion for extensions of time IS GRANTED. The filing deadlines for comments and reply comments are extended to June 25, 1990, and July 16, 1990, respectively.

Federal Communications Commission.

Edward R. Jacobs,

Acting Chief, Private Radio Bureau.

[FR Doc. 90–12230 Filed 5–24–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. LVM 89–01; Notice 5]

Passenger Automobile Average Fuel Economy Standards; Proposed Decision To Grant Exemption

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

ACTION: Proposed decision.

SUMMARY: This proposal is being issued in response to a petition filed by Rolls-Royce Motors, Ltd. (Rolls-Royce) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model year (MY) 1992 through 1994 passenger automobiles, and that lower alternative standards be established for it. This notice proposes that the requested exemption be granted and that alternative standards of 13.8 mpg for MY 1992, 13.8 for MY 1993, and 13.8 mpg for MY 1994 be established for Rolls-Royce.

DATES: Comments on this proposal must be received or on before June 25, 1990.

ADDRESSES: Comments on this proposal must refer to Docket No. LVM 89–01; Notice 5 and should be submitted to: Docket Section, NHTSA, room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Mr. Kee's telephone number is (202) 366–0846.

SUPPLEMENTARY INFORMATION:

Background

Section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act), provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable average fuel economy standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if the NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactures (worldwide) fewer than 10,000 passenger automobiles in the model year for which the exemption is sought (the affected model year) and that manufactured fewer than 10,000 passenger automobiles in the second model year before the affected model year. In determining maximum feasible average fuel economy, the agency is required by section 502(e) of the Act to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

Selection of the Type of Alternative Standard

The Act permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) A separate standard may be established for each exempted manufacturer; (2) classes, based on design, size, price, or other factors, may be established for the automobiles of exempted manufacturers, with a separate average fuel economy standard applicable to each class; or (3) a single standard may be established for all exempted manufacturers.

On November 8, 1989, Rolls-Royce petitioned NHTSA for an exemption from the generally applicable fuel economy standards for MYs 1992, 1993, and 1994. A previous petition dated October 27, 1987, submitted for MYs 1990–1991 and requesting 12.7 mpg for each of these years, was granted. In the current petition, Rolls-Royce states that its maximum feasible fuel economy for MY 1992 through 1994 fleets has increased to 13.8 mpg for each year. For MYs 1992 through 1994, NHTSA believes it is appropriate to establish a separate standard for Rolls-Royce. No petitions have yet been received from other low volume manufacturers for MYs 1992 through 1994, so the agency cannot use the second or third approaches described above.

Background Information on Rolls-Royce

Rolls-Royce is a small company that concentrates wholly on the production of high quality prestige cars. Its annual production rate is 2,000–3,000 automobiles, 1,200–1,500 of which are sold in the U.S. market. The corporate philosophy is that concentrating on this limited range and volume is the only way to maintain its reputation for producing a car that it says is widely perceived as the best in the world.

Roll-Royce states that it is making every effort to achieve the lowest possible fuel consumption consistent with meeting emission, safety, and other standards while maintaining customer expectations of its product. In the 12-year period from 1978, when Federal fuel economy standards were introduced, Rolls-Royce has achieved a fuel economy improvement of approximately 16% by optimizing and tuning its powertrain while leaving basic features of the vehicles unchanged. In view of its position of producing only luxury vehicles, and its long model runs (as much as fifteen years between major changes), the company states that significant fuel economy improvements cannot be made in the short term. Rolls-Royce further states that it has had difficulty increasing the fuel economy of vehicles specifically targeted for the U.S. market due to stringent emission standards.

In it petition, Rolls-Royce states that in the longer term, technical innovation and weight saving should result in worthwhile improvements. A change in the basic concept of its cars to reduce size or downgrade the specifications would not, according to the petitioner, be acceptable to its customers. Nevertheless, the company believes that it has been conscious of the need for weight saving for many years, and, since the introduction of the Silver Shadow, has made many parts of aluminum. These include the engine block and cylinder heads, transmission and axle casings, doors, hood and deck lid.

In addition to discussing opportunities for weight reduction, Rolls-Royce also included in its petition discussions of improving its fuel economy through mix shifts, engine improvements, and drive train and transmission improvements.

Methodology Used To Project Maximum Feasible Average Fuel Economy Level for Rolls-Royce

Baseline Fuel Economy

To project the level of fuel economy which could be achieved by Rolls-Royce in MYs 1992 through 1994, the agency considered whether there were technical or other improvements that would be feasible for these Rolls-Royce vehicles, whether or not the company currently plans to incorporate such improvements in those vehicles. The agency reviewed the technological feasibility of any changes and their economic practicability.

NHTSA interprets "technological feasibility" as meaning that technology which would be available to Rolls-Royce for use on its 1992 through 1994 model year automobiles, and which would improve the fuel economy of those autotmobiles. The areas examined for technologically feasible improvements were weight reduction, aerodynamic improvements, engine improvements, drive line improvements, and reduced rolling resistance.

"Economic practicability" is interpreted as meaning the financial capability of the manufacturer to improve its average fuel economy by incorporating technologically feasible changes to its 1992 through 1994 model year automobiles. In assessing that capability, the agency has always considered market demand since it is an implicit part of the concept of economic practicability. Consumers need not purchase what they do not want.

In accordance with the concerns of economic practicability, NHTSA has considered only those improvements which would be compatible with the basic design concepts of Rolls-Royce automobiles. NHTSA assumes that Rolls-Royce will continue to produce a five-passenger luxury car. Hence, design changes that would make the cars unsuitable for five adult passengers with luggage or would remove items traditionally offered on luxury cars, such as air conditioning, automatic transmission, power steering, and power windows, were not examined. Such changes to the basic design could be economically impracticable since they might well sigificantly reduce the demand for these automobiles, thereby reducing sales and causing significant economic injury to the low volume manufacturer.

Mix Shift

Rolls-Royce has little opportunity for improving fuel economy by changing the model mix since it makes only one basic model in various configurations, all with similarly low fuel economy. The differences in fuel economy values among the different models available in MYs 1992 through 1994 will likewise be small. Further, the model mix is largely fixed by the market demand. Thus,

variations in sales percentages among the models have negligible effect on CAFE.

Producing additional models or making some of the configurations significantly more fuel efficient is not possible since both corporate financial limitations and the unique market sector served by Rolls-Royce preclude significant changes to the basic concept of a Rolls-Royce car. For MYs 1992 through 1994, Rolls-Royce cars will fall into six car lines, under the Rolls-Royce and Bentley name plates. All cars are in the 5,500-pound inertia weight class. Production of the Silver Spur Limousine, in the 6000-pound inertia weight class and with lower fuel economy than the other car lines, was discontinued with the 1989 model year.

Weight Reduction

As stated previously, Rolls-Royce has used aluminum for many of its unstressed components for some time. An in-house program has been conducted by the company to evaluate the effect of further weight reduction by removing items from the vehicle with no changes to engine or transmission. Dynamometer tests indicated that emissions as well as fuel economy improvements would result from reduced weight, but the tests were conducted simply by removing components from the vehicle. An 11% reduction in weight resulted in a 4% improvement in fuel economy. To achieve an equal or greater weight reduction through design changes would require complete redesign and retooling, which is not practicable, as Rolls-Royce states that it does not, for the forseeable future, have the capital to undertake such an expensive effort.

Engine Improvements

The current petition from Rolls-Royce recites past efforts to improve fuel economy through making engine improvements. Past developmental activities include test and evaluation of various technologies applied to the Rolls-Royce engine. These included diesel engines, cylinder disablement, increased engine displacement (to reduce nitrogen oxide emissions and permit timing for improved fuel economy), the May "Fireball" Combustion Chamber, and overall engine downsizing in conjuntion with all new features including bodyshell, transmission, and suspension. Each of these approaches was discarded in turn as failing to provide a feasible option for simultaneouly meeting fuel economy and emissions requirements, and the expectations of the company's customers.

The one technique which does show a high likelihood for making improvement is the programmed electronic ignition advance system. This has shown a 9 percent improvement in fuel economy due to the ability to accurately match any shape of the ignition cycle. This system was introduced on some models for MY 1989, and subsequently on all models for MY 1990. A slight contribution is also realized from reduced axle ratios which can be used in conjunction with electronic engine controls without exceeding emissions standards.

Transmission and Drive Train Improvements

Rolls-Royce currently uses the General Motors GM THM 400 unit transmission in all Rolls-Royce and Bentley cars. Initially, GM believed that a torque converter lock-up clutch would become available for the GM THM 400 transmission, but this did not turn out to be the case. No experimental hardware has been available for Rolls-Royce to test.

A four speed version of a GM THM 200 transmission incorporating a converter clutch has been available. However, this smaller GM THM 200 transmission is not suitable for use with Rolls-Royce's current 6750 cc V8 engine due to the power and torque characteristics of the engine and the torque limitations of the transmission.

Recently, GM has made available to Rolls-Royce a new four speed transmission with a torque converter lock-up clutch. This transmission is capable of operating with Rolls-Royce's engines and the initial design assessment has shown promising results. Rolls-Royce also notes that use of the fourth gear on this new transmission as an overdrive ratio has shown the capability of improving fuel economy by approximately 10 percent under highway driving conditions. Rolls-Royce is continuing to develop this transmission for use in its vehicles and intends to introduce it into production once durability, driveability, and calibration requirements have been satisfactorily completed. This transmission should be available for MY 1992 and later Rolls-Royce automobiles.

Effect of Other Motor Vehicle Standards

The Rolls-Royce petition cites exhaust emission standards as having the greatest effect on fuel economy, and for this reason the company considers the fuel economy program to be an integral part of its emission control program. It states that, historically, emission standards have placed a severe strain on its limited technical resources. According to that company, only with the introduction of new emission control techniques such as oxidation and three-way catalysts has the trend to higher fuel consumption been reversed.

Rolls-Royce is concerned that more stringent emission standards will be imposed during the 1993 or 1994 model years. Since Rolls-Royce is a small volume manufacturer, the recently agreed upon stringent California emission standards will not apply to Rolls-Royce until MY 1995. Hence, the more stringent hydrocarbon and nitrogen oxide standards and increased durability requirements should not affect Rolls-Royce's planned improvements in fuel economy during MYs 1992 through 1994.

In its petition, Rolls-Royce noted that the Federal Clean Air Act is currently being reviewed. It is possible that the future California emission standards may be implemented in some or all of the other 49 states during either 1993 or 1994. If Federal regulations do not provide additional leadtime for small volume manufacturers, as was provided by the state of California, Rolls-Royce's planned fuel economy improvements may be compromised. As the timing and requirements of possible new Federal emission standards are not currently known, developments regarding those standards may lead Rolls-Royce to amend its petition for alternate corporate average fuel economy for MYs 1992 through 1994 at a later date.

Of the Federal safety regulations it believes have an adverse effect on fuel economy, Rolls-Royce considers the most significant ones to be 49 CFR part 581 (energy absorbing bumpers), Federal motor vehicle safety standard (FMVSS) 214 (side door strength), and FMVSS 208 (automatic restraints). The effect of these is to increase vehicle weight notwithstanding other efforts to reduce weight, including application of other materials. The weight increases attributable to these standards are reflected in Rolls-Royce's weight projections for model years 1992–1994 and its requested alternative standards.

The Need of the Nation to Conserve Energy. The agency recognizes there is a need to conserve energy, to promote energy security, and to improve balance of payments. However, as stated above, NHTSA has tentatively determined that it is not technologically feasible or economically practicable for Rolls-Royce to achieve an average fuel economy in the 1992 through 1994 model years above 13.8 mpg. Granting an exemption to Rolls-Royce and setting an alternative standard at that level will result in only a negligible increase in

fuel consumption and will not affect the need of the Nation to conserve energy. In fact, there would not be any increase since Rolls-Royce cannot attain those generally applicable standards. Nevertheless, for illustrative purposes only, the agency estimates that the additional fuel consumed by operating the 1992 through 1994 fleets of Rolls-Royce vehicles at the company's projected CAFE of 13.8 mpg (compared to a hypothetical 27.5 mpg fleet) over 106,952 miles is 443,718 bbls. of fuel. This averages about 108 bbls. of fuel per day over the 12 year period that these cars will be an active part of the fleet. This is insignificant compared to the daily fuel used by the entire motor vehicle fleet which amounted to some 4.6 million bbls. per day for passenger cars in the U.S. in 1987.

Proposed Alternative Standard

This agency has tentatively concluded that it would not be technologically feasible and economically practicable for Rolls-Royce to improve the fuel economy of its model year 1992 through 1994 automobiles above an average of 13.8 mpg, that compliance with other Federal automobile standards would not adversely affect achievable fuel economy beyond the amount already factored into Rolls-Royce's projections, and that the national effort to conserve energy would not be affected by granting the requested exemption and establishing an alternative standard. Consequently, the agency tentatively concludes that the maximum feasible average fuel economy for Rolls-Royce in the 1992 through 1994 model years is 13.8. The agency also proposes to exempt Rolls-Royce from the generally applicable standard of 27.5 mpg and to establish an alternative standard for Rolls-Royce of 13.8 mpg for model years 1992, 1993, and 1994.

NHTSA has analyzed this proposal and determined that neither Executive Order 12291 nor the Department of Transportation regulatory policies and procedures apply, because the proposal would not establish a "rule," which term is defined as "an agency statement of general applicability and future effect." The proposed exemption is not generally applicable, since it would apply only to Rolls-Royce Motors, Inc., as discussed in this notice. If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this proposed action is neither major nor significant. The principal impact of this proposal is that the exempted company would not be required to pay civil penalties if its maximum feasible average fuel economy were achieved, and purchasers of those vehicles would not have to bear the burden of those civil penalties in the form of higher prices. Since this proposal sets an alternative standard at the level determined to be Rolls-Royce's maximum feasible level for model years 1992 through 1994, no fuel would be saved by establishing a higher alternative standard. NHTSA finds in the Section on "The Need of the Nation to Conserve Energy" that because of the small size of the Rolls-Royce fleet, that incremental usage of gasoline by Rolls-Royce customers would not affect the nation's need to conserve gasoline. There would not be any impacts for the public at large.

The agency has also considered the environmental implications of this proposal in accordance with the National Environmental Policy Act and determined that this proposal, if adopted, would not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by the proposed exemptions and alternative standards. Further, since the exempted passenger automobiles cannot achieve better fuel economy than is proposed herein, granting these proposed exemptions would not affect the amount of fuel available.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 531 be amended as follows:

PART 531—[AMENDED]

1. The authority citation for part 531 would continue to read as follows:

Authority: 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

2. In § 531.5, the introductory text of paragraph (b) would be republished and paragraph (b)(2) would be revised to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(2) Rolls-Royce Motors, Inc.

Model year	Average fuel economy standard (miles per gallon)
1978	10.7
1979	10.8
1980	11.1
1981	10.7
1982	10.6
1983	9.9
1984	10.0
1985	10.0
1986	11.0
1987	11.2
1988	11.2
1989	11.2

Model year	Average fuel economy standard (miles per gallon)
1990	12.7
1991	12.7
1992	13.8
1993	13.8
1994	13.8

* * * * *

Issued on: May 18, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-12149 Filed 5-24-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 900512-0112]

Subsistance Taking of North Pacific Fur Seals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Proposed notice of harvest levels and notice of public meeting.

SUMMARY: Regulations on subsistence taking of North Pacific fur seals require the National Marine Fisheries Service (NMFS) to publish a summary of the previous year's fur seal harvest and a projection of the number of seals expected to be taken in the current year to meet the subsistence needs of the Aleut residents of the Pribilof Islands, Alaska. This notice summarizes the 1989 harvest and estimates the number of seals that may be taken in 1990. Following a public meeting and the expiration of a 30-day public comment period, a final notice of harvest levels will be published before the start of the harvest season on June 30.

DATES: A public meeting will be held on June 7, 1990 at 10 a.m. Written comments must be received on or before June 25, 1990.

ADDRESSES: The public meeting will be held in Room 7115, 1335 East-West Highway, Silver Spring, Maryland (Silver Spring Metro). Comments should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs (F/PR), 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Zimmerman, 907-586-7235 or Georgia Cranmore, 301-427-2289.

SUPPLEMENTARY INFORMATION:

Background

The subsistence harvest of North Pacific fur seals, *Callorhinus ursinus*, on the Pribilof Islands, Alaska, is governed by regulations found in 50 CFR Part 215 Subpart D—Taking for Subsistence Purposes. These regulations were published under the authority of the Fur Seal Act, 15 U.S.C. 1151 *et seq.*, and the Marine Mammal Protection Act, 16 U.S.C. 1361 *et. seq.* (see 51 FR 24828, July 9, 1986). The purpose of these regulations is to limit the take of fur seals to a level providing for the legitimate subsistence needs of the Pribilovians using humane harvesting methods, and to restrict taking by sex, age, and season for herd management purposes. As required by 50 CFR 215.32(b), this notice summarizes the 1989 harvest and estimates the number of seals that may be needed for subsistence in 1990.

At the request of the Humane Society of the United States, a public meeting will be held to discuss subsistence harvest levels and related issues.

Summary of Data on the 1989 Harvest Season

The total number of fur seals taken for subsistence purposes on the Pribilof Islands (including St. George and St. Paul Islands) during the 1989 harvest season (June 30–August 8) was 1,521. No female seals were killed. There were 181 taken on St. George Island and 1,340 taken on St. Paul Island. Since 1985, detailed information has been compiled on subsistence taking and use of seal meat on St. Paul Island only. No comparable information is available for St. George Island where less than 10% of the Pribilof subsistence harvest is conducted. The following table provides a comparison of the 1989 harvest data on St. Paul Island with summary information from previous years. Although the regulations prohibit the killing of female seals, small numbers were taken accidentally through 1987. Percent-use is the percent by weight of meat removed per carcass. The maximum possible percent-use for food is about 53.3.

	1985	1986	1987	1988	1989
Harvest-days	15	20	20	12	16
Seals killed	3,384	1,299	1,710	1,145	1,340
Females killed	5	9	6	0	0
Percent-use	43.8	47.2	40.7	43.5	38.2
Lbs. of meat	93,400	31,700	38,800	26,500	26,600

NMFS is concerned about the apparent decline in the efficiency of the 1989 subsistence harvest on St. Paul Island compared to previous years (e.g., 38.2 percent-use in 1989 vs. 43.5 in 1988). Detailed discussions of "substantial use" of seal meat and calculatons and comparisons of percent-use estimates for harvests since 1985 can be found in the 1989 harvest notices (See especially 54 FR 23234, May 31, 1989 and 54 FR 32347, August 7, 1989). Comments and discussions are invited on this aspect of the subsistance harvest as well as on the proposed harvest levels discussed below.

Estimated Number of Seals Needed for Subsistence in 1990

NMFS is required by its regulations to include in this notice a prediction of the fur seal harvest levels for 1990 that will satisfy the subsistence needs of the residents of the Pribilof Islands. Based on a review of previous years' subsistence usage and the understanding that economic conditions including employment levels on St. Paul Island have remained relatively stable since about 1988, NMFS is proposing to set the projected harvest levels on the Pribilof Islands to coincide with actual take for subsistence purposes in 1989. Thus, the 1990 proposed harvest level on St. Paul Island is 1,340 and on St. George Island the proposed harvest level is 181 North Pacific fur seals. The harvest season on both islands is June 30 to August 8.

Dated: May 18, 1990.

James E. Douglas, Jr.

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90-12150 Filed 5-24-90; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 102
Friday, May 25, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the regulations of the Advisory Council on Historic Preservation, "Protection of Historic Properties" (36 CFR part 800), that a panel of three members of the Council will meet on Tuesday, June 12, 1990, to consider the proposed construction of an annex to the United States Post Office and Courthouse in Camden, New Jersey. The proposal as currently planned would require demolition of five historic buildings on the site. It has been determined that this undertaking will adversely affect the Cooper Street Historic District which is listed in the National Register of Historic Places.

The panel will meet in Camden, New Jersey, at Rutgers University Student Center, Conference Room, 5th and Penn Streets, at 1 p.m.

The panel welcomes written and oral statements from concerned parties. Written statements should be submitted to the Executive Director of the Council by June 6. Persons wishing to make oral statements should contact the Executive Director by June 8, Attention: Don Klima (202–786–0505). Oral presentations must be limited to five (5) minutes. Priority will be given to those persons who have indicated prior to the meeting their desire to speak.

The Council was established by the National Historic Preservation Act to advise the President and Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties that are listed in or eligible for listing in the National Register of Historic Places.

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Places, 1100 Pennsylvania Avenue NW., suite 809, Washington, DC 20004 (202–786–0505).

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting schedule and location or the submission of statements is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW., suite 809, Washington, DC 20004, Attention: Don Klima (202–786–0505).

Dated: May 21, 1990.

Robert D. Bush,

Executive Director.

[FR Doc. 90–12193 Filed 5–24–90; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 90–008N]

National Advisory Committee on Microbiological Criteria for Foods; Meeting

Notice is hereby given that a meeting of the National Advisory Committee on Microbiological Criteria for Foods will be held on Wednesday and Thursday, June 13–14, 1990, in Anaheim, California, from 8 a.m. to 5 p.m., at the Sheraton-Anaheim Hotel, 1015 West Ball, Anaheim, California. The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been produced using good manufacturing practices.

Scheduled sessions are as follows:

(1) Wednesday, June 13, 8 a.m. to 9:30 a.m.—Session of the *Listeria monocytogenes* Subcommittee.

(a) 9:30 a.m. to 12 noon—Full Committee session.

(b) 1:30 p.m. to 5 p.m.—Concurrent sessions of the Meat and Poultry Subcommittee and the Seafood Subcommittee.

(2) Thursday, June 14, 8 a.m. to 9:30 a.m.—Session of the *Listeria monocytogenes* Subcommittee.

(a) 9:30 a.m. to 12 noon—Concurrent sessions of the Meat and Poultry Subcommittee and the Seafood Subcommittee.

(b) 1:30 p.m. to 5 p.m.—Full Committee session.

The Committee meetings are open to the public on a space available basis. Comments of interested persons may be filed prior to the meeting in order that they may be considered and should be addressed to Ms. Catherine M. DeRoever, Director, Executive Secretariat, U.S. Department of Agriculture, Food Safety and Inspection Service, room 3175, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. In submitting comments, please reference the docket number appearing in the heading of this Notice. Background materials are available for inspection by contacting Ms. DeRoever on (202) 447–9150.

Done at Washington, DC on: May 22, 1990.

Lester M. Crawford,

Chairman.

[FR Doc. 90–12233 Filed 5–24–90; 8:45 am]

BILLING CODE 3410–D–M

Commodity Credit Corporation

1990 Common Program Provisions for Wheat, Feed Grains (Corn, Sorghum, Barley, Oats, and Rye), Rice, Upland and Extra Long Staple (ELS) Cotton Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Determination of 1990 Common Program Provisions for Wheat Feed Grains, Rice, Upland and ELS Cotton.

SUMMARY: The purpose of this notice is to affirm the determinations made by the Secretary of Agriculture in accordance with the Agricultural Act of 1949, as amended (the "1949 Act"), and the Commodity Credit Corporation Charter Act, as amended (the "Charter Act"), with respect to the 1990 Price Support and Production Adjustment Programs.

EFFECTIVE DATES: May 24, 1990.

ADDRESSES: Bruce R. Weber, Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Craig Jagger, Commodity Analysis Division, USDA–ASCS, Room 3740, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7923.

The Final Regulatory Impact Analysis describing the options considered in developing this notice of determination will be available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been designated as "major." It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are:

Titles	Numbers
Commodity loans and purchases	10.051
Cotton production stabilization	10.052
Feed grains production stabilization	10.055
Wheat production stabilization	10.058
Rice production stabilization	10.065
Grain reserve	10.067

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluations for the wheat, feed grain, rice, upland cotton and extra long staple cotton programs that the programs will have no significant impact on the quality of the human environment. An Environmental Impact Statement for all acreage adjustment programs is being developed.

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

General Information

General descriptions of the statutory basis for the determinations that are set forth in this notice are set forth in the Federal Register Vol. 54, No. 64, Page 13706, and Vol. 54, No. 223, Page 48121.

Comments received during the specified comment periods are summarized below for provisions which are common to the 1990 Wheat, Feed Grain, Rice, Upland and ELS Cotton Programs.

Common Program Comments. Sixty-five responses were received from the April 5, 1989, request for comments regarding the 1990 common program provisions. Twenty-two of the respondents were individual producers and nineteen were producer organizations. One hundred forty-three responses were received on the November 21, 1989, request for comments regarding the planting of approved non-program crops on acreage conservation reserve or conserving use acres. Forty-three of the respondents were individual producers and sixty-two were producer organizations.

Common Program Provisions

With respect to the specific comments for the common program provisions of the 1990 crops of Wheat, Feed Grains, Rice and Upland and ELS Cotton, the following are noted:

(a) *Approved Nonprogram Crops (ANPC) on Acreage Conservation Reserve (ACR) and Conserving Use (CU) Acres:* The Commodity Cridit Corporation (CCC) on April 5 requested comments regarding the planting of ANPC on ACR and CU acres for the 1990 crops. On August 7, 1989, it was announced that the production of ANPC's on land in ACR and CU would not be permitted. However, subsequent interest in this provision prompted CCC to request on November 21, 1989, additional comments on this issue. The responses received for the two comment periods are as follows: *April 1989:* Thirteen respondents opposed the authorization of ANPC on ACR acres and four favored such action. Ten respondents opposed the authorization of ANPC on CU acres and five favored such action. One respondent favored authorization of only soil-conserving ANPC on both ACR and CU acres. *November 1989:* Ten respondents opposed the authorization of ANPC on ACR acres and twenty-eight favored such action. Four respondents opposed the authorization of ANPC on CU acres and one hundred thirty-two favored such action. Planting of ANPC on ACR acres will not be permitted except under emergency conditions. Planting of sunflower, flax, rapeseed (including canola), safflower, castor beans, mustard seed, crambe, triticale, quinoa, Jerusalem artichoke, kenaf, milkweed, amaranth, and psyllium on CU acres will be permitted. Producers exercising this option must agree to forgo any deficiency payments that would otherwise be paid on such acreage. Production of ANPC on CU acreage will be allowed because it increases planting flexibility, allows a modest increase in the supply of crops (such as sunflowers) that are in short supply, and leads to budget savings by reducing both planted acres and payment acres of program crops. Production of nonprogram crops on ACR acreage will not be allowed because the additional plantings of ANPC would affect the incomes of traditional producers of ANPC.

(b) *Haying and Grazing on Acreage Conservation Reserve and Conserving Use Acres:* Sixteen respondents opposed unlimited haying and grazing on ACR and CU acres and 3 favored such action. Haying of ACR and CU acreage will not be permitted, except under emergency conditions, because of the otherwise adverse economic effect such a determination would have on producers who already grow such crops. However, the haying prohibition may be waived if it is determined by the State Agricultural Stabilization and Conservation (ASC) committee that the additional haying will not have an adverse economic effect. Grazing and ACR and CU is permitted except during any 5-consecutive-month period between April 1 and October 31 as designated by the State ASC committees.

(c) *Cross Compliance:* Fifteen respondents favored the implementation of limited cross compliance requirements and 5 respondents opposed such action. Limited cross compliance was implemented for wheat, corn, sorghum, barley, upland cotton and rice in order to ensure that desired levels of stocks for all program commodities are attained. Oats and extra-long staple cotton were exempted from limited cross compliance.

(d) *Offsetting Compliance:* Thirteen respondents opposed the implementation of offsetting compliance requirements and one favored such action. Offsetting compliance requirements will not be implemented due to (1) the statutory limitations placed on such actions relative to rice and upland cotton and (2) the likely decrease in the level of program participation that otherwise would have occurred under the wheat, feed grains, and ELS cotton programs. This higher level of participation achieved by not requiring offsetting compliance will likely result in greater overall program effectiveness.

(e) *Advance Recourse Loans:* Four respondents favored the authorization of advance loans and three opposed the use of such loans. Advance recourse loans will not be offered because (1) sufficient operating funds are available to producers for the 1990 crop and (2) such a program could place unnecessary encumbrances upon crops that have not been produced, resulting in increased financial stress for producers.

(f) *Farm Acreage Base (FAB) Adjustment:* Fourteen respondents favored the implementation of the 10 percent FAB adjustment provision and three opposed such adjustments. The FAB adjustment provision will not be implemented because (1) significant budget increases would occur as producers would be discouraged from reacting to appropriate market signals and instead seek to capitalize on favorable Government programs and (2) additional excess production would be stimulated in those commodities with favorable payment programs.

(g) *Interest Payment Certificates.* Three respondents favored issuing interest payment certificates to producers who repay a price support loan with interest. Three respondents opposed such action. Interest payment certificates will not be implemented because they are not needed to avoid excessive forfeitures of commodities to CCC.

(h) Forty-eight comments were received that related to issues for which comments were not requested.

This notice affirms the following determinations previously made and announced by the Secretary, beginning August 7, 1989, with respect to provisions which are common to the 1990 Wheat, Feed Grain, Rice, Upland and ELS Cotton Programs.

Determinations

Common Program Provisions

1. *Approved Non-Program Crops (ANPC) on Acreage Conservation Reserve (ACR) and Conserving Use (CU) Acres.* In accordance with sections 107D(c)(1), 107D(f)(4), 105C(c)(1), 105C(f)(4), 103A(C)(1), 103A(f)(3), 101A(c)(1), and 101A(f)(3) of the 1949 Act, it has been determined that production of approved, non-program crops will not be permitted on ACR acreage. Planting of sunflower, flax, rapeseed (including canola), safflower, castor beans, mustard seed, crambe, triticale, quinoa, Jerusalem artichoke, kenaf, milkweed, amaranth, and psyllium on CU acres will be permitted. Producers exercising this option must agree to forgo any deficiency payments that would otherwise be paid on such acreage.

2. *Haying and Grazing of ACR or CU.* In accordance with sections 107D(c)(1), 107D(f)(4), 105C(c)(1), 105C(f)(4), 103A(C)(1), 103A(f)(3), 101A(c)(1), and 101A(f)(3) of the 1949 Act, it has been determined that haying of acreage designated as ACR or CU will not be allowed except under emergency conditions unless it is determined that based upon information submitted by a State ASC committee, haying will not result in an adverse economic effect in the State. Grazing of acreage designated as ACR and CU will be permitted except during any 5-consecutive-month period between April 1 and October 31 that is established for a State by the State ASC committee. Haying and grazing of CRP acreage is prohibited.

3. *Cross and Offsetting Compliance.* In accordance with sections 107D(n)(2), 105C(n)(2), 103A(n)(2), and 101A(n)(2) of the 1949 Act, it has been determined that limited cross compliance will be required as a condition of eligibility for program benefits for wheat, feed grains (excluding oats), rice and upland cotton. The imposition of limited cross compliance will not apply for the 1990 crops of oats and ELS cotton. In accordance with sections 107D(i), 105C(i), 103A(n)(1), and 103(h)(13) of the 1949 Act, it has been determined that offsetting compliance by wheat, feed grains and ELS cotton program participants will not be required as a condition of eligibility for program benefits. Sections 101A(n)(1) and 103A(n)(3) prohibit imposition of offsetting compliance for rice and upland cotton program participants.

4. *Establishment of Acreage Bases and Adjustments.* In accordance with section 503 of the 1949 Act, FABs will be established for the 1990 crop-year. Adjustments in crop acreage bases for the 1990 program as provided in section 505 will not be allowed. In accordance with section 504 of the 1949 Act, it has been determined that limited adjustments in crop acreage cases may be approved when producers need to change cropping practices to carry out conservation compliance requirements on highly erodible land.

5. *Advance Recourse Commodity Loans.* In accordance with section 424 of the 1949 Act, it has been determined that advance recourse price support loans shall not be made available to producers since advanced deficiency payments for wheat, feed grains, rice and cotton will substantially augment private lending to producers and, therefore, ease producer credit problems. Further, implementing this program could encourage producers to place additional encumbrances upon crops yet to be produced which could result in increased financial stress for producers after harvest.

6. *Multiyear Set-Aside Program.* In accordance with section 1010 of the Food Act of 1985 (the 1985 Act), it has been determined that there will be no multiyear set-aside program. It has been determined that the CRP and wetland conservation provisions protect the Nation's natural resources and provide program benefits to participants to carry out approved conservation practices.

7. *Establishment of Program Payment Yields.* In accordance with section 506 of the 1949 Act, it has been determined that the actual yield per harvested acre for the 1990 crop and subsequent crop years of wheat, feed grains, rice and upland cotton will not be considered in establishing subsequent year farm program payment yields.

8. *Advance Deficiency Payments.* In accordance with section 107C of the 1949 Act, the Secretary will make available to producers advance deficiency payments for the 1990 crop of wheat, feed grains, upland cotton, and rice. Producers may request 40 percent of their projected deficiency payments when they enroll in the 1990 Wheat, Feed Grain, Upland Cotton and Rice Programs. No advance deficiency paymetns will be offered to ELS cotton producers.

9. *Binding Contracts.* Contracts signed by program participants will be considered binding at the end of the signup period and will provide for liquidated damages if producers do not comply with contractual obligations. It has been determined that binding contracts will ensure a high level of compliance by those producers enrolling in the program and will also result in a more effective program.

10. *Interest Payment Certificates.* In accordance with section 405 of the 1949 Act, it has been determined that interest payment certificates will not be issued to producers. It has been determined that such action is not needed to avoid excessive forfeitures of commodities to CCC.

11. *Cost Reduction Options.* In accordance with section 1009 of the 1985 Act, it has been determined that the Secretary will reserve the right to initiate cost reduction options if subsequent changes occur in supply and demand conditions.

12. *Program Enrollment Period.* The program enrollment period was from January 16, 1990 through April 13, 1990.

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (7 U.S.C. 714b

and 714c); Secs. 101, 101A, 103A, 103(h), 1058, 107C, 1070, 107E, 109, 110, 401, 424, 504, and 505 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 99 Stat. 1419, as amended, 1407, as amended, 1395, as amended, 46, 1383, as amended, 1448, 91 Stat. 950, as amended, 951, as amended, 63 Stat. 1054, as amended, 99 Stat. 1461, as amended, 1462 (7 U.S.C. 1433c, 1441, 1441–1, 1444–1, 1444–b, 1445b–2, 1445b–3, 1445b–4, 1445d, 1445e, 1421, 1464 and 1465). Section 1009 of the Food Security Act of 1985, as amended, 49 Stat. 1453, as amended (7 US..C. 1308a).

Signed at Washington, DC, on May 18, 1990.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 90–12164 Filed 5–24–90; 8:45 am]

BILLING CODE 3410-05-M

Food and Nutrition Service

Special Supplemental Food Program for Women, Infants and Children; Poverty Income Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Department announces adjusted poverty income guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Food Program for Women, Infants and Children (WIC Program). These poverty income guidelines are to be used in conjunction with the WIC Regulations, 7 CFR part 246.

EFFECTIVE DATE: July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Philip K. Cohen, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3720.

SUPPLEMENTARY INFORMATION: The final action has been reviewed under Executive Order 12291 and has been determined to be not major. The Department does not anticipate that this notice will have an annual effect on the economy of $100 million or more. This action will not result in a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. Further, this action will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The action has been reviewed in accordance with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Administrator of the Food and Nutrition Service has determined that the action will not have a significant economic impact on a substantial number of small entities. This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.565 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112).

Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) requires the Secretary to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced-price school meals under section 9 of the National School Lunch Act (42 U.S.C. 1758). Under section 9, the income limit for reduced-price school meals is 185 percent of the Federal poverty income guidelines, as adjusted.

Section 9 also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 1990 was published by the Department of Health and Human Services (DHHS) in the Federal Register for February 16, 1990 at 55 FR 5664. The guidelines published by DHHS are referred to as the poverty income guidelines.

The Department published final WIC regulations on February 13, 1985, at 50 FR 6108. Section 246.7(c)(1) specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9 of the National School Lunch Act for reduced-price school meals or identical to State or local guidelines for free or reduced-price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines established under section 9 of the National School Lunch Act for reduced-price school meals, or which are less than 100 percent of the Federal proverty income guidelines.

Consistent with the method used to compute eligibility guidelines for reduced-price meals under the National School Lunch Program, the poverty income guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At this time the Department is publishing maximum and minimum WIC poverty income limits by household size to be effective July 1, 1990 through June 30, 1991, except as described below.

Section 123(a)(4)(F) of Public Law 101–147 adds a new section 17(f)(18) to the CNA of 1966 providing that "a State agency may implement income eligibility guidelines under this section at the time the State implements income eligibility guidelines under the medicaid program," excpet that WIC guidelines "shall be implemented not later than July 1 of each year." However, section 17(d)(2)(A) provides that an individual is income-eligible for WIC only if he or she is a member of a family with an income that is less than the income limit for reduced-price meals established in section 9(b) of the National School Lunch Act, i.e. 185 percent of poverty income guidelines. In order to avoid conflict with this requirement, this provision may be implemented only by those State agencies with WIC income guidelines that, having been adjusted to reflect changes in the Federal Poverty Income Guidelines before July 1, would not exceed the reduced-price income limit which is in effect at the time the adjustment is made. That is, the provision would apply only to State agencies with WIC income eligibility guidelines sufficiently below 185 percent of the Federal Poverty Income Guidelines that after adjustment they would not exceed the reduced-price limit. While Congress may have intended the new section 17(f)(8) to apply to all States, as written the provision clearly does not override the requirement of section 17(d)(2)(A). Thus, the Department has determined, based on advice from the Office of the General Counsel, that unless a statutory amendment is made, implementation of this provision must be limited as discussed above.

This provision allows States with guidelines sufficiently below 185 percent of poverty to coordinate their income eligibility guidelines with guidelines under the Medicaid Program, except that WIC guidelines must be effective no later than July 1 of each year. Provisions of Public Law 101–147 must be implemented through the rulemaking process by July 1, 1990. It is not likely, however, that the rulemaking will be completed in advance of that deadline. Therefore, guidelines included in this notice cannot be made effective by State

agencies before July 1, 1990. However, the affected States will be able to implement WIC guidelines at the same time as Medicaid Guidelines, i.e., before July 1, beginning in calendar year 1991, in keeping with regulations which will then be in effect.

The first table of this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia and all Territories, including Guam. Because the poverty income guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

EFFECTIVE JULY 1, 1990—JUNE 30, 1991

Family size	Annual poverty income guidelines (PIG)	Annual FNS income guidelines for reduced-price lunches (185 percent of PIG)
48 States, District of Columbia, Puerto Rico, Virgin Islands, and Territories, including Guam:		
1	6,280	11,618
2	8,420	15,577
3	10,560	19,536
4	12,700	23,495
5	14,840	27,454
6	16,980	31,413
7	19,120	35,372
8	21,260	39,331
For each additional family member add	2,140	3,959
Alaska		
1	7,840	14,504
2	10,520	19,462
3	13,200	24,420
4	15,880	29,378
5	18,560	34,336
6	21,240	39,294
7	23,920	44,252
8	26,600	49,210
For each additional family member add	2,680	4,958
Hawaii		
1	7,230	13,376
2	9,690	17,927
3	12,150	22,478
4	14,610	27,029
5	17,070	31,580
6	19,530	36,131
7	21,990	40,682
8	24,450	45,233
For each additional family member add	2,460	4,551

Dated: May 21, 1990.

Betty Jo Nelsen,

Administrator.

[FR Doc. 90-12196 Filed 5-24-90; 8:45 am]

BILLING CODE 3410-30-M

Commodity Supplemental Food Program; Elderly Poverty Income Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION. Notice.

SUMMARY: The Department announces adjusted poverty income guidelines to be used by State agencies in determining the income eligibility of elderly persons applying to participate in the Commodity Supplemental Food Program (CSFP). These poverty income guidelines are to be used in conjunction with the CSFP Regulations, 7 CFR part 247.

EFFECTIVE DATE: July 1. 1990.

FOR FURTHER INFORMATION CONTACT: Philip K. Cohen, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756-3730.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under Executive Order 12291 and has been determined to be not major. The Department does not anticipate that this notice will have an annual effect on the economy of $100 million or more. This action will not result in a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. Further, this action will not have a significant adverse effect on competition, employment, investment, productively, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The action has been reviewed in accordance with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to that review, the Administrator of the Food and Nutrition Service has determined that the action will not have a significant economic impact on a substantial number of small entities. This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.565 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112).

On December 23, 1985 the President signed the Food Security Act of 1985 (Pub. L. 99-198). This legislation amends section 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note) to require that the Department establish procedures allowing agencies administering the CSFP to serve elderly persons if such service can be provided without reducing service levels for women, infants, and children. The law also mandates establishment of eligibility requirements for elderly participation. Prior to enactment of Public Law 99-198, elderly participation was restricted by law to three designated pilot projects which served the elderly in accordance with agreements with the Department.

In order to implement the CSFP mandates of Public Law 99-198, the Department published interim rules on September 17, 1986 at 51 FR 32895 and a final rule on February 18, 1988 at 53 FR 4831. These regulations defined "elderly persons" as those who are 60 years of age or older. The final rule further stipulated that elderly persons certified on or after September 17, 1986 must have "household income at or below 130 percent of the Federal Poverty Income Guidelines published annually by the Department of Health and Human Services" (7 CFR 247.7(a)(3)).

These poverty income guidelines are revised annually to reflect changes in the Consumer Price Index. The revision for 1990 was published by the Department of Health and Human Services at 55 FR 5664 on February 16, 1990. At this time the Department is publishing the income limit of 130 percent of the poverty income guidelines by household size to be used for elderly certification in the CSFP for the period July 1, 1990 through June 30, 1991.

The poverty income guidelines were multiplied by 1.30 and the results rounded up to the next whole dollar. The first table in this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia, and all the Territories including Guam. Because the poverty income guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

EFFECTIVE JULY 1, 1990—JUNE 30, 1991

Family size	Annual FNS poverty income guidelines for elderly in CSFP (130 percent of (PIG)
48 States, District of Columbia, Puerto Rico, Virgin Islands, and Territories, including Guam:	
1	8,164
2	10,946
3	13,728
4	16,510
5	19,292
6	22,074
7	24,856
8	27,638
For each additional family member add:	2,782
Alaska	
1	10,192
2	13,676
3	17,160
4	20,644
5	24,128
6	27,612
7	31,096
8	34,580
For each additional family member add:	3,484
Hawaii	
1	9,399
2	12,597
3	15,795
4	18,993
5	22,191
6	25,389
7	28,587
8	31,785
For each additional family member add:	3,198

Dated: May 21, 1990.

Betty Jo Nelsen,

Administrator.

[FR Doc. 90-12197 Filed 5-24-90; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Exemption of Lowman-North Fire Recovery Project to Rehabilitate National Forest System Lands and Recover Timber Damaged by the Lowman Complex Fire of 1989; Boise National Forest, ID

AGENCY: Forest Service, USDA.

ACTION: Notification that decisions related to resources recovery projects on National Forest System Lands resulting from natural phenomena such as wildfires are exempted from appeals under provisions of 36 CFR part 217 when the Regional Forester or Chief of the Forest Service determines that good cause exists to exempt.

SUMMARY: This is a notification that decisions to implement certain projects pertaining to recovery from the Lowman Complex fire on the Boise National Forest are exempted from appeal per provisions of 36 CFR 217.4 (a)(11) as published on January 23, 1989, at Vol. 54, No. 13, page 3342.

EFFECTIVE DATES: Effective on May 25, 1990.

FOR FURTHER INFORMATION CONTACT: Dan Deiss, Director—Project Lightning, Boise National Forest, 1750 Front Street, Boise, ID 83702.

SUPPLEMENTARY INFORMATION: The catastrophic fires of 1989 burned an estimated 87,380 acres of Natonal Forest System Lands on the Boise National Forest. The Lowman Fire Complex burned 47,610 acres in the South Fork Payette and North Fork Boise River drainages. The Lowman–North analysis area contains 32,648 acres of the Lowman Complex fire area in the South Fork Payette River drainage. In July 1989, an interdisciplinary (ID) team surveyed much of the burned area, in part to identify emergency and long-term rehabilitation needs. From this survey it was found that in many places, this fire burned hot enough to cause severe damage to vegetation and watershed resources. Other resources damaged include: Habitat essential to elk and other major wildlife species; streams providing water for domestic, agricultural and other uses; and recreation structures. Damage to soils is of greatest concern because this damage will affect the length of time necessary to achieve natural revegetation, as well as quantity and quality for water runoff from the area.

The emergency rehabilitation ID team concluded that there was risk of flooding and reduced water quality caused by this fire. Natural revegetation will not provide the diversity necessary for habitat of most wildlife species. If left "untreated" these problems will persist for several years. The risk of insect and disease infestations in both the short- and long-term was also noted by the team.

Field surveys of the burned area indicate that many of the predicted consequences of the fire are starting to occur. In many areas, stream courses and riparian vegetation were severely damaged and natural processes may take up to 10 years to stabilize these areas. Damage to vegetation is great enough that a natural return to the prefire conditions of species diversity may take as long as 200 years.

Because of the drought conditions existing during the 1989 fires, trees suffered greater damage and are losing their sawlog value more quickly than anticipated. Insects that attack both dead and live trees have moved into the project vicinity and threaten both burned and unburned areas. If left untreated, this insect damage will cause loss of much unburned vegetation, further degrading wildlife habitat, recreation opportunities, visual quality and soil and water resources. Further loss of vegetation could increase the possibility for landslides in response to summer storms for the next 5 to 10 years.

In response to this information, an accelerated schedule of planned fire recovery efforts, including salvage of burned timber, is necessary to mitigate as much of the fire-caused damage as possible.

Planned Actions

Emergency rehabilitation efforts undertaken in late 1989 were limited to treating only the most severely burned areas to reduce sediment movement and water quality degradation. The emergency rehabilitation team recommended that additional actions for restoration of the entire burned area be analzyed.

The ID team conducting the environmental analysis for the planned recovery project has concluded that actions are needed to assist mitigation of fire effects and speed recovery. The Lowman-North Final Environmental Impact Statement documents analysis of fire recovery on 32,648 acres of the Lowman Complex. The major recovery projects proposed for this analysis area include salvage of approximately 94 million board feet (MMBF) of fire-killed timber, reforestation of 10,400 acres of suitable timberland, vegetation enhancement in visually-sensitive areas, habitat improvement on big-game winter range, and lopping and scattering of timber slash to reduce soil erosion and sedimentation.

The analysis of wildfire recovery needs for the remaining 11,341 acres of the Lowman Fire Complex in the South Fork Payette River was documented in the Lowman-South Environmental Assessment, released in December, 1989.

Due to the length of time it has taken to develop an acceptable restoration and rehabilitation program and to properly evaluate its effects, recovery projects should be implemented as soon as possible. Delay in implementing the activities necessary to restore these damaged lands or remove the salvageable timber will result in unacceptable degradation of the physical and biological condition of National Forest System Lands and a substantial deterioration of the fire-killed timber. To accomplish recovery work so that part of the cost is

recovered, fire-killed trees should have commercial sawlog value. Removing these trees will accomplish many of the actions recommended, and a significant portion of the receipts from these sales will provide funding for the other work planned through collection of Knutsen-Vandenburg (KV) and Salvage Sale Funds (SSF) funds. It is anticiapted that much of the commercial value of the remaining trees will be lost in the next 6 to 12 months. Delays will also significantly increase the risk of severe forest insect and disease infestation of the already-damaged trees.

Public involvement in the analysis of the fire recovery project and comments to the draft Lowman-North Environmental Impact Statement have identified substantial support for rapid fire recovery.

To expedite the timber salvage and other recovery projects documented in the final Lowman-North Final Environmental Impact Statement, I am exempting the projects from review (appeal) under 36 CFR part 217.

The project will be approved for implementation no sooner than 30 days after notice of the final EIS is published in the **Federal Register**.

Dated: May 17, 1990.

J. S. Tixier,

Regional Forester.

[FR Doc. 90-12074 Filed 5-24-90; 8:45 am]

BILLING CODE 3410-11-M

Flying Twisp Timber Sale, Okanogan National Forest, Okanogan County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) for the Flying Twisp Timber Sale. The purpose of the EIS will be to develop and evaluate a range of alternatives for timber harvest and road construction levels. The alternatives will include a no action althernative, involving no harvest or construction, and additional alternatives to respond to issues generated during the scoping process. The proposed project will be in compliance with the direction in the Okanogan National Forest Land and Resource Managment Plan which provides the overall guidance for management of the area and the proposed projects for the next ten years. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of this proposal must be received by June 22, 1990.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Allen Garr, District Ranger, Twisp Ranger District, P.O. Box 188, Twisp, WA 98856.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Allen Garr, District Ranger, Twisp Ranger District, P.O. Box 188, Twisp, WA 98856; phone (509)997-8041.

SUPPLEMENTARY INFORMATION: The Flying Twisp Timber Sale is displayed in the Okanogan National Forest Land and Resource Management Plan, page D-5. The major issues that have been identified to date reflect highly visible slopes in an important roaded recreation area, approximately 5,000 acres of inventoried roadless area, and an occupied spotted owl habitat area. A open house will be held at the Twisp District Office to allow review of the information gathered to date.

Public participation will be especially import at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental process.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November 1990. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register.** It is very important that those interested in the management of the Okanogan National Forest participate at that time.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environemtal review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*,435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible.

The final EIS is scheduled to be completed by May 1991. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Sam Gehr, Forest Supervisor, Okanogan National Forest, is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be suject to

Forest Service appeal regulations (36 CFR part 217).

Dated: May 17, 1990

Sam Gehr

Forest Supervisor.

[FR Doc. 90-12184 Filed 5-24-90; 8:45 am]

BILLING CODE 3410-11-M

The Winding Stair Tourism and Recreation Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Winding Stair Tourism and Recreation Advisory Council. The meeting will be open to the public. This notice also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act.

DATES: June 8, 1990, 7:00 p.m.

ADDRESSES: The meeting location is at the Kiamichi Area Vocational Technical School, Highway 63A, west of Talihina, Oklahoma. Send written statements to Forest Supervisor, Ouachita National Forest, P.O. Box 1270, Hot Springs, AR 71902.

FOR FURTHER INFORMATION CONTACT: Robert LaVal, (501)-321-5317.

SUPPLEMENTARY INFORMATION: The Winding Stair Tourism and Recreation Advisory Council was created by the Winding Stair Mountain National Recreation and Wilderness Area Act (16 U.S.C. 460vv-13). The Council, comprised of 16 members, appointed by the Secretary of Agriculture, will meet periodically. The purpose of this Council is advisory in nature. The Act designates the Secretary to appoint a special advisory group from the local area in which the Ouachita National Forest is located to assist in the preparation of the tourism and recreation section of the Ouachita National Forest Land and Resource Management Plan amendment as required under subsections 15 (b) and (c). Subsection 15 (b) provides for the promotion of tourism and recreation in ways consistent with the purposes for which the wilderness areas, the botanical areas, the National Recreation Area, the National Scenic and Wildlife Area, and the National Scenic Area are designated.

Glen Sullivan, Director of the Oklahoma Tourism and Recreation Department will chair the meeting. Representatives of the Forest Service will attend from the Department of Agriculture including the designated officer of the Federal Government. The agenda for this meeting will be to: continue with subcommittee reports from the following subcommittees: 1) Master Plan, 2) Lodge Feasibility, 3) Wilderness, 4)Physical Facilities, 5) Equestrian, 6) Signing, 7) Scenic Stops, 8) Hiking-trails-ORV, 9) Hang-gliding. Plans will be made for the next meeting and new business will be discussed.

Dated: May 18, 1990.

John M. Curran,

Forest Supervisor.

[FR Doc. 90-12156 Filed 5-24-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form 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 Economic Analysis.

Title: Annual Survey of Reinsurance and Other Insurance Transactions by U.S. Insurance Companies With Foreign Persons.

Form Number: Agency—BE-48; OMB—0608-0016.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 300 respondents; 1,200 reporting hours; average hours per response—4 hours.

Needs and Uses: This survey obtains data on transactions between U.S. insurance companies and foreign persons. The information gathered is needed to support U.S. trade policy initiatives and to compile the U.S. balance of payments and the national income and product accounts.

Affected Public: Businesses or other for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory

OMB Desk Officer: Donald Arbuckle, 395-7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Donald Arbuckle, OMB Desk Officer Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 22, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-12221 Filed 5-24-90; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form 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 Economic Analysis.

Title: Annual Survey of Construction, Engineering, Architectural, and Mining Services Provided by U.S. Firms to Unaffiliated Foreign Persons.

Form Number: Agency—BE-47; OMB—0608-0015.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 100 respondents; 500 reporting hours; average hours per response—5 hours.

Needs and Uses: This survey obtains data on U.S. sales to unaffiliated foreign persons of construction, engineering, architectural, and mining services. The information is needed to support U.S. trade policy initiatives and to compile the U.S. balance of payments and the national income and product accounts.

Affected Public: Businesses or other for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Donald Arbuckle, 395-7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 22, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-12222 Filed 5-24-90; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form 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 Economic Analysis.

Title: Annual Survey of Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons.

Form Number: Agency—BE–93; OMB—0608–0017

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 450 respondents; 1,800 reporting hours; average hours per response—4 hours

Needs and Uses: This survey obtains data on royalties, license fees, and other receipts and payments for intangible rights between U.S. and unaffiliated foreign persons. The information is needed to support U.S. trade policy initiatives and to compile the U.S. balance of payments and the national income and product accounts.

Affected Public: Businesses or other for-profit institutions.

Frequency: Annually.

Respondent's Obligations: Mandatory.

OMB Desk Officer: Donald Arbuckle, 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 22, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–12223 Filed 5–24–90; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[A–201–802]

Preliminary Finding Regarding Critical Circumstances: Gray Portland Cement and Clinker from Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily find that critical circumstances do not exist regarding imports of gray portland cement and clinker from Mexico. We have notified the U.S. International Trade Commission (ITC) of our determination. If this investigation proceeds normally, we will make a final finding regarding the alleged critical circumstances by July 10, 1990.

EFFECTIVE DATE: May 25, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Saeed, Brad Hess, or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–1777, 377–3773, or 377–1769, respectively.

SUPPLEMENTAL INFORMATION:

Preliminary Finding

We preliminarily find that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of gray portland cement and clinker from Mexico, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act), and in accordance with § 353.16 of the Commerce Department's regulations (19 CFR 353.16).

Case History

On April 20, 1990 (55 FR 14989) we published a notice of postponement of the final determination until July 10, 1990. On April 19, 1990, petitioner alleged that critical circumstances exist with respect to imports of gray portland cement and clinker from Mexico. On April 20, 1990, we requested that respondents CEMEX, S.A., Apasco, S.A. de C.V., and Cementos Hidalgo, S.C.L. provide monthly volume and value of shipments to the United States for each month from January 1988 to April 1990. The requested volume and value data were examined during verification in Mexico between April 23 and May 4, 1990.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of gray portland cement and clinker from Mexico. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect the following:

(1) That there is a history of dumping of the same class or kind of merchandise, or that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise at less than fair market value, and,

(2) That there have been massive imports of the subject merchandise over a relatively short period.

Pursuant to § 353.16(f) and (g) of our regulations, we examined a period beginning in the month following the month in which the petition was filed and ending at least three months later (base period) for each of the respondents. Because the petition was filed near the end of the month of September, we selected the following month as the beginning of the base period in this case. We consider this "base period" to be a good measure for a "relatively short period of time."

We then compared the quantity of imports during the base period to the quantity of imports during the immediately preceding period of comparable duration for each of the respondents. We found that none of the respondents' shipments had increased by more than 15 percent during the comparable period. 19 CFR 353.16(f)(2). Accordingly, no respondent had increases above the 15 percent threshhold we use to determine whether imports are "massive."

Based on the above, we preliminarily find that imports of gray portland cement and clinker from Mexico have not been massive over a relatively short period. We will continue to seek information on import quantities through the end of the month of our preliminary determination (April 1990) for use in our final determination.

Since we do not find that there have been massive imports, we need not consider whether there is a history of dumping or whether importers of this merchandise knew or should have known that such merchandise was being sold at less than fair value. We preliminarily find that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of gray portland cement and clinker from Mexico.

This determination is published pursuant to section 733(f) of the Act.

Dated: May 18, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-12224 Filed 5-24-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-406]

Certain Round-Shaped Agricultural Tillage Tools (Discs) From Brazil; Initiation of Changed Circumstances Countervailing Duty Administrative Review and Consideration of Revocation of Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Initiation of Changed Circumstances Countervailing Duty Administrative Review and Consideration of Revocation of Order.

The Department of Commerce (the Department) has determined from the information presented that changed circumstances may exist, sufficient to warrant revocation of the countervailing duty order on certain round-shaped agricultural tillage tools (discs) from Brazil. Accordingly, the Department is initiating a changed circumstances administrative review of that order, pursuant to § 355.25(d)(2) of the Department's regulations.

EFFECTIVE DATE: May 25, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Cooper or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

On October 22, 1985, the Department published a countervailing duty order on discs from Brazil. On November 8, 1988, we received a request for revocation of the order from Ingersoll Products Company (Ingersoll), a domestic producer, based on changed circumstances. On December 5, 1988, Osmundson Manufacturing Company (Osmundson), the only other domestic producer, objected to revocation. Osmundson alleged that Ingersoll is not representative of the domestic industry. On April 12, 1990, we received clarification that Marktill Corporation, the parent company of Ingersoll, is the party requesting revocation.

Based on the information presented, we conclude that changed circumstances may exist, sufficient to warrant revocation of the countervailing duty order. Accordingly, the Department is initiating a changed circumstances review, pursuant to § 355.25(d) of the Department's regulations, in order to determine whether, in fact, changed circumstances exist.

This initiation of changed circumstances administrative review is in accordance with sections 751 (b) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675 (b) and (c)).

Dated: May 17, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-12225 Filed 5-24-90; 8:45 am]

BILLING CODE 3510-DS-M

National Institutes of Health, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to sectrion 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 89-077R. *Applicant:* National Institutes of Health, Bethesda, MD 20892. *Instrument:* Positron Emission Tomography Scanner, Model PC2048-15B. *Manufacturer:* Scanditronix AB, Sweden. *Intended Use:* See notice at 54 FR 11993, March 23, 1989.

Reasons: The foreign apparatus provides superior transverse and axial spatial resolution during wobble and stationary acquisition modes.

Docket Number: 89-208R. *Applicant:* Oklahoma Medical Center, Oklahoma City, OK 73104. *Instrument:* Electron Microscope, Model JEM 1200EX/SEG/DP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 55 FR 2861, January 29, 1990.

Reasons: The foreign instrument provides a resolution of 0.14nm (lattice) and magnification from 50x to 1 000 000x.

Docket Number: 89-223. *Applicant:* National Institutes of Health, Bethesda, MD 20892. *Instrument:* Rapid Kinetics Instrument (multi-mixing) Model QFM-5. *Manufacturer:* Biologic, Co., France. *Intended Use:* See notice at 54 FR 40159, September 29, 1989.

Reasons: The foreign instrument provides five independently programmable syringes for rapid mixing and quenching of reactions in the millisecond time range.

Docket Number: 89-287. *Applicant:* Pennsylvania State University, University Park, PA 16802. *Instrument:* Copper-Laser-Pumped Dye Laser, Model FL 3001. *Manufacturer:* Lambda Physik, Inc., West Germany. *Intended Use:* See notice at 55 FR 2861, January 29, 1990.

Reasons: The foreign article provides a source for resonance fluorescence detection of OH and NO_2.

Docket Number: 90-012. *Applicant:* University of Minnesota, Minneapolis, MN 55455. *Instrument:* Mass Spectrometer, Model 262V. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* See notice at 55 FR 6034, February 21, 1990.

Reasons: The foreign instrument is capable of precise automated, variable multicollection, low level analysis of radiogenic lead.

Docket Number: 90-013. *Applicant:* Virginia Commonwealth University, Richmond, VA 23284-2000. *Instrument:* Surface Analysis System with Leed-Auger Spectrometer, Model ADES 500. *Manufacturer:* VG Microtech, Ltd., United Kingdom. *Intended Use:* See notice at 55 FR 6035, February 21, 1990.

Reasons: The foreign instrument provides a charged particle analyzer with a two axis goniometer stage for angle resolved measurements.

Docket Number: 90-018. *Applicant:* University of California, Lawrence Livermore National Laboratory, Livermore, CA 94551. *Instrument:* X-Ray Diffractometer, Model HIXAPD. *Manufacturer:* Rigaku Corp., Japan. *Intended Use:* See notice at 55 FR 6035, February 21, 1990.

Reasons: The foreign instrument provides a high intensity X-ray source (18kW) and a goniometer with a two theta step size of 0.002 degrees.

The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-12226 Filed 5-24-90; 8:45 am]

BILLING CODE 3510-DS-M

Women and Infants' Hospital; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 89–060R. *Applicant:* Women and Infants' Hospital, Providence, RI 02905. *Instrument:* Chromosome Analyzer, Model Cytoscan RK1. *Manufacturer:* Image Recognition Systems, United Kingdom. *Intended Use:* See notice at 54 FR 7971, February 24, 1989.

Reasons: The foreign instrument provides a spatial resolution of 768x575 pixels and a classifier for both Giesma and fluorescent banding. *Advice Submitted by:* National Institutes of Health, February 22, 1990.

Docket Number: 89–096R. *Applicant:* University of Nebraska Medical Center, Omaha, NE 68131. *Instrument:* Automated Chromosome Analyzer, Model RK2E. *Manufacturer:* Image Recognition Systems, United Kingdom. *Intended Use:* See notice at 54 FR 13726, April 5, 1989.

Reasons: The foreign instrument provides a spatial resolution of 768x575 pixels and capabilities for bright-field and fluorescence analysis. *Advice Submitted by:* National Institutes of Health, February 22, 1990.

Docket Number: 89–138R. *Applicant:* New England Deaconess Hospital, Boston, MA 02215. *Instrument:* Electron Microscope, Model H–600–3. *Manufacturer:* Hitachi Nissei Sangyo America, Ltd., Japan. *Intended Use:* See notice at 55 FR 2861, January 29, 1990.

Reasons: The foreign instrument provides a resolution of 0.2nm (lattice) and magnification to 300 000x. *Advice Submitted by:* National Institutes of Health, February 22, 1990.

Docket Number: 89–192. *Applicant:* University of Nebraska, Lincoln, NE 68583–0718. *Instrument:* Mass Spectrometer, Model Delta S. *Manufacturer:* Finnigan Corp., West Germany. *Intended Use:* See notice at 54 FR 34543, August 21, 1989.

Reasons: The foreign instrument provides computer-controlled analysis of up to 48 samples per run with an internal precision of 0.006°/oo for 10 bar μl samples of CO_2. *Advice Submitted by:* National Institutes of Health, March 20, 1990.

Docket Number: 89–196. *Applicant:* Health and Human Services, Washington, DC 20204. *Instrument:* Mass Spectrometer, Model AutoSpec-Q. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 54 FR 34543, August 21, 1989.

Reasons: The foreign instrument provides: (1) resolution to 60 000, (2) MS. /MS capability to analyze daughter ions to 4000 daltons and (3) continuous flow FAB. *Advice Submitted by:* National Institutes of Health, March 20, 1990.

Docket Number: 89–198. *Applicant:* Duke University Medical Center, Durham, NC 27710. *Instrument:* Mechanical and Optical Measurement of Muscle Contractile Biophysics System. *Manufacturer:* Wissenschaftliche Gerate Dr. K. Guth, West Germany. *Intended Use:* See notice See notice at 54 FR 34544, August 21, 1990.

Reasons: The foreign instrument can measure the shortening of contractile tissue with: (1) sensitivity to velocity in the 300μm/s range, (2) force resolution of 0.3mg and (3) capability to rapidly change ambient solutions. *Advice Submitted by:* National Institutes of Health, March 20, 1990.

Docket Number: 89–199. *Applicant:* Goucher College, Towson, MD 21204. *Intended Use:* See notice at 54 FR 34544, August 21, 1989.

Docket Number: 89–276. *Applicant:* Boston Biomedical Research Institute, Boston, MA 02114. *Intended Use:* See notice at 55 FR 2125, January 25, 1990.

Instrument: Rapid Kinetics Accessory, Model RX 1000. *Manufacturer:* Applied Photophysics, United Kingdom.

Reasons: The foreign article rapidly mixes and delivers fluid reactants directly to the observation cell of an existing spectrometer or spectrophotometer. *Advice Submitted by:* National Institutes of Health, March 20, 1990.

Docket Number: 89–215. *Applicant:* Case Western Reserve University, Cleveland, OH 44106. *Instrument:* Rapid Kinetics Instrument, Multi-mixing, Model SF–51MX. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended Use:* See notice at 54 FR 40158, September 29, 1989.

Reasons: The foreign instrument provides multi-mixing capability with a dead time less than 1.0ms. *Advice Submitted by:* National Institutes of Health, March 20, 1990.

The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–12227 Filed 5–24–90; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1990 a commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: June 25, 1990.

ADDRESSES: Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, VA 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On February 2, April 6 and 13, 1990, the Committee for Purchase From the Blind and Other Severely Handicapped published notices (55 FR 3634, 12878 and 13930) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity and provide the services at a fair maket price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The

major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following commodity and services are hereby added to Procurement List 1990:

Commodity

Mast Section
5985-01-072-8065

Services

Administrative Services
Federal Supply Service
Kansas City, Missouri

Assembly of Tool Kit
Robins Air Force Base, Georgia

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 90-12217 Filed 5-24-90; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990; Proposed Additions;

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1990 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

Comments Must Be Received On Or Before: June 25, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, VA 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Commitee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540):

Commodities

Strap, Webbing
2540-00-586-7579
Strap, Webbing
2590-00-958-6917
Repair Kit, Puncture
2640-00-052-6724
Disinfectant-Detergent, General Purpose
6840-00-935-9813

Services

Commissary Shelf Stocking & Custodial
Oakland Army Base
Oakland, California
Commissary Shelf Stocking & Custodial
Fort Gordon, Georgia
Janitorial/Custodial
U.S. Army Reserve Center
4300 S. Treadway
Abilene, Texas

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 90-12218 Filed 5-24-90; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

May 7, 1990.

The USAF Scientific Advisory Board Ad Hoc Committee Summer Study on Technology Options and Concepts for Defeating Enemy Air Defenses will meet on 9-20 July 1990 from 8 a.m. to 5 p.m. at the Naval Postgraduate School, Monterey, CA 98943-5000.

The purpose of this meeting will be to formulate, define, and evaluate its conclusions and recommendations of the study. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-12187 Filed 5-24-90; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

May 7, 1990.

The USAF Scientific Advisory Board Ad Hoc Committee Summer Study on Technology Options and Concepts for Defeating Enemy Air Defenses will meet on 20-21 June 1990 from 8 a.m. to 5 p.m. at the ANSER Corp., 1215 Jefferson Davis Hwy, Arlington, VA 22202.

The purpose of this meeting will be to receive briefings relevant to Technology Options and Concepts for Defeating Enemy Air Defenses. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-12188 Filed 5-24-90; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

May 7, 1990.

The USAF Scientific Advisory Board Ad Hoc Committee Summer Study on Technology Options and Concepts for Defeating Enemy Air Defenses will meet on 27-28 June 1990 from 8 a.m. to 5 p.m. at the ANSER Corp., 1215 Jefferson Davis Hwy, Arlington, VA 22202.

The purpose of this meeting will be to receive briefings relevant to Technology Options and Concepts for Defeating Enemy Air Defenses. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-12152 Filed 5-24-90; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

May 10, 1990.

The USAF Scientific Advisory Board Division Advisory Group (DAG) for Electronic Systems Division (ESD) will meet on 18 Jun 90 from 8:30 a.m. to 5 p.m. and on 19 Jun 90 from 8:30 a.m. to 12 p.m. at Hanscom AFB, MA.

The purpose of this meeting is to brief the ESD C3I acquisition programs and related RADC technology efforts. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–12189 Filed 5–24–90; 8:45 am]

BILLING CODE 3910–01–M

Department of the Navy

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Defense Subpanel Task Force will meet 19 June 1990 from 9 a.m. to 5 p.m., in the CNO's Conference Room, Pentagon 4E630, Washington, DC. All sessions will be closed to the public.

The purpose of this meeting is to discuss key issues regarding national security, maritime defense needs, defense policy, planning, and budgetary matters of immediate Navy interest. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b (c) (1) of title 5, United States Code.

For further information concerning this meeting, contact: Lelia V. Carnevale, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, room 601, Alexandria, VA 22302–0268, Phone (703) 756–1205.

Dated: May 22, 1990.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 90–12191 Filed 5–24–90; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Aviator Physical Stress will meet on June 14–15, 1990. The meeting will be held at the Naval Research Laboratory, Washington, DC. The meeting will commence at 8:30 a.m. and terminate at 5:30 p.m. on June 14–15, 1990. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to an assessment of the effects of physical stress generated during aviation combat maneuvers and the consequences of such stresses on short and long term mission performance. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552B(c)(1) of title 5, United States Code.

For further information concerning this meeting contact:

Commander John Hrenko,

U.S. Navy Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4488.

Dated: May 22, 1990.

Sandra M. Kay,

Department of the Navy Alternate Federal Register Liaison Officer.

[FR Doc. 90–12192 Filed 5–24–90; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF90–143–000, et al.]

Bonneville Yuma Corp. et al.; Electric rate, Small power production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Bonneville Yuma Corporation

[Docket Nos. QF90–143–000]

May 17, 1990.

On May 7, 1990, Bonneville Yuma Corporation (Applicant), of 257 East 200 South, Suite 800, Salt Lake City, Utah 84111, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located at 1st Street and 27th Drive in Yuma, Arizona. The facility will consist of one combustion turbine-generator, one heat recovery boiler and one condensing/extraction steam turbine generator. The thermal energy recovered from the facility will be used in a greenhouse complex for year round heating and cooling and for production of purified water for use in crop irrigation. The net electric power production capacity of the facility will be 53.5 MW. The primary energy source of the facility will be natural gas. Installation of the facility will commence in January 1991.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Montana Power Company

[Docket No. ER90–197–000]

May 18, 1990.

Take notice that on May 11, 1990, Montana Power Company (Montana) tendered for filing additional information requested by staff regarding proposed revisions to its FERC Electric Original Volume No. 1, which sets forth Montana's Nonfirm Energy for Resale Rates (M–1 Tariff).

Comment date: June 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Public Service Corporation

[Docket No. ER90–314–000

May 18, 1990.

Take notice that on May 15, 1990 Wisconsin Pubic Service Corporation tendered for filing revised tariff sheets to its April 5, 1990 filing in this docket.

Comment date: June 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Westmoreland-Hadson Partners

[Docket No. QF 90–147–000]

May 18, 1990.

On May 9, 1990, Westmoreland-Hadson Partners, c/o Westmoreland

Energy, Inc., of 2955 Ivy Road, Charlottesville, VA 22901, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Weldon Township, near Roanoke Rapids, North Carolina. The facility will consist of a coal-fired boiler and steam turbine generators. Thermal energy recovered from the facility will be utilized by Rubber Pitch Company for process uses and for space cooling. The maximum net electric power production capacity of the facility will be 167,200 kW. The primary source of energy will be coal. Construction of the facility is scheduled to begin in 1991.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

5. PacificCorp, Doing business as Pacific Power & Light Utah Power & Light

[Docket No. ER90–366–000]

May 18, 1990.

Take notice that PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light (PacifiCorp) on May 14, 1990 tendered for filing, in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, an Amendment No. 1 to the Fifteen-Year Power Sales Agreement (Agreement) dated October 27, 1988 (PacifiCorp/Pacific Power & Light Company Rate Schedule FERC No. 254), between PacifiCorp and Puget Sound Power & Light Company (Puget).

This Amendment revises the Agreement by changing the dates by which the Parties are required to exchange certain information relating to the services provided.

PacifiCorp respectfully requests that a waiver of the prior notice requirements of 18 CFR 35.3 be granted pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations and that an effective date of April 1, 1990 be assigned, this date being consistent with the start of the 1990 Energy Rate Period as defined in the Agreement.

Copies of this filing were supplied to Puget, the Oregon Public Utilities Commission, and the Washington Utilities and Transportation Commission.

Comment date: June 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of New Mexico

[Docket No. ER90–352–000]

May 18, 1990.

Take notice that on May 2, 1990, Public Service Company of New Mexico (PNM) tendered for filing an Amended Original Contract No. 14–06–400–245 (Amended Original Contract) and Amendment No. 1 to Contract No. 8–07–40–PO695 (Amendment No. 1 to PO695) between PNM and Western Area Power Administration (Western). These formal contractual amendments implement a Letter of Principles which was accepted for filing by the Federal Energy Regulatory Commission in 1988 (Docket No. ER88–542–000). Under these contractual amendments Western will provide 50 MW of firm transmission service for PNM between the Westwing switchyard and the Shiprock substation of the Four Corners Generating Station switchyard. PNM will provide firm transmission service to Western at a rate of $3.00/kW-month (as reduced by certain agreed modifications), and may provide additional firm transmission service for Western on a seasonal basis.

PNM requests waiver of the Commission's notice requirements to permit the Amended Original Contract to become effective as of December 8, 1989 and Amendment No. 1 to PO695 to become effective as of December 6, 1988.

Copies of the filing have been served upon Western and the New Mexico Public Service Commission.

Comment date: June 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Central Maine Power Company

[Docket No. ER90–368–000]

May 18, 1990.

Take notice that on May 14, 1990, Central Maine Power Co. (CMP) tendered for filing the following Transmission service Agreements:

1. Transmission Service Agreement between Central Maine Power Company and Commonwealth Electric Company effective November 1, 1988.

2. Transmission Service Agreement between Central Maine Power Company and Unitil Power Corp. effective November 1, 1989.

3. Transmission Service Agreement between Central Maine Power Company and Public Service Company of New Hampshire effective November 1, 1989.

CMP requests that the Commission waive its notice and filing requirements to permit these Agreements to become effective in accordance with their terms.

CMP has served copies of the filing on the affected customer and on the Maine Public Utilities Commission.

Comment date: June 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

Central Maine Power Company

[Docket No. ER90–367–000]

May 18, 1990.

Take notice that Central Maine Power Company (CMP), on May 14, 1990, tendered for filing proposed changes in its FERC Electric Tariff, 11th Revised Volume No. 1, Wholesale Electric Rate for Other Utilities. Under the rate increase to be effective July 1, 1990, CMP would be permitted to increase its current wholesale rates by $176,635 for Period I.

The proposed tariff implements a Stipulation and Contracts between CMP and its Wholesale Customers, Kennebunk Light and Power District, Inhabitants of the Town of Madison (Madison Electric Works), and Fox Islands Electric Cooperative, Inc. Copies of the filing have been served on CMP's above-named Wholesale Customers, and on the Maine Public Utilities Commission, and the Public Advocate.

The proposed tariff reflects in wholesale rates what the Maine Public Utilities Commission reflected in retail rates effective January 1, 1990 and also reflects revenue requirements associated with the Charles E. Monty hydroelectric generating station. The proposed tariff also revises the terms and charges for providing standby power.

The filing also requests a waiver to allow recovery in rates of the costs of the Charles E. Monty hydroelectric station shortly before the expected inservice date of that facility.

Comment date: June 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. 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 and 385.214). All such motions or protests should be filed on or before the comment date. 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,

Secretary.

[FR Doc. 90-12166 Filed 5-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-1342-000, et al.]

Columbia Gulf Transmission Co., et al.

Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Columbia Gulf Transmission Company

[Docket No. CP90-1342-000]

May 17, 1990.

Take notice that on May 10, 1990, Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama, Houston, Texas 77027, filed in Docket No. CP90-1342-000, a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act, to transport natural gas under its blanket certificate issued in Docket No. CP86-239, a maximum of 22,000 MMBtu per day for Exxon Corporation (Exxon), all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia Gulf indicates that service commenced April 1, 1990, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90-2757 and estimates the volumes transported to be 22,000 MMBtu on peak day and average day and annual volume of 8,030,000 MMBtu.

Comment date: July 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Mississippi River Transmission Corporation

[Docket Nos. CP90-1358-000, CP90-1359-000, CP90-1360-000, CP90-1361-000, and CP90-1362-000]

May 18, 1990.

Take notice that on May 14, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed five requests with the Commission in the above referenced dockets, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA), for authorization to transport natural gas on behalf of various shippers, under the blanket certificate issued in Docket No. CP89-1121-000 pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.[1]

MRT proposes an interruptible natural gas transportation service for each of the shippers under its FERC Rate Schedule ITS. MRT has also provided other information applicable to each transaction, including the shipper's identity; the peak day, average day, and annual volumes; service initiation dates; and the related docket numbers of the 120-day transactions under § 284.223(a) of the Regulations, as summarized in the attached appendix.

Comment date: July 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No.	Shipper	Volumes-MMBtu (peak, average annual)	ST docket start up date	Receipt points (State)	Delivery points (State)
CP90-1358-000	Santanna Natural Gas Corp.	100,000 50,000 18,250,000	ST90-2568, 3-15-90	AR, IL, LA, TX, OK	MO, IL, LA, AR.
CP90-1359-000	V.H.C. Gas Systems L.P.	200,000 200,000 73,000,000	ST90-2570, 3-14-90	AR, IL, LA, OK, TX	AR, IL, LA, MO, TX.
CP90-1360-000	Louis Dreyfus Energy Corp.	100,000 20,000 7,300,000	ST90-2569, 3-13-90	AR, IL, LA, TX	MO, LA, AR, IL, TX, OK.
CP90-1361-000	ARCO Natural Gas Marketing, Inc.	100,000 100,000 36,500,000	ST90-2571, 3-16-90	AR, IL, LA, TX	LA.
CP90-1362-000	Archer Daniels Midland Company.	3,100 3 1,095	ST90-2519, 3-12-90	AR, IL, LA, TX	IL.

3. Northern Natural Gas Company

[Docket No. CP90-1381-000]

Williston Basin Interstate Pipeline Company

[Docket No. CP90-1382-000]

May 17, 1990

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket Number (date filed)	Applicant	Shipper name	Peak day [1] avg. annual	Points of		Start up date rate schedule	Related [1] dockets
				Receipt	Delivery		
CP90-1381-000 (5-16-90).	Northern Natural Gas Company, P.O. Box 1188, Houston, Texas, 77251-1188.	Meridian Oil Trading Inc..	35,000	TX	TX	3-1-90, IT-1	CP86-435-000, ST90-2231-000.
			26,250				
			12,775,000				
CP90-1382-000 (5-16-90).	Williston Basin Interstate Pipeline Company, 304 East Rosser Avenue, Bismarck, North Dakota, 58501.	Exxon Corporation	45,000Dth	WY, ND, MT	MT, WY, ND	4-1-90, IT-1	CP89-1118-000, ST90-2560-000.
			2,000Dth				
			730,000Dth				

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the National Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary

[FR Doc. 90-12167 Filed 5-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-1391-000]

Arcadian Corp., Complainant, vs. Southern Natural Gas Co., Respondent; Notice of Complaint

May 18, 1990.

Take notice that on May 17, 1990, Arcadian Corporation (Arcadian) 6750 Poplar Avenue, Suite 600, Memphis, Tennessee 38138, filed in Docket No. CP90-1391-000 a complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure against Southern Natural Gas Company (Southern). Arcadian states that Southern has refused to provide a direct transportation service for Arcadian and that Southern's refusal is in violation of sections 4 and 5 of the Natural Gas Act (NGA) and part 284 of the Commission's Regulations. By this filing Arcadian is requesting the Commission to exercise its authority under sections 5 and 16 of the NGA to compel Southern to honor Arcadian's request for such service, all as more fully set forth in the complaint on file with the commission and open to public inspection.

Arcadian states that it is located adjacent to Southern's mainline, that it is willing to reimburse Southern for all of the costs of the facilities necessary to provide the service, and that the requested direct transportation service could save Arcadian as much as four million dollars per year in gas transportation charges. Arcadian further states that Southern has previously agreed to provide direct transportation service for (1) several competitors of Arcadian, (2) the previous owner of Arcadian's plant, and (3) other similarly situated shippers located near Southern's pipeline system, including both end users and LDCs. On the basis of these and other facts, Arcadian states that Southern's refusal to grant Arcadian's request for direct transportation is unduly discriminatory under Sections 4 and 5 of the NGA, violates the terms and conditions of Southern's open-access tariff, and is anticompetitive.

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, Southern is to respond within 15 days from the date of this notice.

Any person desiring to be heard or to make a protest with reference to Arcadian's complaint should file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or protest in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) within 15 days from the date of this notice. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person desiring to become a party must file a motion to intervene. Copies of this complaint are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-12165 Filed 5-24-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3782-3]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5073.

Availability of Environmental Impact Statements Filed May 14, 1990 Through May 18, 1990 Pursuant to 40 CFR 1506.9

EIS No. 900158, FINAL EIS, BLM, MT, ID, Centennial Mountains Wilderness Study Area, Recommendations, Targhee and Beaverhead National Forests, Clark and Fremont Counties, ID and Beaverhead County, MT, June 26, 1990, Contact: Darrell McDaniel (406) 494-5059.

The Department of the Interior/ Bureau of Land Management and the Department of Agriculture are Joint Lead Agencies for this project.

EIS No. 900159, DRAFT EIS, FAA, KY, Louisville Airport Improvements, Construction of two Parallel Runways at Standiford Field, Airport Layout Plan, Approval, Funding and 404 Permit, Jefferson County, KY, July 09, 1990, Contact: Peggy Kelly (901) 544-3495.

EIS No. 900160, Final EIS, OSM, AZ, Black Mesa and Kayenta Coal Mines,

Mining and Reclamation Operations Permit, Life-of-Mine Mining Plan and 404 Permit, Hopi and Navajo Reservations, Navajo County, AZ, June 25, 1990, Contact: Jerry Gavette (303) 844–2938.

EIS No. 900161, DRAFT EIS, FHW, VA, US 29 Corridor Improvement, US 250 Bypass, Charlottesville to South Fork Rivanna River in Albermarle, Funding, COE Section 10 and 404 Permits, Albermarle County, VA, July 09, 1990, Contact: James M. Tumlin (804) 771–2371.

EIS No. 900162, FINAL EIS, EPA, DC, Blue Plains Wastewater Treatment Plant, Sludge Management Plan, Construction Grant, DC, June 25, 1990, Contact: Jayne Dohm (215) 597–7828.

EIS NO. 900163, DRAT EIS, AFS, CA, North Fork of the Mokelumne River, Wild and Scenic River Study, Designation or Nondesignation into the National Wild and Scenic River System, Eldorado and Stanislaus National Forests, Amador and Calaveras Counties, CA, July 23, 1990, Contact: Beth Paulson (916) 622–5061.

EIS NO. 900164, FINAL EIS, AFS, ID, Lowman-North Fire Recovery Project, July thru August 1989 Lowman Complex Fire, Implementation, Boise National Forest, Lowman Ranger District, Boise County, ID, June 25, 1990, Contact: Dan Deiss (208) 364–4100.

EIS No. 900165, DRAFT SUPPLEMENT, UMT, NY, Queens Subway Improvement, Options Study, Connection of Queens Boulevard Subway Line with the 63rd Street Tunnel, New Alternatives, Queens, NY, Due: July 13, 1990, Contact: Brian P. Sterman (212) 264–8162.

EIS No. 900166, FINAL EIS, FAA, TX, New Austin Airport, Construction, Airport Layout Plan and Location Approval, Cities of Austin and Manor, Travis County, TX, June 25, 1990, Contact: Mo. Keane (817) 624–5606.

EIS No. 900167, DRAFT EIS, MMS, AK, Navarin Basin Outer Continental Shelf (OCS) Oil and Gas Sale No. 107, Leasing, Bering Sea, AK, July 09, 1990, Contact: Richard Miller (202) 787–1665.

EIS No. 900168, DRAFT EIS, FHW, FL, US 1/FL–5 Upgrading, Abaco Road on Key Largo to Card Sound Road, Funding, Dade and Monore Counties, FL, July 16, 1990, Contact: J.R. Skinner (904) 681–7223.

EIS No. 900169, DRAFT EIS, REA, VA, Clover Units 1 and 2, Coal-Fired Generating Station and Related Transmission Facilities, Construction and Operation, Licensing and Approval, Halifax County, VA, July 09, 1990, Contact: Joseph Binder (202) 382–1420.

Amended Notices

EIS No. 900094, DRAFT EIS, AFS, CA, Mt, Shasta Wilderness Management Plan, Shasta-Trinity National Forests, Implementation, Mt. Shasta Ranger District and McCloud Ranger District, Siskiyou County, CA, June 07, 1990, Contact: Garry Oye (916) 246–5222. Published FR 3–23–90—Review period extended.

EIS No. 900102, DRAFT SUPPLEMENT, AFS, ID, Valbois Destination Resort Village, Special Use Permit and Land/Resource Management Plan Amendments, Additional Information, Cascade Lake, Boise National Forest, Valley County, ID, Due: June 14, 1990, Contact: Greg Spangenberg (208) 364–4104. Published FR 03–30–90—Review period extended.

EIS No. 900126, FINAL EIS, AFS, ID Boise National Forest, Land and Resource Management Plan, Implementation, Ada, Boise, Gem, Elmore, Valley and Washington, ID, May 29, 1990, Contact: Dave Rittersbacher (208) 364–4161. Published FR 5–5–90—Due Date Correction.

Dated: May 22, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90–12235 Filed 5–24–90; 8:45 am]

BILLING CODE 6560–50–M

(ER–FRL–3782–2)

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 7, 1990 through May 11, 1990 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities At (202) 382–5076. An explanation of the rating assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. D–AFS–J65159–UT, Rating LO, Strawberry Valley Management Area Management Plan, Implementation, Section 404 Permit, Uinta National Forest, Wasatch County, UT. **SUMMARY:** EPA has no objections to the proposed actions.

ERP No. D–BLM–A82122–00, Rating EC2, Thirteen Western States, Vegetation Treatment on Bureau of Land Management Lands, Implementation, AZ, CO, ID, MT, NV, NM, ND, OK, OR, SD, UT, WA, and WY. **SUMMARY:** EPA has environmental concerns with the proposed project. The final EIS should describe how site-specific environmental assessments will be made and should include more information on the pesticides used.

ERP No. D–BLM–J65058–MT, Rating EC2, Sleeping Giant and Sheep Creek Wilderness Study Areas (WSAs) Recommendations, Wilderness or Nonwilderness Designation, Lewis and Clark County, MT. **SUMMARY:** EPA has environmental concerns with the proposed project. The impacts of potential mining, oil and gas activities, and road construction should be discussed. Cumulative impacts and mitigation measures should also be addressed. EPA believes that the "All Wilderness" alternatives best assures the retention of the environmental characteristics of the area.

ERP No. D–FAA–J51010–CO, Rating EC2, Colorado Springs Municipal Airport Expansion, Construction of Runway 17L–32R parallel to existing Runway 17R–35L, Construction and Operation, Funding, City of Colorado Springs, CO. **SUMMARY:** EPA has environmental concerns with the proposed action and believes that additional information is needed in the final EIS regarding compatible land use zoning and additional analysis of air and water quality mitigation.

ERP No. D–FRC–F03003–00, Rating EO2, Niagara Import Point Project, Natural Gas Pipeline Facilities, Construction and Operation, Licenses, Section 10 and 404 Permits, NY, WI, MA, MN, MI, and RI. **SUMMARY:** EPA rated this document "EO–2" indicating environmental objections to the proposed project because of potential adverse wetland and water quality impacts. Additional information on the above impacts, as well as mitigation on secondary/cumulative impacts is requested in the final EIS.

ERP No. D–MMS–A02231–00, Rating EO2, 1991 Central, Western and Eastern Gulf of Mexico Outer Continental Shelfs (OSC) Oil and Gas Sales 131, 135 and 137, Lease Offering, LA, TX, MS, AL and FL. **SUMMARY:** EPA objects to proposed unrestricted leasing without inclusion of protective environmental stipulations. EPA also suggests that a comprehensive ozone modeling effort be undertaken in order to gauge impacts of offshore emissions on ozone levels onshore.

ERP No. D–UMT–J40119–UT, Rating EC2, I–15/State Street Corridor Highway and Transit Improvements, Funding, Salt Lake County, UT. **SUMMARY:** EPA expressed environmental concerns

related to this project pending designation of a preferred alternative and a more positive approach to wetlands impact mitigation. EPA believes that additional information should be provided in the final EIS.

Final EISs

ERP No. F-AFS-J61078-UT, Uinta National Forest, Arterial Travel Route Development and Management Implementation, Utah and Wasatch Counties, UT. **SUMMARY:** EPA's concerns about the arterial travel route's potential impacts to wetland functions and values previously raised at the draft EIS stage, are not fully addressed in the final EIS/Record of Decision. Additional information on potential wetland impacts is needed.

ERP No. F-SCS-F36157-IL, Upper Crab Orchard Creek Watershed, Flood Damage Reduction Plan, Funding and Implementation, Williamson County, IL. **SUMMARY:** EPA has environmental concerns with the proposed project. EPA's primary concern is the proposed mitigation plan associated with the loss of Bottomland Hardwood and Brushland wetlands. This concern includes proposed monitoring, preservation, and the need for the distribution of an annual report on the success of the creation of BLH wetlands.

Dated: May 22, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-12234 Filed 5-24-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3712-7]

Proposed Administrative Settlement; Wasatch Chemical Site, Salt Lake City, UT

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Proposed administrative settlement.

SUMMARY: In accordance with the requirements of section 12(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), notice is hereby given of a proposed administrative settlement under section 122(h) concerning the Wasatch Chemical Site in Salt Lake City, Utah. The proposed administrative settlement requires eight potentially responsible parties (PRPs) to together pay $225,000 in order to resolve the cost recovery case related to removal activities taken by U.S. EPA at the Lot 6 portion of the Site.

DATES: Comments must be submitted by June 25, 1990.

ADDRESSES: Comments should be addressed to Debra J. Kovacs (8HWM-ER), Cost Recovery Coordinator, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405, and should refer to: In the matter of: Wasatch Chemical Site, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Jessie A. Goldfarb, Office of Regional Counsel, at (303) 293-1458.

SUPPLEMENTARY INFORMATION: Notice of section 122(h) Cost Recovery Settlement:

In accordance with section 122(i)(1) of CERCLA, notice is hereby given that the terms of an Administrative Settlement Agreement have been agreed to by Mountain Fuel Supply, Inc. ("Mountain Fuel"), Entrada Industries, Inc. ("Entrada"), Questar Corporation ("Questar"), McCall Oil and Chemical Company ("MCall Oil") d/b/a Great Western Chemical Company ("Great Western"), Huntsman-Christensen Corporation ("H-C"), Ladd E. Christensen, and A. Blaine Hunstman, Jr. By the terms of the proposed administrative settlement, these PRPs will together pay $225,000 to U.S. EPA if the United States will provide Mountain Fuel, Entrada, Questar, McCall Oil, and Great Western with a covenant not to sue limited to: (1) The obligations of Mountain Fuel, Entrada, Questar, McCall Oil, and Great Western to the United States under Administrative Order on Consent, Docket No. CERCLA VIII-86-04 (the "Consent Order"), for reimbursement of response and oversight costs pertaining to the removal action incurred before June 6, 1986 (the dae of demobilization of response activities at Lot 6); (2) claims for civil liability to the United States arising out of section 107(a) of CERLA for reimbursement of Lot 6 removal costs; and (3) claims for civil penalties and treble damages for any failure to comply with the Consent Order. Furthermore, the United States will provide H-C, Ladd E. Christensen, and A. Blaine Huntsman, Jr. with a covenant not to sue limited: (1) Claims for civil liability to the United States arising out of section 107(a) of CERCLA for Lot 6 removal costs; and (2) claims for civil penalties and treble damages for failure to comply with Unilateral Administrative Order, Docket No. CERLA VIII-86-03. The $225,000 figure represents approximately 93% of the total costs expended by U.S. EPA in connection with removal activities at the Lot 6 portion of the Site.

U.S. EPA will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed administrative settlement.

A copy of the proposed Administrative Settlement Agreement may be obtained in person or by mail from Jessie A. Goldfarb (8RC), Assistant Regional Counsel, U.S Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405. Additional background information relating to the administrative settlement is available for review at that address.

Kerrigan Clough,

Acting Regional Decision Officer, U.S. EPA, Region VIII.

[FR Doc. 90-12220 Filed 5-24-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

May 21, 1990.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0084

Title: Ownership Report for Noncommercial Educational Broadcast Station

Form No.: FCC 323-E

The approval on form FCC 323-E has been extended through 04/30/93. The September 1987 edition with an expiration date of 4/30/90 will remain in use until updated forms are available.

OMB No.: 3060-0061

Title: Annual Report of Cable Television Systems—Schedule A

Form No.: FCC 325

A revised form FCC 325 has been approved through 04/30/93. This revision will be implemented with the report for the 1989 filing year.

OMB No.: 3060-0105

Title: Licensee Qualification Report

Form No.: FCC 430

The approval on form FCC 430 has been extended through 3/31/93. The May 1989 edition with an expiration date of 3/31/90 will remain in use until updated forms are available.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90-12231 Filed 5-24-90; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

May 17, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact Eyvette Flynn, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, telephone (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0051

Title: Ship/Aircraft License Expiration Notice and/or Renewal Application

Form No.: FCC 405-B

Action: Revision

Respondents: Individuals, State or local governments, Business (including small business), and Non-profit institutions

Frequency of Response: On occasion

Estimated Annual Burden: 50,000 Responses, three minutes each (average)

Needs and Uses: This form is a computer-generated expiration notice which is sent to ship and aircraft radio service station licensees. By returning the notice to the FCC, licensees may renew their authorizations when there is no change, or only minor changes, to the existing authorization.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90-12194 Filed 5-24-90; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 17, 1990.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501-3520).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington. DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202)395-3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: 3060-0168

Title: Section 43.43, Reports of proposed changes in depreciation rates

Action: Extension

Respondents: Businesses

Frequency of Response: On occasion and triennially

Estimated Annual Burden: 12 responses; 120,000 hours total annual burden; 10,000 hours average burden per response

Needs and Uses: Dominant communication common carriers with annual operating revenues of $100 million or more are required to file a report showing any proposed changes to their depreciation rates schedule at least ninety days prior to the effective date of the proposed changes pursuant to 47 CFR 43.43. The information filed is used by the Commission to establish the proper depreciation rates to be charged by the carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90-12195 Filed 5-24-90; 8:45 am]

BILLING CODE 6712-01-M

Application; Kill Devil Hills Communications Limited Partnership et al.

1. The Commission has before it the following mutually exclusive applications for 4 new FM stations:

I

Applicant, City and State	File No.	MM Docket No.
A. Kill Devil Hills, Communications, Limited Partnership, Kill Devil Hills, NC.	BPH-880406MF	90-190
B. Oceanside, Communications, Inc., Limited Partnership, Kill Devil Hills, NC.	BPH-880407MP	
C. First Flight Broadcasting, Kill Devil Hills, NC.	BPH-880407MR	
D. Edward Fenton Lawler, Kill Devil Hills, NC.	BPH-880407MS	
E. KDH Broadcasting, Limited Partnership, Kill Devil Hills, NC.	BPH-880407MT	
F. Great Scott Broadcasting, Kill Devil Hills, NC.	BPH-880406MD (Dismissed herein)	
D. Coastal Radio Limited Partnership, Kill Devil Hills, NC.	BPH-880407MB (previously returned)	

Issue Heading and Applicants

1. Air Hazard, C, D
2. Comparative, A-E
3. Ultimate, A-E

II

Applicant, City and State	File No.	MM Docket No.
A. Ms. Bennett Kessler, Independence, CA.	BPH-880519MF	90-191
B. Bill Dean Cramer, Independence, CA.	BPH-880519NG	

Issue Heading and Applicants

1. Air Hazard, A
2. City Coverage, B
3. Comparative, A, B
4. Ultimate, A, B

III

Applicant, City and State	File No.	MM Docket No.
A. George S. Flinn, Jr., Corpus Christi, TX.	BPH-880310NU	90-196
B. Reina Broadcasting, Inc., Corpus Christi, TX.	BPH-880310NV	
C. Barrio Broadcasting, Inc., Corpus Christi, TX.	BPH-88031OMU (dismissed herein)	

Issue Heading and Applicants

1. Air Hazard, A, B
2. Comparative, A, B
3. Ultimate, A, B

IV

Applicant, City and State	File No.	MM Docket No.
A. Sylvester Communications, Limited Partnership, Sylvester, GA.	BPH-880505ND	90-192
B. Thomas W. Lawhorne, Sylvester, GA.	BPH-8805050A	
C. CAM-Broadcasting, Inc., Sylvester, GA.	BPH-8805050J	

Issue Heading and Applicants

1. Comparative, A-C
2. Ultimate, A-C

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 90-12143 Filed 5-24-90; 8:45 am]

BILLING CODE 6712-01-M

Applications; RC Communications, Inc., et al.

Applicant, City and State	File No.	MM Docket No.
A. RC Communication, Inc., Santa Barbara, CA.	BPH-880226MX	90-218
B. Claudia Harden, Santa Barbara, CA.	BPH-880229MC	
C. Bernard G. Perez, Santa Barbara, CA.	BPH-880229NK	90-218
D. Isis Broadcast Group, Santa Barbara, CA.	BPH-880301MG	
E. Joelmart, Inc., Santa Barbara, CA.	BPH-880301MJ	
F. Buffalo Broadcasting, Inc, Santa Barbara, CA.	BPH-880301MM	
G. Alma Broadcasting, A limited Partnership, Santa Barbara, CA.	BPH-880301MN	
H. Katherine Ann Marriott d/b/a Pacific Rim Broadcasting, A California Limited Partnership, Santa Barbara, CA.	BPH-880301MS	
I. Mandorla, Inc., Santa Barbara, CA.	BPH-880301MV	
J. Great Scott Broadcasting, Santa Barbara, CA.	BPH-880301MX	
K. Graziano Broadcasting Co., Santa Barbara, CA.	BPH-880301NA	
L. Patricia Wheeler Wodlinger, Santa Barbara, CA.	BPH-880301ND	
M. Gerald Sternberg and George Koutoulas, A General Partnership, Santa Barbara, CA.	BPH-880301NE	
N. Chanel Broadcasting, Santa Barbara, CA.	BPH-880301NH	
O. Mission Pacific Corp., Santa Barbara, CA.	BPH-880301NI	
P. Letta Broadcasting, Inc., Santa Barbara, CA.	BPH-880301NK	
Q. Sharol Walen Siemens d/b/a Santa Barbara FM Limited Partnership, Santa Barbara, CA.	BPH-880301NL	
R. P & T Communications, Santa Barbara, CA.	BPH-880301NO	
S. Santa Barbara Communications, Inc., Santa Barbara, CA.	BPH-880301NR	
T. Fell-Mitchell Limited Partnership, Santa Barbara, CA.	BPH-880301NS	
U. Deborah Lynn Sczudlo, Santa Barbara, CA.	BPH-880301OA	
V. Ying Hua Benns, Santa Barbara, CA.	BPH-880301OE	
W. Susan Lundborg, Santa Barbara, CA.	BPH-880301OK	
X. Delta Broadcasting, Inc., Santa Barbara, CA.	BPH-880301OL	
Y. Loew Broadcasting of California, Inc., Santa Barbara, CA.	BPH-880301PB	
Z. Michael Salvador Gonzalez, Santa Barbara, CA.	BPH-880301PC	.....

Issue Heading and Applicants

1. (See Appendix), I
2. (See Appendix), I
3. (See Appendix), I
4. (See Appendix), I
5. Air Hazard, B,H,I,O,P,Q,R,T,U,V,W,Y,Z
6. Comparative, All Applicants
7. Ultimate, All Applicants

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix (Santa Barbara, CA)

Additional Issue Paragraphs

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to I's (Mandorla) application.

2. To determine whether I's (Mandorla) organizational structure is a sham.

3. To determine whether I (Mandorla) violated section 1.65 of the Commission's Rules, and/or lacked candor, by failing to report the dismissal with prejudice of applications in which one or more of its partners had an ownership interest.

4. To determine, from the evidence adduced pursuant to Issues 1 through 3 above, whether I (Mandorla) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90-12144 Filed 5-24-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200357.

Title: Maryland Port Administration Cargo Incentive Agreement.

Parties

Maryland Port Administration (MPA)
Wallenius Motorships, Inc. (Wallenius)

Synopsis: The Agreement provides for MPA to pay Wallenius an incentive of $3.00 per loaded container and $.40 per ton for Ro/Ro cargo. This incentive is restricted to such cargo coming into or going out of the MPA marine terminals by a waterborne movement. The Agreement's term expires December 31, 1990.

Agreement No.: 224–200352.

Title: Maryland Port Administration/ The National Shipping Company of Saudi Arabia.

Parties

Maryland Port Administration (MPA)
The National Shipping Company of Saudi Arabia (NSCSA)

Synopsis: The Agreement provides for MPA to pay NSCSA an incentive of $3.00 per loaded container and $0.40 per ton for Ro/Ro cargo coming into and going out of MPA marine terminals by NSCA's direct vessel calls. The incentive is restricted to such cargo coming into or going out of the MPA marine terminal by waterborne movement. The Agreement's term expires December 31, 1990.

Agreement No.: 224–200353.

Title: Port Everglades Authority/ Tecmarine Lines, Inc. Terminal Agreement.

Parties

Port Everglades Authority
Tecmarine Lines, Inc. (TLI)

Synopsis: The Agreement provides TLI with the five-year lease of approximately 4.5 acres of vacant property in the city of Hollywood, Broward County, Florida to be used as a container terminal and for related uses, including the storage and maintenance of containers, related equipment and cargo. TLI guarantees payment to the Authority of minimum wharfage on 10,000 tons of cargo per lease year per acre.

By Order of the Federal Maritime Commission.

Dated: May 21, 1990.

Joseph C. Poking,

Secretary.

[FR Doc. 90–12163Filed 5–24–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bank of Cabot Employee Stock Ownership Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 8, 1990.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Bank of Cabot Employee Stock Ownership Trust,* Cabot, Arkansas; to acquire 13.75 percent of the voting shares of Cabot Bankshares, Inc., Cabot, Arkansas, and thereby indirectly acquire Bank of Cabot, Cabot, Arkansas.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *James Richmond Lightner,* Dallas, Texas; to acquire 0.64 percent of the voting shares of Equitable Bankshares, Inc., Dallas, Texas, and thereby indirectly acquire Equitable Bank, N.A., Arlington, Texas, and Equitable Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, May 21, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–12179 Filed 5–24–90; 8:45 am]

BILLING CODE 6210–01–M

Bumpushares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The Companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation wold not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 13, 1990.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Bumpushares, Inc.,* Atwood, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank & Trust Company, Atwood, Tennessee.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.,* Minneapolis, Minnesota; to merge with Northern Cities Bancorporation, Inc., Anoka, Minnesota, and thereby indirectly acquire The Northern Bank, Anoka Minnesota, and the Northern National Bank of Forest Lake, Forest Lake, Minnesota.

Board of Governors of the Federal Reserve System, May 21, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–12180 Filed 5–24–90; 8:45 am]

BILLING CODE 6210–01–M

Central Bancshares of the South, Inc., et al.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 13, 1990.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Central Bancshares of the South, Inc.*, Birmingham, Alabama; to engage *de novo* through its subsidiary, Central Compass Securities, Inc., Birmingham, Alabama, in underwriting and dealing to a limited degree, in certain municipal revenue bonds; 1–4 family mortgage-related securities, commercial paper, and certain consumer receivable related securities; and to act as agent in the private placement of all types of securities, including providing related advisory services, and to buy and sell all types of securities on the order of investors as a "riskless principal", pursuant to § 225.23; underwriting and dealing in bank-eligible securities pursuant to § 225.25(b)(16); offering combined securities brokerage pursuant to § 225.25(b)(15); and offering investment advice to institutional and retail customers pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 21, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–12181 Filed 5–24; 8:45 am]

BILLING CODE 6210–01–M

Luxemburg Bancshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 13, 1990.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Luxemburg Bancshares, Inc.*, Luxemburg, Wisconsin; to engage *de novo* through its subsidiary, Area Development Corporation, Luxemburg, Wisconsin, in providing financial assistance and advice for area economic development pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in all of Kewaunee County; the cities of Green Bay and De Pere, Villages of Allouez and Ashwaubenon and towns of New Denmark, Easton, Humboldt, Scott, Morrison, Green Bay, Glenmore, Rockland, Bellevue, Allouez, and Lawrence, all in Brown County; the towns of Union Brussels, Forestville, Clay Banks, Gardner, Nasewaupee, and Sturgeon Bay, all in Door County.

Board of Governors of the Federal Reserve System, May 21, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–12182 Filed 5–24–90; 8:45 am]

BILLING CODE 6210–01–M

SCB Bancorp, Inc.; Acquistion of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected

to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 13, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *SCB Bancorp, Inc.*, Decatur, Illinois; to acquire First Federal Savings and Loan Association of Macon County, Decatur, Illnois, and thereby engage in operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 21, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-12183 Filed 5-24-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following is the package submitted to OMB since the last publication on May 11, 1990. (For a copy of the package, call the FSA, Report Clearance Officer 202-252-5604.)

This information collection will be used as a generic grant application request to OMB for the Office of Community Services' six program announcements—Discretionary Grant Program, Community Food and Nutrition Grant program, Low Income Home Energy Assistance Program, Demonstration Partnership Program, Emergency Services and Shelter AFDC Transitional Housing Demonstration Program, and Jobs Opportunity for Low-Income Individuals Program.

Respondents: state and local governments, non-profit institutions;
Number of Respondents: 640;
Frequency of Response: one-time;
Estimated Average Burden per Response: 18.59 hours;
Estimated Annual Burden: 11900 hours.

Previously the information collection pertaining to the Discretionary Grant Program, Emergency Services and Shelter AFDC Transitional Housing Demonstration Program and Demonstration Partnership Program were published separately, however they are now subsumed in this collection package.

OMB Desk Officer: Shannah Koss McCallum.

Written comments and recommendations for the proposed information collection should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: May 9, 1990.

Sylvia E. Vela,

Associate Administrator, Office of Management and Information Systems.

[FR Doc. 90-11728 Filed 5-24-90; 8:45 am]

BILLING CODE 4150-04-M

Health Resources and Services Administration

Announcement of Final Categories of Facilities Determined To Have a Critical Shortage of Nurses for Service Obligations Under the Program of Scholarships for the Undergraduate Education of Professional Nurses

The Health Resources and Services Administration (HRSA) announces the final categories of health facilities which the Secretary has determined to have a critical shortage of nurses for purposes of the fulfillment of service obligations by individuals who first receive a scholarship under the Scholarships for the Undergraduate Education of Professional Nurses Grant Program for academic years 1989-90 and 1990-91. This program is authorized under section 843 of the Public Health Service Act (the Act), as added by Public Law 100-607.

FOR FURTHER INFORMATION CONTACT: Bruce Baggett, Chief, Student and Institutional Branch, Division of Student Assistance, Room 8-38, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Purpose

The Scholarships for the Undergraduate Education of Professional Nurses (SUEPN) Grant Program is designed to provide financial assistance to individuals who are enrolled or accepted for enrollment as undergraduate nursing students in diploma, associate, or baccalaureate degree programs or in programs of nursing education leading to first degrees in professional nursing and who are in financial need with respect to attending their schools. A scholarship recipient must agree to serve full-time upon graduation as a registered nurse for a period of not less than 2 years in an Indian Health Service health center, in a Native Hawaiian health center, in a public hospital, in a migrant health center, in a community health center, in a nursing facility, in a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses.

In addition to finalizing the categories of health facilities which the Secretary has determined to meet the criterion of "a health facility having a critical shortage of nurses," definitions are included for all other facilities specified in the statute as eligible sites for purposes of nurses fulfilling their service obligations under the SUEPN Grant Program.

Definitions of Facilities

Two definitions which appeared in the notice published in the **Federal Register** on November 30, 1989 (54 FR 49360), are being revised. Specifically, (1) the requirement that a "Migrant Health Center" must provide patient case management services (including outreach, counseling, referral, and follow-up) which was inadvertently omitted in the proposed notice, is being incorporated, and (2) the definition of "Nursing Facility" is being updated to reflect recent amendments to the Social Security Act.

Accordingly, the following definitions, arranged alphabetically, apply to those facilities specified in section 843 of the Act.

Community Health Center means an entity (as defined under section 330(a) of the Act and in regulations at 42 CFR 51c.102(c)) which either through its staff and supporting resources or through contracts or cooperative arrangements with other public or private entities provides:

(1) Primary health services;
(2) As may be appropriate for particular centers, supplemental health services necessary for the adequate support of primary health care services;
(3) Referral to providers of supplemental health services and payment, as appropriate and feasible, for their provision of such services;
(4) Environmental health services, including, as may be appropriate for particular centers (as determined by the centers), the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and other environmental factors related to health;
(5) Information on the availability and proper use of health services, for all residents of the area it serves; and
(6) Patient case management services (including outreach, counseling, referral, and follow-up services), for all residents of the area it serves (referred to in this section as a "catchment area").

Indian Health Service Health Center means a health care facility (whether operated directly by the Indian Health Service or operated by a tribal contractor or grantee under the Indian Self-Determination Act), which is physically separated from a hospital, and which provides one or more clinical treatment services, such as physician, dentist or nursing services, available at least 40 hours a week for outpatient care to persons of Indian or Alaska Native descent. (Reference: Indian Health Service Manual, Part 1, Chapter 4, Section 4B(4)(c))

Migrant Health Center means an entity (as defined under section 329(a) of the Act and in regulations at 42 CFR § 56.102(g) which either through its staff and supporting resources or through contracts or cooperative arrangements with other public or private entities provides:
(1) Primary health services;
(2) As may be appropriate for particular centers, supplemental health services necessary for the adequate support of primary health services;
(3) Referral to providers of supplemental health services and payment, as appropriate and feasible, for their provision of such services;
(4) Environmental health services, including, as may be appropriate for particular centers (as determined by the centers), the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and other environmental factors related to health;
(5) As may be appropriate for particular centers (as determined by the centers), infections and parasitic disease screening and control;
(6) As may be appropriate for particular centers, accident prevention programs, including prevention of excessive pesticide exposure;
(7) Information on the availability and proper use of health services which promote and facilitate optimal use of health services, including, if a substantial number of the individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals; and
(8) Patient case management services (including outreach, counseling, referral, and follow-up):
for migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers, within the area it serves and individuals who have previously been migratory agricultural workers but can no longer meet the definition of migratory agricultural workers because of age or disability, and members of their families within the area it serves.

(a) *Migratory agricultural worker* means an individual whose principal employment is in agriculture on a seasonal basis, who has been so employed within the last 24 months, and who establishes for the purpose of such employment a temporary abode.

(b) *Seasonal agricultural worker* means an individual whose principal employment is in agriculture on a seasonal basis and who is not a migratory agricultural worker.

Native Hawaiian Health Center means an entity (as defined in section 8 of the Native Hawaiian Health Care Act of 1988 (Pub. L. 100–579 [S. 136])—(A) which is organized under the laws of the State of Hawaii, (B) which provides or arranges for health care services through practitioners licensed by the State of Hawaii, where licensure requirements are applicable, (C) which is a public or private nonprofit entity, and (D) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services.

Nursing Facility means a facility as defined under section 1919(a) of the Social Security Act (SSA) for fiscal year (FY) 1991 and subsequent fiscal years, except for FY 1989 and 1990, such term means a "skilled nursing facility," as such term is defined in section 1861(j) of the SSA, and an "intermediate care facility," as such term is defined in section 1905(c) of such Act.

Public Hospital means a facility (as defined in regulations at 24 CFR 242.1) owned by a State or unit of local government or by an instrumentality thereof, or owned by a public benefit corporation established by a State or unit of local government or by an instrumentality thereof; and (A) Which provides community services for inpatient medical care of the sick or injured (including obstetrical care); (B) where not more than 50 percent of the total patient days during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis; (C) which is a facility licensed or regulated by the State (or, if there is no State law providing for such licensing or regulation by the State, by the municipality or other political subdivision in which the facility is located).

Rural Health Clinic means an entity (as defined under section 1861(aa)(2) of the Social Security Act and in regulations at 42 CFR 491.2) which:
(1) Is primarily engaged in furnishing to outpatients, physicians' services and services furnished by a physician assistant or by a nurse practitioner, as well as such services and supplies covered under sections 1861(s)(2)(A) and 1861(s)(10) of the Social Security Act;
(2) In the case of a facility which is not a physician-directed clinic, has an arrangement (consistent with the revisions of State and local law relative to the practice, performance, and delivery of health services) with one or more physicians under which provision is made for the periodic review by such physicians of covered services furnished by physicians assistants and nurse practitioners, the supervision and guidance by such physicians of physician assistants and nurse practitioners, the preparation by such physicians of such medical orders for care and treatment of clinic patients as may be necessary, and the availability of such physicians for such referral of and consultation for patients as is necessary and for advice and assistance in the management of medical emergencies; and, in the case of the physician-directed clinic, has one or more of its staff physicians perform the activities accomplished through such an arrangement;
(3) Maintains clinical records on all patients;
(4) Has arrangements with one or more hospitals, having agreements in

effect under section 1866 of the Act, for the referral and admission of patients requiring inpatient services or such diagnostic or other specialized services as are not available at the clinic;

(5) Has written policies, which are developed with the advice of (and with provision for review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more physician assistants or nurse practitioners, to govern those services which it furnishes;

(6) Has a physician, physician assistant, or nurse practitioner responsible for the execution of policies described in subparagraph (5) and relating to the provision of the clinic's services;

(7) Directly provides routine diagnostic services, including clinical laboratory services, as prescribed in regulations by the Secretary, and has prompt access to additional diagnostic services from facilities meeting requirements under this title;

(8) In compliance with State and Federal law, has available for administering to patients of the clinic at least such drugs and biologicals as are determined by the Secretary to be necessary for the treatment of emergency cases (as defined in regulations) and has appropriate procedures or arrangements for storing, administering, and dispensing any drugs and biologicals;

(9) Has appropriate procedures for review of utilization of clinic services to the extent that the Secretary determines to be necessary and feasible; and

(10) Meets such other requirements as the Secretary may find necessary in the interest of the health and safety of the individuals who are furnished services by the clinic.

In the **Federal Register** of November 30, 1989 (54 FR 49360), the HRSA proposed categories of facilities determined to meet the criterion of a "health facility having a critical shortage of nurses" for purposes of fulfillment of service obligations by individuals who first receive a scholarship under the SUEPN Grant Program for academic years 1989–90 and 1990–91. The Department has adopted the categories as proposed and has added these additional categories as discussed below. The Department has also decided to extend the designations of these categories of facilities to recipients who receive SUEPN Grants subsequent to academic year 1990–1991 unless it is determined that changes are warranted. Any changes in the designation of facilities determined to meet the criterion of a "health facility having a critical shortage of nurses" will be announced in the **Federal Register.**

Comments were received from 64 respondents during the 30-day comment period. They included 38 health care facilities, 24 State health care associations, and 2 national health care associations. The majority of respondents strongly supported the inclusion of "nursing facilities" as critical shortage areas for purposes of the SUEPN Grant Program, and urged HRSA to retain nursing facilities as an eligible site in the final notice.

It should be noted that a "nursing facility" is one of the eligible service sites specified and defined by the statute. As such, "nursing facilities" which meet the statutory definition will continue to be eligible sites for purposes of nurses fulfilling their service obligations under this program.

Three respondents endorsed the proposed designation of "hospitals" classified by the Medicare and Medicaid Programs as "rural hospitals," as health facilities having a critical shortage of nurses. Another respondent endorsed the designation of "disproportionate-share hospitals" as determined by the Medicare and Medicaid Programs.

Four respondents representing health care facilities expressed interest in being considered for participation in the SUEPN Grant Program. It should be noted, however, that the SUEPN Grant Program does not provide a separate process for designating shortage facilities. Rather, eligible facilities are specified by section 843 of the Act and defined in existing statutes and regulations with further designations made through this Notice process.

The HRSA has reassessed its earlier designations of critical shortage areas and concluded that IHS hospitals and related health facilities other than centers covered by the statute, veterans hospitals, and military health care facilities of the Department of Defense should be added to the list of critical shortage areas for purposes of the SUEPN Program.

The IHS health facilities are those eligible for Medicare and Medicaid reimbursement, and are operated by either the IHS or by an Indian tribe or tribal organization. These facilities include hospitals, nursing facilities, or any other facility which provides services of a type otherwise covered under a State plan (Medicaid only). Since the IHS hospitals, and other IHS health facilities have a demonstrated unmet need for health care services, including professional nursing services, HRSA is adding these facilities to the list of final designations of critical shortage areas.

As documented in the 1988 Report of the Secretary's Commission on Nursing, Volume 1, studies on the nursing shortage in the veterans hospitals were conducted in the 1960's and 1970's and again in 1984. A chronic shortage of nursing personnel still persists today. Among the factors which are responsible for the nursing shortage are the aging of the population and an increased demand for health care services. Consequently, the HRSA agrees that veterans hospitals would meet the criterion of a health facility having a critical shortage of nurses and has added this category to the final designations.

The military health care facilities of the Department of Defense (DOD) are comprised of hospitals, teaching hospitals, medical centers, community hospitals, clinics and mobile facilities for DOD beneficiaries. These facilities have demonstrated a persistent shortage of health care personnel, including specified nursing specialties. These chronic shortage problems are reflected in the 1988 Report of the Secretary's Commission on Nursing, Volume 1. The HRSA is, therefore, adding the DOD military health care facilities to the list of critical shortage areas for the purpose of the SUEPN Program.

Final Designation of Facilities Having a Critical Shortage of Nurses

The following categories of facilities have been determined to meet the criterion of a "health facility having a critical shortage of nurses" for purposes of fulfillment of service obligations by nurses who first received scholarships under the Scholarships for the Undergraduate Education of Professional Nurses Grant Program for academic years 1989–90 and 1990–91 and by subsequent recipients unless changes have been announced in the **Federal Register.**

(1) All rural hospitals, as classified by the Medicare and Medicaid Programs;

(2) All hospitals classified as "disproportionate share" hospitals. "Disproportionate share" hospitals are those that serve a significantly disproportionate number of low-income patients, as determined by the Medicare and Medicaid Programs;

(3) Home health agencies approved for Medicare and Medicaid reimbursement;

(4) State and local health departments;

(5) Indian Health Service hospitals and other Indian Health Service facilities approved for Medicare and Medicaid reimbursement.

(6) Veterans hospitals; and

(7) Military health care facilities of the Department of Defense.

These categories are in addition to the eligible service sites specified and defined in the statute. The HRSA plans to review the categories on a periodic basis to determine whether modifications for purposes of new scholarship recipients should be made to meet changing critical needs for nursing services.

This program is listed at 13.182 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented by 45 CFR part 100).

Dated: May 21, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90-12190 Filed 5-24-90; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.A. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, May 18, 1990.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. Study of HIB Infection in Northwest Tanzania—NEW—This survey of HIV (AIDS virus) in Tanzania will obtain from rural, semi-urban, and high risk population groups, information about the frequency of behaviors linked to HIV transmission. These data will provide vital parameter estimates critical to projecting future trends in the spread of the AIDS virus. Respondents: Individuals or households; Number of Respondents: 2,502; Number of Responses per Respondent: 1.05; Average Burden per Response: .37 hours; Estimated Annual Burden: 965 hours.

2. Survey of Primary Care Preventive Services Availability and Provider Practices in Community and Migrant Health Centers—NEW—A mail survey of Community and Migrant Health Centers (C/MHC) will be conducted to collect data on the preventive services offered and the providers of those services. The data will be used to develop appropriate policy and target assistance to strengthen C/MHC preventive health programs. Respondents: Non-profit institutions, small businesses or organizations; Number of Respondents: 544; Number of Responses per Respondent: 1; Average Burden per Response: .75 hours; Estimated Annual Burden: 408 hours.

3. Cognitive Research on Response Errors in Health Survey Questions—NEW—The submission is for approval of four laboratory-based studies of the congnitive processes involved in reporting various topics in health interviews. Possible survey topics include income, drug and alcohol use, mental health, pregnancy outcomes, health promotion and disease prevention, accidents and health insurance. The results will be used to develop improved questioning procedures for several surveys of the National Center for Health Statistics. Respondents: Individuals or households; Number of Respondent: 800; Number of Responses per Respondent: 7.25; Average Burden per Response: .292 hours; Estimated Annual Burden: 1,692 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, Room 3002, Washington, DC 20503.

Dated: May 21, 1990.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 90-12151 Filed 5-24-90; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on May 11, 1990.

Social Security Administration

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. Application For Parent's Insurance Benefits—0960-0012—The information collected on the form SSA-7 is used by the Social Security Administration to determine whether the applicant is entitled to benefits as the surviving parent of a deceased wage earner. The respondents are individuals who file for parent's benefits.

Number of Respondents: 1,400.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 350 hours.

OMB Desk Officer: Allison Herron

Social Security Administration

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: May 21, 1990.

R. Houseknecht,

Social Security Administration Reports Clearance.

[FR Doc. 90-12203 Filed 5-24-90; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-90-3086]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed

forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 18, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Section 8 Housing Assistance Payments Program: Supporting Data for Annual Contributions Estimates, Estimate of Total Required Annual Contributions, Requisition for Partial Payment of Annual Contributions, Voucher for Payment of Annual Contributions

. . . . .

Office: Housing.

Description of the need for the information and its proposed use: These forms are used by Public Housing Agencies to estimate their annual contributions requirement, requisition funds, and to report actual receipt and expenditures to assure that project costs do not exceed the amount authorized in the Annual Contributions Contract.

Form Number: HUD–52663, HUD–52672, HUD–52673, and HUD–52681.

Respondents: State or Local Governments.

Frequency of submission: Quarterly and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–52672	6,000		1		1.5		9,000
HUD–52673	6,000		1		1.5		9,000
HUD–52663	6,000		4		1.0		24,000
HUD–52681	6,000		1		3.0		18,000

Total estimated burden hours: 60,000.

Status: Extension.

Contact: Mary Conway, HUD, (202) 755–6664; Scott Jacobs, OMB, (202) 395–6880.

Date: May 18, 1990.

[FR Doc. 90–12174 Filed 5–24–90; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–90–3087]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 16, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Construction Complaint

Office: Housing

Description of the need for the information and its proposed use: The form will provide orderly processing of homeowner complaint items that the builder is responsible to correct and will determine eligibility for financial assistance. It will also identify builders who are not conforming to applicable standards.

Form number: HUD–92446

Respondents: Individuals or Households

Frequency of submission: On Occasion

Reporting burden:

	Number of Respondents	x	Frequency of Response	x	Hours per Response	=	Burden Hours
HUD-92556	4,600		1		.5		2,300

Total estimated burden hours: 2,300
Status: Reinstatement
Contact: Kenneth Crandall, HUD, (202) 755–6720 Scott Jacobs, OMB, (202) 395–6880

Date: May 16, 1990

[FR Doc. 90–12175 Filed 5–24–90; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–90–3088]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone number of any agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 21, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Certificate of Completion—Consolidated
Office: Public and Indian Housing
Description of the need for the information and its proposed use: The certificate transmits information concerning the completion of construction contracts so the Department may authorize payment of funds due the contractor or developer. The information is supplied by the project architect and assembled and forwarded by the PHA.
Form Number: None
Respondents: State or Local Governments and Non-Profit Institutions
Frequency of Sumission: On Occasion
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Annual Reporting	240		1		1.5		359
Recordkeeping	240		1		.25		59

Total estimated Burden Hours: 418
Status: Reinstatement
Contact: William Thorson, HUD (202 755–6460, Scott Jacobs, OMB, (202) 396–6880

Dated: May 21, 1990.

[FR Doc. 90–12176 Filed 5–24–90; 8:45 am]
BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–90–1917; FR 2606–N–73]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: May 25, 1990.

ADDRESSES: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20401; telephone (202) 755–6300; TDD number for the hearing- and speech-impaired (202) 755–5965. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by

Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of Decmeber 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Divison of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary faciliities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Army:* HQ–DA, Attn: DAEN–ZCI–P–Robert Conte; room 1E671 Pentagon, Washington, DC 20360–2600; (202) 693–4583; *U.S. Air Force:* H. L. Lovejoy, Bolling AFB, HQ–USAF/LEER, Washington, DC 20332–5000; (202) 767–4191. (These are not toll-free numbers.)

Dated: May 17, 1990.

Paul Roitman Bardack,

Deputy Assistant Secretary for Program Policy Development and Evaluation.

Suitable Buildings (by State)

Arizona

Bldg. S–305
Yuma Proving Ground
Yuma, AZ, Co: Yuma/La Paz
Location: Main Administrative Area—Near the intersection of 2nd street and C street.
Landholding Agency: Army
Property Number: 219013924
Status: Underutilized
Comment: 5457 sq. ft.; 2 story wood and stucco frame; 2nd floor underutilized.

Bldg. S–303
Yuma Proving Ground
Yuma, AZ, Co: Yuma/La Paz
Location: Main Administrative Area—Near the intersection of 2nd street and C street.
Landholding Agency: Army
Property Number: 219013925
Status: Underutilized
Comment: 5439 sq. ft.; 2 story wood and stucco frame; underutilized portion is occupied by Alcohol and Drug Abuse Prevention offices.

Bldg. 506
Yuma Proving Ground
Yuma, AZ, Co: Yuma/La Paz
Location: Main Administrative Area—Near the intersection of 2nd street and D street.
Landholding Agency: Army
Property Number: 219013926
Status: Underutilized
Comment: 91247 sq. ft.; 3 story concrete block; intermittent use by military troops; possible asbestos in floor tiles.

Bldg. 538
Yuma Proving Ground
Yuma, AZ, Co: Yuma/La Paz
Location: Main Administrative Area—Near intersection of 5th and F streets.
Landholding Agency: Army
Property Number: 219013927
Status: Underutilized
Comment: 5040 sq. ft.; 1 story concrete block; most recent use—Guest house; intermittent use by military personnel.

Bldg. S–611
Yuma Proving Ground
Yuma, AZ, Co: Yuma/La Paz
Location: Main Administrative Area—Near intersection of 5th and D streets.
Landholding Agency: Army
Property Number: 219013928
Status: Unutilized
Comment: 1840 sq. ft.; 1 story wood and stucco frame; most recent use—child care center.

Bldg. 1004
Yuma Proving Ground
Yuma, AZ, Co: Yuma/La Paz
Location: Main Administrative Area—Near the intersection of 5th street and Barranca Road.
Landholding Agency: Army
Property Number: 219013929
Status: Underutilized
Comment: 22886 sq. ft.; 3 story concrete block; intermittent use by civilian and military personnel; most recent use—Bachelors Officers Quarters.

Bldg. S–1005
Yuma Proving Ground
Yuma, AZ, Co: Yuma/La Paz
Location: Main Administrative Area—Near the intersection of 7th and F Streets.
Landholding Agency: Army
Property Number: 219013930
Status: Unutilized
Comment: 176 sq. ft.; 1 story wood and stucco frame; most recent use—cold storage and refrigeration facility.

Bldg. S–105
Yuma Proving Ground
Yuma, AZ, Co: Yuma/La Paz
Location: Main Administrative Area—Between A and C streets, north of 2nd street.
Landholding Agency: Army
Property Number: 219013959
Status: Underutilized
Comment: 8910 sq. ft.; 1 story metal frame; possible asbestos; most recent use—storage.

Bldg. S–304
Yuma Proving Ground
Yuma, AZ, Co: Yuma/La Paz
Location: Main Administrative Area—Between C and D streets, south of 1st street.
Landholding Agency: Army
Property Number: 219013960
Status: Unutilized
Comment: 4054 sq. ft.; 2 story wood and stucco frame; possible asbestos; needs rehab; most recent use—Administrative offices.

Bldg. S–1000
Yuma Proving Ground
Yuma, AZ, Co: Yuma/La Paz
Location: Main Administrative Area—near intersection of 7th and F streets.

Landholding Agency: Army
Property Number: 219013965
Status: Underutilized
Comment: 2943 sq. ft; 2 story wood and stucco frame; underutilized portion in process of renovation; possible asbestos; most recent use—Administrative offices.

South Dakota

Bldg. 8479E, Skyway Housing
Ellsworth Air Force Base
56 Front Street
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189010760
Status: Unutilized
Comment: 960 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8475H, Skyway Housing
Ellsworth Air Force Base
74 Front Street
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189010761
Status: Unutilized
Comment: 1170 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8475D, Skyway Housing
Ellsworth Air Force Base
78 Front Street
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189010762
Status: Unutilized
Comment: 960 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8433C, Skyway Housing
Ellsworth Air Force Base
302 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189010763
Status: Unutilized
Comment: 963 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8440F, Skyway Housing
Ellsworth Air Force Base
226 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189010764
Status: Unutilized
Comment: 1213 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8475F, Skyway Housing
Ellsworth Air Force Base
76 Front Street
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189010765
Status: Unutilized
Comment: 960 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8448C, Skyway Housing
Ellsworth Air Force Base
223 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189010766
Status: Unutilized
Comment: 960 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8454A, Skyway Housing
Ellsworth Air Force Base
299 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189010767
Status: Unutilized
Comment: 1213 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8474D, Skyway Housing
Ellsworth Air Force Base
82 Front Street
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189010768
Status: Unutilized
Comment: 1170 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8481A, Skyway Housing
Ellsworth Air Force Base
52 Front Street
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189010769
Status: Unutilized
Comment: 1170 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8451C, Skyway Housing
Ellsworth Air Force Base
275 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189010770
Status: Unutilized
Comment: 1120 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8454C, Skyway Housing
Ellsworth Air Force Base
303 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189010771
Status: Unutilized
Comment: 960 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8475B, Skyway Housing
Ellsworth Air Force Base
80 Front Street
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189010772
Status: Unutilized
Comment: 1114 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8478D, Skyway Housing
Ellsworth Air Force Base
61 Front Street
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189010773
Status: Unutilized
Comment: 1170 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8477D, Skyway Housing
Ellsworth Air Force Base
70 Front Street
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189010774
Status: Unutilized
Comment: 960 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Universe of Properties:

Total = 110
Suitable = 25
Suitable Buildings = 25
Suitable Land = 0
Unsuitable = 85
Unsuitable Buildings = 85
Unsuitable Land = 0
Number of Resubmissions = 0

[FR Doc. 90–12010 Filed 5–24–90; 8:45 am]
BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–610–00–4111–.02]

Public Meetings to Solicit Comments on BLM Policy Concerning Suspension of Stripper Well Production

AGENCY: Bureau of land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) will conduct three public meetings to receive comments on: (1) Whether economic conditions are such that BLM policy concerning the suspension of stripper well production should continue or be terminated, and (2) what criteria should be used, certification required, bonding amounts established, and/or tests required to ensure that the affected shut-in wells will not pose an evironmental risk or put the Federal Government at significant risk as to potential liability for unplugged wells.

The public is also informed that the BLM is considering establishing a requirement for operators to test the integrity of the well casing in order to ensure that the affected shut-in wells

are not left in a condition which would pose an environmental risk. The test would be conducted at least once every three years and consist of holding a minimum of 1000 psi or 70 percent of the internal yield of the casing being tested, whichever is less. The test pressure would be held for a minimum of 30 minutes, with less than a 10 percent decline. If the well fails the test, appropriate corrective action would be required.

Individuals or company representatives who wish to speak at the meetings must notify the appropriate District Manager at least seven days prior to the meeting date. Persons will be allowed up to 15 minutes to make their oral statement. Written comments will also be accepted at the meetings or by mail no later than August 15, 1990. Written comments should be directed to any of the three District Offices lsited. Those parties planning to attend the meetings should contact the appropriate District Office prior to the meeting date in order to confirm the meeting location.

DATES: The meetings will be held in Roswell, New Mexico on July 17, 1990; Casper, Wyoming on July 19, 1990; and Bakersfield, California on July 24, 1990.

ADDRESSES:

Roswell District Office, 1717 W. Second Street, Featherstone Farms Bldg., P.O. Box 1397, Roswell, New Mexico 88201–1397, Telephone: (505) 622–9042

Casper District Office, 1701 East E. Street, Casper, Wyoming 82601, Telephone: (307) 261–5101

Bakersfield District Office, Federal Bldg., Rm. 311, 800 Truxtun Avenue, Bakersfield, California 93301–4782, Telephone: (805) 861–4191

FOR FURTHER INFORMATION CONTACT: Rudy Baier, Bureau of Land Management, (202) 653–2153.

Dean Stepanek,

Deputy Director, Bureau of Land Management.

[FR Doc. 90–12079 Filed 5–24–90; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

Availability of a Draft Environmental Impact Statement on the Northern Montezuma Wetlands Project

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This Notice advises the public that the Draft Environmental Impact Statement (DEIS) on the Northern Montezuma Wetlands Project in Cayuga, Seneca, and Wayne Counties, New York is available for public review. Comments and suggestions are requested. The U.S. Fish Wildlife Service (FWS) and the New York State Department of Environmental Conservation (NYDEC) propose to purchase real property and real property interests on approximately 30,050 acres of private land in the Montezuma wetlands complex to expand the Montezuma National Wildlife Refuge and the State Howland Island, Crusoe Lake, and Cayuga Lake Wildlife Management Areas. These lands will be actively managed for wetland protection, creation, restoration, and enhancement for migratory waterfowl and other wetland-dependent species of wildlife.

DATES: Written comments are requested by August 1, 1990. Public meetings will be held as follows: Seneca County, New York on June 19, 1990 at 7 p.m. at the Seneca County Office Building, Waterloo, New York; Cayuga County, New York, on June 20, 1990, at 7 p.m. at the Port Byron High School, Port Byron, New York; Wayne County, New York, June 21, 1990 at 7 p.m. at the Savannah Elementary School, Savannah, New York.

ADDRESSES: Comments should be addressed to Ronald E. Lambertson, Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158.

FOR FURTHER INFORMATION CONTACT: Mr. Paul F. Casey, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner Massachusetts 02158, (617) 965–5100, extension 410.

Individuals wishing copies of the DEIS should immediately contact the above contact person. Copies have been sent to all agencies and organizations who participated in the scoping process. Copies will be available for examination at FWS office in Newton, Massachusetts; NYDEC offices in Avon, Cortland, and Delmar, New York; FWS and NYDEC offices at the Montezuma NWR in Seneca Falls, New York; and the Town Clerk's offices in the project area.

SUPPLEMENTARY INFORMATION: This Draft Environmental Impact Statement addresses the acquisition and management of the Northern Montezuma Wetlands Project area. It poses five alternative sets of actions, and discusses how each would address the objectives of the FWS and NYDEC; it describes the petinent environmental characteristics of the area and it projects how the environmental would be affected with the implementation of each of these alternatives.

The No Action alternative would involve only the application of legislatively mandated state and federal statutes and regulations which protect wetlands in the project area. There would be no additional purchases of land by the FWS or the NYDEC and no wetland restoration, creation or enhancement other than on exisitng State and Federal lands.

The Proposed Action involves FWS and the NYDEC purchasing real property or real property interests on approximately 36,050 acres of land, exclusive of existing state and federal land. These land would be managed for wildlife, public recreation, and educational uses. The Proposed Action would consolidate and tie together existing federal, state, and private lands into a cooprative effort to protect, restore, and enhance wetlands and associated upland habitats specifically for waterfowl and wetland-dependent wildlife. Compatible public recreational uses on lands acquired would be permitted in accordance with adopted public use regulations for these categories of land areas, and educational opportunities for research and demonstration areas would be enhanced.

Another alternative presented in the DEIS involves acquiring an area larger than the Proposed Action, including additional wetlands in the Montezuma Marsh Complex and associated uplands, totalling approximately 50,979 acres, exclusive of existing state and federal land. Elements of land purchases and management would be identical to those described for the Proposed Action, but would be implemented on a large scale. Correspondingly, the benefits and impacts of this alternative would also be greater than that of the Proposed Action.

An additional alternative involves the acquisition and management of wetlands within the project boundary and a reduced upland management zone. This alternative is essentially a wetland preservation alternative with limited management and no restoration or creation of wetland habitats. Remnant wetlands that now exist in the Montezuma March Complex would be purchased in the same manner as described in the Proposed Action, along with a very narrow strip of upland adjacent to these wetlands. The upland would provide limited administrative access and a small buffer from adjacent land uses. This alternative includes an area of 11,200 acres exclusive of existing state and federal lands. The benefits and impacts of this alternative would correspondingly be less than those of the Proposed Action, and substantially

less than would accrue from the largest alternative.

The non-jurisdictional alternative includes participation of only the private sector in implementing conservation measures and management practices to meet the stated purposes of this project. This alternative does not involve the NYDEC or the FWS, but may include private individuals and organizations such as The Nature Conservancy, Ducks Unlimited, Audubon Society, and others.

Other alternatives are analyzed in the DEIS and dismissed as not being reasonable, practical, or viable.

Dated: May 17, 1990.

Ronald E. Lambertson,

Regional Director.

[FR Doc. 90-12155 Filed 5-24-90; 8:45 am]

BILLING CODE 4310-55-M

Office of Surface Mining Reclamation and Enforcement

[FES 90-12]

Availability of Final Environmental Impact Statement

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Notice of availability of a final environmental impact statement (EIS) for the proposed Permit Application, Black Mesa-Kayenta Mine, Navajo and Hopi Indian Reservations, Arizona, OSM-EIS-25.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is making available a final environmental impact statement (EIS) on the proposed permit application and mining plan for the existing Black Mesa-Kayenta mine. The EIS has been prepared to assist the Department of the Interior in making a decision on the permit application and mining plan submitted by Peabody Coal Company (PCC) for its existing surface coal mine, located approximately 125 miles northeast of Flagstaff, Arizona, and 10 miles southwest of Kayenta, Arizona.

ADDRESSES: Copies of the final EIS may be obtained from Peter A. Rutledge, Chief, Federal Programs Division, Office of Surface Mining Reclamation and Enforcement, Western Field Operations, Brooks Towers, Second floor, 1020-15th Street, Denver, Colorado 80202, Attention: Jerry D. Gavette.

FOR FURTHER INFORMATION CONTACT: Jerry D. Gavette, Senior Project Manager (telephone: 303-844-2938) at the Denver, Colorado, location given under "**ADDRESSES.**"

SUPPLEMENTARY INFORMATION: The Black Mesa-Kayenta mine, located approximately 12 miles northeast of Flagstaff, Arizona, and 10 miles southwest of Kayenta, Arizona, consists of two separate but adjacent existing mining operations—the Black Mesa mine, which produces approximately 5 million tons of coal per year, and the Kayenta mine, which produces approximately 7 million tons of coal per year.

The proposed life-of-operations areas would cover 62,753 acres of Hopi and Navajo tribal lands. PCC proposes to disturb 13,618 acres of land within the proposed life-of-operations area. PCC plans to produce 292 million tons of coal through the year 2011 and conduct reclamation related activities through the year 2023.

OSM has previously issued PCC two permits to mine coal at the mining complex. Between 1970 and December 31, 1985, mining activities disturbed approximately 4,480 acres within these two permit areas. The proposed operations would (1) Encompass the previously issued permits under one permit, and (2) disturb an additional 13,618 acres through the year 2023. The Federal permit and mining plan would (1) Authorize PCC to continue mining for five years with the right of renewal thereafter within the life-of-operations area, and (2) authorize PCC to uprade a number of existing mining-related facilities to meet current Federal performance standards.

Two alternatives are evaluated in the EIS. These include (1) Approval of the proposed permit application package and mining plan with conditions; and (2) disapproval of the proposed permit application package and mining plan. OSM has identified "approval of the proposed permit application package and mining plan with conditions" as the preferred alternative.

Dated: May 1, 1990.

Jonathan P. Deason,

Office of Environmental Affairs.

[FR Doc. 90-11898 Filed 5-24-90; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-461 (Preliminary)]

Gray Portland Cement and Cement Clinker From Japan

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-461 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatend with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of gray portland cement and cement clinker, provided for in subheadings 2523.10.00, 2523.29.00, and 2523.90.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 511.14 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 2, 1990.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATES: May 18, 1990.

FOR FURTHER INFORMATION CONTACT: Brian Walters (202-252-1198), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 18, 1990, by the Ad Hoc Committee of Southern California Producers of Gray Portland Cement, of Washington, DC.

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in

the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry

Public service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on June 8, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Brian Walters (202–252–1198) not later than June 6, 1990, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions

Any person may submit to the Commission on or before June 12, 1990, a written brief containing information and arguments pertinent to the subjct matter of the investigation, as provided in section 207.15 of the Commission's rules (19 CFR 207.15). If briefs contain business proprietary information, a nonbusiness proprietary version is due June 13, 1990. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than June 15, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs. A nonbusiness proprietary version of such additional comments is due June 18, 1990.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: May 21, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–12185 Filed 5–24–90; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Activities Under OMB Review

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Darlene Proctor (202) 275–7233. Comments regarding this information collection should be addressed to Darlene Proctor, Interstate Commerce Commission, room 2203, Washington, DC 20423 and to Wayne Brough, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

Type of Clearance: Reinstatement of a previously approved collection for which approval has expired.
Bureau/Office: Office of Public Assistance.
Title of Form: Identification of Minority and Female-Owned Motor Carriers.
OMB Form Number: 3120–0050.
Agency Form No.: OPA 81–1.
Frequency: Annually.
No. of Respondents: 325.
Total Burden Hours: 17.

Noreta R. McGee,

Secretary.

[FR Doc. 90–12211 Filed 5–24–90; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31673]

SPCSL Corp.—Trackage Rights Exemption—The Belt Railway Co. of Chicago

The Belt Railway Company of Chicago (BRC) has agreed to grant overhead trackage rights to SPCSL Corp. (SPCSL) over its line (1) between Hawthorne Interlocking Plant at 31st Street, in Chicago, IL, and the BRC connection to the CSX intermodal terminal in Bedford Park, IL (BRC–CSX Bedford Park connection), and (2) between the BRC connection with the Indiana Harbor Belt Railroad (IHB) [1] in Argo, IL, and the BRC–CSX Bedford Park connection. The trackage rights became effective on May 14, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a

[1] SPCSL trackage rights over the IHB are the subject of a notice of exemption in Finance Docket No. 31674.

petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, SPCSL Corp., One Market Plaza, room 846, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: May 16, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-12109 Filed 5-24-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31674]

SPCSL Corp.—Trackage Rights Exemption—Indiana Harbor Belt Railroad Co.

Indiana Harbor Belt Railroad (IHB) has agreed to grant overhead trackage rights to SPCSL Corp. (SPCSL) over its line between IHB's connections with the SPCSL and Grand Trunk Western Railroad Company (GTW) at GTW Tower in Blue Island, IL, and IHB's connection with Soo Line Railroad Company (Soo) (at Bensenville, IL, allowing SPCSL to interchange: (1) With the Chicago and North Western Transportation Company at its Proviso Yard; (2) with the Belt Railway Company of Chicago (BRC) [1] at its Clearing Yard; (3) with Soo at its Bensenville Yard; (4) with GTW at its Blue Island Yard; and (5) with the Burlington Northern Railroad Company at its Cicero Yard. The trackage rights became effective on May 14, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, SPCSL Corp., One Market Plaza, room 846, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

[1] SPCSL trackage rights over the BRC are the subject of a notice of exemption in Finance Docket No. 31673.

Dated: May 16, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 901-2110 Filed 5-24-90; 8:45 am]

BILLING CODE 7035-01-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the Ariel Rios Federal Building, located at 12th Street, NW., between Constitution and Pennsylvania Avenues in Washington, DC on June 26 and 27, 1990. The meeting will be in room 3000 beginning at 8:30 a.m. each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in title 5 U.S. Code, section 1242(a)(1)(B) and to review the May 1990 Joint Board examinations in order to make recommendations relative thereto, including minimum acceptable pass scores. A determination as required by section (d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board examinations and review of the May 1990 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

In addition to the above, there will be discussion of the following: (1) Topics for inclusion on the examination program for the November 1990 pension actuarial examination and the May 1991 basic actuarial examinations; (2) a decision as to whether reference material should be furnished candidates for assistance in the examinations and, if so, the type of such material; and (3) a discussion as to whether numerical analysis should continue to be included as a subject in academic courses for purposes of obtaining partial credit for the basic actuarial knowledge of eligibility for enrollment through a degree in actuarial mathematics. The portion of the meeting dealing with the discussion of these topics will be open to the public as space is available. Such discussion will commence at 1:30 p.m. on June 26 and will continue until the discussion is finished but not beyond 3:30 p.m.

Time permitting, after discussion by Committee members, interested persons may make statements germane to these subjects. Persons wishing to make oral statements are requested to notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Advisory Committee by sending it to the Committee Management Officer. Notifications and statements must be received no later than June 18, 1990 by Mr. Leslie S. Shapiro, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, DC 20220.

Dated: May 21, 1990.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 90-12142 Filed 5-24-90; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 21, 1990 a proposed Consent Decree in *United States* versus *A.N. Reitzloff Co., et al.*, Civil Action No. 90-CV-71414 was lodged with the United States District Court for the Eastern District of Michigan. The proposed Consent Decree concerns the hazardous waste site known as the Liquid Disposal, Incorporated ("LDI") Site, located at 3901 Hamlin Road in Shelby Township, Macomb County, Michigan. The Consent Decree sets forth a settlement with a group of 115 *de minimis* Defendants. Under the terms of the Consent Decree, the United States will recover approximately $1,100,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States*

versus *A.N. Reitzloff Co., et al.*, D.J. Ref. 90–11–2–220B.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Michigan, Office of the United States Attorney, 231 West Lafayette, Detroit, Michigan 48226 and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. The proposed Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please include a check in the amount of $14.70 for the Consent Decree, Appendices and Signature Pages or $3.30 for the Consent Decree and Appendices, (10 cents per page for reproduction costs) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90–12160 Filed 5–24–90; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office docuemnt entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Kentucky, KY90–7 (Jan. 5, 1990).	p. 321, pp. 322–325
Pennsylvania:	
PA90–3 (Jan. 5, 1990)	p. 935
PA90–8 (Jan. 5, 1990)	p. 987, pp. 988–990
PA90–9 (Jan. 5, 1990)	p. 997, pp. 998–1000
PA90–10 (Jan. 5, 1990)	p. 1005, pp. 1006–1008
PA90–14 (Jan. 5, 1990)	p. 1019, pp.1020–1023
PA90–19 (Jan. 5, 1990)	p. 1049, pp. 1050, 1052, 1053

Volume II

Iowa:	
IA90–12 (Jan. 5, 1990)	p. 56c, p. 56d
IA90–14 (Jan. 5, 1990)	p. 58a, p. 58b
Illinois:	
IL90–1 (Jan. 5, 1990)	p. 59, p. 63
IL90–2 (Jan. 5, 1990)	p. 87, p. 89
IL90–7 (Jan. 5, 1990)	p. 127, p. 128
IL90–8 (Jan. 5, 1990)	p. 135, p. 136
IL90–9 (Jan. 5, 1990)	p. 143, p. 144
IL90–11 (Jan. 5, 1990)	p. 153, p. 154
Missouri:	
MO90–3 (Jan. 5, 1990)	p. 659, pp. 660–662
MO90–5 (Jan. 5, 1990)	p. 671, p. 672
MO90–6 (Jan. 5, 1990)	p. 677, pp. 678–684
MO90–7 (Jan. 5, 1990)	p. 685, p. 686
Ohio:	
OH90–2 (Jan. 5, 1990)	p. 791, pp. 798, 804, 807
OH90–29 (Jan. 5, 1990)	p. 873, pp. 885, 899

Volume III

California, CA90–4 (Jan. 5, 1990).	p. 71, pp. 72–83, 86, 90

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Governmental Depository

Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 18th day of May, 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90–12055 Filed 5–24–90; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

NRC Committee To Review the Severe Accident Risks Report; Meeting

The NRC Committee to Review the Severe Accident Risks Report (NUREG–1150) will hold its final meeting on June 13, 14 and, if necessary, June 15, 1990 at the Gaithersburg Marriott Hotel, 620 Lakeforest Blvd., Gaithersburg, MD. Notice of the establishment of this committee was published in the **Federal Register** on June 21, 1989. (54 FR 26124).

The purpose of this special committee is to provide the NRC with a technical peer review of the adequacy of the methods, insights, analyses and conclusions set forth in the April 1989 draft of NUREG–1150 and, in addition, to provide answers to particular questions posed by the Commission and set forth in the referenced **Federal Register** notice.

At this meeting, the Committee intends to review the technical contents of its final report to the Commission and to develop a specific set of conclusions and recommendations for inclusion in that report.

This meeting will be open to the public and any member of the public wishing to file a written statement with the Committee may send the statement to Mr. Charles B. Bartlett, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC, 20555.

Further information regarding this meeting can be obtained by calling Mr. Bartlett at 301–492–3604.

Dated: May 21, 1990.

John C. Hoyle,

Federal Advisory Committee, Management Officer.

[FR Doc. 90–12201 Filed 5–24–90; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–28028; File No. DTC–90–06]

Self-Regulatory Organizations; Proposed Rule Change by The Depository Trust Co., Relating to Eligibility of Rule 144A Securities at The Depository Trust Co.

May 18, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on May 9, 1990, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes a procedure to make eligible for DTC's book-entry delivery and other services those domestic and foreign issues for which transactions may be exempt from the registration and prospectus delivery requirements of the Securities Act of 1933, as amended, pursuant to rule 144A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C), below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC intends to make eligible for DTC's book-entry delivery and other services those domestic and foreign issues for which transactions may be exempt from registration under rule 144A. The purpose of the proposed rule change is to clarify DTC's eligiblity criteria for such issues.

The proposed rule change is consistent with the requirements of section 17A(b)(3)(A) the Act in that it promotes efficiencies in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

DTC has not sought or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (1) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (2) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communicatins relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, at the address above. Copies of such filing

will also be available for inspection and copying at the principal office of DTC. All submissions should refer to file number SR–DTC–90–06 and should be submitted by June 18, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–12208 Filed 5–24–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–28031; File No. SR–PSE–90–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Trading of Warrants on the Financial News Composite Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 2, 1990, the Pacific Stock Exchange ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to list and trade warrants based on the Financial News Composite Index ("FNCI").[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C), below, of the most significant aspects of such statements.

[1] The Commission previously has expressed an interest in determining the impact of new index products on U.S. financial markets. *See* Securities Exchange Act Release No. 26152 (October 3, 1988), 53 FR 39832 (October 12, 1988) (order approving amendments to the American Stock Exchange rules permitting the listing of index warrants based on established market indexes).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The FNCI is a recognized, price-weighted stock index based on the prices of 30 stocks and is designed to track the overall stock market. The components of the FNCI are highly capitalized stocks that trade on the New York and American Stock Exchanges, and the National Assocation of Securities Dealers' National Market System.

Such warrant issues will conform to PSE listing guidelines as proposed in proposed rule filing SR–PSE–90–11.[2] The proposed guidelines provide that (1) The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements specified in PSE listing requirements; (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

FNCI index warrants will be direct obligations of their issuer subject to cash settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a put option would receive payment in U.S. dollars to the extent that the FNCI has declined below a pre-stated cash-settlement value. Conversely, holders of a warrant structured as a call option would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the FNCI has increased above the pre-stated cash-settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

In SR–PSE–90–11, the PSE proposed suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. The proposed amendment to Exchange Rule X, section 18(c), will make the options suitability standards applicable to recommendations regarding index warrants. The Exchange also recommends that index warrants be sold only to options-approved accounts. The proposed amendment to Exchange Rule X, section 18(e)(1), will require a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day the order is entered. In addition, the PSE, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the FNCI.

The PSE believes that there is an adequate mechanism for the obtaining of surveillance information with respect to the FNCI's component stocks since options on the FNCI are currently traded on the Exchange.

The PSE believes that the proposed rule change is consistent with the requirements of the Act, and in particular, section 6(b)(5), as the warrants are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the

[2] As of the date of this release, SR–PSE–90–11 has not been approved by the Commission. Approval of SR–PSE–90–11 must occur before approval of the proposal to list warrants based on the FNCI.

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 18, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Dated: May 21, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-12209 Filed 5-24-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17500; 811-1075]

Advance Growth Capital Corporation; Notice of Application

May 21, 1990.

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

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Advance Growth Capital Corporation ("Applicant").

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N-8F was filed on October 2, 1989, and was amended and restated on December 11, 1989, February 20, 1990, and April 12, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 15, 1990, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notifed of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 397 Downing Road, Riverside, Illinois 60546.

FOR FURTHER INFORMATION CONTACT: Robert A. Robertson, Staff Attorney, at (202) 504-2283 or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

APPLICANT'S REPRESENTATIONS

1. Applicant is an Illinois corporation and an investment company under the 1940 Act. According to SEC records, on September 14, 1966, Applicant filed a registration statement on Form N-5 under the Securities Act of 1933, and this registration statement was declared effective on October 21, 1967.

2. Prior to Applicant's October 25, 1979 shareholders meeting, a proxy statement dated September 26, 1979, concerning, among other things, the orderly liquidation of Applicant was distributed on or about September 26, 1979 to all of Applicant's shareholders of record as of that date. Preliminary copies of the proxy materials were filed with the SEC on September 26, 1979.

3. On October 25, 1979, Applicant's shareholders approved a plan (the "Plan") submitted by Applicant's Board of Directors for the orderly liquidation of Applicant over a period of several years.

4. On May 18, 1989, Applicant's Board of Directors, pursuant to the Plan, approved a final liquidating distribution to Applicant's shareholders on June 15, 1989.

5. As of June 15, 1989, there were outstanding 438,775 shares of Applicant's common stock, $1.00 par value. This stocks' net asset value per share at that date was $0.365591, with an aggregate value of $160,412.19.

6. Applicant has not within the past eighteen months transferred any of its assets to a separate trust, the beneficiaries of which were or are shareholders of the Applicant.

7. As of the filing of the application, Applicant had no outstanding debts or liabilities, was not a party to any litigation or administrative proceeding, had no securityholders, and was not engaged in, nor intends to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-12210 Filed 5-24-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17499; 811-4599]

Trident Income Shares, Inc.; Application for Deregistration

May 18, 1990.

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

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Trident Income Shares, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on May 2, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 13, 1990 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One Battery Park Plaza, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, or Jeremy N. Rubenstein,

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[3] 17 CFR 200.30-3(a)(12) (1990).

Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

APPLICANT'S REPRESENTATIONS:

1. Applicant was organized as a Maryland corporation and is an open-ended diversified management investment company registered under the Act. On March 3, 1986, applicant filed a notification of registration on Form N–5 pursuant to section 8(a) of the Act. On May 26, 1986, applicant filed a registration statement pursuant to section 8(b) of the Act on Form N–1A. Applicant never filed a registration statement under the Securities Act of 1933, nor did it make a public offering of its securities.

2. At a meeting held on January 11, 1990, applicant's board of directors adopted a plan of liquidation and dissolution. On April 5, 1990, applicant's shareholders unanimously approved the plan. Accordingly, on April 27, 1990, applicant distributed to its stockholders $9.42 in cash per share by check or wire transfer, which amount was the net asset value of applicant's shares. Applicant was dissolved on April 30, 1990 pursuant to applicable state law. The expenses incurred in connection with the liquidation and dissolution were borne by applicant.

4. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–12162 Filed 5–24–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1214]

The Advisory Committee on International Communications and Information Policy; Meeting

The Department of State announces that the Advisory Committee on International Communications and Information Policy will hold an open meeting on May 30, 1990 (depending on the availability of a Soviet, presidential summit, official), from 9:30 a.m. to 11 p.m. in Room 1207, Department of State, 2201 C Street, NW., Washington, DC.

The Advisory Committee deals with issues of international communications and information policy, especially as the issues involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy, and the activities of international organizations with regard to the development of communications and information policy.

This meeting will deal specifically with liberalization of the Soviet economy, especially policies and prospects in regard to modernization and development of telecommunications and broadcasting in the Soviet Union.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Arrangements must be made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise Mr. Bohdan Bulawka, Department of State, Washington, DC; telephone 647–5791. All attendees must use the C Street entrance to the building.

Dated: May 16, 1990.

Bohdan Bulawka,

Executive Director, Advisory Committee on International Communications & Information Policy.

[FR Doc. 12097 Filed 5–24–90; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1211]

Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet June 7, 1990 at NASA Headquarters, 600 Independence Avenue SW., Washington, DC in room 521J commencing at 10 a.m.

Study Group 2 deals with matters relating primarily to the space operations and research services and radioastronomy. The purpose of the meeting is to continue U.S. preparations for participation in newly formed international working parties and particularly for the 1992 World Administrative Radio Conference.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Mr. John Postelle, ARC Professional Services Group, Herndon, Virginia 22070, phone (703) 834–5607.

Dated: May 10, 1990.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 90–12153 Filed 5–24–90; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1212]

National Committee of the U.S. Organization for the International Radio Consultative Committee; Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet at 9:30 a.m., June 27, 1990 in room 1105, Department of State, 2201 C Street, NW, Washington, DC.

The United States Organization, and in particular the National Committee as its steering body, assists and advises the Department on matters concerning international CCIR activities. The purpose of the meeting is to: (a) Review results of the Plenary Assembly held May 21–June 1, 1990, in Dusseldorf; (b) consider the need for changes in the national orgnaization; and (c) discuss the work program for the upcoming study cycle.

Members of the public may attend and join in discussions subject to instructions of the Chairman and to available seating. Participants must indicate their desire to attend in advance by contacing the office of Warren Richards, Department of State, Washington, DC; phone (202) 647–2593, telefax (202) 647–0158, to pre-register. Entrance to the building is controlled and attendees must use the main entrance at 22nd and C Streets.

Dated: May 11, 1990.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 90–12154 Filed 5–24–90; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 120-XX on Crew Qualification and Pilot Training Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Proposed Advisory Circular (AC) 120-XX, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed AC pertaining to crew qualification and pilot training requirements for transport category aircraft operated under part 121 of the Federal Aviation Regulations. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before July 9, 1990.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Aircraft Evaluation Group Standards Staff, ANM-271, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, WA 98168. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Judy M. Golder, ANM-271, at the address above, telephone (206) 431-2273.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under "**FOR FURTHER INFORMATION CONTACT.**" Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 120-XX and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Flight Standards Division Aircraft Evaluation Group Standards Staff before issuing the final AC.

Background

The proposed AC sets forth acceptable means of compliance with Federal Aviation Regulations (FAR) regarding qualification and type rating of flightcrew members operating under part 121 of the FAR. The AC describes necessary revisions and enhancements to the crew qualification process to address uniform, systematic, timely, and comprehensive application of pertinent FAR in a changing and increasingly complex air carrier operating environment. The guidance also provides a common method for industry and FAA to describe, evaluate, and approve particular programs.

Issued in Washington, DC, on May 17, 1990.

D.C. Beaudette,

Director, Flight Standards Service.

[FR Doc. 90-12216 Filed 5-24-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

May 18, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Customer Satisfaction Focus Group Interviews.

Description: These focus groups are being conducted to help the Service fulfill its responsibilities under OMB Circular A-132. The data collected will be used to evaluate the performance of IRS Service centers during the 1989 filing season and to initiate recommendations for changes and improvments.

Respondents: Individuals or households, Small businesses or organizations

Estimated Number of Responses: 1,000.

Estimated Burden Hours Per Respondent:

Telephone Interviews: 5 minutes.

Focus Group Sessions: 3 hours.

Frequency of Response: One-time Focus Groups.

Estimated Total Reporting Burden: 443 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

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. 90-12157 Filed 5-24-90; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

May 18, 1990.

The Department of Treasury has submitted the folloiwng public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0028.

Form Number: IRS Forms 940 and 940PR.

Type of Review: Extension.

Title: Employer's Annual Federal Unemployment (FUTA) Tax Return (940); Planilla Para La Declaracion Anual Del Patron—La Contribucion Federal Par El Desempleo (FUTA) (940PR).

Description: Internal Revenue Code section 3301 imposes a tax on employers based on the first $7,000 of taxable annual wages paid to each employee. IRS uses the information reported on Forms 940 and 940PR (Puerto Rico) to ensure that employers have reported and figured the correct FUTA wages and tax.

Respondents: Individuals or households, Farms, Busineses or other for-profit, Small businesses or organizations.

Estimated Number of Responses/ Recordkeepers: 724,046.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—14 hrs., 7 min.

Learning about the law or the form—18 min.

Preparing and sending the form to IRS—32 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 10,824,488.

OMB Number: 1545–0190.
Form Number: IRS Form 4876–A.
Type of Review: Revision.
Title: Election To Be Treated as an Interest Charge DISC.
Description: A domestic corporation and its shareholders must elect to be an interest change domestic international sales corporation (IC-DISC). Form 4876–A is used to make the election. IRS uses the information to determine if the corporation qualifies to be an IC-DISC.
Respondents: Businesses or other for-profit.
Estimated Number of Responses/Recordkeepers: 1,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—4 hrs., 4 min.
Learning about the law or the form—1 hr., 5 min.
Preparing and sending the form to IRS—1 hr., 13 min.
Frequency of Response: One-time election.
Estimated Total Reporting/Recordkeeping Burden: 6,360 hours.
OMB Number: 1545–0748.
Form Number: IRS Form 2678.
Type of Review: Extension.
Title: Employer Appointment of Agent
Description: 26 U.S.C. 3504 authorizes an employer to designate a fiduciary, agent, etc., to perform the same acts as required of employers.
Respondents: Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Responses: 93,356.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: Other (as necessary).
Estimated Total Reporting Burden: 46,678 hours.
OMB Number: 1545–1126.
Form Number: None.
Type of Review: Extension.
Title: Treaty-Based Return Positions.
Description: Section 301.6114 sets forth the reporting requirement under Code section 6114. Persons or entities subject to this reporting requirement must make the required disclosure on a statement attached to their return, in the manner set forth, or be subject to a penalty.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Responses: 5,000.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 5,000 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
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. 90–12158 Filed 5–24–90; 8:45 am]
BILLING CODE 4830–01–M

Office of Thrift Supervision

[No. 90–890]

Capital Forbearances

May 18, 1990.
AGENCY: Office of Thrift Supervision, Treasury.
ACTION: Notice.

SUMMARY: The public is advised that the Office of Thrift Supervision has submitted a request for a revision of an information collection entitled "Capital Forbearances," to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).
The information collected will enable the Office of Thrift Supervision to monitor capital forbearances it has granted. We estimate it will take approximately 40 hours per respondent per year to complete the information collection.
DATES: Comments on the information collection request are welcome and should be received on or before June 4, 1990.
ADDRESSES: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, *Attention:* Desk Officer for the Office of Thrift Supervision.
The Office of Thrift Supervision would appreciate commenters sending copies of their comments to the information contact provided below.
Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Office of Thrift Supervision address given below: Director, Information Services Division, Communications Services, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Phone: 202–416–2751.
FOR FURTHER INFORMATION CONTACT: Mary J. Hoyle, Regulations & Legislation Division, Office of Chief Counsel, (202) 906–7135, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

By The Office of Thrift Supervision.
Timothy Ryan,
Director.
[FR Doc. 90–12173 Filed 5–24–90; 8:45 am]
BILLING CODE 6720–01–M

[OTS No. 2648; AC–24]

Central Federal Savings and Loan Association; Ripon, WI, Final Action Approval of Conversion Application

May 15, 1990.
Notice is hereby given that on May 10, 1990, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Central Federal Savings and Loan Association, Ripon, Wisconsin, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Chicago District Office, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601–4360.

By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
[FR Doc. 90–12171 Filed 5–24–90; 8:45 am]
BILLING CODE 672–01–M

[OTS No. 0276; AC–23]

Hopkins Savings and Loan Association, Wauwatosa, WI, Merged With and Into Federated Bank, SSB Wauwatosa, WI; Final Action Approval of Conversion Application

May 15, 1990.
Notice is hereby given that on May 11, 1990, the designee of the Chief Counsel, acting pursuant to the authority delegated to him, approved the application of Hopkins Savings and Loan Association, Wauwatosa, Wisconsin, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552 and District Director, Office of Thrift Supervision, Chicago District Office, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-12172 Filed 5-24-90; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Secretary's Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 1001, will be held at the Department of Veterans Affairs, Room 1010, 810 Vermont Avenue NW., Washington, DC 20420 on June 20, 1990 and at Quantico National Cemetery, Administration Building, Triangle, Virginia 22172 on June 21, 1990.

Both sessions will begin at 9 a.m. to conduct routine business. The meeting will be open to the public up to the seating capacity which is about twenty persons. Those wishing to attend should contact Mr. Sydney Farrar, Staff Assistant, National Cemetery System, (phone 202-233-7980) no later than 12 noon, EST June 14, 1990.

Agenda items will include: (1) Discussion of the overall operation of the National Cemetery System; (2) Volunteer initiatives; (3) Educational programs; (4) World War II and Eisenhower Centennial Celebrations.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to the Director, National Cemetery System (40) at 810 Vermont Avenue NW., Washington, DC 20420. In any such letters, the writers must fully identify themselves and state the organization, association or person they represent. To the extent practicable, letters should indicate the subject matter they want to discuss. Oral presentations should be limited to 10 minutes in duration. Those wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver them to the Director, National Cemetery System. Letters and written statements as discussed must be mailed or delivered in time to reach the Director, National Cemetery System by 12 noon EST June 14, 1990. Oral statements will be heard only between 1:30 p.m. and 2 p.m.

Dated: May 18, 1990.

By direction of the Secretary:

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 90-12147 Filed 5-24-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 102
Friday, May 25, 1990

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).

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, May 30, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Publication for comment of proposed amendments to Regulation H (Membership of State Banking Institutions in the Federal Reserve System) to clarify and simplify the calculation of dividend paying capacity.

Discussion Agenda

2. Publication for comment of proposed amendments to Subpart B of Regulation J (Collection of Checks and Other Items and Transfers of Funds) to conform with Article 4A of the Uniform Commercial Code regarding funds transfers.

3. Any items carried foward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: May 23, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-12311 Filed 5-23-90; 11:38 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:30 a.m., Wednesday, May 30, 1990, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW. Washington, D.C. 20551.

STATUS: Closed

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building requirements.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 23, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-12312 Filed 5-23-90; 11:38 am]

BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION

Presidential Search Committee; Notice

TIME AND DATE: A meeting of the Presidential Search Committee will be held on June 4, 1990. The meeting will commence at 5:00 p.m. (EDT).

PLACE: Conference call originating from the Legal Services Corporation, 400 Virginia Ave., SW., Washington, DC 20024.

STATUS OF MEETING: The meeting has been closed subject to the recorded vote of a majority of the Board of Directors to discuss matters related to Presidential Search as authorized under The Government in the Sunshine Act [5 U.S.C. 552b(c)(2), (6), and (9)(B) and 45 CFR 1622.5 (a), (e), and (g)].

MATTERS TO BE CONSIDERED:

1. Matters Related to Presidential Search.
   (a) Review of Resumes and Presidential Questionnaires, and Such Other Matters Relating to the Presidential Search as May Come Before the Committee.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date Issued: May 23, 1990.

Maureen R. Bozell,

Corporation Secretary.

[FR Doc. 90-12385 Filed 5-23-90; 3:42 pm]

BILLING CODE 7050-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Wednesday, May 30, 1990.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS : Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

2. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 90-12325 Filed 5-23-90; 12:20 pm]

BILLING CODE 7535-01-M

Corrections

Federal Register
Vol. 55, No. 102
Friday, May 25, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. 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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 90-050]

Mediterranean Fruit Fly; Addition to the Quarantined Areas

Correction

In rule document 90-10808 beginning on page 19241 in the issue of Wednesday, May 9, 1990, make the following correction:

§ 301.78-3 [Corrected]

On page 19242, in § 301.78-3(c), in the third column, in the 25th line, "northeasterly" should read "northwesterly".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 237

Federal Acquisition Regulation Supplement; Master Agreements for Advisory and Assistance Services

Correction

In proposed rule document 90-11115 beginning on page 19967 in the issue of Monday, May 14, 1990, make the following correction:

237.270 [Corrected]

On page 19968, in the second column, in section 237.270(b)(2)(i), in the third line, "officers" should read "offers".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER90-346-000 et al.]

Tampa Electric Co. et al; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 90-11437 beginning on page 20514, in the issue of Thursday, May 17, 1990, make the following corrections:

1. On page 20514, in the second column, under **1. Tampa Electric Co.**, the docket line, should read "[Docket No. ER90-346-000]".

2. On the same page, in the third column, under **2. Southern California Edison Co.**, the docket line, should read "[Docket No. ER76-205-007]".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 89C-0304]

Listing of Color Additives for Coloring Sutures: [Phthalocyaninato(2-)] Copper

Correction

In rule document 90-10911 beginning on page 19618, in the issue of Thursday, May 10, 1990, make the following correction:

On page 19618, in the third column, under **DATES:**, in the first line, "May 11, 1990", should read "June 12, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6782

[MT-930-00-4214-10; SDM 76796]

Withdrawal of National Forest System Lands Near Jewel Cave National Monument; South Dakota

Correction

In rule document 90-11813 appearing on page 20766 in the issue of Friday, May 18, 1990, in the heading, the CFR citation should read as set forth above.

BILLING CODE 1505-01-D

NATIONAL CAPITAL PLANNING COMMISSION

Memorandum of Understanding With James T. Lewis Enterprises, Ltd.

Correction

In notice document 90-9035 beginning on page 14498 in the issue of Wednesday, April 18, 1990, make the following correction:

1. On page 14498, in the second column, in paragraph 10.A.(1)(d), in the third line, "generally" was misspelled.

2. On the same page, in the third column, paragraph 10.A.(2)(b), should read:

(b) The total combined area of penthouses (freestanding and incorporated within architectural features) and any architectural features shall not exceed 35% of the gross roof area of each building;

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-54-AD; Amdt. 39-6599]

Airworthiness Directives; Cessna Citation Model 550, 551, and S550 Series Airplanes, Equipped With Supplemental Type Certificate (STC) SA2698SW Freon Air Conditioners

Correction

In rule document 90-11009 beginning

on page 19722, in the issue of Friday, May 11, 1990, make the following correction:

§ 39.13 [Corrected]

On page 19723, in the third column, under **Cessna Citation:**, in the third line, "STC AS2698SW" should read "STC SA2698SW".

BILLING CODE 1505-01-D

federal register

Friday
May 25, 1990

Part II

Drug-Free Workplace Requirements; Notice and Final Rules

Office of Management and Budget
Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of the Treasury
Department of Veterans Affairs
ACTION

African Development Foundation
International Development Cooperation Agency
Agency for International Development
Commission on the Bicentennial of the United States Constitution
Environmental Protection Agency
Federal Emergency Management Agency
Federal Mediation and Conciliation Service
General Services Administration
Institute of Museum Services
Inter-American Foundation
National Aeronautics and Space Administration
National Archives and Records Administration
National Foundation on the Arts and the Humanities
National Endowment for the Arts
National Endowment for the Humanities
National Science Foundation
Peace Corps
Small Business Administration
United States Information Agency

Department of Defense/General Services Administration/National Aeronautics and Space Administration

OFFICE OF MANAGEMENT AND BUDGET

Governmentwide Implementation of the Drug-Free Workplace Act of 1988

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This Notice provides information, in the form of nonbinding questions and answers, to assist the public in meeting the requirements of the Drug-Free Workplace Act of 1988. The Office of Management and Budget (OMB) coordinated regulatory development with over 30 Federal agencies to ensure uniform, governmentwide implementation of this Act. As a consequence, OMB is offering this governmentwide non-regulatory guidance.

Part of the omnibus drug legislation enacted November 18, 1988 is the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D). This statute requires contractors and grantees of Federal agencies to certify that they will provide drug-free workplaces. Making the required certification is a precondition of receiving a contract or grant from a Federal agency after March 18, 1989.

Regulatory requirements pertaining to contractors are detailed in a final rule appearing in today's **Federal Register** This rule amends the Federal Acquisition Regulation (FAR). Regulatory requirements pertaining to grantees are detailed in a final common rule also appearing in today's **Federal Register**. The preamble to the grantee common rule answers questions pertaining to grants or to contracts-and-grants, but does not address questions pertaining only to contracts.

FOR FURTHER INFORMATION CONTACT: For grants, contact Barbara F. Kahlow, Financial Management Division, OMB, (telephone 202–395–3053). For contracts, contact Robert Neal, Office of Federal Procurement Policy, OMB, (telephone 202–395–6810).

SUPPLEMENTARY INFORMATION:

Response to Questions

See the common preamble to the grantee final common rule for detailed response to most questions on requirements on contractors and grantees.

1. Question—What is a minimum set of components for an employer program to meet the requirements of the Drug-Free Workplace Act?

Answer—Each employer must meet the specific requirements of the Act with a good faith effort, including having a policy statement and a drug awareness program. Neither the law nor the final rules require employers to establish an Employee Assistance Program (EAP), to conduct any drug testing, or to incorporate any particular component in an employer's program.

2. Question—What are examples of other possible components of an employer drug-free workplace program for contractors and grantees?

Answer—Here is a partial list of other possible components of an employer program. The list is provided for information only; there is no intention for the Federal Government to require any particular component.

Employee Education

- Conduct education/outreach of employees/families via:

—Discussion groups on drug abuse/company policy
—Videotapes/pamphlets on drugs in workplace
—Brown bag lunch discussions
—Communication of available employee assistance
—Communication of available health benefits for drug/alcohol treatment

Employee Assistance

- Establish an EAP
- Identify treatment resources
- Assemble resource file on providers of assistance
- Provide problem assessments
- Provide confidential counselling
- Provide referral to counselling and/or treatment
- Provide crisis intervention
- Establish hot-line
- Provide family support services
- Conduct followup during and after treatment
- Conduct evaluation of job performance pre- and post-program contact
- Review insurance coverage (to include outpatient as well as inpatient treatment)
- Institute mechanism to review employee complaints

Supervisory Training

- Conduct management/supervisory/union training on:

—Drug Abuse education
—Signs and symptoms of drug use
—Company policy on drug use
—Employee assistance resources
—How to deal with an employee suspected of drug use
—How and when to take disciplinary action

Drug Detection

- Institute a program of drug testing of:

—All employees—testing of applicants or pre-employment; testing of employees based on reasonable suspicion, post accident, during and after counselling and/or rehabilitation
—Employees in health and safety or national security sensitive positions—random unannounced testing

- Increase security

3. Question—What are examples of some model drug-free workplace programs?

Answer—Both the Department of Health and Human Services' National Institute on Drug Abuse (NIDA) and the U.S. Chamber of Commerce have identified several model programs. For further information on these or other models or on programs to combat drug abuse in the workplace, call the NIDA toll-free employer help-line on: 800–843–4971. NIDA also has a clearinghouse for general information on controlling alcohol and drug abuse. That number is 301–468–2600. The address of the National Clearinghouse for Alcohol and Drug Information is Box 2345, Rockville, MD 20852. Currently, the Federal Government does not have an example of a model program for a small employer.

Examples include the following:

A large chemical company—EAP contracted out, including: seminars, assessment, short-term counselling and referral, supervisory training, and followup monitoring; some local sites have drug testing for cause, post accident, and for safety-critical jobs.

A large automotive manufacturing company—EAP contracted out, including: crisis intervention and treatment for employees and immediate family, counselling, referral to counselors/therapists or inpatient/outpatient treatment; hotline; considering drug testing.

A major contractor—EAP for employees and their dependents, including: education, counselling, assessment, referral; hotline; management/supervisory training; alcohol/drug testing of applicants; alcohol/drug testing of employees based on reasonable suspicion or for cause; preventive alcohol/drug testing of corporate officers, employees in safety-sensitive or security-sensitive positions; inspections; trained dogs.

A mid-sized electrical company—EAP including counselling and management/supervisory training, drug testing of applicants and of employees for cause.

4. Question—Is the retail purchase of utility services by the Federal Government covered by the FAR and, therefore, subject to the Act?

Answer—Yes. Federal purchases of utility services are covered under subpart 8.3 of the FAR.

5. Question—Is an order issued pursuant to a basic ordering agreement covered by the FAR and, therefore, subject to the Act?

Answer—Yes. Basic ordering agreements are covered under subpart 16.7 of the FAR. Orders exceeding $25,000 issued under basic ordering agreements are subject to the Act.

6. Question—What are examples of Federal contracts that are not "procurement contracts"?

Answer—Contracts not covered by the FAR, e.g., any other acquisition contract for real or personal property or services not subject to the FAR. An example is contracts for obtaining goods and services for post exchanges on military bases.

7. Question—Are oil and gas leases with the Federal Government covered by the FAR?

Answer—No. These types of contracts are not covered under the FAR.

8. Question—Are contracts to buy timber from the Federal Government covered by the FAR?

Answer—No. These types of contracts are not covered by the FAR.

9. Question—Are FSLIC and FDIC contracts for deposit insurance covered by the FAR?

Answer—No. These types of contracts are not covered by the FAR.

10. Question—Does selling U.S. savings bonds or acting as a depository for the Department of the Treasury constitute a procurement contract?

Answer—No.

11. Question—Is the receipt of funds by an individual pursuant to an imprest fund transaction covered by the FAR?

Answer—Yes; however, the Act is not applicable because imprest fund transactions do not exceed the $25,000 threshold.

12. Question—Is an order issued against a requirements contract or an indefinite quantity contract covered by the Drug-Free Workplace Act when the order is reasonably expected to exceed $25,000?

Answer—Yes.

13. Question—If a single firm has several contracts that when added together total $25,000 or more, is the firm subject to the Act?

Answer—No. A firm would be subject to the Act only if the value of a single contract is $25,000 or more.

14. Question—Does the FAR, which is issued jointly by three agencies (the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration), apply to contract awards by other executive agencies?

Answer—Yes.

15. Question—Do Drug-Free Workplace Act requirements apply to subcontracts?

Answer—No.

16. Question—Under the Act, can an agency impose any additional requirements, beyond those in the common rule, on grantees?

Answer—No. Both the January 31, 1989, grantee interim final common rule and the grantee final common rule indicate that the grantee common rule is the sole authority for implementing the Act and that no separate agency guidance is authorized under the Act.

17. Question—What is section 5301 of the omnibus drug legislation and how will it be implemented?

Answer—Section 5301 of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, 102 Stat. 4310 (codified at 21 U.S.C. section 853a) is another, separate part of the omnibus drug legislation that included the Drug-Free Workplace Act of 1988. Section 5301 deals with denial of certain Federal benefits for persons convicted of drug offenses. Denial decisions are made by Federal and State judges. The Department of Justice will be directing implementation. Questions should be addressed to: Director, Drug Offense/Denial of Federal Benefits Project, Office of Justice Programs, Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531; telephone: 202-307-0630.

18. Question—How will the Drug-Free Workplace Act be enforced?

Answer—Under the Act, certifications are required from contractors and grantees. Also, as part of normal Federal contract and grant administration, compliance will be checked. Additionally, as part of normal Federal auditing, compliance will be checked. And, lastly, as part of grantees' Single Audits, compliance checking will be required. OMB's compliance supplements for State and local governments and for other entities will include a requirement for such compliance checking.

Dated: May 20, 1990.

Frank Hodsoll,

Executive Associate Director.

[FR Doc. 90-12186 Filed 5-24-90; 8:45 am]

BILLING CODE 3110-01-M

Department of Agriculture

7 CFR PART 3017

Department of Energy

10 CFR PART 1036

Small Business Administration

13 CFR PART 145

National Aeronautics and Space Administration

14 CFR PART 1265

Department of Commerce

15 CFR PART 26

Department of State

22 CFR PART 137

International Development Cooperation Agency

Agency for International Development

22 CFR PART 208

Peace Corps

22 CFR PART 310

United States Information Agency

22 CFR PART 513

Inter-American Foundation

22 CFR PART 1006

African Development Foundation

22 CFR PART 1508

Department of Housing and Urban Development

24 CFR PART 24

Department of Justice

28 CFR PART 67

Department of Labor

29 CFR PART 98

Federal Mediation and Conciliation Service

29 CFR PART 1471

Department of the Treasury

31 CFR PART 19

Department of Defense

32 CFR PART 280

Department of Education

34 CFR PART 85

National Archives and Records Administration

36 CFR PART 1209

Department of Veterans Affairs

38 CFR PART 44

Environmental Protection Agency

40 CFR PART 32

General Services Administration

41 CFR PART 105-68

Department of the Interior

43 CFR PART 12

Federal Emergency Management Agency

44 CFR PART 17

Department of Health and Human Services

45 CFR PART 76

National Science Foundation

45 CFR PART 620

National Foundation on the Arts and the Humanities

National Endowment for the Arts

45 CFR PART 1154

National Endowment for the Humanities

45 CFR PART 1169

Institute of Museum Services

45 CFR PART 1185

ACTION

45 CFR PART 1229

Commission on the Bicentennial of the United States Constitution

45 CFR PART 2016

Department of Transportation

49 CFR PART 29

Government-Wide Requirements for Drug-Free Workplace (Grants)

AGENCIES: Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, ACTION, African Development Foundation, Agency for International Development, Commission on the Bicentennial of the United States Constitution, Environmental Protection Agency, Federal Emergency Management Agency, Federal Mediation and Conciliation Service, General Services Administration, Institute of Museum Services, Inter-American Foundation, National Aeronautics and Space Administration, National Archives and Records Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Peace Corps, Small Business Administration, United States Information Agency.

ACTION: Final rule.

SUMMARY: The Drug-Free Workplace Act of 1988 requires that all grantees receiving grants from any Federal agency certify to that agency that they will maintain a drug-free workplace, or, in the case of a grantee who is an individual, certify to the agency that his or her conduct of grant activity will be drug-free. This government-wide rule is for the purpose of implementing the statutory requirements. It directs that grantees take steps to provide a drug-free workplace in accordance with the Act. The rule amends an interim final rule published January 31, 1989, in response to public comment.

DATES: This rule is effective July 24, 1990, except for the certification requirement of § _____.630 (c) and (d) for States and State agencies which is effective June 25, 1990. Compliance is authorized immediately. However, the Department of Education is required to submit the final rule to Congress for review. See Education's agency-specific preamble below.

FOR FURTHER INFORMATION CONTACT: See agency-specific preambles for the contact person for each agency.

SUPPLEMENTARY INFORMATION: As part of the omnibus drug legislation enacted November 18, 1988, Congress passed the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*). This statute requires contractors and grantees of Federal agencies to certify that they will provide drug-free workplaces; or, in the case of a grantee who is an individual, certify to the agency that his or her conduct of the grant will be drug-free. Making the required certification is a precondition for receiving a contract or grant from a Federal agency.

The Federal agencies published an interim final rule on this subject January

31, 1989 (53 FR 4946), requesting public comments on it. The requirements of the interim final rule became applicable on March 18, 1989. The agencies received 95 comments, which they have reviewed. The responses to the comments are discussed below.

Drug-free workplace requirements pertaining to contractors will be found in a separate final rule amending the Federal Acquisition Regulation (FAR; 48 CFR subparts 9.4, 23.5, and 52.2). This government-wide common rulemaking concerns only grants (including cooperative agreements). This common rule will be the sole authority for implementing the Act, i.e., there will be no separate agency guidance issued. Because the statute makes use of existing suspension and debarment remedies for noncompliance with drug-free workplace requirements, the agencies have determined to implement the statute through an amendment to the existing government-wide nonprocurement suspension and debarment common rule. Using this vehicle will allow the agencies to take advantage of existing administrative procedures and definitions, minimizing regulatory duplication.

Section-By-Section Analysis

This portion of the preamble discusses the amendments made by this rule to the interim final government-wide drug-free workplace common rule as published on January 31, 1989. This section-by-section analysis does not attempt to describe the entire drug-free workplace rule, only those portions added or changed by this final rule.

Section _____.605 Definitions

In the definition of "controlled substance," citations to regulations implementing the Controlled Substances Act have been corrected to refer to 21 CFR part 1308.

The definition of "employee" has been made more specific. An employee now includes all "direct charge" employees (i.e., those whose services are directly and explicitly paid for by grant funds) and "indirect charge" employees (i.e., those members of the grantee's organization who perform support or overhead functions related to the grant and for which the Federal Government pays its share of expenses under the grant program). (The terms "direct charge and indirect charge" come from cost principles in OMB Circular A-21, A-87, and A-122). Among indirect charge employees, those whose impact or involvement is insignificant to the performance of the grant are exempted from coverage.

Any other person who is on the grantee's payroll and works in any activity under the grant, even if not paid from grant funds, is also considered to be an employee. Temporary personnel and consultants who are on the grantee's payroll are covered. Similar workers who are not on the grantee's own payroll (e.g., who are on the payroll of contractors working for the grantee) are not covered, even if their physical place of employment is in the grantee's covered workplace. Likewise, volunteers, even if used to help meet a matching requirement, are not employees for purposes of this rule.

In the definition of "grant," editorial changes to the reference to the common rule on grants management were made. The definition of "grantee" specifies that a Federal agency that received a grant from another Federal agency is not considered a grantee for purposes of this rule. For convenience of parties that may use this rule but not the entire nonprocurement suspension and debarment rule, the definition of "State" from the suspension and debarment rule is repeated in this section. It emphasizes that State-supported institutions of higher education are not considered part of a "State" for purposes of the rule.

Section _____.610 Coverage

Paragraph (b) of this section now provides that the agency head or his/her designee can determine that the application of this rule should be negated on the basis of inconsistency with U.S. international obligations or foreign law.

Section _____.615 Grounds for Suspension of Payments, Suspension or Termination of Grants, or Suspension or Debarment

Since grants are often made to individuals (e.g., Pell Grants), a new paragraph (c) has been added to this section to specify the conduct by an individual grantee that constitutes a violation of the rule. (There is no similar provision in the drug-free workplace rule for contracting.) This conduct includes failing to carry out the requirements of the individual grantee's certification (e.g., by unlawful possession or use of a controlled substance during the conduct of any grant activity) or conviction of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity. The sanctions, set forth in § _____.620, are the same as for other grantees. Paragraph (a), now limited to making a false certification, applies both to individual and other grantees. The former subparagraphs (b) and (c), which concern grantees other than individuals, are now subparagraphs (1) and (2) of a new paragraph (b) concerning grantees other than individuals.

Section _____.630 Certification Requirements and Procedures

This new section replaces the former § _____.630 (Grantees' responsibilities) in its entirety. Paragraph (a) states the general rule that grantees must make the appropriate drug-free workplace certification as a prior condition to being awarded a grant. They need not do so, however, for a grant awarded before March 18, 1989, or under a no-cost time extension for such a grant. If there is a non-automatic continuation of such a grant that occurs after March 18, 1989, a one time certification is necessary. Non-automatic continuations are equivalent to competing continuations for many agencies.

As provided in paragraph (b), grantees must make the required certification for each grant as part of the grant application or if there is no application, prior to award. (For mandatory formula grants and entitlements with no application process, a one-time certification is needed to continue receiving awards.)

Paragraph (c) provides an opportunity for grantees that are States to make the certification to each Federal agency on an annual (Federal fiscal year) basis starting in Fiscal Year 1990, rather than on a grant-by-grant basis. Except as provided in paragraph (d), an annual State certification must cover all Federal agency grants to all State agencies. The original certification must be retained in the Governor's office. A copy must be sent with each grant to each Federal agency providing a grant to the State. A Federal agency may designate a central location for submission. For States that previously submitted an annual certification, statewide certification for Fiscal Year 1990 is required to be provided to Federal agencies no later than June 30, 1990.

Paragraph (d) establishes a variation on the statewide annual certification procedure of paragraph (c). Under this variation, the Governor may exclude certain State agencies from the statewide certification. Such certification would identify the excluded agencies. Each of the excluded agencies would then have the option to submit a single State agency certification to each Federal grant agency covering a Federal fiscal year. A State agency could also submit a single State agency certification in a case where there is no statewide certification. Otherwise, State

agencies will have to submit grant-by-grant certifications.

The original State agency certification is retained in the State agency's central office; a copy is submitted with each grant, unless the Federal agency has designated a central location for submission. The State agency certification is deemed to apply to all State agencies involved with the grant. If State agency X receives the grant, and part of the work is subgranted or subcontracted out to State agency Y, the workplaces and employees of the latter, as well as those of the former, are covered by the certification.

Paragraph (e) concerns the question of when the drug-free workplace policy statement and program promised in the certification must actually be in place. The certification promises that the policy statement and program will be in effect in the future; they do not need to be in place at the time of award. For a grant of 30 days or less in duration of performance, they must be in place as soon as possible, but in any case before performance is expected to be completed. For a grant of over 30 days in duration of performance, they must be in effect within 30 days of award. An agency may set a different compliance date where extraordinary circumstances warrant for a specific grant.

Section _____.635 Reporting and Employee Sanctions for Convictions of Criminal Drug Offenses

This new section concerns requirements of employers and grantees who are individuals to report criminal drug offense convictions and the actions that employers are required to take concerning employees who are convicted of a criminal drug offense occurring in the workplace.

When a grantee other than an individual is notified by an employee, or learns from another source, that the employee has been convicted of a criminal drug offense occurring in the workplace, the grantee must provide, within 10 calendar days, a written notice of the conviction (including the employee's position title and grant identification number(s)) to the appropriate person or office in the Federal agency for each grant on which the convicted employee was working.

As with certifications, it is up to each Federal agency whether such reports are made to each grant officer or other official or to a central point in the agency. A grantee who is an individual who is convicted of a criminal drug offense while conducting grant activity must also make a written report of the conviction within 10 calendar days to the appropriate Federal agency official or office. Sanctions for the individual grantee are as provided in § _____.620.

When a grantee is notified that an employee has been convicted of a criminal drug offense for a violation occurring in the workplace, the grantee has 30 calendar days to take appropriate action. One type of action would be to require the employee to participate satisfactorily in an approved drug abuse assistance or rehabilitation program. Alternatively, the employer would take appropriate personnel action against the employee, up to and including termination. Terminating the employee is not mandatory under the rule; less stringent disciplinary action is permitted.

Whatever personnel action is taken must be consistent with section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794). This statute prohibits discrimination on the basis of handicap in programs receiving Federal financial assistance. As a general matter, a person may be a handicapped person protected by the Act on the basis of a "physical or mental impairment" that substantially limits a major life activity, such as working, including drug addiction or alcoholism (*see* for example 43 Op. Atty. Gen. 12 (1977), Department of Transportation rules at 49 CFR 27.5).

Under case law interpreting the Rehabilitation Act, a recovering substance abuser who is rehabilitated or undergoing rehabilitation would fall within the definition of a handicapped individual. It should be pointed out, however, that under the Rehabilitation Act (29 U.S.C. 706(7)(B)), the definition of a handicapped individual, for purposes of employment, does not include someone

> whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

Appendix C

Instructions

This rule adds three new paragraphs to the instructions for the certification for grantees other than individuals. Paragraph eight repeats certain key definitions from the regulation (controlled substance, conviction, criminal drug statute, and employee) for the convenience of grantees. Paragraphs five, six and seven relate to the identification of workplaces. Federal agencies, in order to audit grantee compliance, must have access to the addresses or locations of workplaces to which drug-free workplace requirements apply. Consequently, grantees must identify workplaces in one of three ways: (1) On the certification document, (2) on the grant application or in signing the award if there is no application, or (3) in a document kept on file and available for inspection by Federal agencies. The choice among these options is the grantee's. The identifications must include the street address or location of the workplace, where work will take place at a specific site or sites. In other situations, it may be necessary to use a categorical identification instead. For example, a mass transit authority could identify covered workplaces as including all buses and subway trains while in operation.

Certification for Grantees Other Than Individuals

Paragraph A(b) of this certification has been amended to specify that the grantee's drug-free awareness program must be an "ongoing" program. This means that this program cannot be a one-time effort at the outset of the grant, but must continue throughout the life of the grant. In addition to editorial changes, paragraphs (A) (d), (e) and (f) have been amended to specify that notices must be provided in writing and that deadlines are determined in calendar days. Reference to the notification requirement of § _____.635(a)(1) has been added to paragraph A(e) and a reference to the Rehabilitation Act has been added to paragraph A(f)(1). Finally, paragraph B now says that the grantee "may" submit workplace identifications in the certification; the grantee, as explained in the instructions, may also do so at the time of grant application (or the time of award, if there is no application) or may keep the identifications on file.

Certification for Grantees Who Are Individuals

A new paragraph (b) has been added, incorporating the notice requirement of § _____.635(b).

Response to Comments

The following portion of the preamble lists the issues raised by public comments to the docket for the January 31, 1989, interim final rule. The statement of each issue is followed by the agencies' response.

The Certification Process

1. All grantees (not just States) should be allowed to certify on an annual basis, rather than on a grant-by-grant basis.

Response: Under principles of Federalism, States occupy a special

position in the Federal system. Moreover, States and State agencies receive substantial funding under many Federal programs, and have many continuing grant program relationships with Federal agencies. State governments are well situated to make comprehensive certifications for their State agencies. The Federal agencies have determined that annual certifications make sense as an option for the States. It is far less clear that such a system would be appropriate for other grantees. It should be noted that State-supported institutions of higher education are not considered to be "States" or State agencies for this or other purposes under the regulation. This means, for example, that a university could not submit a one-time certification for itself or for a particular agency or the entire State government.

2. The certification options available to grantees should be clarified.

Response: Section _____.630 of the common rule now provides that grantees shall make the required certification for each grant at the time of initial grant application or before award if there is no application. States may make a one-time annual certification; State agencies not covered by an annual statewide certification may make a one-time annual State agency-wide certification. However, a photocopy of the statewide or State agency-wide certification must accompany each grant, unless the Federal agency has established a central point for receiving certifications.

3. Add relevant definitions to the certification.

Response: Definitions of key terms, including controlled substance, conviction, criminal drug statute, and employee have been added to the certification. The definition of a controlled substance includes Schedule I–V substances under the Controlled Substances Act.

4. Work sites should not have to be identified in each certification, in order to reduce administrative burdens.

Response: The purpose of identification of work sites is to enable Federal agencies to determine whether grantees are complying with the regulation. To reduce administrative burdens, the revised rule allows grantees to choose whether to list work sites on the certification, in the grant application or award, or in a file maintained by the grantee available for Federal inspection.

5. Clarify that certification Alternate I is for grantees other than individuals and that Alternate II is for individuals.

Response: The titles of Alternates I and II now explicitly provide that they are for grantees other than individuals and for grantees who are individuals, respectively.

6. Conditional certifications should be allowed.

Response: The Drug-Free Workplace Act does not allow for conditional certification. All grantees must certify that they will have a drug-free workplace.

7. Certifications should not be required for students in general, and recipients of Pell Grants in particular.

Response: The statute does not provide a basis on which student grantees can be exempted from the requirement that all grantees, including individuals, make a drug-free workplace certification. Making this certification will not add a significant burden to the student grant application process, and it is consistent with the intent of Congress that students, like other grantees, maintain a drug-free workplace.

8. Clarify whether certifications are needed for changes or modifications to grants awarded before March 18, 1989.

Response: In the case of a grant awarded prior to March 18, 1989, a certification is required only when there is a nonautomatic continuation award made after that date. That certification will be in effect through the end of the project period.

Scope of the Regulation

1. Requirements should not apply to local school districts or other educational organizations.

Response: The statute does not provide a basis on which school districts or other education-related grantees can be exempted from the requirements of the regulations.

2. Clarify whether any type of entity (e.g., banks, hospitals, institutions of higher education, local governments, utilities) is exempt from drug-free workplace requirements. What kind of grants do banks get that would be subject to these requirements?

Response: There are no exemptions for any type of organization. Banks may be more likely to get contracts (e.g., for debt collection, tax collection, or financial management services) than grants. Nevertheless, should a bank receive a grant, it would be subject to grant-related drug-free workplace requirements, whether or not it was also subject to these requirements as the result of having a contract with a Federal agency.

3. Clarify whether grants from such agencies as the U.S. Postal Service (USPS), the Tennessee Valley Authority (TVA), and the Legal Services Corporation (LSC) trigger drug-free workplace requirements.

Response: Grants from TVA would do so; grants from USPS and LSC would not, because they are not executive branch agencies.

4. Clarify whether drug-free workplace requirements apply to subgrantees or contractors under grants, or to employees of contractors who work in a grantee's workplace.

Response: These requirements do not apply to subgrantees or contractors under grants, since the statute covers only parties who get grants directly from a Federal agency. For example, if a Federal agency provides grant funds to a State government, which in turn passes some of these funds to a local government, the State government is covered by these regulations and the local government is not. Employees of a subgrantee or contractor under a grant are not covered by the regulation, even if they work in a grantee's workplace. Of course, these rules do not preclude a grantee, acting on its own independent authority, from imposing additional requirements on subrecipients or contractors.

5. Clarify whether the receipt of free or subsidized space or utilities from a Federal agency is a grant subjecting the recipient to coverage under the regulation.

Response: Receipt of space or utilities (e.g., space used by enterprises operated by blind persons in Federal facilities) is not a grant subject to these regulations.

Drug-Free Policy Statement and Awareness Program

1. Grantees' drug-free awareness programs should be ongoing, not a one-time affair. Clarify whether employees need to be notified only once as part of the drug-free awareness program or with each grant.

Response: It is the intent of the regulations that the grantee's policy and program be a continuing effort. For clarity on this point, the regulation has been amended to specify that the grantee's program must be "ongoing." Consequently, while there is not a requirement that a grantee notify employees about their responsibilities each time a new grant is received, as such, the grantee's ongoing program must ensure that employees remain aware of their continuing responsibilities.

2. Clarify whether alcohol and nonprescription drug abuse must be a part of programs under this regulation.

Response: While grantees may include these subjects in their programs

at their own discretion, this regulation does not require their inclusion. For grantees' information, it is not essential to use the term "controlled substances" in the policy statement or program.

3. Clarify what responsibility employees or grantees have for reporting the use of controlled substances consistent with a legal prescription.

Response: Since the reporting requirements of the regulations pertain only to convictions for the unlawful use, possession, etc., of drugs occurring in the workplace, there is no reporting requirement in this situation.

4. The agencies should provide additional guidance or models for policy statements and drug awareness programs and sources of additional information about programs to combat drug abuse.

Response: The agencies believe that the requirements of the statute and regulation are very clear and explicit and that providing models is not necessary. It is preferable that individual grantees draft their own policies and create their own awareness programs, which can be better adapted to the needs of their workforces than any government-wide guidance. For grantees' information, the National Institute on Drug Abuse (NIDA) has a toll-free employer help-line for persons interested in programs to combat drug abuse in the workplace. The number is 800–843–4971. NIDA also has a clearinghouse for general information on controlling alcohol and drug abuse. That number is 301–468–2600. The address of the National Clearinghouse for Alcohol and Drug Information is Box 2345, Rockville, MD 20852.

5. Clarify whether grantees are required to establish an employee assistance program (EAP) or special training for supervisors.

Response: Nothing beyond the drug-free workplace policy statement and awareness program cited in the regulation is required. While grantees may voluntarily establish EAPs or special training for supervisors, doing so is not a requirement of this regulation.

6. The rules should define more specifically what constitutes a drug awareness program.

Response: The agencies believe that it is preferable to allow grantees to tailor programs to their needs. In addition, further specification could interfere with successful existing employer programs.

7. The regulation should allow the notice and policy statement to be given to a collective bargaining representative rather than to each employee individually.

Response: Under the statute and regulations, grantees are accountable for informing each employee of his or her responsibilities. This task cannot be delegated to a third party, such as a union. Nothing prevents the grantee from working cooperatively with a union to improve understanding of the grantee's policy and program among employees, however.

8. Clarify that employees are not required individually to verify receipt of the policy statement.

Response: We understand that some grantees have chosen to ask their employees to sign that they have received the statement. While grantees have the discretion to follow this practice, it is not required by the regulation.

9. Clarify whether drug testing is required or authorized under these regulations.

Response: The Act and these rules neither require nor authorize drug testing. The legislative history of the Drug-Free Workplace Act indicates that Congress did not intend to impose any additional requirements beyond those set forth in the Act. Specifically, the legislative history precludes the imposition of drug testing of employees as part of the implementation of the Act. At the same time, these rules in no way preclude employers from conducting drug testing programs in response to government requirements (e.g., Department of Transportation or Nuclear Regulatory Commission rules) or on their own independent legal authority.

10. Clarify when the drug-free awareness program required by the regulations must be in place.

Response: The statute and regulations do not require the program to be in place at the time of grant award. The certification is to the effect that such a program "will" be implemented (i.e., in the future). The agencies believe that grantees should have a reasonable time to get their program up and running. For a grant of 30 days or less duration, however, the program must be in place as soon as possible, but in any case before the performance of the grant is expected to be completed. To require less would be clearly contrary to the intent of Congress. Given that there is often some lag between the award of a grant and its performance, grantees for many short-duration grants should still have a reasonable amount of time after award to ensure that their program is in place. An agency may set a different compliance date where extraordinary circumstances warrant for a specific grant. For grants that will be performed during a period of over 30 days, the program must be in place within 30 days of award.

Employees

1. Clarify whether all employees of a grantee are covered if only a few of the grantee's several divisions are involved with the grant.

Response: As noted above, persons on the grantee's payroll who work on any activity under the grant are covered. This includes both so-called "direct charge" (i.e., those whose services are directly and explicitly paid for from grant funds) and "indirect charge" (i.e., those persons who perform support or overhead functions related to the grant and for which the Federal agency pays its share of expenses under the grant program) employees. If a grantee has four operating divisions and a headquarters unit, and one division receives a Federal grant, then the employees of the one division receiving the grant who are directly engaged in the performance of work under the grant are covered, as well as headquarters employees that support the division's operations. However, these rules in no way preclude a grantee from electing to cover employees of other divisions.

2. Clarify whether temporary employees or volunteers are covered.

Response: Any person who works on any activity under the grant, and who is on the grantee's payroll, is considered to be a covered employee (except for an indirect charge employee whose impact or involvement is insignificant to the performance of a grant), even if not paid from grant funds. A temporary employee is covered if he or she meets these criteria. A volunteer is someone who is not on the grantee's payroll, and hence is not covered under the rule, even if used to help meet a matching requirement.

3. If convicted of a criminal drug offense resulting from a violation occurring in the workplace, employees are obligated to report the conviction to the grantee. Clarify whether employees also have an obligation to report co-workers' convictions to the grantee.

Response: Employees are required to report only their own convictions. Reporting co-workers' convictions is not required.

4. Clarify whether a grantee is required to take action with respect to an employee who is convicted of a criminal drug offense resulting from a violation occurring in the workplace, even if the information about the conviction comes from a source other than the employee's self-report.

Response: Under § _____.635(a), the grantee's obligation to take action (either disciplinary action or referral for rehabilitation) arises when the grantee is "notified" of the conviction. This notification can come from any source (e.g., a newspaper report, contact from a probation officer, the employee's self-report).

5. The grantee's action with respect to a convicted employee should be determined on a case-by-case basis.

Response: The regulation requires only that, in case of a conviction for a criminal drug offense resulting from a violation occurring in the workplace, the grantee take one of two types of action. The grantee may take disciplinary action (which may be termination or a less severe sanction) or may refer the employee for a rehabilitation or drug abuse assistance program. The choice of which basic course to choose, as well as the specific discipline or treatment option, is left to the grantee's discretion and may be on a case-by-case basis.

6. Clarify that names of convicted employees need not be transmitted to the Federal agency.

Response: Notice is to be provided, including grant identification number(s) and position title, to the appropriate grant officer or office of the Federal agency. Language has been added to the certification for grantees other than individuals to make this point.

7. Clarify that employer obligations to inform employees of potential action against them include only those actions specified under this rule and not other Federal, State, or local laws.

Response: This statement is correct. While an employer may include other matters as part of the drug-free awareness policy, only the potential consequences of violations under this rule are required to be covered.

Enforcement and Sanctions

1. Clarify that agencies are not authorized to impose sanctions for employee convictions occurring before certifications are made.

Response: The grounds for sanctions under § _____.615 include false certification, violation of a certification, and failing to make a good faith effort to provide a drug-free workplace (i.e., in response to the certification). None of these grounds for a sanction arise in the absence of a certification. Consequently, convictions occurring before a grantee ever made a certification would not be relevant to a determination concerning sanctions.

2. Clarify whether, after closeout on a grant but before final audit resolution, grantees must report convictions of covered employees.

Response: Reporting of convictions is not required in this period.

3. The rule should allow reporting of convictions to a single agency to provide government-wide compliance with this requirement for all grants.

Response: If a given agency wishes to establish a central point for the reporting of convictions, it may do so. Requiring a central point for reporting to each agency, let alone the entire government, would be too cumbersome administratively and would not be consistent with the requirements of the Act. The same point applies to the submission of certifications to one government-wide point, which some commenters also requested.

4. Clarify to which Federal agencies grantees must report convictions of covered employees.

Response: Grantees (both individuals and others) must notify every grant officer on whose grant activity the convicted employee was working. If the employee was working on grants from more than one agency, then grant officers at all applicable agencies must be notified. Alternatively, if one or more of the agencies involved has designated a central point for the receipt of such notices, the grantee would notify the central point rather than the grant officer(s) in these agencies.

5. The rule should indicate the percentage of a grantee's employees that need to be convicted of criminal drug offenses for violations occurring in the workplace in order to trigger a finding that a grantee has failed to make a good faith effort to maintain a drug-free workplace. In any case, more guidance on what constitutes a good faith effort should be provided.

Response: The legislative history of the Act indicates that Congress did not believe that such a percentage trigger is appropriate. In determining whether the rule has been violated, an agency will look at the convictions and the efforts the grantee has made to maintain a drug-free workplace, deciding on a case-by-case basis whether the grantee has made a good faith effort. A numerical or percentage cutoff would not permit agencies to do justice to the variety of situations that may occur. Likewise, guidance on what constitutes a good faith effort would either be so general as to be of little use in particular situations or so specific as to unreasonably limit the necessary case-by-case judgments that agencies have the responsibility to make.

6. The evidentiary standard for imposing sanctions should be one of "substantial" evidence.

Response: The drug-free workplace requirements pertaining to grants do not independently state any such standard. Since the rules are part of the government-wide common rule for nonprocurement suspension and debarment, they use the same standards for imposing sanctions applicable to other nonprocurement suspension and debarment actions. The agencies do not believe that adopting a separate standard for drug-free workplace actions is appropriate or necessary.

7. Responsibility for making determinations about lack of good faith or other grounds for violations of the rule should be delegated to agency suspension and debarment officials.

Response: Section_____.615 authorizes agency heads or their official designees to make determinations of violations. This language permits agency heads to delegate this responsibility. The regulation should not constrain the discretion of agency heads by automatically designating certain officials to perform this task.

8. Sanctions should be limited only to the transgressing workplace, not to other parts of the grantee's organization.

Response: The agencies do not believe that the regulation should contain such a limitation. If the grantee falsely certifies, fails to carry out the requirements of the certification, or fails to make a good faith effort to maintain a drug-free workplace, the grantee's overall management could be faulted for the violation, not only lower-level management at a particular site or facility. Responsibility for compliance goes all the way up an organization's chain of command, and agencies need to be able to apply sanctions accordingly.

9. The rule should provide that sanctions, and waivers of sanctions under § _____.625, must be granted consistently and fairly by agencies.

Response: The agencies do not believe that there is a practical way of implementing this request. Agencies must deal with sanction and waiver issues on a case-by-case basis. Meaningful regulatory guidelines for agency action to this end would be very difficult to draft and implement, and could lead to unnecessary litigation.

10. Clarify whether benefits can be withheld from individual grantees.

Response: Section_____.615 now specifies that individuals can violate the rule by falsely certifying, failing to carry out the requirements of the certification, or being convicted of a criminal drug

offense resulting from a violation occurring during the conduct of any grant activity. Like other grantees, grantees who are individuals are subject to sanctions (e.g., suspension or termination of the grant, debarment) if they violate the rule. As discussed in §_____.605(b), veterans' benefits are not subject to sanctions under this rule.

11. Clarify that a conviction includes acceptance of a guilty plea by a judicial body.

Response: It does.

12. The rule should make distinctions for severity of criminal statute violations.

Response: The Act, which speaks of convictions of a criminal drug offense, does not provide discretion to make such distinctions. However, grantees can take this information into account when developing their drug-free awareness programs or deciding on disciplinary actions.

13. Agencies should be permitted to grant a waiver of sanctions on the ground that sanctions would disrupt the operations of the agency.

Response: The rule permits waivers in the public interest, which is a sufficient basis for considering waivers. It is unlikely that there would be many circumstances in which sanctions to a grantee would disrupt the operations of the Federal agency making the grant, in any case.

14. The rule should delete the requirement to take corrective action for reported convictions within 30 days.

Response: This requirement is statutory and the rule cannot change it.

Relationship to Other Laws, Regulations and Agreements

1. Clarify whether the requirements of the Act and regulations preempt State and local laws.

Response: The requirements of the Act and regulations coexist with State and local law. We know of no conflicts with State or local law, so the question appears moot.

2. Clarify whether the requirements of the Act and regulations preempt collective bargaining agreements and inform grantees what to do about negotiations with unions about drug-free workplace requirements.

Response: These requirements coexist with the collective bargaining process. Compliance with the requirements of the Act and regulations is a condition of receiving a Federal grant. Preemption is not an issue. The Act and regulations do not purport to compel any change in existing labor-management agreements. Of course, labor and management cannot, via a collective bargaining agreement, nullify a grant condition based on Federal law. Federal agencies are not compelled to provide grants to organizations that fail to comply with a statutorily-imposed grant condition, for whatever reason. However, where the regulations provide discretion to grantees about the mode of compliance with the regulations (e.g., a grantee may either take disciplinary action against an employee convicted of a criminal drug offense resulting from a violation occurring in the workplace or refer the employee for rehabilitation), labor and management may determine the mode of compliance through collective bargaining.

3. Clarify the relationship of the Act and regulations to tenure policies of institutions of higher education.

Response: There is no relationship between university tenure policies and these requirements. If a tenured faculty member is convicted of a criminal drug offense resulting from a violation occurring in the workplace, the university would be required to take disciplinary action against the faculty member or refer her or him for rehabilitation. Given the range of choice which the university has under this provision, nothing in the rule requires the university to take action inconsistent with its tenure policies.

4. Either agency heads or their designees should be able to make the determination concerning whether application of these rules would be inconsistent with international law or the laws of a foreign nation.

Response: The rule has been changed so that the designee of an agency head, as well as the agency head, may make this determination.

5. Clarify whether the rule is intended to preempt laws of other nations or international law, including with respect to privacy and confidentiality matters. There should be prior consultation with foreign governments about any regulatory requirements before the rules are applied to grants that may be performed abroad.

Response: For this Act, it has been determined that Federal law does not preempt the laws of other nations or international law, including with respect to employee confidentiality. Concerning prior consultation, neither the Act nor the Administrative Procedure Act allows special treatment for foreign governments in rulemaking.

6. The rule should provide protection to grantees from employee lawsuits or provide for Federal reimbursement from costs incurred in defending against such litigation.

Response: The statute does not immunize grantees from employee litigation and the agencies could not effectually create such protection in a regulation. Nor does the statute authorize the expenditure of Federal funds to reimburse grantees for the cost of defending such lawsuits.

7. Clarify the relationship between this rule and drug testing programs of the Department of Defense, Department of Transportation, and the Nuclear Regulatory Commission.

Response: The Department of Defense requires drug testing for certain employees of some defense contractors. If such a defense contractor also receives a grant from the Department of Defense or another Federal agency, the contractor would have to comply with both the Department of Defense requirements and these drug-free workplace rules.

The Department of Transportation and the Nuclear Regulatory Commission require drug testing for certain employees of employers in the industries they regulate. If one of these employers is also a grantee of a Federal agency, the employer would have to comply with both the Department of Transportation or Nuclear Regulatory Commission requirements and these drug-free workplace rules. Finally, various Federal agencies, including the Departments of Defense, Treasury and Transportation, require some of their own Federal employees (e.g., air traffic controllers) to be tested for drug use. These requirements are unrelated to any requirements for grantees under the Drug-Free Workplace Act.

Other Issues

1. Clarify what the "place of performance" of a grant means, particularly for activities that have no fixed location e.g., buses in a mass transit system).

Response: The place of performance is wherever activity under a grant occurs. It can be in a fixed location, a variety of locations, or no fixed location. For mass transit buses, for instance, the place of performance may be the transit authority's buses, wherever they are in operation. For grants for the arts, the places of performance may be the various concert halls, theaters, galleries, etc. at which the public views the performance or art work. General categorical descriptions of such workplaces may be listed by grantees.

2. Clarify whether the number of days employees and grantees have to make various notifications are calendar days or working days.

Response: The certification now specifies calendar days.

3. The notice of conviction from an employee to a grantee and a grantee to an agency should be in writing.

Response: The certification now so specifies.

4. The regulation should have more specific language concerning which costs related to a drug-free awareness program are allowable under a grant.

Response: Grantees should refer to applicable OMB Circulars A–21, A–87, and A–122 and Federal agency regulations for information on the allowability of costs. Cost allowability principles are the same for activities under these regulations as they are for expenditures needed to meet other grant conditions.

5. Clarify whether the rehabilitation of employees is an allowable cost under grants.

Response: Only the fair Federal share of the reasonable and necessary expenses for the rehabilitation or other treatment for covered employees would be allowable, consistent with OMB Circulars A–21, A–87, and A–122 and Federal agency regulations.

6. There should be a second opportunity for public comments after more experience under the rules.

Response: This suggestion, essentially a recommendation that the agencies issue another interim final rule, has not been adopted. The comments received in response to the interim final rule covered virtually all aspects of the rule, and the agencies have considered them fully and carefully. A second round of public comment would be likely to generate little additional useful comment and would only prolong uncertainty about the final shape of the regulations.

Regulatory Process Matters

This rule is a non-major rule under Executive Order 12291. The agencies have evaluated the rule under Executive Order 12612, pertaining to Federalism. The statute requires drug-free workplace certifications to be made by all grantees, including State agencies. The rule does reduce burdens on State grantees by allowing State agencies to elect an annual certification to each Federal grantor agency in lieu of a certification for every grant. For these reasons, the agencies have determined that the rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

As a statutory matter, this rule must apply to all grantees, regardless of size. (The statute does provide a shorter, less burdensome certification to be made by grantees who are individuals, however.) Costs incurred by grantees to implement drug-free workplace programs are directly mandated by statute; the agencies have minimal regulatory discretion in designing this regulation.

This rule contains information collection requirements subject to the Paperwork Reduction Act. The information collection requirements concern employees reporting drug offense convictions to grantees, grantees reporting these convictions to the agencies, and grantees listing the location(s) of their workplace(s) as part of the certification. These requirements have been reviewed and approved by the Office of Management and Budget, with OMB Control Number 0991–0002.

Text of the Common Rule

The text of the common rule, as adopted by the agencies in this document, appears below:

PART _____—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

* * * * *

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

_____.600 Purpose.
_____.605 Definitions.
_____.610 Coverage.
_____.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
_____.620 Effect of violation.
_____.625 Exception provision.
_____.630 Certification requirements and procedures.
_____.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * *

Appendix C to Part _____ Certification Regarding Drug-Free Workplace Requirements

* * * *

Subpart F—Drug-Free Workplace Requirements (Grants)

§ _____.600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR subparts 9.4, 23.5, and 52.2.

§ _____.605 Definitions.

(a) Except as amended in this section, the definitions of § _____.105 apply to this subpart.

(b) For purposes of this subpart—

(1) *Controlled substance* means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15;

(2) *Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) *Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

(4) *Drug-free workplace* means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance;

(5) *Employee* means the employee of a grantee directly engaged in the performance of work under the grant, including:

(i) All "direct charge" employees;

(ii) All "indirect charge" employees, unless their impact or involvement is insignificant to the performance of the grant; and,

(iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces);

(6) *Federal agency* or *agency* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) *Grant* means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management government-wide common rule on uniform administrative requirements for grants and cooperative agreements. The term does not include technical assistance that provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) *Grantee* means a person who applies for or receives a grant directly from a Federal agency (except another Federal agency);

(9) *Individual* means a natural person;

(10) *State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers the instrumentality to be an agency of the State government.

§ _____.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government. A determination of such inconsistency may be made only by the agency head or his/her designee.

(c) The provisions of subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

§ _____.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certification under § _____.630;

(b) With respect to a grantee other than an individual—

(1) The grantee has violated the certification by failing to carry out the requirements of subparagraphs (A.) (a)–(g) and/or (B.) of the certification (Alternate I to Appendix C) or

(2) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

(c) With respect to a grantee who is an individual—

(1) The grantee has violated the certification by failing to carry out its requirements (Alternate II to Appendix C); or

(2) The grantee is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity.

§ _____.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in § _____.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (*see* § _____.320(a)(2) of this part).

§ _____.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§ _____.630 Certification requirements and procedures.

(a)(1) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the Federal agency providing the grant, as provided in Appendix C to this part.

(2) Grantees are not required to make a certification in order to continue receiving funds under a grant awarded before March 18, 1989, or under a no-cost time extension of such a grant. However, the grantee shall make a one-time drug-free workplace certification for a non-automatic continuation of such a grant made on or after March 18, 1989.

(b) Except as provided in this section, all grantees shall make the required certification for each grant. For mandatory formula grants and entitlements that have no application process, grantees shall submit a one-time certification in order to continue receiving awards.

(c) A grantee that is a State may elect to make one certification in each Federal fiscal year. States that previously submitted an annual certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. Except as provided in paragraph (d) of this section, this certification shall cover all grants to all State agencies from any Federal agency. The State shall retain the original of this statewide certification in its Governor's office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency has designated a central location for submission.

(d)(1) The Governor of a State may exclude certain State agencies from the statewide certification and authorize these agencies to submit their own certifications to Federal agencies. The statewide certification shall name any State agencies so excluded.

(2) A State agency to which the statewide certification does not apply, or a State agency in a State that does not have a statewide certification, may elect to make one certification in each Federal fiscal year. State agencies that previously submitted a State agency certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. The State agency shall retain the original of this State agency-wide certification in its central office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency designates a central location for submission.

(3) When the work of a grant is done by more than one State agency, the

certification of the State agency directly receiving the grant shall be deemed to certify compliance for all workplaces, including those located in other State agencies.

(e)(1) For a grant of less than 30 days performance duration, grantees shall have this policy statement and program in place as soon as possible, but in any case by a date prior to the date on which performance is expected to be completed.

(2) For a grant of 30 days or more performance duration, grantees shall have this policy statement and program in place within 30 days after award.

(3) Where extraordinary circumstances warrant for a specific grant, the grant officer may determine a different date on which the policy statement and program shall be in place.

§ _____.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

(a) When a grantee other than an individual is notified that an employee has been convicted for a violation of a criminal drug statute occurring in the workplace, it shall take the following actions:

(1) Within 10 calendar days of receiving notice of the conviction, the grantee shall provide written notice, including the convicted employee's position title, to every grant officer, or other designee on whose grant activity the convicted employee was working, unless a Federal agency has designated a central point for the receipt of such notifications. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(2) Within 30 calendar days of receiving notice of the conviction, the grantee shall do the following with respect to the employee who was convicted.

(i) Take appropriate personnel action against the employee, up to and including termination, consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(ii) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(b) A grantee who is an individual who is convicted for a violation of a criminal drug statute occurring during the conduct of any grant activity shall report the conviction, in writing, within 10 calendar days, to his or her Federal agency grant officer, or other designee, unless the Federal agency has designated a central point for the receipt of such notices. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(Approved by the Office of Management and Budget under control number 0991–0002.)

Appendix C to Part _____Certification Regarding Drug-Free Workplace Requirements

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall

include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

Adoption of the Common Rule

The text of the common rule, as adopted by the agencies in this document, appears below.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3017

RIN 0505-AA06

FOR FURTHER INFORMATION CONTACT: Juliette Bethea, Chief, Federal Assistance and Fiscal Policy Division, Office of Finance and Management, (202) 382-1204.

ADDITIONAL SUPPLEMENTARY INFORMATION: Any State or State Agency electing to submit an annual drug-free workplace certification to the U.S. Department of Agriculture (USDA), as specified in paragraphs (c) and (d) of section 3017.630, should forward its certification to: U.S. Department of Agriculture, Office of Finance and Management, Federal Assistance and Fiscal Policy Division, Federal Assistance Team, Room 1369, South Building, Washington, DC 20250.

Under § 3017.635(a)(1), grantees who are not individuals shall provide written notice of employee convictions for violations of a criminal drug statute occurring in the workplace to every USDA granting agency on whose grant activity the convicted employee was working. Under § 3017.635(b), grantees who are individuals shall provide written notice to every USDA granting agency of their convictions for violations of criminal drug statutes occurring during the conduct of any grant activity. Grantees may contact the USDA granting agency for the appropriate mailing address. USDA agencies shall give the Office of Finance and Management a copy of any such conviction notices they receive.

List of Subjects in 7 CFR Part 3017

Debarment and suspension (nonprocurement), Drug abuse, Grant programs (Agriculture).

Title 7 of the Code of Federal Regulations is amended as set forth below.

Dated: May 11, 1990.

Clayton Yeutter,

Secretary.

Accordingly, the interim final rule amending 7 CFR part 3017 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 3017—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 3017 continues to read as follows:

Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 5 U.S.C. 301.

2. Subpart F and Appendix C to part 3017 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

3017.600 Purpose.
3017.605 Definitions.
3017.610 Coverage.
3017.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
3017.620 Effect of violation.
3017.625 Exception provision.
3017.630 Certification requirements and procedures.
3017.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 3017—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR _____, May 25, 1990.

DEPARTMENT OF ENERGY

10 CFR Part 1036

RIN 1991-AA71

FOR FURTHER INFORMATION CONTACT: Howard K. Mitchell, (202) 586-8190.

List of Subjects in 10 CFR Part 1036

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 10 of the Code of Federal Regulations is amended as set forth below.

Berton J. Roth,

Deputy Director, Office of Procurement and Assistance Management.

Accordingly, the interim final rule amending 10 CFR part 1036, which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the final changes:

PART 1036—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 1036 continues to read as follows:

Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); Secs. 644 and 646, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97-258, 98 Stat. 1003-1005 (31 U.S.C. 6301-6308).

2. Subpart F and Appendix C to part 1036 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

1036.600 Purpose.
1036.605 Definitions.
1036.610 Coverage.

Sec.
1036.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1036.620 Effect of violation.
1036.625 Exception provision.
1036.630 Certification requirements and procedures.
1036.635 Reporting of and employee sanctions for convictions of criminal drug offenses.
* * * * *

Appendix C to Part 1036—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR _____, May 25, 1990.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 145

RIN 3245-AC08

FOR FURTHER INFORMATION CONTACT: Christopher Holleman, Attorney-Advisor, U.S. Small Business Administration, 1441 L Street NW., Room 706, Washington, DC 20416, (202) 653-6169.

List of Subjects in 13 CFR Part 145

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 13 of the Code of Federal Regulations is amended as set forth below.

Katherine Bulow,

Deputy Administrator.

Susan Engeleiter,

Administrator.

Accordingly, the interim final rule amending 13 CFR part 145 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 145—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 145 continues to read as follows:

Authority: E.O. 12549; Secs. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 15 U.S.C. 634(b)(6).

2. Subpart F and Appendix C to part 145 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
145.600 Purpose.
145.605 Definitions.
145.610 Coverage.
145.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
145.620 Effect of violation.
145.625 Exception provision.
145.630 Certification requirements and procedures.
145.635 Reporting of and employee sanctions for convictions of criminal drug offenses.
* * * * *

Appendix C to Part 145—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice at 55 FR ———, May 25, 1990.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1265

RIN 2700-AA81

FOR FURTHER INFORMATION CONTACT: David K. Beck, (202) 453-8250.

List of Subjects in 14 CFR Part 1265

Administrative practice and procedure, Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 14 of the Code of Federal Regulations is amended as set forth below.

S. J. Evans,

Assistant Administrator for Procurement.

Accordingly, the interim final rule amending 14 CFR part 1265 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 1265—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 1265 continues to read as follows:

Authority: E.O. 12549; Secs. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); National Aeronautics and Space Act, Pub. L. 85-568, July 29, 1958, as amended, sec. 203(c)(1).

2. Subpart F and Appendix C to part 1265 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
1265.600 Purpose.
1265.605 Definitions.
1265.610 Coverage.
1265.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1265.620 Effect of violation.
1265.625 Exception provision.
1265.630 Certification requirements and procedures.
1265.635 Reporting of and employee sanctions for convictions of criminal drug offenses.
* * * * *

Appendix C to Part 1265—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

DEPARTMENT OF COMMERCE

15 CFR Part 26

RIN 0605-AA05

FOR FURTHER INFORMATION CONTACT: Diane C. Haeger, (202) 377-5817.

ADDITIONAL SUPPLEMENTARY INFORMATION: As provided under §§ 26.630 (c) and (d)(2) and 26.635 (a)(1) and (b), a central point of contact may be designated for submission of annual State and State agency certifications and notices of conviction. The Office of Federal Assistance serves as the central point for the Department of Commerce. State and State agency certifications and notices of conviction should be forwarded to: Barbara L. Spithas, Director, Office of Federal Assistance, HCHB Room 6204, U.S. Department of Commerce, Washington, DC 20230.

List of Subjects in 15 CFR Part 26

Administrative practice and procedures, Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 15 of the Code of Federal Regulations is amended as set forth below.

Sonya G. Stewart,

Director for Finance and Federal Assistance.

Accordingly, the interim final rule amending 15 CFR part 26 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 26—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 26 continues to read as follows:

Authority: Executive Order 12549; Secs. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 5 U.S.C. 301.

2. Subpart F and Appendix C to part 26 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

26.600 Purpose.
26.605 Definitions.
26.610 Coverage.
26.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
26.620 Effect of violation.
26.625 Exception provision.
26.630 Certification requirements and procedures.
26.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 26—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

3. Part 26, subpart F is further amended as follows:

a. Section 26.630 is amended by adding paragraphs (c)(1) and (d)(2)(i) to read as follows:

§ 26.630 Certification requirements and procedures.

* * * * *

(c) * * *

(1) The Office of Federal Assistance serves as the central location for submission of State and State agency certifications. Certifications should be sent to: Director, Office of Federal Assistance, HCHB Room 6204, Washington, DC 20230.

(d) * * *

(2) * * *

(i) The Office of Federal Assistance serves as the central location for submission of should be sent to: Director, Office of Federal Assistance, HCHB Room 6204, Washington, DC 20230.

* * * * *

b. Section 26.635 is amended by adding paragraphs (a)(1)(i) and (b)(1) to read as follows:

§ 26.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

(a) * * *

(1) * * *

(i) The Office of Federal Assistance serves as the central location for submission of notices of conviction. Notices should be sent to: Director, Office of Federal Assistance, HCHB-Room 6204, Washington, DC 20230.

* * * * *

(b) * * *

(1) The Office of Federal Assistance serves as the central location for submission of notices of conviction. Notices should be sent to: Director, Office of Federal Assistance, HCHB Room 6204, Washington, DC 20230.

* * * * *

DEPARTMENT OF STATE

22 CFR Part 137

RIN 1400–AA21

FOR FURTHER INFORMATION CONTACT: James Tyckoski, Office of the Procurement Executive (703) 875–7046.

List of Subjects in 22 CFR Part 137

Administrative practice and procedure, Controlled substances, Debarment and suspension (nonprocurement), Drug abuse, Fraud, Grant programs-foreign relations, Grants administration, Reporting and recordkeeping requirements.

Title 22 of the Code of Federal Regulations is amended as set forth below.

John J. Conway,

Procurement Executive.

Accordingly, the interim final rule amending 22 CFR part 137 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 137—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 137 continues to read as follows:

Authority: Executive Order 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 22 U.S.C. 2658.

2. Subpart F and Appendix C to part 137 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

137.600 Purpose.
137.605 Definitions.
137.610 Coverage.
137.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
137.620 Effect of violation
137.625 Exception provision.
137.630 Certification requirements and procedures.
137.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 137—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 208

RIN 0412–AA14

FOR FURTHER INFORMATION CONTACT: Kathleen O'Hara, (703) 875–1534.

List of Subjects in 22 CFR Part 208

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 22 of the Code of Federal Regulations is amended as set forth below.

John F. Owens,

Deputy Assistant to the Administrator for Management.

Accordingly, the interim final rule amending 22 CFR part 208 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 208—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 208 continues to read as follows:

Authority: Executive Order 12549; Sec. 5151–5160 of the Drug Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); Sec. 621, Foreign Assistance Act of 1961, 22 U.S.C. 2381.

2. Subpart F and Appendix C to part 208 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
208.600 Purpose.
208.605 Definitions.
208.610 Coverage.
208.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
208.620 Effect of violation.
208.625 Exception provision.
208.630 Certification requirements and procedures.
208.635 Reporting of and employee sanctions for convictions of criminal drug offenses.
* * * * *

Appendix C to Part 208—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

PEACE CORPS

22 CFR Part 310

RIN 0420-AA05

FOR FURTHER INFORMATION CONTACT: John K. Scales, General Counsel, 202-606-3114.

List of Subjects in 22 CFR Part 310

Cooperative agreements, Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 22 of the Code of Federal Regulations is amended as set forth below.

Paul D. Coverdell,

Director.

Accordingly, the interim final rule amending 22 CFR part 310 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 310—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 310 continues to read as follows:

Authority: Executive Order 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D); 22 U.S.C. 2503.

2. Subpart F and Appendix C to part 310 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
310.600 Purpose.
310.605 Definitions.
310.610 Coverage.
310.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
310.620 Effect of violation.
310.625 Exception provision.
310.630 Certification requirements and procedures.
310.635 Reporting of and employee sanctions for convictions of criminal drug offenses.
* * * * *

Appendix C to Part 310—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

UNITED STATES INFORMATION AGENCY

22 CFR Part 513

FOR FURTHER INFORMATION CONTACT: Darwin Roberts, United States Information Agency, Office of Contracts, Policy and Procedures Staff, Room 1611, 330 C Street, SW., Washington, DC 20547, Telephone (202) 485-6410.

List of Subjects in 22 CFR Part 513

Administrative practice and procedure, Controlled substances, Debarment and suspension (nonprocurement), Drug abuse, Grant monitoring, Grant programs, Grants administration, Ineligible grantees.

Title 22 of the Code of Federal Regulations is amended as set forth below.

Henry E. Hockeimer,

Associate Director for Management.

Accordingly, the interim final rule amending 22 CFR part 513 which was published at 54 FR 4947 on January 31, 1989, is adopted as final rule with the following changes.

PART 513—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 513 continues to read as follows:

Authority: E.O. 12549; 40 U.S.C. 486(c); Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.)

2. Subpart F and Appendix C to part 513 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
513.600 Purpose.
513.605 Definitions.
513.610 Coverage.
513.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
513.620 Effect of violation.
513.625 Exception provision.
513.630 Certification requirements and procedures.
513.635 Reporting of and employee sanctions for convictions of criminal drug offenses.
* * * * *

Appendix C to Part 513—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

INTER-AMERICAN FOUNDATION

22 CFR Part 1006

FOR FURTHER INFORMATION CONTACT: Charles M. Berk, (703) 841-3812.

List of Subjects in 22 CFR Part 1006

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 22 of the Code of Federal Regulations is amended as set forth below.

Charles M. Berk,

General Counsel.

Accordingly, the interim final rule amending 22 CFR part 1006 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 1006—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 1006 continues to read as follows:

Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 22 U.S.C. 290f.

2. Subpart F and Appendix C to part 1006 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
1006.600 Purpose.
1006.605 Definitions.
1006.610 Coverage.
1006.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1006.620 Effect of violation.
1006.625 Exception provision.
1006.630 Certification requirements and procedures.
1006.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 1006—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1508

FOR FURTHER INFORMATION CONTACT: Paul S. Magid, General Counsel at (202) 673–3916.

List of Subjects in 22 CFR Part 1508

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 22 of the Code of Federal Regulations is amended as set forth below.

Leonard H. Robinson, Jr.,

President.

Accordingly, the interim final rule amending 22 CFR part 1508 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 1508—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 1508 is revised to read as follows:

Authority: Sec. 506(a)(4) of Title V of the International Security and Development Cooperation Act of 1980 (Pub. L. 96–533).

2. Subpart F and Appendix C to part 1508 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
1508.600 Purpose.
1508.605 Definitions.
1508.610 Coverage.
1508.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1508.620 Effect of violation.
1508.625 Exception provision.
1508.630 Certification requirements and procedures.
1508.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

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Appendix C to Part 1508—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 24

RIN 2501–AA78

FOR FURTHER INFORMATION CONTACT: Marylea W. Byrd, Office of General Counsel, Department of Housing and Urban Development, Room 10266, 451 Seventh Street, SW., Washington, DC 20410. (202) 755–9886 (This is not a toll-free number.)

ADDITIONAL SUPPLEMENTARY INFORMATION: The provisions of this subpart apply to recipients of all HUD grants including CDBG formula grant recipients not otherwise subject to sanctions under part 24. Certifications required under this subpart should be submitted by formula grant recipients in conjunction with other required certifications.

Additionally, public housing authorities (PHAs) that receive HUD grants through annual contributions contracts are grantees who are subject to the requirements in this subpart. The certification required by this subpart is in addition to the requirement that PHAs include a provision in tenant's leases making drug-related criminal activity grounds for terminating the lease.

On November 3, 1989, the Department published, at 54 FR 46566, a final rule implementing the requirements of the Comprehensive Homeless Assistance Plan (CHAP), as authorized by Subtitle A of Title IV of the Stewart B. McKinney Homeless Assistance Act (the "McKinney Act") (42 U.S.C. 11361). One of the provisions of November 3, 1989 final rule requires all applicants for assistance under the McKinney Act—including applicants for (1) the Emergency Shelter Grants program, (2) the Supportive Housing Demonstration program (both the Transitional Housing and Permanent Housing for the Handicapped Homeless programs), (3) the Supplemental Assistance for Facilities to Assist the Homeless program, and (4) the section 8 Housing Assistance Payments program for the Moderate Rehabilitation of Single Room Occupancy Units for the Homeless—to include in their CHAPs an assurance that the homeless facility will be drug- and alcohol-free. Applicants should note that they must comply both with the requirements of this common rule and with the certification requirements set forth under the November 3, 1989 final rule regarding CHAPs.

List of Subjects in 24 CFR Part 24

Administrative practice and procedure, Debarment and suspension (nonprocurement), Drug abuse, Government contracts, Organization and functions (Government Agencies), Government procurement, Grant programs: housing and community development, Loan programs: housing and community development.

Title 24 of the Code of Federal Regulations is amended as set forth below.

Alfred A. DelliBovi,

Acting Secretary, Department of Housing and Urban Development.

Accordingly, the interim final rule amending 24 CFR part 24 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 24—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

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

Authority: E.O. 12549; secs. 5151–5160, Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D, 41 U.S.C. 701 *et seq.*); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Subpart F and Appendix C to part 24 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
24.600 Purpose.
24.605 Definitions.
24.610 Coverage.

Sec.
24.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
24.620 Effect of violation.
24.625 Exception provision.
24.630 Certification requirements and procedures.
24.635 Reporting of and employee sanctions for convictions of criminal drug offenses.
* * * * *

Appendix C to Part 24—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

DEPARTMENT OF JUSTICE

28 CFR Part 67

[Atty. Gen. Order No. 1416-90]

RIN 1121-AA14

FOR FURTHER INFORMATION CONTACT: Cynthia J. Schwimer (202) 307-3186.

ADDITIONAL SUPPLEMENTARY INFORMATION: Notices of convictions as described in § 67.635 (a) and (b), should be sent to the Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue NW., Washington, DC 20531. The Department of Justice has adopted a uniform system of implementing the Drug-Free Workplace common rule that will be applicable to the nonprocurement assistance activities of the offices, bureaus, and divisions of the Department of Justice which have grantmaking authority. These include: The Office of Justice Programs (including the Office for Victims of Crime, the National Institute of Justice, the Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, and the Bureau of Justice Statistics), the Bureau of Prisons, the U.S. Marshals Service, the Immigration and Naturalization Service, the Federal Bureau of Investigation, the Drug Enforcement Administration and the Community Relations Service.

List of Subjects in 28 CFR Part 67

Administrative practice and procedures, Controlled substances, Debarment and suspension (nonprocurement), Drug abuse, Fraud, Grant programs—Law, Grants administration, Reporting and recordkeeping requirements.

Title 28 of the Code of Federal Regulations is amended as set forth below.

Dick Thornburgh,

Attorney General.

PART 67—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 67 continues to read as follows:

Authority: Executive Order 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 *et seq*), Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq* (as amended), Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq* (as amended), Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq* (as amended); 18 U.S.C. 4042; and 18 U.S.C. 4351-4353.

2. Subpart F and Appendix C to part 67 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
67.600 Purpose.
67.605 Definitions.
67.610 Coverage.
67.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
67.620 Effect of violation.
67.625 Exception provision.
67.630 Certification requirements and procedures.
67.635 Reporting of and employee sanctions for convictions of criminal drug offenses.
* * * * *

Appendix C to Part 67—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

DEPARTMENT OF LABOR

29 CFR Part 98

RIN 1291-AA17

FOR FURTHER INFORMATION CONTACT: Richard W. Strom on (202) 523-9174.

List of Subjects in 29 CFR Part 98

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 29 of the Code of Federal Regulations is amended as set forth below.

Elizabeth Dole,

Secretary of Labor.

Accordingly, the interim final rule amending 29 CFR part 98 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 98—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 98 continues to read as follows:

Authority: E.O. 12549; Sec. 5151 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 5 U.S.C. 552-556.

2. Subpart F and Appendix C to part 98 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
98.600 Purpose.
98.605 Definitions.
98.610 Coverage.
98.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
98.620 Effect of violation.
98.625 Exception provision.
98.630 Certification requirements and procedures.
98.635 Reporting of and employee sanctions for convictions of criminal drug offenses.
* * * * *

Appendix C to Part 98—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1471

RIN 3076-AA02

FOR FURTHER INFORMATION CONTACT: Lee A. Buddendeck, 202/653-5320.

List of Subjects in 29 CFR Part 1471

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 29 of the Code of Federal Regulations is amended as set forth below.

Bernard E. DeLury,

Director.

Accordingly, the interim final rule amending 29 CFR part 1471 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 1471—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 1471 continues to read as follows:

Authority: Executive Order 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), P.L. 95–524, Oct 27, 1978, 29 USC 175a.

2. Subpart F and Appendix C to part 1471 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

1471.600 Purpose.
1471.605 Definitions.
1471.610 Coverage.
1471.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1471.620 Effect of violation.
1471.625 Exception provision.
1471.630 Certification requirements and procedures.
1471.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

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Appendix C to Part 1471—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

DEPARTMENT OF THE TREASURY

31 CFR Part 19

RIN 1505–AA40

FOR FURTHER INFORMATION CONTACT: Charles Schaefer (202) 566–9616.

List of Subjects in 31 CFR Part 19

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 31 of the Code of Federal Regulations is amended as set forth below.

Linda M. Combs,

Assistant Secretary (Management).

Accordingly, the interim final rule amending 31 CFR part 19 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 19—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 19 continues to read as follows:

Authority: Executive Order 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 31 U.S.C. 32.

2. Subpart F and Appendix C to part 19 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

19.600 Purpose.
19.605 Definitions.
19.610 Coverage.
19.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
19.620 Effect of violation.
19.625 Exception provision.
19.630 Certification requirements and procedures.
19.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 19—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 280

RIN 0790–AC53

FOR FURTHER INFORMATION CONTACT: Dr. Mark Herbst, telephone (202) 694–0205.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Defense is adopting the following final rule establishing requirements for a drug-free workplace for DoD grantees. In adopting this rule, DoD is establishing uniform practices within the Office of the Secretary of Defense, the Military Departments and the Defense Agencies that are consistent with those being established by other Executive Departments and Agencies.

List of Subjects in 32 CFR Part 280

Debarment and suspension (Nonprocurement), Drug abuse, Grant programs.

Title 32 of the Code of Federal Regulations is amended as set forth below.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Accordingly, the interim final rule amending 32 CFR Part 280 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 280—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 280 continues to read as follows:

Authority: Executive Order 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 5 U.S.C. 301.

2. Subpart F and Appendix C to part 280 are revised to read as follows:

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

280.600 Purpose.
280.605 Definitions.
280.610 Coverage.
280.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
280.620 Effect of violation.
280.625 Exception provision.
280.630 Certification requirements and procedures.
280.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

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Appendix C to Part 280—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

DEPARTMENT OF EDUCATION

34 CFR Part 85

RIN 1880–AA39

EFFECTIVE DATE: These regulations take effect either 45 days after publication in

the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A notice announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mary Jane Kane, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3636, GSA Regional Office Building No. 3), Washington, DC 20202–4700, 202–732–7400 (FTS 732–7400), 202–708–5580 (FTS 458–5580) after May 6, 1990.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Education has designated central locations for submission of annual statewide or State agency drug-free workplace certifications and for receipt of notifications of convictions of criminal drug offenses. States and State agencies that previously submitted an annual certification are not required to make a certification for Federal Fiscal year 1990 until July 31, 1990. Any State or State agency electing to submit an annual drug-free workplace certification to the Department of Education must forward its certification to: Office of Intergovernmental and Interagency Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3073, Federal Office Building No. 6), Washington, DC 20202–3500. Grantees reporting convictions of criminal drug offenses must forward reports to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202–4571.

Analysis of Comments and Changes

In response to the invitation to comment in the interim final regulations published in the Federal Register on January 31, 1989 (54 FR 4947), a number of comments and questions were received regarding the applicability and effect of the regulations on the Pell Grant and campus-based student financial assistance programs authorized by Title IV of the Higher Education Act of 1965 (HEA), as amended. The campus-based student financial assistance program include the Perkins Loan (formerly National Direct Student Loan (NDSL)), College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) programs.

An analysis of the comments follows. Major issues are grouped according to subject. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Pell Grant Program

Comment: Commenters asked what is required under the provisions of the Drug-Free Workplace Act of students who receive a grant under the Pell Grant Program.

Discussion: These grants are considered direct grants to individuals and thus the certification requirements are applicable. To receive a Pell grant, a student must certify that, as a condition of receiving a Pell grant, he or she will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the period covered by his or her Pell grant.

Change: None.

Comment: Commenters asked if Pell grant recipients must sign the certification statement annually.

Discussion: Each student must sign the certification for any year in which he or she receives a Pell grant.

Change: None.

Comment: Commenters asked if a student who refuses to sign the certification required under the Drug-Free Workplace regulations in order to receive a Pell grant would still be eligible for other Title IV, HEA programs.

Discussion: If a student does not sign the certification, he or she may not receive a Pell grant. However, the student could still be eligible for other Federal student assistance. The amount of the Pell grant that the student would have been eligible to receive would still be counted as (1) estimated financial assistance for the Stafford Loan, Supplemental Loans for Students (SLS), and PLUS programs and (2) as a resource under the campus-based programs and the Income Contingent Loan (ICL) Program.

Change: None.

Comment: Commenters asked if by signing the certification statement required for the Pell Grant Program, a student is agreeing not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the period covered by his or her Pell grant at all times, or just when he or she is attending classes.

Discussion: By signing the certification required for eligibility under the Pell Grant Program, a student is agreeing not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the period covered by his or her Pell grant at all times. For example, even if the student is off campus, away for the weekend, or on a school break, the student has agreed that he or she will be drug-free during the period of time covered by his or her Pell grant.

Change: None.

Comment: Commenters asked what happens if a Pell grant recipient who has signed the certification is convicted of the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the period of enrollment covered by the Pell grant.

Discussion: A Pell grant recipient convicted of a criminal drug offense resulting from a violation occurring during the period of enrollment covered by the Pell grant must report the conviction, in writing, within 10 calendar days of the conviction, to the Director, Grants and Contracts Service, U.S. Department of Education. If the Department determines, in writing, that the reported conviction constitutes a violation of the Requirements for Drug-Free Workplace regulations, the Pell grant recipient shall be subject to suspension of payments under the grant, suspension or termination of the grant, or suspension or debarment. Failure of a Pell grant recipient to report the conviction constitutes a violation of these regulations and is subject to suspension of payments under the grant, suspension or termination of the grant, or suspension or debarment. If debarred, the student shall be ineligible for award of any grant from any Federal agency, for a period of up to five years.

Change: None.

Campus-Based Programs

Comment: Commenters asked how the Drug-Free Workplace Act of 1988 affects institutions participating in the campus-based student financial assistance programs.

Discussion: For purposes of the Act, institutions of postsecondary education participating in the campus-based programs are deemed to be "grantees" and the program allocations are deemed to be "grants." Therefore, as of March 18, 1989, as a precondition to receiving a grant, institutions of postsecondary education must certify annually (on a form provided by the Department) that they will provide a drug-free workplace. Individual recipients of funds under the campus-based student financial assistance programs are not required to sign a certification.

Change: None.

Comment: Commenters asked if institutions of postsecondary education participating in the campus-based programs are required to certify

annually that they provide a drug-free workplace.

Discussion: Yes. Institutions are required to certify annually that they will provide a drug-free workplace and to submit that certification as part of the Fiscal Operations Report and Application to Participate (FISAP) process.

Change: None.

Comment: Commenters asked if students employed under the College Work-Study (CWS) Program are considered to be employees of the institution for purposes of the Drug-Free Workplace requirements.

Discussion: Students employed under the CWS Program are considered to be employees of the institution if the work is performed for the institution in which the student is enrolled. For work performed for (a) a Federal, State, or local public agency, or (b) a private nonprofit or a private for-profit organization, students are also considered to be employees of the institution unless the agreement between the institution and organization specifies that the organization is considered to be the employer. (Reference: Appendix B—Model Off-Campus Agreement of the regulations for the College Work-Study Program, 34 CFR part 674).

Change: None.

Comment: Commenters questioned the necessity of having the Chief Executive Officer sign the "Certification Regarding Drug-Free Workplace Requirements—Grantees Other Than Individuals" required of institutions of postsecondary education participating in the campus-based programs. A few commenters also asked what the policy is if the institution's Chief Executive Officer claims that he or she cannot sign a certification because the institution uses a private servicer to administer Title IV, HEA programs under a contractual arrangement and the institution has no employees directly engaged in the administration of the programs other than a limited number of its personnel who function in a contract monitoring role.

Discussion: Under the Student Assistance General Provisions regulations in 34 CFR 668.12(a)(2), the institution enters into a written participation agreement with the Secretary in order to participate in the Title IV, HEA programs. Funds provided under the campus-based programs are considered to be "grants" awarded to postsecondary institutions as "grantees" directly rather than to a subordinate administrative component such as the financial aid office or student service division. Therefore, the Chief Executive Officer is responsible for the proper administration of the Title IV, HEA programs and for compliance with all statutory and regulatory requirements. Correspondingly, regardless of the institution's relationship with a private servicer, the Chief Executive Officer must certify that the institution maintains a drug-free workplace on behalf of the entire grantee organization (i.e., all departments, divisions, or other units of the institution) and is responsible for the implementation of the drug-free workplace requirements as specified in the Drug-Free Workplace regulations. The institution is not responsible for ensuring that the servicer as a subrecipient maintains a drug-free workplace.

Change: None.

List of Subjects in 34 CFR Part 85

Debarment and suspension (nonprocurement), Drug abuse, Grant programs. Title 34 of the Code of Federal Regulations is amended as set forth below.

Dated: May 10, 1990.

Lauro F. Cavazos,

Secretary of Education.

Accordingly, the interim final rule amending 34 CFR part 85 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 85—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 85 continues to read as follows:

Authority: Executive Order 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D 41 U.S.C. 701 et seq.); 20 U.S.C. 3474, 1221e-3(a)(1).

2. Subpart F and Appendix C of part 85 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

85.600 Purpose.
85.605 Definitions.
85.610 Coverage.
85.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
85.620 Effect of violation.
85.625 Exception provision.
85.630 Certification requirements and procedures.
85.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 85—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

3. Part 85 is further amended as follows:

a. Section 85.630 is amended by: amending paragraph (c) introductory text by removing "June 30, 1990" and adding "July 31, 1990"; adding paragraph (c)(1); amending paragraph (d)(2) by removing "June 30, 1990" and adding "July 31, 1990"; and adding paragraph (d)(2)(i) to read as follows:

§ 85.630 Certification requirements and procedures.

* * * * *

(c) * * *

(1) If a State elects to make one certification in each Federal fiscal year as specified in paragraph (c) of this section it must forward its certification to: Office of Intergovernmental and Interagency Affairs.

(d) * * *

(2) * * *

(i) If a State agency elects to make one certification in each Federal fiscal year as specified in paragraph (d) of this section it must forward its certification to: Office of Intergovernmental and Interagency Affairs.

* * * * *

b. Section 85.635 is amended by adding paragraphs (a)(1)(i) and (b)(1) to read as follows:

§ 85.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

(a) * * *

(1) * * *

(i) A grantee must report convictions as specified in paragraph (a)(1) of this section to the Director, Grants and Contracts Service, Office of Management.

* * * * *

(b) * * *

(1) A grantee must report convictions as specified in paragraph (b) of this section to the Director, Grants and Contracts Service, Office of Management.

* * * * *

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1209

RIN 3095-AA44

FOR FURTHER INFORMATION CONTACT: John Constance or Nancy Allard at 202-501-5110 (FTS 241-5110).

List of Subjects in 36 CFR Part 1209

Debarment and suspension (nonprocurement), Drug abuse, Grant programs—Archives and records.

Title 36 of the Code of Federal Regulations is amended as set forth below:

Don W. Wilson:

Archivist of the United States.

Accordingly, the interim final rule amending 36 CFR part 1209 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 1209—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 1209 continues to read as follows:

Authority: E.O. 12549; sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V, subtitle D; 41 U.S.C. 701 et seq.); 44 U.S.C. 2104(a).

2. Subpart F and Appendix C to part 1209 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

1209.600 Purpose.
1209.605 Definitions.
1209.610 Coverage.
1209.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1209.620 Effect of violation.
1209.625 Exception provision.
1209.630 Certification requirements and procedures.
1209.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 1209—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 44

RIN 2900-AE66

FOR FURTHER INFORMATION CONTACT: Mr. B. Michael Berger, Director, Records Management Service (723), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-6232.

List of Subjects in 38 CFR Part 44

Accounting, Administrative practice and procedures, Agreements, Debarment and suspension (nonprocurement), Drug abuse, Drug-free workplace, Grant programs—State cemetery and State veterans homes, Insurance, Loan guaranty, Reporting and recordkeeping requirements, Scholarships, Veterans, Vocational rehabilitation and education.

Title 38 of the Code of Federal Regulations is amended as set forth below:

Dated: May 11, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Accordingly, the interim final rule amending 38 CFR part 44 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 44—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 44 continues to read as follows:

Authority: E.O. 12549; sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V, subtitle D; 41 U.S.C. 701 et seq.); 38 U.S.C. 210(c).

2. Subpart F and Appendix C to part 44 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

44.600 Purpose.
44.605 Definitions.
44.610 Coverage.
44.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
44.620 Effect of violation.
44.625 Exception provision.
44.630 Certification requirements and procedures.
44.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 44—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 32

RIN 2090-AA10

FOR FURTHER INFORMATION CONTACT: Corinne Allison at (202) 245-4077.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA) is highly decentralized and delegates the administration of its financial assistance programs to various Regional and Headquarters offices. For this reason, the Agency will not establish a central office to receive (1) drug-free workplace certifications or (2) notifications of criminal convictions for drug offenses occurring during the conduct of grant activity in the recipient's workplace. Submitting those materials directly to the Regional or Headquarters office responsible for processing the application and administering the award is in the best interest of EPA's applicants/recipients.

List of Subjects in 40 CFR Part 32

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 40 of the Code of Federal Regulations is amended as set forth below.

Dated: May 3, 1990.

William K. Reilly,

Administrator.

Accordingly, the interim final rule amending 40 CFR part 32 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 32—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 32 continues to read as follows:

Authority: E.O. 12549; secs. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 300f, 4901, 6901 et seq.

2. Subpart F and Appendix C to part 32 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.
32.600 Purpose.
32.605 Definitions.
32.610 Coverage.
32.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
32.620 Effect of violation.
32.625 Exception provision.
32.630 Certification requirements and procedures.
32.635 Reporting of and employee sanctions for convictions of criminal drug offenses.
* * * * *

Appendix C to Part 32—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-68

RIN 3090-AE00

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad (202) 501-1224.

List of Subjects in 41 CFR Part 105-68

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 41 of the Code of Federal Regulations is amended as set forth below.

Richard G. Austin,

Acting Administrator.

Accordingly, the interim final rule amending 41 CFR part 105-68 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 105-68—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 105-68 continues to read as follows:

Authority: Title V, Subtitle D; 41 U.S.C. 701 et seq.; 40 U.S.C. 486(c).

2. Subpart F and Appendix C to part 105-68 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug Free Workplace Requirements (Grants)

Sec.
105-68.600 Purpose.
105-68.605 Definitions.
105-68.610 Coverage.
105-68.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
105-68.620 Effect of violation.
105-68.625 Exception provision.
105-68.630 Certification requirements and procedures.
105-68.635 Reporting of and employee sanctions for convictions of criminal drug offenses.
* * * * *

Appendix C to Part 105-68—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

DEPARTMENT OF THE INTERIOR

43 CFR PART 12

RIN 1090-AA28

FOR FURTHER INFORMATION CONTACT: Ceceil Coleman, Phone (202) 208-6431.

Additional Supplementary Information: The Department of the Interior is not designating a central location for the receipt of the documents required by §§ 12.630 and 12.635.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Debarment and suspension (nonprocurement), Drug abuse, Grant programs, Grants administration.

Title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: May 11, 1990.

Lou Gallegos,

Assistant Secretary—Policy, Management and Budget.

Accordingly, the interim final rule amending 43 CFR part 12 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 12—ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for part 12 continues to read as follows:

Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); 5 U.S.C. 301; Pub. L. 98-502; OMB Circulars A-102 and A-110; and OMB Circular A-128.

Subpart D—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

2. In subpart D the heading preceding § 12.600, §§ 12.600, 12.605, 12.610, 12.615, 12.620, 12.625, 12.630, and Appendix C to subpart D are revised, and § 12.635 is added to read as set forth at the end of the common preamble.

Drug-Free Workplace Requirements (Grants)

Sec.
12.600 Purpose.
12.605 Definitions.
12.610 Coverage.
12.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
12.620 Effect of violation.
12.625 Exception provision.
12.630 Certification requirements and procedures.
12.635 Reporting of and employee sanctions for convictions of criminal drug offenses.
* * * * *

Appendix C to Subpart D—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

3. Subpart D is further amended as follows:

§ 12.610 [Amended]

a. Section 12.610(c) is amended by removing "subparts A, B, C, D, and E" and adding "subpart D."

b. Section 12.630 is amended by adding paragraphs (c)(1) and (d)(2)(i) to read as follows:

§ 12.630 Certification requirements and procedures.

* * * * *

(c) * * *

(1) The Department of the Interior is not designating a central location for the receipt of the statewide certifications from States. Therefore, each State shall ensure that a copy of their certification is submitted individually with respect to each grant application sent to the Bureau/Office within the Department.

* * * * *

(d) * * *

(2) * * *

(i) The Department of the Interior is not designating a central location for the receipt of State agency-wide certifications from State agencies. Therefore, each State agency shall ensure that a copy is submitted individually with respect to each grant application sent to the Bureau/Office within the Department.

c. Section 12.635 is amended by adding paragraphs (a)(1)(i) and (b)(1) to read as follows:

§ 12.635 Reporting of and employee sanctions for convictions of sanctions for convictions of criminal drug offenses.

* * * * *

(a) * * *

(1) * * *

(i) The Department of the Interior is not designating a central location for the receipt of these notices from grantees. Therefore, the grantee shall provide this written notice to every grant officer, or other designee within a Bureau/Office of the Department on whose grant activity the convicted employee was working.

* * * * *

(b) * * *

(1) The Department of the Interior is not designating a central location for the receipt of the notice from a grantee who is an individual. Therefore, the grantee who is an individual shall provide this writtten notice to the grant officer or other designee within the Bureau/Office within the Department.

§§ 12.600, 12.605, 12.610, 12.615, 12.620, 12.625, 12.630, and 12.635 [Amended]

d. Sections 12.600, 12.605, 12.610, 12.615, 12.620, 12.625, 12.630, and 12.635 are further amended by removing "this subpart" and adding "the drug-free workplace requirements for grants" wherever "this subpart" appears, by removing "this part" and adding "subpart D" wherever "this part" appears.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 17

RIN 3067-AB58

FOR FURTHER INFORMATION CONTACT: Arthur E. Curry, Chief, Policy Division, Office of the Comptroller, (202) 646-3718.

List of Subjects in 44 CFR Part 17

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 44 of the Code of Federal Regulations is amended as set forth below.

Arthur E. Curry,

Chief, Policy Division, Office of the Comptroller.

Accordingly, the interim final rule amending 44 CFR part 17 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 17—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 17 continues to read as follows:

Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), Title V, Subtitle D; 41 U.S.C. 701 *et seq.*).

2. Subpart F and Appendix C to part 17 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

17.600 Purpose.
17.605 Definitions.
17.610 Coverage.
17.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
17.620 Effect of violation.
17.625 Exception provision.
17.630 Certification requirements and procedures.
17.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 17—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 76

RIN 0991-AA67

FOR FURTHER INFORMATION CONTACT: Beverly Cordova, 202-245-0377.

ADDITIONAL SUPPLEMENTARY INFORMATION: Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for State-wide and State agency-wide certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Ave., SW., Washington, DC 20201.

However, please note that § 76.630(b) now provides, "For mandatory formula grants and entitlements which have no application process, grantees shall submit a one-time certification in order to continue receiving awards."

List of Subjects in 45 CFR Part 76

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Dated: May 4, 1990.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

Accordingly, the interim final rule amending 45 CFR part 76 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 76—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 76 continues to read as follows:

Authority: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), Title V, Subtitle D; 41 U.S.C. 701 *et seq*). 5 U.S.C. 301.

2. Subpart F and Appendix C to part 76 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

76.600 Purpose.
76.605 Definitions.
76.610 Coverage.
76.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
76.620 Effect of violation.
76.625 Exception provisions.
76.630 Certification requirements and procedures.
76.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 76—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

National Science Foundation

45 CFR Part 620

RIN 3145-AA16

FOR FURTHER INFORMATION CONTACT: J. Rom, 357-7880.

List of Subjects in 45 CFR Part 620

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Jeff Fenstermacher,

Assistant Director for Administration.

Accordingly, the interim final rule amending 45 CFR part 620 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 620—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 620 continues to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); Sec. 11(a) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

2. Subpart F and Appendix C to part 620 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

620.600 Purpose.
620.605 Definitions.
620.610 Coverage.
620.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
620.620 Effect of violation.
620.625 Exception provision.
620.630 Certification requirements and procedures.
620.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 620—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Part 1154

RIN 3135–AA05

FOR FURTHER INFORMATION CONTACT: Larry Baden, Grants Officer, 202–682–5403.

ADDITIONAL SUPPLEMENTAL INFORMATION: Given the frequency of touring, performances, and exhibition activity of organizational applicants to the Arts Endowment and given the fluidity of those types of activities, it is not practical for these applicants to list places of performance at the time of application. Therefore, the Arts Endowment believes that the Office of Mangement and Budget-approved alternative for maintaining workplace information on file is the most responsible and least burdensome option for Endowment organizational applicants.

List of Subjects in 45 CFR Part 1154

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Cynthia C. Rand,

Deputy Chairman for Management.

Accordingly, the interim final rule amending 45 CFR part 1154 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 1154—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 1154 continues to read as follows:

Authority: E.O. 12549; Secs. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 20 U.S.C. 959(a)(1).

2. Subpart F and Appendix C to part 1154 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

1154.600 Purpose.
1154.605 Definitions.
1154.610 Coverage.
1154.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1154.620 Effect of violation.
1154.625 Exception provision.
1154.630 Certification requirements and procedures.
1154.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 1154—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———May 25, 1990.

National Endowment for the Humanities

45 CFR Part 1169

RIN 3136–AA12

FOR FURTHER INFORMATION CONTACT: David J. Wallace, (202) 786–0494.

List of Subjects in 45 CFR Part 1169

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Lynne V. Cheney,

Chairman, National Endowment for the Humanities.

Accordingly, the interim final rule amending 45 CFR part 1169 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 1169—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 1169 continues to read as follows:

Authority: E.O. 12549; Secs. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 20 U.S.C. 959(a)(1).

2. Subpart F and Appendix C to part 1169 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

1169.600 Purpose.
1169.605 Definitions.
1169.610 Coverage.
1169.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1169.620 Effect of violation.
1169.625 Exception provision.
1169.630 Certification requirements and procedures.
1169.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 1169—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR———, May 25, 1990.

Institute of Museum Services

45 CFR Part 1185

RIN 3137-AA00

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, 786–0539.

List of Subjects in 45 CFR Part 1185

Debarment and suspension (nonprocurement), Drug abuse, Grant programs, Museums.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Daphne Wood Murray,

Director, Institute of Museum Services.

Accordingly, the interim final rule amending 45 CFR part 1185 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 1185—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 1185 continues to read as follows:

Authority: E.O. 12549; Section 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 20 U.S.C. 961–68, as amended.

2. Subpart F and Appendix C to part 1185 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

1185.600 Purpose.
1185.605 Definitions.
1185.610 Coverage.
1185.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1185.620 Effect of violation.
1185.625 Exception provision.
1185.630 Certification requirements and procedures.
1185.635 Report of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 1185—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

ACTION

45 CFR Part 1229

RIN 3001-AA16

FOR FURTHER INFORMATION CONTACT: Margaret M. McHale at 202–634–9150.

List of Subjects in 45 CFR Part 1229

Accounting, Administrative practice and procedures, Debarment and suspension (nonprocurement), Drug abuse, Grant programs—Volunteer services, Grants administration, insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Jane A. Kenny,

Director, ACTION.

Accordingly, the interim final rule amending 45 CFR part 1229 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 1229—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 1229 continues to read as follows:

Authority: E.O. 12549: Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq; Pub. L. 93–113; 42 U.S.C. 4951, et seq.; 42 U.S.C. 5060.

2. Subpart F and Appendix C to part 1229 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

1229.600 Purpose.
1229.605 Definitions.
1229.610 Coverage.
1229.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1229.620 Effect of violation.
1229.625 Exception provision.
1229.630 Certification requirements and procedures.
1229.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 1229—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2016

FOR FURTHER INFORMATION CONTACT: Jack McDade, Acting Director of Administration, (202) 653–5330.

List of Subjects in 45 CFR Part 2016

Debarment and suspension (nonprocurement), Drug abuse, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended as set forth below:

Dr. Herbert M. Atherton,

Staff Director and Director of Education.

Accordingly, the interim final rule amending 45 CFR part 2016 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 2016—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 2016 continues to read as follows:

Authority: Public Law 98–101, as amended; title V of Public Law 99–194; and title V of Public Law 101–62.

2. Subpart F and Appendix C to part 2016 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec

2016.600 Purpose.
2016.605 Definitions.
2016.610 Coverage.
2016.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
2016.620 Effect of violation.
2016.625 Exception provision.
2016.630 Certification requirements and procedures.
2016.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 2016—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

DEPARTMENT OF TRANSPORTATION

49 CFR Part 29

RIN 2105-AB64

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, 202-366-9306.

List of Subjects in 49 CFR Part 29

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 49 of the Code of Federal Regulations is amended as set forth below.

Samuel K. Skinner,

Secretary of Transportation.

Accordingly, the interim final rule amending 49 CFR part 29 which was published at 54 FR 4947 on January 31, 1989, is adopted as a final rule with the following changes:

PART 29—GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 29 continues to read as follows:

Authority: E.O. 12549; sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V, subtitle D; 41 U.S.C. 701 et seq.); 49 CFR part 322.

2. Subpart F and Appendix C to part 29 are revised to read as set forth at the end of the common preamble.

Subpart F—Drug-Free Workplace Requirements (Grants)

Sec.

29.600 Purpose.
29.605 Definitions.
29.610 Coverage.
29.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
29.620 Effect of violation.
29.625 Exception provision.
29.630 Certification requirements and procedures.
29.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

* * * * *

Appendix C to Part 29—Certification Regarding Drug-Free Workplace Requirements

Cross Reference: See also Office of Management and Budget notice published at 55 FR ———, May 25, 1990.

[FR Doc. 90-11589 Filed 5-24-90; 8:45 am]

BILLING CODES 3410-90-M; 6450-01-M; 8025-01-M; 7510-01-M; 3510-FE-M; 4710-24-M; 6116-01-M; 6051-01-M; 8230-01-M; 7025-01-M; 6117-01-M; 4210-32-M; 4410-18-M; 4510-23-M; 6372-01-M; 4810-25-M; 3810-01-M; 4000-01-M; 7515-01-M; 8032-01-M; 6560-50-M; 6820-61-M; 4310-RF-M; 6718-01-M; 4150-04-M; 7555-01-M; 7537-01-M; 7536-01-M; 7036-01-M; 6050-28-M; 6340-01-M; 4910-62-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 9, 23, 42, and 52

[Federal Acquisition Circular 84-57]

RIN 9000-AC98

Federal Acquisition Regulation (FAR); Drug-Free Workplace Act of 1988

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-57 amends the Federal Acquisition Regulation (FAR) to implement the Drug Free Workplace Act of 1988 (Pub. L. 100-690). The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are issuing this final rule to adopt and amend the interim rule (FAC 84-43) published in the **Federal Register** on January 31, 1989 (54 FR 4967). The Act requires that certain contractors certify that they will maintain a drug-free workplace.

DATES: *Effective Date:* July 24, 1990. This rule applies to contracts awarded on or after that date, and for modifications awarded on or after that date which require a justification and approval (see subpart 6.3).

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite Federal Acquisition Circular 84-57.

SUPPLEMENTARY INFORMATION:

A. Background

The FAR revisions included in this final rule implement the Drug-Free Workplace Act of 1988 (Pub. L. 100-690) and are applicable to all Federal agencies. Generally, all offerors on contracts expected to equal or exceed $25,000 will be required to certify that they will maintain a drug-free workplace by—

(1) Publishing a statement notifying employees that drug abuse in the workplace is prohibited;

(2) Establishing an ongoing, drug-free awareness program to inform its employees of the dangers of drug abuse, the contractor's drug-free workplace policy, the availability of drug counseling programs, and the possible penalties for drug abuse violations occurring in the workplace;

(3) Requiring each employee directly involved in the performance of a Government contract to notify the employer of any criminal drug statute conviction for a violation occurring in the workplace, and requiring the contractor to so notify the Government;

(4) Requiring the imposition of sanctions or remedial measures for an employee convicted of a drug abuse violation in the workplace; and

(5) Continuing, in good faith, to comply with the above requirements.

With respect to contractors consisting of only one individual, regardless of the dollar value of the contract, the regulation requires the individual to certify that he/she will not engage in unlawful conduct related to controlled substances in the workplace. Development or promulgation of a drug-free awareness program is not required for contractors consisting of only one individual. The agencies intend that a "principal investigator," in a research or similar contract, be viewed as an individual only if the contract is awarded directly to the investigator.

The regulation also provides various remedies to the Government for a contractor's false certification, violation of the certification, or failure to make a good faith effort to provide a drug-free workplace program. The remedies provided are suspension of payments, termination of the contract for default, and suspension or debarment of the contractor.

B. Paperwork Reduction Act

This final rule is deemed to contain information collection requirements. Public comments concerning the information collection requirement pertaining to the interim rule were previously invited in the **Federal Register** on January 23, 1989. The Office of Management and Budget, pursuant to 5 CFR part 1320, granted approval for a paperwork collection requirement under OMB Control Number 9000-0101. However, the information collection requirements in this final rule remain unchanged.

C. Regulatory Flexibility Act

It is expected that this final rule will have a singificant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). A Final Regulatory Flexibility Act Analysis has been prepared and will be submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Final Regulatory Flexibility Act Analysis is available from the FAR Secretariat upon request.

D. Public Comments

An interim rule was published in the **Federal Register** on January 31, 1989 (54 FR 4967), and the comments received were considered in the development of this final rule.

List of Subjects in 48 CFR Parts 1, 9, 23, 42, and 52

Government procurement.

Dated: May 16, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

[Number 84-57]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-57 is effective July 24, 1990, for contracts awarded on or after that date which require a justification and approval (see subpart 6.3).

(The provisions of the interim rule remain in effect until the effective date of this rule.)

Eleanor Spector,

Deputy Assistant Secretary of Defense for Procurement, DoD.

Richard H. Hopf,

Associate Administrator for Acquisition Policy, GSA.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-57 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Drug-Free Workplace

FAR 9.405(a), 9.406-1(c), 9.406-2(b) and (d), 9.406-4(a), 9.407-2(a), 23.501, 23.503, 23.504, 23.505, 23.506, and 42.302 are revised, and a provision at 52.223-5, and a clause at 52.223-6 are revised to implement the Drug-Free Workplace Act of 1988 (Pub. L. 100-690). The Act was passed to ensure that Government contractors establish and maintain a drug-free workplace. As of March 18, 1989, the regulations require Government contractors, including 8(a) contractors, to certify, in order to be eligible for award, that they will provide a drug-free workplace through certain enumerated acts. The Act provides specified remedies to the Government for failure of the contractor to comply. Special rules apply to contracts with individuals.

This requirement is effective July 24, 1990, for contracts awarded on or after that date and for modifications awarded

on or after that date which require a justification and approval (see subpart 6.3). Until the effective date of this final rule, the provisions of the interim rule remain in effect.

Accordingly, the interim rule amending 48 CFR parts 1, 9, 23, and 52, which was published at 54 FR 4967–4971 on January 31, 1989, is adopted as a final rule with the following changes which includes a change to part 42:

1. The authority citation for 48 CFR parts 1, 9, 23, 42 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

§ 9.405 [Amended]

2. Section 9.405 is amended by removing in paragraph (a), at the end of the first sentence, the parenthetical phrase "(see 9.405–2, 9.406–1(c), and 9.407–1(d))" and inserting in its place the parenthetical phrase "(see 9.405–2, 9.406–1(c), 9.407–1(d), and 23.506(e))".

3. Section 9.406–1 is amended by revising paragraph (c) to read as follows:

§ 9.406–1 General.

* * * * *

(c) A contractor's debarment shall be effective throughout the executive branch of the Government, unless an acquiring agency's head or a designee (except see 23.506(e)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

§ 9.406–2 [Amended]

4. Section 9.406–2 is amended by adding in paragraph (b)(2)(iii), at the end of the sentence, the parenthetical reference "(see 23.504)".

5. Section 9.406–4 is amended by revising in paragraph (a), the third sentence to read as follows:

§ 9.406–4 Period of debarment.

(a) * * * If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

* * * * *

9.407–2 [Amended]

6. Section 9.407–2 is amended by adding in paragraph (a)(4)(iii), at the end of the sentence, the parenthetical reference "(see 23.504)."

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

7. Section 23.501 is amended by revising the introductory text and paragraph (c) to read as follows:

23.501 Applicability.

This subpart applies to all contracts, including contracts with 8(a) contractors under FAR subpart 19.8 and modifications which require a justification and approval (see subpart 6.3) except—

* * * * *

(c) Contracts by law enforcement agencies, if the head of the law enforcement agency or designee involved determines that application of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or

* * * * *

8. Section 23.503 is amended by revising the definitions "Drug-free workplace" and "Employee" to read as follows:.

23.503 Definitions.

* * * * *

Drug-free workplace means the site(s) for the performance of work done by the contractor in connection with a specific contract at which employees of the contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

Employee means an employee of a contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other contract employee who has other than a minimal impact or involvement in contract performance.

* * * * *

9. Section 23.504 is amended by revising the introductory text of paragraph (a)(2); by revising paragraphs (a)(4), (a)(5), and (a)(6); and by adding paragraph (d) to read as follows:

23.504 Policy.

(a) * * *

(2) Establishing an ongoing drug-free awareness program to inform its employees about—

* * * * *

(4) Notifying all employees in writing in the statement required by subparagraph (a)(1) of this section, that as a condition of employment on a covered contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction;

(5) Notifying the contracting officer in writing within 10 calendar days after receiving notice under subdivision (a)(4)(ii) of this section, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the postion title of the employee;

(6) Within 30 calendar days after receiving notice under subparagraph (a)(4) of this section of a conviction, taking one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

* * * * *

(d) For a contract of 30 days or more performance duration, the contractor shall comply with the provisions of paragraph (a) of this section within 30 calendar days after contract award, unless the contracting officer agrees in writing that circumstances warrant a longer period of time to comply. Before granting such an extension, the contracting officer shall consider such factors as the number of contractor employees at the worksite, whether the contractor has or must develop a drug-free workplace program, and the number of contractor worksites. For contracts of less than 30 days performance duration, the contractor shall comply with the provisions of paragraph (a) of this section as soon as possible, but in any case, by a date prior to when performance is expected to be completed.

10. Section 23.505 is revised to read as follows:

23.505 Solicitation provision and contract clause.

(a) Contracting officers shall insert the provision at 52.223–5, Certification Regarding A Drug-Free Workplace, except as provided in paragraph (c) of this section, in solicitations—

(1) Of any dollar value if the contract is expected to be awarded to an individual; or

(2) Expected to equal or exceed $25,000, if the contract is expected to be awarded to other than an individual.

(b) Contracting officers shall insert the clause at 52.223–6, Drug-Free Workplace, in solicitations and contracts described in paragraph (a) of this section unless the conditions of paragraph (c) of this section apply.

(c) Contracting officers shall not insert the provision at 52.223–5, Certification Regarding A Drug-Free Workplace, or

the clause at 52.223–6, Drug-Free Workplace, in solicitations or contracts, if—

(1) The resultant contract is to be performed entirely outside of the United States, its territories, and its possessions;

(2) The resultant contract is for law enforcement agencies, and the head of the law enforcement agency or designee involved determines that application of the requirements of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or

(3) Inclusion of these requirements would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.

23.506 [Amended]

11. Section 23.506 is amended in paragraph (e) by removing in the first sentence the word "subpart" and inserting in its place the word "section".

PART 42—CONTRACT ADMINISTRATION

. Section 42.302 is amended by adding paragraph (a)(66) to read as follows:

42.302 Contract administration functions.

(a) * * *

(66) Determine that the contractor has a drug-free workplace program and drug free awareness program (see subpart 23.5).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

13. Section 52.223–5 is amended in the clause by removing in the title of the provision the date "(March 1989)" and inserting in its place the date "(JUL 1990)"; by revising in paragraph (a) the definitions "Drug-free workplace" and "Employee"; by revising the introductory text of paragraphs (b), (b)(2), and (b)(6); and by revising paragraphs (b)(4), (b)(5), and (e) to read as follows:

52.223–5 Certification Regarding A Drug-Free Workplace.

* * * * *

(a) * * *

* * * * *

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

* * * * *

(b) By submission of its offer, the offeror, if other than an individual, who is making an offer that equals or exceeds $25,000, certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, it will—no later than 30 calendar days after contract award (unless a longer period is agreed to in writing), for contracts of 30 calendar days or more performance duration; or as soon as possible for contracts of less than 30 calendar days performance duration, but in any case, by a date prior to when performance is expected to be completed—

* * * * *

(2) Establish an ongoing drug-free awareness program to inform such employees about—

* * * * *

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this provision that, as a condition of continued employment on the contract resulting from this solicitation, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction;

(5) Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee; and

(6) Within 30 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

* * * * *

(e) In addition to other remedies available to the Government, the certification in paragraphs (b) or (c) of this provision concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

* * * * *

14. Section 52.223–6 is amended in the introductory text by removing the reference "23.505(c)" and inserting in its place "23.505(b)"; in the title of the clause by removing the date "(Mar. 1989)" and inserting in its place "(JUL 1990)"; by revising in paragraph (a) the definitions "Drug-free workplace" and "Employee"; by revising the introductory text of paragraphs (b), (b)(2), and (b)(6); by revising paragraphs (b)(4), (b)(5), and (d) to read as follows:

52.223–6 Drug-Free Workplace.

* * * * *

(a) * * *

* * * * *

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

* * * * *

(b) The Contractor, if other than an individual, shall—within 30 calendar days after award (unless a longer period is agreed to in writing for contracts of 30 calendar days or more performance duration); or as soon as possible for contracts of less than 30 calendar days performance duration—

* * * * *

(2) Establish an ongoing drug-free awareness program to inform such employees about—

* * * * *

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction.

(5) Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision (a)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 calendar days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any

employee who is convicted of a drug abuse violation occurring in the workplace:

* * * * *

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

* * * * *

[FR Doc. 90–11721 Filed 5–24–90; 8:45 am]
BILLING CODE 6820–34–M

federal register

Friday
May 25, 1990

Part III

Department of Education

34 CFR Part 300 et al.

Intergovernmental Review of Department of Education Programs and Activities; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 300, 315, 332, 365, 366, 367, 369, 380, 385, 396, 400, 607, 608, 609, 624, 628, 629, 630, 631, 637, 639, 643, 644, 645, 646, 649, 656, 657, 658, and 692

RIN 1860-AA00

Intergovernmental Review of Department of Education Programs and Activities

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends program regulations to implement changes in coverage for Department of Education programs subject to Executive Order 12372 (Intergovernmental Review of Federal Programs). These changes are required to comply with amendments published on July 6, 1986 to the regulations in 34 CFR part 79 that implement the Executive Order. Those amendments to part 79 revised the criteria for inclusion and exclusion of programs subject to State review under the Executive Order. The notice of proposed rulemaking for these changes provided an opportunity for the public to comment on revisions to the lists of included and excluded programs. The notice also allowed each State to select the programs to be subject to that State's review process.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Linda Mount, Telephone: (202) 732-3671.

SUPPLEMENTARY INFORMATION: Executive Order 12372 (the Order), signed July 14, 1982, was intended "to foster an intergovernmental partnership and a strengthening 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."

On June 24, 1983, the Secretary published regulations in 48 FR 29158, implementing the Order. The Secretary published amendments to these regulations (at 51 FR 20823, June 9, 1986) to implement changes in criteria for program coverage issued in OMB's March 14, 1985, memorandum entitled "Procedural Changes in Agency Implementation of Executive Order 12372."

On March 13, 1989, the Secretary published a notice of proposed rulemaking to amend certain program regulations to bring them within the coverage of the Order, as specified in the new part 79 criteria. Also published with that document were two new appendices—Appendix A, Programs for Inclusion for State Review under Executive Order 12372 and Appendix B, Programs for Exclusion from Review under Executive Order 12372. The appendices include all included and excluded programs implemented on or before December 31, 1989. Regulations for each program implemented after that date indicate whether the program is subject to the Order. The Department will publish supplements to the lists before the end of this year, indicating whether new programs are included or excluded.

The Department has reviewed all of its current programs for coverage under the Order according to the revised OMB criteria. Under these criteria, a Federal assistance program or activity is included for State review unless the program or activity does not directly affect State or local governments, is proposed Federal legislation, regulation, or budget formulation, or involves one of the following: (1) National security, (2) procurement, (3) direct payments to individuals, (4) financial transfers for which Federal agencies have no funding discretion or direct authority to approve specific sites or projects, (5) research and development that is national in scope, and (6) assistance to federally-recognized Indian tribes.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM for public comment, ten parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows:

There were a number of comments related to listing of programs in the Catalog of Federal Domestic Assistance that were not related to program coverage under this Executive Order. Therefore, those comments are not discussed in this preamble.

General comments

Comment: Two commenters inquired if a noncompeting continuation grant application requires a review by a State agency, particularly if the original award predated the date these rules become final.

Discussion: The first continuation award for which application is made after these regulations become effective will be covered by these regulations. Further, awards under all new programs, including multi-year awards, are covered under part 79 unless the applicable program regulations exclude that program from coverage under the Order.

Changes: None.

Comment: One commenter was concerned that adherence to this Order would result in undue lengthening of the grant application process.

Discussion: Adherence to these regulations will not usually result in lengthening of the time between submission of the proposal and the actual time of the grant award is made since the period between the submission of the proposal and the grant award is usually more than the 60-day comment period provided for State comment under the regulations.

Changes: None.

Comment: One commenter expressed concerns over the disadvantages that the university community would experience as a result of the proposed change to programs covered under the Order since a responsible level of review presently exists.

Discussion: By establishing a single point of contact (SPOC), the State can coordinate programs to avoid duplication within the State. The normal university-State relationship would not provide this kind of coordination ability.

Changes: None.

Comment: Some commenters questioned whether programs not listed in these regulations are covered under the Order. The regulations for each program specifies whether the regulations in part 79 implementing the Order apply to the program. If a new program does not have regulations, part 79 provides that the program is automatically covered (34 CFR 79.3(b)). This final regulation only amends program regulations that do not already apply part 79 to add coverage of that part for programs that meet the criteria for coverage. The application notice for each discretionary grant program specifies whether the program is subject to review under the Executive Order.

Change: None.

Appendices A and B

Comment: Several commenters suggested that some programs be moved from the included list to the excluded list. These included the Supplemental Education Opportunity Grant (SEOG), State Student Loan Incentive Grant (SSIG), and Paul Douglas Teacher Scholarship Programs. The justification offered for why these programs should

be excluded was that funds are awarded through States or institutions of postsecondary education to students.

Discussion: The applicable criterion for exclusion under the Order provides that the funds must be paid by the Federal Government directly to the individual. The funds awarded in the above programs go first to the State or the postsecondary institution and then to the individual. Therefore, these programs cannot be properly excluded from coverage. (See 34 CFR 79.3(c)(5)).

Change: None.

Comment: A commenter suggested that the National Resource Centers and Fellowship Program for Language and Area or Language and International Studies, and the Undergraduate International Studies and Foreign Language Program be moved to the excluded list based on the rationale that funds under this program support research that is national in scope and go directly to the individual.

Discussion: The funds awarded under these programs do not go directly to individuals but rather go first to postsecondary institutions and are therefore not excluded under the Order. They also do not conduct research and development that is national in scope and therefore do not fall into one of OMB's categories for exclusion. These programs remain on the list of included programs. The International Research and Studies program does support research and development that is national in scope and remains on the list of excluded programs.

Change: None.

Comment: Clarification of the appropriate placement for several programs was sought by several commenters.

Discussion: The Rehabilitation Services Administration-Service Projects program (CFDA #84.128) appears both in appendix A and appendix B. There are several components under 84.128. All components are covered except 84.128H which is excluded from coverage under the Order.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 300

Administrative practice and procedure, Education, Education of handicapped, Equal educational opportunity, Privacy, Private schools.

34 CFR Part 315

Education, Education of handicapped, Education—research, Government contracts, Student aid, Teachers.

34 CFR Part 332

Education, Education of handicapped.

34 CFR Part 365

Education, State Independent Living, Reporting and recordkeeping requirements, Vocational rehabilitation services.

34 CFR Part 366

Education, Grant programs—social programs, Vocational rehabilitation.

34 CFR Part 367

Education, Independent living services, Older Blind individuals, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 369

Education, Grant Programs—social programs,Vocational rehabilitation.

34 CFR Part 380

Education, Grants program—education, Grants program—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 385

Education, Vocational rehabilitation.

34 CFR Part 396

Education, Vocational rehabilitation.

34 CFR Part 400

Adult Education, Education, Education of disadvantaged, Equal educational opportunity, Private schools, Schools, School construction, Vocational education, Women.

34 CFR Part 607

Colleges and universities, Education.

34 CFR Part 608

Colleges and universities, Education.

34 CFR Part 609

Colleges and universities, Education.

34 CFR Part 624

Colleges and universities, Education.

34 CFR Part 628

Colleges and universities, Education.

34 CFR Part 629

Adult education, Colleges and universities, Education, Veterans.

34 CFR Part 630

Colleges and universities, Education, Government contracts.

34 CFR Part 631

Colleges and universities, Education, Educational research, Employment, Manpower training programs, Student aid.

34 CFR Part 637

Colleges and universities, Education, Education of disadvantaged, Educational study programs, Equal educational opportunity, Science and technology.

34 CFR Part 639

Colleges and universities, Education, Educational study programs, Law.

34 CFR Part 643

Colleges and universities, Education, Education of disadvantaged, Education of handicapped.

34 CFR Part 644

Colleges and universities, Education of disadvantaged, Education, Education of handicapped.

34 CFR Part 645

Colleges and universities, Education, Education of disadvantaged, Education of handicapped.

34 CFR Part 646

Bilingual education, Education, Education of disadvantaged, Education of handicapped, Government contracts.

34 CFR Part 649

Colleges and universities, Education, Energy, Mineral resources, Mines, Scholarships and fellowships.

34 CFR Part 656

Education, Foreign language.

34 CFR Part 657

Education, Fellowships.

34 CFR Part 658

Education, Foreign language.

34 CFR Part 692

Education, State-administered-education, Student aid.

Dated: May 21, 1990.

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend parts 300, 315, 332, 365, 366, 367, 369, 380, 385, 396, 400, 607, 608, 609, 624, 628, 629, 630, 631, 637, 639, 643, 644, 645, 646, 649, 656, 657, 658, and 692 of title 34 of the Code of Federal Regulations as follows:

PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

1. The authority citation for part 300 continues to read as follows:

Authority: 20 U.S.C. 1411–1420, unless otherwise noted.

§ 300.3 [Amended]

2. Section 300.3(a)(1) is amended by removing "Programs), and part 77 (Definitions)." and adding, in their place, "Programs), part 77 (Definitions that apply to Department Regulations), and part 79 (Intergovernmental Review of Department of Education Programs and Activities)."

PART 315—PROGRAM FOR SEVERELY HANDICAPPED CHILDREN

3. The authority citation of part 315 continues to read as follows:

Authority: 20 U.S.C. 1424, unless otherwise noted.

4. In § 315.3, paragraphs (b) (3) and (4) are revised to read as follows:

§ 315.3 What regulations apply to this program?

* * * * *

(b) * * *

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1424, 20 U.S.C. 3474(a))

PART 332—EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION, AND TRAINING

5. The authority citation for part 332 is revised to read as follows:

Authority: 20 U.S.C. 1451–1452, unless otherwise noted.

§ 332.3 [Amended]

6. Section 332.3 is amended by removing "77 and" and adding, in their place, the words "77, 79, and ".

PART 365—THE STATE INDEPENDENT LIVING REHABILITATION SERVICES PROGRAM

7. The authority citation for part 365 continues to read as follows:

Authority: 29 U.S.C. 796a–d–1, unless otherwise noted.

§ 365.1 [Amended]

8. Section 365.1(b)(1) is amended by removing the word "and", and by adding ", and part 79 (Intergovernmental Review of Department of Education Programs and Activities)," before the period at the end of the sentence.

PART 366—CENTERS FOR INDEPENDENT LIVING

9. The authority citation for part 366 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 796(e), unless otherwise noted.

§ 366.3 [Amended]

10. Section 366.3(a) is amended by removing the word "and" each place it appears, and by adding ", and part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence.

PART 367—INDEPENDENT LIVING SERVICES FOR OLDER BLIND INDIVIDUALS

11. The authority citation for part 367 continues to read as follows:

Authority: 29 U.S.C. 796f, unless otherwise noted.

§ 367.4 [Amended]

12. Section 367.4(a) is amended by removing the word "and" and by adding the words ", and part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence.

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

13. The authority citation for part 369 continues to read as follows:

Authority: 29 U.S.C. 711(c), 732, 750, 775, 777 (a)(1) and (a)(3), 777b, 777f, and 795g, unless otherwise noted.

§ 369.3 [Amended]

14. Section 369.3(a) is amended by removing the word "and", and by adding ", and part 79 (Intergovernmental Review of Department of Education Programs and Activities), except that part 79 does not apply to the Handicapped American Indian Vocational Rehabilitation Service Projects Program (34 CFR part 371)" before the period at the end of the sentence.

PART 380—SPECIAL PROJECTS AND DEMONSTRATION FOR PROVIDING SUPPORTED EMPLOYMENT SERVICES TO INDIVIDUALS WITH SEVERE HANDICAPS AND TECHNICAL ASSISTANCE PROJECTS

15. The authority citation for part 380 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 777a(d), unless otherwise noted.

§ 380.8 [Amended]

16. Section 380.8(a) is amended by adding ", part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before "Part 80".

PART 385—REHABILITATION TRAINING

17. The authority citation for part 385 continues to read as follows:

Authority: 29 U.S.C. 711(c), 744, and 776, unless otherwise noted.

§ 385.3 [Amended]

18. Section 385.3(a) is amended by removing the word "and", and by adding ", and part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence.

PART 396—TRAINING OF INTERPRETERS FOR DEAF INDIVIDUALS

19. The authority citation for part 396 is revised to read as follows:

Authority: 29 U.S.C. 744(d), unless otherwise noted.

20. In § 396.3, paragraph (a)(3) and (4) are revised to read as follows:

§ 396.3 What regulations apply to this program?

* * * * *

(a) * * *

(3) Part 77 (Definitions that Apply to Department Regulations); and

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

* * * * *

(Authority: 29 U.S.C. 774(d))

PART 400—VOCATIONAL EDUCATION PROGRAMS—GENERAL PROVISIONS

21. The authority citation for part 400 continues to read as follows:

Authority: 29 U.S.C. *et seq.*, unless otherwise noted.

§ 400.3 [Amended]

22. Section 400.3(f) is amended by adding "except that part 79 does not apply to any applications submitted by an Indian tribal organization that is eligible under 34 CFR 410.2(a)(1) of the Indian and Hawaiian Natives Program (34 CFR Part 410)" before the period at the end of the sentence.

PART 607—STRENGTHENING INSTITUTIONS PROGRAMS

23. The authority citation for part 607 continues to read as follows:

Authority: 20 U.S.C. 1057–1059, 1066–1069F, unless otherwise noted.

§ 607.6 [Amended]

24. Section 607.6(a) is amended by removing "Regulations; and Part 78 (Education Appeal Board)." and adding in their place "Regulations; and Part 79 (Intergovernmental Review of Department of Education Programs and Activities)."

PART 608—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES PROGRAM

25. The authority citation for part 608 continues to read as follows:

Authority: 20 U.S.C. 1060 through 1063a, 1063c, and 1069c, unless otherwise noted.

§ 608.3 [Amended]

26. Section 608.3(a) is amended by removing the word "and", and adding ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence.

PART 609—STRENGTHENING HISTORICALLY BLACK GRADUATE INSTITUTIONS PROGRAM

27. The authority citation for part 609 continues to read as follows:

Authority: 20 U.S.C. 1063b and 1069c, unless otherwise noted.

§ 609.3 [Amended]

28. Section 609.3(a) is amended by removing the word "and" and adding ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence.

PART 624—INSTITUTIONAL AID PROGRAMS—GENERAL PROVISIONS

29. The authority citation for part 624 continues to read as follows:

Authority: 20 U.S.C. 1051–1069c, unless otherwise noted.

§ 624.5 [Amended]

30. Section 624.5(a) introductory text is amended by removing "and", and adding in its place a comma after "(Direct Grant Programs)" and adding ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)," after "(Definitions)".

PART 628—ENDOWMENT CHALLENGE GRANT PROGRAM

31. The authority citation for part 628 continues to read as follows:

Authority: 20 U.S.C. 1065a, unless otherwise noted.

32. In § 628.5, paragraph (b)(1)(v) is added and paragraph (b)(2) is revised to read as follows:

§ 628.5 What regulations apply to the Endowment Challenge Grant Program?

* * * * *

(b)(1) * * *

(v) The regulations in 34 CFR part 79.

(2) Except as specifically indicated in paragraph (b)(1) of this section, the Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74 through 77 do not apply.

(Authority: 20 U.S.C. 1065a)

PART 629—VETERANS EDUCATION OUTREACH PROGRAM

33. The authority citation for part 629 continues to read as follows:

Authority: 20 U.S.C. 1070e–1, unless otherwise noted.

34. In § 629.4, paragraph (a)(5) is added to read as follows:

§ 629.4 What regulations apply?

* * * * *

(a) * * *

(5) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

* * * * *

(Authority: 20 U.S.C. 1070e–1, 1088)

PART 630—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

35. The authority citation for part 630 continues to read as follows:

Authority: 20 U.S.C. 1135–1135a–2, 1135e–1135e–1, unless otherwise noted.

§ 630.4 [Amended]

36. Section 630.4(a)(1) is amended by removing the word "and," and by adding before the period at the end of the sentence ", and Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

PART 631—COOPERATIVE EDUCATION PROGRAM—GENERAL

37. The authority citation for part 631 continues to read as follows:

Authority: 20 U.S.C. 1133–1133b, unless otherwise noted.

§ 631.4 [Amended]

38. Section 631.4(a)(1) is amended by removing the word "and", and by adding before the period at the end of the sentence ", and 79 (Intergovernmental Review of Department of Education Programs and Activities)".

PART 637—MINORITY SCIENCE IMPROVEMENT PROGRAM

39. The authority citation for part 637 continues to read as follows:

Authority: 20 U.S.C. 1135b–1135b–3, 1135d–1135d–6, unless otherwise noted.

§ 637.3 [Amended]

40. Section 637.3(a) is amended by removing the word "and", and by adding before the period at the end of the sentence, ", and Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

PART 639—LAW SCHOOL CLINICAL EXPERIENCE PROGRAM

41. The authority citation for part 639 continues to read as follows:

Authority: 20 U.S.C. 1134s–1134t, unless otherwise noted.

§ 639.3 [Amended]

42. Section 639.3(a) is amended by removing the word "and" after the words "(Direct Grant Programs)" and adding, in its place a comma, and by removing "(Definitions)" and adding, in its place, the words "(Definitions that Apply to Department Regulations), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

PART 643—TALENT SEARCH PROGRAM

43. The authority citation for part 643 continues to read as follows:

Authority: 20 U.S.C. 1070d–1, unless otherwise noted.

§ 643.5 [Amended]

44. Section 643.5(a) is amended by removing the word "and," and adding, in its place, a comma and by adding before the period at the end of the sentence, ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

PART 644—EDUCATIONAL OPPORTUNITY CENTERS PROGRAM

45. The authority citation for part 644 continues to read as follows:

Authority: 20 U.S.C. 1070d–1c, unless otherwise noted.

§ 644.5 [Amended]

46. Section 644.5(a) is amended by removing the word "and," and adding, in its place, a comma, and by adding before the period at the end of the sentence ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

PART 645—UPWARD BOUND PROGRAM

47. The authority citation for part 645 continues to read as follows:

Authority: 20 U.S.C. 1070d, 1070d–1a, unless otherwise noted.

§ 645.5 [Amended]

48. Section 645.5(a) is amended by removing the word "and" and adding, in its place, a comma, and by adding before the period at the end of the sentence, ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

49. The authority citation for part 646 continues to read as follows:

Authority: 20 U.S.C. 1070, 1070d–1b, unless otherwise noted.

PART 646—STUDENT SUPPORT SERVICES PROGRAM

§ 646.5 [Amended]

50. Section 646.5(a) is amended by removing the word "and" and adding, in its place, a comma, and by adding before the period at the end of the sentence ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

PART 649—PATRICIA ROBERTS HARRIS FELLOWSHIPS PROGRAM

51. The authority citation for part 649 continues to read as follows:

Authority: 20 U.S.C. 1134d–1134f, unless otherwise noted.

§ 649.3 [Amended]

52. Section 649.3(a) is amended by removing the word "and" after "Department Regulations)," and by adding after "Appeal Board)," ", and Part 79 (Intergovernmental Review of Department of Education Programs and Activities),".

PART 656—NATIONAL RESOURCE CENTERS PROGRAM FOR LANGUAGE AND AREA OR LANGUAGE AND INTERNATIONAL STUDIES

53. The authority citation for part 656 continues to read as follows:

Authority: 20 U.S.C. 1122, unless otherwise noted.

§ 656.6 [Amended]

54. Section 656.6(c) is amended by removing the word "and" and adding, in its place, a comma, and by adding before the period at the end of the sentence ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

PART 657—FOREIGN LANGUAGES AND AREA STUDIES FELLOWSHIPS PROGRAM

55. The authority citation for part 657 continues to read as follows:

Authority: 20 U.S.C. 1122, unless otherwise noted.

56. Section 657.4(c) is amended by removing the word "and" and adding, in its place, a comma, and by adding before the period at the end of the sentence ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

PART 658—UNDERGRADUATE INTERNATIONAL STUDIES AND FOREIGN LANGUAGE PROGRAM

57. The authority citation for part 658 continues to read as follows:

Authority: 20 U.S.C. 1124, unless otherwise noted.

§ 658.3 [Amended]

58. Section 658.3(c) is amended by removing the word "and" and adding, in its place, a comma, and by adding before the period at the end of the sentence ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

PART 692—STATE STUDENT INCENTIVE GRANT PROGRAM

59. The authority citation for part 692 is revised to read as follows:

Authority: 20 U.S.C. 1070c–1070c–4, unless otherwise noted.

§ 692.3 [Amended]

60. Section 692.3(b) is amended by removing the word "and", and by adding before the period at the end of the sentence ", and Part 79 (Intergovernmental Review of Department of Education Programs and Activities)".

Note: This appendix is not to be codified in the Code of Federal Regulations.

Appendix A—Programs Included for State Review Under Executive Order 12372 [1]

Program name	CFDA section No.
Adult education—state-administered	84.002
Bilingual education	84.003
Desegregation of public education	84.004
Supplemental educational opportunity grants.	84.007
Follow through	84.014
National Resources Centers and Fellowship program for langauge and area or language and international studies.	84.015
Undergraduate international studies and foreign language program.	84.016
Handicapped children's early education.	84.024
Services for deaf-blind children and youth.	84.025N
Handicapped media services and captioned films.	84.026
Assistance to states for education of handicapped children.	84.027
Regional resource and federal centers.	84.028
Training personnel for the education of the handicapped.	84.029
Clearinghouse for the handicapped	84.030
Strengthening institutions	84.031A
Strengthening historically black colleges and universities.	84.031B
Endowment challenge grants	84.031D
Public library services	84.034
Interlibrary cooperation	84.035
Library career training fellowships	84.036
Library research and demonstration	84.039
School assistance in federally affected areas—construction.	84.040
Student support services program	84.042
Talent search	84.044
Upward bound	84.047
Vocational education—basic grants to states.	84.049
Vocational education—state advisory councils.	84.053
Cooperative education	84.055
*Indian education—formula grants to local educational agencies and tribal schools.	84.060
*Indian education—special programs and projects.	84.061

[1] This list includes programs implemented on or before December 31, 1988.

Program name	CFDA section No.
*Indian education—adult indian education.	84.062
Veterans education outreach	84.064
Educational opportunity centers	84.066
State student incentive grant	84.069
*Indian education—grants to Indian controlled schools.	84.072
National diffusion network	84.073
Bilingual vocational training	84.077
Postsecondary education programs for handicapped persons.	84.078
Women's educational equity	84.083
Program for severely handicapped children.	84.086
Strengthening research library resources.	84.091
Patricia Roberts Harris Graduate and professional study.	84.094
Law school clinical experience	84.097
Bilingual vocational instructor training.	84.099
Bilingual vocational instructional materials, methods, and techniques.	84.100
Vocational education Hawaiian native program.	84.101C
Training program for special program staff and leadership personnel.	84.103
Fund for the improvement of postsecondary education.	84.116
Minority science improvement	84.120
Law-related education	84.123
Territorial teacher training assistance.	84.124
State vocational rehabilitation services.	84.126
Rehabilitation service projects	84.128A, B, C, D, F, G, J
Rehabilitation training	84.129
Centers for independent living	84.132
Migrant education high school equivalency.	84.141
College facilities loan	84.142
Migrant education—interstate and intrastate coordination.	84.144
Federal real property assistance	84.145
Transition program for refugee children.	84.146
College assistance migrant	84.149
Business and international education.	84.153
Library services and construction act—construction.	84.154
Removal of architectural barriers to the handicapped.	84.155
Secondary education and transitional services for handicapped youth.	84.158
Training interpreters for deaf individuals.	84.160
Client assistance for handicapped individuals.	84.161
Emergency immigrant education assistance act.	84.162
Library services and construction act, title IV—basic grants to Indian tribes and Hawaiian native (Indian tribes excluded from coverage).	84.163B
Strengthening teacher skills and instruction in mathematics and science.	84.164
Magnet schools assistance	84.165
Library literacy	84.167
Secretary's discretionary program for mathematics, science, computer learning, and critical foreign languages.	84.168
State independent living rehabilitation service program.	84.169
Construction, reconstruction, and renovation of academic facilities.	84.172
Preschool grants for handicapped children.	84.173
State assistance for vocational education—support programs by community based organizations.	84.174
Paul T. Douglas teacher scholarship	84.176
Independent living for older blind adults.	84.177
Leadership in educational administration development.	84.178
Technology, media and materials	84.180
Early intervention programs for infants and toddlers with handicaps.	84.181
Drug-free schools and communities programs—training and demonstration grants to institutions of higher education, and federal activities.	84.184
Drug-free schools and communities—State and local.	84.186
The State supported employment services.	84.187
Drug free schools and communities—regional centers.	84.188
Adult education for the homeless	84.192
Vocational educational—national programs; demonstration centers for the retraining of dislocated workers.	84.193
Education of the homeless	84.196
College library technology and cooperation.	84.197
Workplace literacy partnerships	84.198
Vocational education—national cooperative demonstration.	84.199
School dropout demonstration assistance.	84.201
Star school	84.203
State vocational education comprehensive career guidance and counseling.	No CFDA #
State vocational education industry—education partnerships.	No CFDA #
Vocational education—state equipment pools.	No CFDA #
Vocational education—national programs.	No CFDA #

*Except applicants that are federally recognized Indian tribes.

Note: This appendix is not to be codified in the Code of Federal Regulations.

Appendix B—Programs Excluded From State Review Under Executive Order 12372 [2]

Program	CFDA No.
Interest subsidy grants for academic facilities loans.	84.001
Exclusion Justification:	
Funds under this program were determined by prior action and the government's commitment is for the life of the loan. Since no application to the Federal government is involved, States do not review this program.	
Education of handicapped children in State operated schools.	84.009
Exclusion Justification:	
Funds under this program are determined by a statutory formula. Therefore, the Department has no discretion in approving specific sites or in determining the amount of allocations.	
Educationally deprived children; local educational agencies.	84.010
Exclusion Justification:	
Funds under this program are determined by a statutory formula and distributed to participating local education agencies. Therefore, the Department has no discretion in approving specific sites or in determining the amounts of allocations.	
Migrant education—State formula grant.	84.011
Exclusion Justification:	
Funds under this program are determined by a statutory formula and distributed to State education agencies. Therefore, the Department has no discretion in approving specific sites or projects or in determining the amount of allocations.	
Educationally deprived children State administration.	84.012
Exclusion Justification:	
Funds under this program are determined by a statutory formula and distributed to State education agencies. Therefore, the Department has no discretion in approving specific sites or projects or in determining the amounts of allocations.	
Neglected and delinquent children	84.013
Exclusion Justification:	
Funds under this program are determined by a statutory formula and distributed to State education agencies. Therefore, the Department has no discretion in approving specific sites or projects or in determining the amounts of allocations.	
International research and studies	84.017
Exclusion Justification:	
This program provides assistance for the conduct of research, studies and surveys and the development of instructional materials for modern languages and area and international studies. Research is national in scope and is conducted by individual scholars.	
Fulbright-Hays training grants—faculty research abroad.	84.019
Exclusion Justification:	
This program supports research projects conducted abroad by individual research scholars in cooperation with bi-national commissions, U.S. embassies, foreign ministries of education, and institutions of higher education abroad. Research is of national and international scope.	
Fulbright-Hays training centers—foreign curriculum consultants.	84.020

[2] This list includes programs implemented on or before December 31, 1988.

Program	CFDA No.
Exclusion Justification: This program awards grants to institutions of higher education for the selection of curriculum specialists from abroad to assist U.S. institutions or groups of institutions in the development of programs of research and study in the United States. This program does not affect State or local governments because the recruitment of individual candidates is made by U.S. embassies, Fulbright Commissions abroad, or foreign ministries of education.	
Fulbright-Hays training grants—group projects abroad.	84.021
Exclusion Justification: This program awards grants to individuals through eligible institutions in the United States and abroad in cooperation with Fulbright Commissions, U.S. Embassies, and foreign ministries of education for the purpose of engaging in group projects in research, training, and curriculum development. Projects conducted abroad and at institutions in the United States are national in scope and do not directly affect State or local governments.	
Fulbright-Hays training grants—doctoral dissertation research abroad.	84.022
Exclusion Justification: This fellowship program provides payments to individuals who have been advanced to doctoral degree candidacy in foreign language and area studies. Individual projects are conducted abroad and therefore the research has no impact on States or local governments.	
Research in education on the handicapped.	84.023
Exclusion Justification: This program provides assistance for the conduct of special education research and studies. Research is national in scope and does not affect individual States.	
Guaranteed student loan program and plus (auxiliary) loan.	84.032
Exclusion Justification: These programs authorize low interest loans available from lenders such as banks and credit unions to help defray costs of education at participating institutions. The loans are provided directly to the student or to parents of the student.	
College work-study	84.033
Exclusion Justification: This program provides jobs for undergraduate and graduate students. Participating institutions receive direct allocations of Federal funds according to national funding formulas. Funds are ultimately paid directly to students.	
Perkins loan program to schools	84.037
Exclusion Justification: Funds for this program provide reimbursement for the value of loan cancellations as prescribed by statute. The Department has no discretion in determining the amount of these reimbursements.	
Perkins direct student loan	84.038
Exclusion Justification: This program provides low-interest loans to both undergraduate and graduate students. This is a matching funds program with the institution contributing one-ninth of the project award. The annual allocation is distributed to participating institutions according to national formulas.	
School assistance in federally affected areas—Maintenance and operations.	84.041
Exclusion Justification: This program makes financial payments to school districts. Funds under this program are distributed to participating local educational agencies that are affected by the presence of Federal activity or property, or by Presidentially-declared disasters. Once eligibility is established, the Department of Education has no discretion in approving sites or projects, or in determining allocation amounts.	
National vocational education research.	84.051
Exclusion Justification: This program is designed to provide support to the National Center for Research in Vocational Education for which a location is chosen every five years; six curriculum development and demonstration centers; and several other contractors to engage in research and curriculum development and demonstration. Contracts may only be awarded to projects of national significance in vocational education and to develop and provide information to facilitate national planning and policy development.	
Pell grant	84.063
Exclusion Justification: This program is a student financial assistance program based on a formula. Payments are made directly to individual students to pursue college or other postsecondary education goals.	
Indian education—grants to Indian controlled schools.	84.072
Exclusion Justification: This program is designed to meet the special needs of Indian children. Single Points of Contact may not review applications submitted by federally recognized Indian tribes. Other applicants under this program must submit applications to Single Points of Contact for review as required by this Order.	
Arts in Education	84.084
Exclusion Justification: Legislation for this program identifies the two grantees; The Kennedy Center and the National Committee on Arts for the Handicapped and therefore, the Department has no funding discretion.	
Indian education fellowship for Indian students.	84.087
Exclusion Justification: This program provides fellowships to individual Indian students to enable them to pursue studies at accredited colleges or institutions of higher education.	
Vocational education Indian and Hawaiian Native.	84.101A
Exclusion Justification: This program provides grants and contracts to federally recognized Indian tribal governments that are eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination Act or under the Act of April 16, 1934.	
Educational research and development.	84.117
Exclusion Justification: This program is designed to provide grants and contracts to institutions of higher education, public and private non-profit organizations, and local and State educational agencies to support the conduct of educational research and development that is of national scope.	
Handicapped American Indian vocational rehabilitation services solely to handicapped American Indians who reside on Federal or State reservations in order to prepare for suitable employment.	84.128H
National institute on disability and rehabilitation research.	84.133
Exclusion Justification: The Institute provides financial support for research conducted by over 200 organizations throughout the United States and internationally and for scholarly exchange. Research priorities are based on areas of national scope such as spinal cord injury; physical restoration and psycosocial rehabilitation; and telecommunications. Therefore, they do not directly affect local areas or governments.	
Consolidation of Federal programs for elementary and secondary education.	84.151
Funds under this program are distributed as block grants which are determined by a statutory formula and distributed to State educational agencies. The Department has no discretion in approving specific sties or in determining the amount of allocations.	
Handicapped special studies—State evaluation studies.	84.159
This program funds projects for data collection activities and studies; investigations; evaluations (to assess the impact and effectiveness of programs assisted under the Education of the Handicapped Act); and for the development, publication and dissemination of the Annual Report to Congress required under the Act. The projects address issues and research of national audiences, such as researchers, policy maker and Congress.	
Library services and construction act—Title IV basic grants to Indian tribes.	84.163A

Program	CFDA No.
Exclusion Justification: This program provides assistance to Federally recognized Indian tribes	
Jacob Javits fellowships	84.170
Exclusion Justification: This program provides fellowships to students of superior ability selected on the basis of demonstrated achievement and exceptional promise, for study at the doctoral level in selected fields of the arts, humanities, and the social sciences. Individuals apply directly to the Department and the calculated stipend is directly awarded to the fellow through the institution.	
Robert C. Byrd honors scholarship	84.185
Exclusion Justification: This program provides financial assistance to States to award scholarships to States to award scholarships to individuals who have demonstrated outstanding academic achievement and who show promise of continued academic achievement. Funds are determined by a statutory formula and the Department has no discretion on amount of allocations.	
Adult education—national adult education discretionary.	84.191
Exclusion Justification: Projects funded under this program will be research based and national in scope. No specific state or region will be targeted	
Allen J. Ellender fellowship	84.998
Exclusion Justification: As directed by Congress, The Close Up Foundation is the recipient of this contract which purpose is to enable economically disadvantaged students and their teachers to participate in a week long government studies program to increase their understanding of the Federal Government.	
Drug-free schools and communities—Hawaiian natives.	84.999c
Exclusion Justification: Funds under this program are awarded only to Hawaiian natives and the Department has no discretion in selecting recipients.	
General assistance to the Virgin Islands.	No CFDA No.
Exclusion Justification: This grant is specifically mandated for the Virgin Islands by section 1524 of PL 95-561.	
Inexpensive book distribution	No CFDA No.
Exclusion Justification: Grant recipient is designated in legislation.	

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Friday
May 25, 1990

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Suspension of Certain Aircraft Operations From the Transponder With Automatic Pressure Altitude Reporting Capability Requirement; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26242, Notice No. 90-16]

RIN 2120-AD52

Suspension of Certain Aircraft Operations From the Transponder With Automatic Pressure Altitude Reporting Capability Requirement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to suspend, until December 30, 1993, certain provisions of the regulations which require the installation and use of automatic altitude reporting (Mode C) transponders (Mode C rule). This proposed rule would provide access to specified outlying general aviation (GA) airports within 30 miles of a terminal control area (TCA) primary airport (Mode C veil) for aircraft without a Mode C transponder. The FAA believes that the operation of an aircraft without a Mode C transponder can be safely accommodated provided that the operation is conducted in areas not currently within air traffic control (ATC) radar coverage and not predominantly used by aircraft required to install and use traffic alert and collision avoidance systems (TCAS) equipment. The FAA expects that radar coverage in some Mode C veil airspace will improve as a result of scheduled radar system upgrades. After new radar systems are in service, the FAA may conduct field evaluations to reassess the actual radar coverage in appropriate areas. Based on those reassessments, the FAA may propose further rulemaking to extend the period that the Mode C transponder requirement would be suspended for operations at certain airports on a case-by-case basis by a notice published in the Federal Register.

DATES: Comments must be received on or before July 24, 1990.

ADDRESSES: Comments to the proposal may be mailed or delivered in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 26242, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Richard K. Kagehiro, Air Traffic Rules Branch, ATO-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments should identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comment submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is written: "Comments to Docket Number 26242." The postcard will be date/time stamped and returned to the commenter. The proposals in this notice may be changed as a result of comments received. All comments submitted will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-200, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background and Need for Rulemaking

Effective July 1, 1989, § 91.24 of the Federal Aviation Regulations (FAR) requires aircraft operating in a Mode C veil to be equipped with an operable Mode C transponder. Aircraft not originally certificated with an engine-driven electrical system or which have not subsequently been certified with such a system installed, balloons, and gliders are excluded from this requirement. The Mode C requirement resulted from regulatory proceedings initiated under Notice 88-2 (53 FR 4306, February 12, 1988; final rule adopted 53 FR 23356, June 21, 1988).

In September 1989, in order to provide for requests to deviate from the Mode C transponder requirements for operations within a Mode C veil, the FAA issued internal guidance to ATC facilities regarding the issuance of an ATC authorization to operate without a Mode C transponder. Such an authorization must be applied for by each aircraft operator and is processed by an ATC facility on a case-by-case basis. If approved, the authorization specifies any restriction or condition determined by the ATC facility to be necessary to ensure that the operation can be conducted safely and will not impact on other operations. Although there may be circumstances which are applicable to many operators or a group of operations (such as operations to and from a specific outlying airport or operations conducted in areas of no radar coverage), ATC authorizations must be requested and granted on an individual basis only. This aspect of the authorization process has been inefficient and time-consuming for both operators and ATC staff with regard to authorizing operations conducted at outlying airports or in areas of no radar coverage.

As a result, the FAA believes that it would be beneficial to provide some temporary means of allowing access to outlying GA airports with a minimum of ATC involvement. However, the means of providing access should be consistent with the safety provisions of the Mode C rule and the legislation which required that rule. Further, in response to over 65,000 comments received to Notice 88-2, the FAA stated in the preamble to the Mode C rule (53 FR 23356, June 21, 1988) that it would consider a means of providing access to outlying GA airports for those aircraft not equipped with Mode C transponders. However, such action would be taken only to the extent that it would be consistent with maintaining adequate safety within the TCA and the airspace surrounding the TCA primary airport.

Safety Benefits of the Mode C Rule

The FAA attributes four safety benefits to the installation and use of Mode C transponders. First, automated ATC radar tracking systems compare altitude information from airborne Mode C transponders, stored flight plan information, and radar positional information of aircraft operating within the ATC system to provide an automatic conflict alert warning to advise controllers of the potential loss of appropriate separation standards

between two or more aircraft. The controller can then quickly relay this information to the pilots or issue an instruction or clearance if necessary. Additionally, aircraft altitude information derived from this equipment can be displayed directly on a controller's radar screen. Second, aircraft altitude information derived from Mode C transponders will activate traffic alert and collision avoidance systems (TCAS) in TCAS-equipped aircraft. TCAS is designed to alert a flightcrew to a collision potential and, with certain versions of TCAS, to provide that flightcrew with a conflict resolution advisory. TCAS, however, will not alert the flightcrew of a TCAS-equipped aircraft to the presence of a non-transponder-equipped aircraft. Third, the automated ATC tracking systems compare the aircraft altitude data with pre-programmed terrain information. If any of the comparisons predict a potentially hazardous situation for a tracked aircraft, a low-altitude alert in the form of a visual or aural alarm immediately alerts the controller who issues safety instructions to the aircraft. Finally, a software feature called "Mode C Intruder" (MCI), available in all en route ATC facilities and planned for terminal facilities, establishes tracks on Mode C transponder-equipped aircraft that are not being controlled by ATC and alerts controllers to potential conflicts between these aircraft and controlled aircraft.

The conflict alert, low-altitude alert, and MCI functions require altitude information from Mode C transponders to be detected by ATC radar systems. When aircraft operations are confined exclusively to areas of no radar coverage, the safety benefits attributed to the conflict alert, low-altitude alert, and MCI cannot be realized. As a result, the FAA believes that access to certain outlying GA airports by aircraft without Mode C transponders can be accommodated without derogating these safety benefits provided that the operation is conducted within airspace that is outside ATC radar coverage.

However, the FAA believes certain measures should be taken to ensure that the operation of an aircraft without a Mode C transponder will not derogate the safety benefits attributed to TCAS. The TCAS final rule (54 FR 940, January 10, 1989) provides that certain air taxi and commercial operators, and virtually all large air carrier aircraft must be equipped with some level of TCAS equipment in accordance with a phased-in implementation schedule over the next several years. As discussed earlier, current TCAS equipment does not provide the flightcrew of a TCAS-equipped aircraft with a warning or collision conflict resolution advisory with respect to a non-transponder-equipped aircraft. As a result, the FAA will not propose to suspend the Mode C requirement as it applies to aircraft operating in the airspace overlying or in the immediate vicinity of an airport that is served by scheduled air carrier operations using aircraft that will be required to install TCAS equipment.

ATC Radar System Improvements

The FAA expects the radar coverage in some Mode C veil airspace to improve as a result of the scheduled upgrading of radar systems at each TCA location. Computer programs can help predict the radar coverage of new generation radar systems; however, these computer programs cannot account for all factors which may affect radar coverage. As a result, the actual radar coverage may differ slightly from the predicted coverage. After new radar systems are in service, the FAA may conduct field evaluations to reassess actual radar coverage on a site-by-site basis. Those reassessments may result in future proposed rulemaking to: (1) Extend the period that the Mode C transponder requirement are proposed to be suspended if the evaluations indicate that aircraft operations at a designated airport are still not within radar coverage; or (2) designate other airports at which operations may be suspended from the Mode C transponder requirements if those evaluations determine that such operations are not within radar coverage.

Proposed and Future TCA's

A list of airports and specified altitudes below which aircraft operations are proposed to be excluded from the Mode C transponder requirement for the proposed Tampa and Washington Tri-Area TCA Mode C veils is included in the NPRM. Although a final agency determination regarding these proposed TCA's has not been reached, the FAA is listing the airports in this NPRM to provide the public with as much information as possible to allow full consideration of the impact of the TCA proposals and the Mode C veil on their operations. Should any of the proposed TCA's be established, the effective date of the proposed suspension of the Mode C transponder requirements for operations in the vicinity of the listed airports will be coincident with the effective date of the establishment of that TCA. The list of airports within the proposed Washington Tri-Area TCA Mode C veil at which operations are proposed to be excluded from the Mode C transponder requirement contains a number of airports which are also included in the list of airports for the current Washington TCA Mode C veil. However, should the Washington Tri-Area TCA be adopted, the current Washington TCA would be revoked and replaced by the Washington Tri-Area TCA. The proposed suspension of the Mode C transponder requirement for aircraft operations at the airports specified for the proposed Washington Tri-Area TCA would coincide with the effective date of the Washington Tri-Area TCA, should that TCA become effective.

With regard to future proposed TCA's, a list of airports and specified altitudes below which aircraft operations would be excluded from the Mode C transponder requirement would accompany any notices of proposed rulemaking regarding future TCA's.

The Proposed Special Federal Aviation Regulation

This notice proposes a Special Federal Aviation Regulation (SFAR) to permit the operation of an aircraft to and from designated GA airports within the Mode C veil without a Mode C transponder. A list of airports at which operations without a Mode C transponder would be permitted is contained in the NPRM. It is proposed that the Mode C transponder requirement be reinstated for aircraft operations to and from the designated GA airports after December 30, 1993. However, the FAA may conduct field evaluations to reassess the radar coverage within certain TCA Mode C veils on a site-by-site basis after new radar systems are in service. Based on those reassessments, the FAA may propose to extend the period that the Mode C transponder requirement would be suspended for operations at certain airports on a case-by-case basis by further notice published in the Federal Register.

Aircraft operations without a Mode C transponder would be permitted within a 1.5-nautical-mile radius of a designated airport from the surface up to a specified altitude. Additionally, aircraft operations without a Mode C transponder would be permitted along the most direct route between that designated airport and the boundary of the Mode C veil. The routing would be consistent with established traffic patterns, noise abatement procedures, and safety. This proposed SFAR and the designation of altitudes for each airport, however, would not be intended to supersede the provisions of § 91.79,

minimum safe altitudes. Routings to and from each airport are intentionally unspecified to permit the pilot, complying with § 91.79, to avoid operating over obstructions, noise-sensitive areas, etc. Further, should the pilot of an aircraft, intending to operate into or out of an airport listed in the proposed SFAR, determine that the operation at or below the specified altitude would be unsafe due to meteorological conditions, aircraft operating characteristics, or other factors, then the pilot should seek relief from the Mode C transponder requirement via that ATC authorization process.

Aircraft operations at, to, or from the listed airports would be suspended from the Mode C transponder requirement until December 30, 1993. This time period would accommodate the scheduled upgrading of present ATC radar systems at each TCA airport and an evaluation period to determine the extent of radar coverage within each Mode C veil as a result of radar system enhancements. Based on the results of these evaluations, the period that the Mode C transponder requirement would be suspended for operations at certain airports could be extended on a site-by-site basis by a subsequent notice published in the **Federal Register.**

Operations of aircraft without Mode C transponders at airports not listed in the proposed SFAR would continue to be safely accommodated in accordance with existing provisions for individual ATC authorizations.

Requests for Comments

Comments are requested on the specific proposal contained in this notice, particularly on the airports included or which ought to be included, the altitude restriction at each airport, and the provisions for access to these airports. The FAA received approximately 65,000 comments to the NPRM regarding the establishment of a Mode C transponder requirement for aircraft operations within 30 miles of a TCA primary airport (Notice 88–2; 53 FR 4306, February 12, 1988) and approximately 10,000 comments were received in response to an industry-sponsored petition to allow greater access to Mode C veils (Notice PR–88–16). Basic issues relating to the Mode C requirement have been exhaustively covered in those proceedings, and this notice does not represent a reopening or reconsideration of those issues. Accordingly, commenters should direct their comments to the specific rule proposed in this notice.

Regulatory Evaluation Summary

Introduction

This section summarizes the full regulatory evaluation prepared by the FAA which provides more detailed information on estimates of the potential economic consequences of this proposed rule. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all major rules except those responding to emergency situations or other narrowly defined exigencies. A major rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or highly controversial.

The FAA has determined that this proposed rule would not be major as defined in the executive order. Therefore a full regulatory analysis, that includes the identification and evaluation of cost reducing alternatives to the proposal, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this proposal without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. If the reader desires more detailed economic information than this summary contains, then he/she should consult the full regulatory evaluation contained in the docket.

Benefit and Cost Analysis

Costs

This proposed rule would be relieving in nature and would not be expected to impose costs on either society or the FAA. In addition, this proposal would not impose significant costs on the aviation community (namely, fixed base operators). This assessment is based on rationale contained in the following discussion for each of these groups.

For the FAA, this proposed rule would not impose additional costs for either personnel or equipment. The acquisition of new radar tracking systems is a routine cost of upgrading FAA equipment and would not occur as a result of this proposed rule. In addition, this proposed rule would not impose costs for personnel. This is because the proposed temporary suspension of the Mode C transponder requirement is expected to enhance air traffic control (ATC) operations efficiency by eliminating the need for ATC authorizations at the subject designated airports. This proposed action would reduce the demand on ATC personnel and equipment resources.

This proposed rule would not have an adverse impact on aviation safety. The FAA believes that access to certain outlying GA airports by aircraft without Mode C transponders can be accommodated without diminishing Mode C safety benefits, provided the operation is conducted outside radar coverage. When aircraft operations are confined exclusively to areas of no radar coverage, the full safety benefits of the Mode C rule cannot be realized. Future enhancement of the radar tracking system is expected to increase radar coverage, thus extending the Mode C benefits to more areas outside of the current radar coverage. The scheduled installation of the new radar tracking systems at all TCA primary airports is expected to be completed in about three years. After new radar systems are in service, the FAA may conduct field evaluations to reassess actual radar coverage. Those reassessments could result in future proposed rulemaking to amend the proposed suspension period for operations at certain airports.

For the aviation community, the FAA anticipates no significant costs would be incurred by fixed base operators (FBO's) as the result of this proposed rule. Fixed base operators represent the most likely group to potentially incur costs. These costs would be in the form of lost revenues from the relocation of GA aircraft without Mode C transponders as a result of this proposed action. However, the FAA believes that any potential cost impact on FBO's would be insignificant. The FAA believes that GA aircraft operators based at non-designated airports within a Mode C veil and currently authorized to operate without a Mode C transponder would have little incentive to relocate since: (1) The ATC authorization contains those conditions and provisions necessary for safe operation and the operator has agreed to comply with those provisions; and (2) the renewal process for an existing authorization is less cumbersome than the first-time

authorization process. Furthermore, the FAA does not believe that significant numbers of GA aircraft without Mode C transponders would relocate from outside a Mode C veil to a designated airport within a Mode C veil. This is because this proposed rule would only allow aircraft without Mode C transponders to operate from the surface up to a specified altitude within a 1.5 nautical mile radius of a designated airport and along the most direct route between that airport and the boundary of the Mode C veil. Thus, although this proposed rule would provide greater access to a Mode C veil, the FAA believes that this proposed rule would not provide much of an incentive for GA aircraft operators to relocate. This assessment is further supported by the belief that the vast majority of GA aircraft operators required to have Mode C transponders will have acquired them by December 30, 1990. This is when the requirement for such equipment at Airport Radar Service Areas goes into effect.

The FAA recognizes the possibility that lost revenues incurred by some FBO's outside the Mode C veil could be offset by revenue gains on the part of FBO's inside the veil. However, there is much uncertainty associated with this possibility due to a lack of information concerning the level of competition among FBO's inside and outside the Mode C veil throughout the United States. For example, in any given state, the market structure inside the Mode C veil could resemble a spatial monopoly, in which unit prices for services rendered by FBO's would be higher than that of a more competitive market structure located outside the veil. If some aircraft operators were to relocate from areas of higher competition to areas of lower competition among FBO's, those operators may incur higher charges for services rendered. For those operators who elect to relocate, it can be assumed to be in their best interest to do so. Thus, any additional higher FBO charges aircraft operators incur as the result of relocating would be at least offset by those factors that prompted their decision to relocate. The net change in revenue among FBO's may not be offsetting because of differences in unit prices charged. While it is not known to what extent revenue gains and losses would be offset among FBO's, the FAA, nonetheless, believes that the cost impacts on FBO's would not be significant for the reasons stated in the previous paragraphs.

Benefits

This proposed rule is expected to generate potential benefits in the form of increased convenience to GA aircraft operators (without Mode C transponders) and enhanced operations efficiency to FAA air traffic control. Currently, GA aircraft operators, without Mode C transponders, can operate at an airport within the Mode C veil but outside of ATC radar coverage only after receiving ATC authorization. However, certain aspects of the authorization process are inefficient and time consuming for both affected GA operators and the FAA because authorizations can only be granted on a case-by-case basis. The convenience of this proposed rule would be the temporary relief from the burden of obtaining ATC authorizations that sometimes confronts GA aircraft operators who wish to fly to and from the designated airports without Mode C transponders.

For ATC, this proposed rule would provide benefits in the form of enhanced operations efficiency. Such enhanced efficiency would be the temporary relief of the strain on ATC to assign authorizations during busy periods. This temporary action would better allow ATC to allocate its personnel and equipment resources to more productive functions.

Although the benefits of this proposed rule have not been quantified, they are expected to be substantial for both the flying public and the FAA.

Conclusion

This proposed rule is not expected to impose costs on either the FAA or society, and would not impose significant costs on the aviation community (FBO's). The FAA estimates that this proposed rule would potentially generate substantial benefits such as increased convenience to some GA aircraft operators and operations efficiency to FAA air traffic control Thus, the FAA firmly believes that this proposed rule would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities would not be unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." The small entities that could be potentially affected by the implementation of the proposed rule are air taxi operators and FBO's.

In terms of air taxi operators, no cost impacts are anticipated by this proposed rule. This assessment is based on the FAA's estimation that these operators are already equipped with Mode C transponders. They are, in all likelihood, based at airports within the Mode C veil which fall within the radar coverage of ATC.

In terms of FBO's, the FAA estimates that this proposed rule would not impose significant costs. This assessment is based on the belief that GA aircraft operators are not likely to impose lost revenues on FBO's by relocating from airports outside of the Mode C veil or undesignated airports within the Mode C veil to designated airports specified in this proposed rule. Although the proposed rule would provide greater access to a Mode C veil, the FAA believes that this proposed rule would not provide GA aircraft operators with much of an incentive to relocate. This assessment is further supported by the belief that the vast majority of those GA aircraft operators required to have Mode C transponders will acquire them by December 30, 1990 (Phase II of the Mode C rule for Airport Radar Service Areas). Therefore, the FAA believes that this proposed rule would not have a significant economic impact on substantial number of small entities.

International Trade Impact Assessment

This proposed rule would not have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. This is because this proposed rule would neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign) that would result in a competitive disadvantage to either.

Federalism Determination

The regulations proposed herein would 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 proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Effects

This proposed action would relieve the requirement for an aircraft to be equipped with a Mode C transponder when operating at/to/from certain airports within a Mode C veil. As such, this proposal would not establish specific operating procedures nor would it limit the operation of an aircraft to a specific route or altitude. Routings to

and from each airport are intentionally unspecified to permit the pilot, complying with § 91.79, to avoid operating over obstructions, noise-sensitive areas, etc. Therefore, this proposal would accommodate the operation of an aircraft in compliance with existing safety and environmental requirements and procedures and would not alter or supersede those requirements. The FAA's experience with the granting of authorizations since the adoption of the Mode C transponder requirement indicates that there would not be a large number of aircraft operations at any one airport that would utilize this proposed action. For these reasons, the FAA has concluded that further environmental assessment is unnecessary and makes a finding of no significant impact as a result of the adoption of this proposed rule.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed rule would not be major under Executive Order 12291. In addition, the FAA certifies that this proposed rule would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979.)

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Automatic altitude reporting equipment, Aviation safety, Terminal control area, Transponder, Mode C veil.

The Proposed Special Federal Aviation Regulation (SFAR)

For the reasons set forth in the preamble, the FAA proposes to amend part 91 of title 14 of the Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100–223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; Pub. L. 100–202; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By adding Special Federal Aviation Regulation No. _____ to read as follows:

SFAR NO. _____—Suspension of Certain Aircraft Operations from the Transponder with Automatic Pressure Altitude Reporting Capability Requirement

Section 1. For purposes of this SFAR:

(a) The airspace within 30 nautical miles of a terminal control area primary airport, from the surface upward to 10,000 feet MSL, excluding the airspace designated as a terminal control area is referred to as the Mode C veil.

(b) Effective until December 30, 1993, the transponder with automatic altitude reporting capability requirements of FAR § 91.24(b)(2) do not apply to the operation of an aircraft:

(1) In the airspace at or below the specified altitude and within a 1.5-nautical-mile radius of an airport listed in Section 2 of this SFAR; and

(2) In the airspace at or below the specified altitude along the most direct and expeditious routing between an airport listed in Section 2 of this SFAR and the outer boundary of the Mode C Veil airspace overlying that airport, consistent with established traffic patterns, noise abatement procedures, and safety.

Section 2. Effective until December 30, 1993. Airports At Which the Provisions of Section 91.24(b)(2) Do Not Apply.

(1) Airports within a 30-nautical-mile radius of The William B. Hartsfield Atlanta International Airport.

Airport name	Arpt ID	Alt. (AGL)
Air Acres Airport, Woodstock, GA.	5GA4	1,500
B&L Strip Airport, Hollonville, GA.	GA29	1,500
Camfield Airport, McDonough, GA.	GA36	1,500
Cobb County-McCollum Field Airport, Marietta, GA.	RYY	1,500
Covington Municipal Airport, Covington, GA.	9A1	1,500
Diamond R Ranch Airport, Villa Rica, GA.	3GA5	1,500
Dresden Airport, Newnan, GA	GA79	1,500
Eagles Landing Airport, Williamson, GA.	5GA3	1,500
Fagundes Field Airport, Haralson, GA.	6GA1	1,500
Gable Branch Airport, Haralson, GA.	5GA0	1,500
Georgia Lite Flite Ultralight Airport, Acworth, GA.	31GA	1,500
Griffin-Spalding County Airport, Griffin, GA.	6A2	1,500
Howard Private Airport, Jackson, GA.	GA02	1,500
Newnan Coweta County Airport, Newnan, GA.	CCO	1,500
Peach State Airport, Williamson, GA.	3GA7	1,500
Poole Farm Airport, Oxford, GA	2GA1	1,500
Powers Airport, Hollonville, GA	GA31	1,500
S&S Landing Strip Airport, Griffin, GA.	8GA6	1,500
Shade Tree Airport, Hollonville, GA.	GA73	1,500

(2) Airports within a 30-nautical-mile radius of the General Edward Lawrence Logan International Airport.

Airport name	Arpt ID	Alt. (AGL)
Berlin Landing Area Airport, Berlin, MA.	MA19	2,500
Hopedale Industrial Park Airport, Hopedale, MA.	1B6	2,500
Larson's SPB, Tyngsboro, MA	MA74	2,500
Moore AAF, Ayer/Fort Devens, MA.	AYE	2,500
New England Gliderport, Salem, NH.	NH29	2,500
Plum Island Airport, Newburyport, MA.	2B2	2,500
Plymouth Municipal Airport, Plymouth, MA.	PYM	2,500
Taunton Municipal Airport, Taunton, MA.	TAN	2,500
Unknown Field Airport, Southborough, MA.	1MA5	2,500

(3) Airports within a 30-nautical-mile radius of the Charlotte/Douglas International Airport.

Airport name	Arpt ID	Alt. (AGL)
Arant Airport, Wingate, NC	1NC6	2,500
Bradley Outernational Airport, China Grove, NC.	NC29	2,500
Chester Municipal Airport, Chester, SC.	9A6	2,500
China Grove Airport, China Grove, NC.	76A	2,500
Goodnight's Airport, Kannapolis, NC.	2NC8	2,500
Knapp Airport, Marshville, NC	3NC4	2,500
Lake Norman Airport, Mooresville, NC.	14A	2,500
Lancaster County Airport, Lancaster, SC.	LKR	2,500
Little Mountain Airport, Denver, NC.	66A	2,500
Long Island Airport, Long Island, NC.	NC26	2,500
Miller Airport, Mooresville, NC	8A2	2,500
US Heliport, Wingate, NC	NC56	2,500
Unity Aerodrome Airport, Lancaster, SC.	SC76	2,500
Wilhelm Airport, Kannapolis, NC	6NC2	2,500

(4) Airports within a 30-nautical-mile radius of the Chicago-O'Hare International Airport.

Airport name	Arpt ID	Alt. (AGL)
Aurora Municipal Airport, Chicago/Aurora, IL.	AAR	1,200
Donald Alfred Gade Airport, Antioch, IL.	IL11	1,200
Dr. Joseph W. Esser Airport, Hampshire, IL.	7IL6	1,200
Flying M. Farm Airport, Aurora, IL.	IL20	1,200
Fox Lake SPB, Fox Lake, IL	IS03	1,200
Graham SPB, Crystal Lake, IL	IS79	1,200
Herbert C. Mass Airport, Zion, IL	IL02	1,200
Landings Condominum Airport, Romeoville, IL.	C49	1,200
Lewis University Airport, Romeoville, IL.	LOT	1,200
McHenry Farms Airport, McHenry, IL.	44IL	1,200
Olson Airport, Plato Center, IL	LL53	1,200
Redeker Airport, Milford, IL	IL85	1,200
Reid RLA Airport, Gilberts, IL	6IL6	1,200

Airport name	Arpt ID	Alt. (AGL)
Shamrock Beef Cattle Farm Airports, McHenry, IL.	49LL	1,200
Sky Soaring Airport, Union, IL	55LL	1,200
Waukegan Regional Airport, Waukegan, IL.	UGN	1,200
Wormley Airport, Oswego, IL	85LL	1,200

(5) Airports within a 30-nautical-mile radius of the Cleveland-Hopkins International Airport.

Airport name	Arpt ID	Alt. (AGL)
Akron Fulton International Airport, Akron, OH.	AKR	1,300
Bucks Airport, Newbury, OH	40OH	1,300
Derecsky Airport, Auburn Center, OH.	6OI0	1,300
Hannum Airport, Streetsboro, OH.	69OH	1,300
Kent State University Airport, Kent, OH.	1G3	1,300
Lost Nation Airport, Willoughby, OH.	LNN	1,300
Mills Airports, Mantua, OH	OH06	1,300
Portage County Airport, Ravenna, OH.	29G	1,300
Stoney's Airport, Ravenna, OH	OI32	1,300
Wadsworth Municipal Airport, Wadsworth, OH.	3G3	1,300

(6) Airports within a 30-nautical-mile radius of the Dallas/Fort Worth International Airport.

Airport name	Arpt ID	Alt. (AGL)
Beggs Ranch/Aledo Airport, Aledo, TX.	TX15	1,800
Belcher Airport, Sanger, TX	TA25	1,800
Bird Dog Field Airport, Krum, TX	TA48	1,800
Boe-Wrinkle Airport, Azle, TX	28TS	1,800
Flying V Airport, Sanger, TX	71XS	1,800
Graham Ranch Airport, Celina, TX.	TX44	1,800
Haire Airport, Bolivar, TX	TX33	1,800
Hartlee Field Airport, Denton, TX	1F3	1,800
Hawkins' Ranch Strip Airport, Rhome, TX.	TA02	1,800
Horseshoe Lake Airport, Sanger, TX.	TE24	1,800
Ironhead Airport, Sanger, TX	T58	1,800
Kezer Air Ranch Airport, Springtown, TX.	61F	1,800
Lane Field Airport, Sanger, TX	58F	1,800
Log Cabin Airport, Aledo, TX	TX16	1,800
Lone Star Airpark Airport, Denton, TX.	T32	1,800
Rhome Meadows Airport, Rhome, TX.	TS72	1,800
Richards Airports, Krum, TX	TA47	1,800
Tallows Field Airports, Celina, TX.	79TS	1,800
Triple S Airport, Aledo, TX	42XS	1,800
Warshun Ranch Airport, Denton, TX.	4TA1	1,800
Windy Hill Airport, Denton, TX	46XS	1,800
Bailey Airport, Midlothian, TX	7TX8	1,400
Bransom Farm Airport, Burleson, TX.	TX42	1,400
Carroll Air Park Airport, De Soto, TX.	F66	1,400
Carroll Lake-View Airport, Venus, TX.	70TS	1,400
Eagle's Nest Estates Airport, Ovilla, TX.	2T36	1,400
Flying B Ranch Airport, Ovilla, TX.	TS71	1,400
Lancaster Airport, Lancaster, TX	LNC	1,400
Lewis Farm Airport, Lucas, TX	6TX1	1,400
Markum Ranch Airport, Fort Worth, TX.	TX79	1,400
McKinney Municipal Airport, McKinney, TX.	TKI	1,400
O'Brien Airpark Airport, Waxahachie, TX.	F25	1,400
Phil L. Hudson Municipal Airport, Mesquite, TX.	HQZ	1,400
Plover Heliport, Crowley, TX	82Q	1,400
Venus Airport, Venus, TX	75TS	1,400

(7) Airports within a 30-nautical-mile radius of the Stapleton International Airport.

Airport name	Arpt ID	Alt. (AGL)
Athanasiou Valley Airport, Blackhawk, CO.	CO07	1,200
Boulder Municipal Airport, Boulder, CO.	1V5	1,200
Bowen Farms No. 2 Airport, Strasburg, CO.	3CO5	1,200
Carrera Airpark Airport, Mead, CO.	93CO	1,200
Cartwheel Airport, Mead, CO	0CO8	1,200
Colorado Antique Field Airport, Niwot, CO.	8CO7	1,200
Comanche Airfield Airport, Strasburg, CO.	3CO6	1,200
Comanche Livestock Airport, Strasburg, CO.	59CO	1,200
Flying J Ranch Airport, Evergreen, CO.	27CO	1,200
Frederick-Firestone Air Strip Airport, Frederick, CO.	CO58	1,200
Frontier Airstrip Airport, Mead, CO.	84CO	1,200
Hoy Airstrip Airport, Bennett, CO	76CO	1,200
J&S Airport, Bennett, CO	CD14	1,200
Kugel-Strong Airport, Platteville, CO.	27V	1,200
Land Airport, Keenesburg, CO	CO82	1,200
Lindys Airpark Airport, Hudson, CO.	7CO3	1,200
Marshdale STOL, Evergreen, CO	CO52	1,200
Meyer Ranch Airport, Conifer, CO.	5CO6	1,200
Parkland Airport, Erie, CO	7CO0	1,200
Pine View Airport, Elizabeth, CO	02V	1,200
Platte Valley Airport, Hudson, CO.	18V	1,200
Rancho De Aereo Airport, Mead, CO.	05CO	1,200
Spickard Farm Airport, Byers, CO.	5CO4	1,200
Vance Brand Airport, Longmont, CO.	2V2	1,200
Yoder Airstrip Airport, Bennett, CO.	CD09	1,200

(8) Airports within a 30-nautical-mile radius of the Detroit Metropolitan Wayne County Airport.

Airport name	Arpt ID	Alt. (AGL)
Al Meyers Airport, Tecumseh, MI	3TE	1,400
Brighton Airport, Brighton, MI	45G	1,400
Cackleberry Airport, Dexter, MI	2MI9	1,400
Erie Aerodome Airport, Erie, MI	05MI	1,400
Ham-A-Lot Field Airport, Petersburg, MI.	MI48	1,400
Meriliat Airport, Tecumseh, MI	34G	1,400
Rossettie Airport, Manchester, MI.	75G	1,400
Tecumseh Products Airport, Tecumseh, MI.	0D2	1,400

(9) Airports within a 30-nautical-mile radius of the Honolulu International Airport.

Airport name	Arpt ID	Alt. (AGL)
Dillingham Airfield Airport, Mokuleia, HI.	HDH	2,500

(10) Airports within a 30-nautical-mile radius of the Houston Intercontinental Airport.

Airport name	Arpt ID	Alt. (AGL)
Ainsworth Airport, Cleveland, TX	0T6	1,200
Biggin Hill Airport, Hockley, TX	0TA3	1,200
Cleveland Municipal Airport, Cleveland, TX.	6R3	1,200
Fay Ranch Airport, Cedar Lane, TX.	0T2	1,200
Freeman Property Airport, Katy, TX.	61T	1,200
Gum Island Airport, Dayton, TX	3T6	1,200
Harbican Airpark Airport, Katy, TX.	9XS9	1,200
Harold Freeman Farm Airport, Katy, TX.	8XS1	1,200
Hoffpauir Airport, Katy, TX	59T	1,200
Horn-Katy Hawk International Airport, Katy, TX.	57T	1,200
Houston-Hull Airport, Houston, TX.	SGR	1,200
Houston-Southwest Airport, Houston, TX.	AXH	1,200
King Air Airport, Katy, TX	55T	1,200
Lake Bay Gall Airport, Cleveland, TX.	0T5	1,200
Lake Bonanza Airport, Montgomery, TX.	33TA	1,200
R W J Airpark Airport, Baytown, TX.	54TX	1,200
Westheimer Air Park Airport, Houston, TX.	5TA4	1,200

(11) Airports within a 30-nautical-mile radius of the Kansas City International Airport.

Airport name	Arpt ID	Alt. (AGL)
Amelia Earhart Airport, Atchison, KS.	K59	1,000
Booze Island Airport, St. Joseph, MO.	64MO	1,000
Cedar Air Park Airport, Olathe, KS.	51K	1,000
D'Field Airport, McLouth, KS	KS90	1,000
Dorei Airport, McLouth, KS	K69	1,000
East Kansas City Airport, Grain Valley, MO.	3GV	1,000
Excelsior Springs Memorial Airport, Excelsior Springs, MO.	3EX	1,000
Flying T Airport, Oskaloosa, KS	7KS0	1,000

Airport name	Arpt ID	Alt. (AGL)
Hermon Farm Airport, Gardner, KS.	KS59	1,000
Hillside Airport, Stilwell, KS	63K	1,000
Independence Memorial Airport, Independence, MO.	3IP	1,000
Johnson County Executive Airport, Olathe, KS.	OJC	1,000
Johnson County Industrial Airport, Olathe, KS.	IXD	1,000
Kimray Airport, Plattsburg, MO	7MO7	1,000
Lawrence Municipal Airport, Lawrence, KS.	LWC	1,000
Martins Airport, Lawson, MO	21MO	1,000
Mayes Homestead Airport, Polo, MO.	37MO	1,000
McComas-Lee's Summit Municipal Airport, Lee's Summit, MO.	K84	1,000
Mission Road Airport, Stilwell, KS.	64K	1,000
Northwood Airport, Holt, MO	2MO2	1,000
Plattsburg Airpark Airport, Plattsburg, MO.	MO28	1,000
Richards-Gebaur Airport, Kansas City, MO.	GVW	1,000
Rosecrans Memorial Airport, St. Joseph, MO.	STJ	1,000
Runway Ranch Airport, Kansas City, MO.	2MO9	1,000
Sheller's Airport, Tonganoxie, KS	11KS	1,000
Shomin Airport, Oskaloosa, KS	OKS1	1,000
Stonehenge Airport, Williamstown, KS.	71KS	1,000
Threshing Bee Airport, McLouth, KS.	41K	1,000

(12) Airports within a 30-nautical-mile radius of the McCarran International Airport.

Airport name	Arpt ID	Alt. (AGL)
Sky Ranch Estates Airport, Sandy Valley, NV.	3L2	2,500

(13) Airports within a 30-nautical-mile radius of the Memphis International Airport.

Airport name	Arpt ID	Alt. (AGL)
Bernard Manor Airport, Earle, AR.	65M	2,500
Holly Springs-Marshall County Airport, Holly Springs, MS.	M41	2,500
Mc Neely Airport, Earle, AR	M63	2,500
Price Field Airport, Joiner, AR	80M	2,500
Tucker Field Airport, Hughes, AR	78M	2,500
Tunica Airport, Tunica, MS	30M	2,500
Tunica Municipal Airport, Tunica, MS.	M97	2,500

(14) Airports within a 30-nautical-mile radius of the Minneapolis-St. Paul International Wold-Chamberlain Airport.

Airport name	Arpt ID	Alt. (AGL)
Belle Plaine Airport, Belle Plaine, MN.	7Y7	1,200
Carleton Airport, Stanton, MN	SYN	1,200
Empire Farm Strip Airport, Bongards, MN.	MN15	1,200
Flying M Ranch Airport, Roberts, WI.	78WI	1,200
Johnson Airport, Rockford, MN	MY86	1,200
River Falls Airport, River Falls, WI.	Y53	1,200
Rusmar Farms Airport, Roberts, WI.	WS41	1,200
Waldref SPB, Forest Lake, MN	9Y6	1,200

(15) Airports within a 30-nautical-mile radius of the New Orleans International/ Moisant Field Airport.

Airport name	Arpt ID	Alt. (AGL)
Bollinger SPB, Larose, LA	L38	1,500
Clovelly Airport, Cut Off, LA	LA09	1,500

(16) Airports within a 30-nautical-mile radius of the John F. Kennedy International Airport, the La Guardia Airport, and the Newark International Airport.

Airport name	Arpt ID	Alt. (AGL)
Altaire Airport, Belmar/Farmingdale, NJ.	BLM	2,000
Cuddihy Landing Strip Airport, Freehold, NJ.	NJ60	2,000
Ekdahl Airport, Freehold, NJ	NJ59	2,000
Fla-Net Airport, Netcong, NJ	0NJ5	2,000
Forrestal Airport, Princeton, NJ	N21	2,000
Greenwood Lake Airport, West Milford, NJ.	4N1	2,000
Greenwood Lake SPB, West Milford, NJ.	6NJ7	2,000
Lance Airport, Whitehouse Station, NJ.	6NJ8	2,000
Mar Bar L Farms, Englishtown, NJ.	NJ46	2,000
Peekskill SPB, Peekskill, NY	7N2	2,000
Peters Airport, Somerville, NJ	4NJ8	2,000
Princeton Airport, Princeton/ Rocky Hill, NJ.	39N	2,000
Solberg-Hunterdon Airport, Readington, NJ.	N51	2,000

(17) Airports within a 30-nautical-mile radius of the Philadelphia International Airport.

Airport name	Arpt ID	Alt. (AGL)
Ginns Airport, West Grove, PA	78N	1,000
Hammonton Municipal Airport, Hammonton, NJ.	N81	1,000
Li Calzi Airport, Bridgeton, NJ	N50	1,000
New London Airport, New London, PA.	N01	1,000
Wide Sky Airpark Airport, Bridgeton, NJ.	N39	1,000

(18) Airports within a 30-nautical-mile radius of the Phoenix Sky Harbor International Airport.

Airport name	Arpt. ID	Alt. (AGL)
Ak Chin Community Airfield Airport, Maricopa, AZ.	E31	2,500
Boulais Ranch Airport, Maricopa, AZ.	9E7	2,500
Estrella Sailport, Maricopa, AZ	E68	2,500
Hidden Valley Ranch Airport, Maricopa, AZ.	AZ17	2,500
Millar Airport, Maricopa, AZ	2AZ4	2,500
Pleasant Valley Airport, New River, AZ.	AZ05	2,500
Serene Field Airport, Maricopa, AZ.	AZ31	2,500
Sky Ranch Carefree Airport, Carefree, AZ.	E18	2,500
Sycamore Creek Airport, Fountain Hills, AZ.	0AS0	2,500
University of Arizona, Maricopa Agricultural Center Airport, Maricopa, AZ.	3AZ2	2,500

(19) Airports within a 30-nautical-mile radius of the Lambert/St. Louis International Airport.

Airport name	Arpt ID	Alt. (AGL)
Blackhawk Airport, Old Monroe, MO.	6MO0	1,000
Lebert Flying L Airport, Lebanon, IL.	3H5	1,000
Shafer Metro East Airport, St. Jacob, IL.	3K6	1,000
Sloan's Airport, Elsberry, MO	0MO8	1,000
Wentzville Airport, Wentzville, MO.	MO50	1,000
Woodliff Airpark Airport, Foristell, MO.	98MO	1,000

(20) Airports within a 30-nautical-mile radius of the Salt Lake City International Airport.

Airport name	Arpt ID	Alt. (AGL)
Bolinder Field-Tooele Valley Airport, Tooele, Ut.	TVY	2,500
Cedar Valley Airport, Cedar Fort, UT.	UT10	2,500
Morgan County Airport, Morgan, UT.	42U	2,500
Tooele Municipal Airport, Tooele, UT.	U26	2,500

(21) Airports within a 30-nautical-mile radius of the Seattle-Tacoma International Airport.

Airport name	Arpt ID	Alt. (AGL)
Firstair Field Airport, Monroe, WA.	WA38	1,500
Gower Field Airport, Olympia, WA.	6WA2	1,500
Harvey Field Airport, Snohomish, WA.	S43	1,500

(22) Effective upon the establishment of the Tampa International Airport TCA: Airports within a 30-nautical-mile radius of the Tampa International Airport.

Airport name	Arpt ID	Alt. (AGL)
Hernando County Airport, Brooksville, FL.	BKV	1,500
Lakeland Municipal Airport, Lakeland, FL.	LAL	1,500
Zephyrhills Municipal Airport, Zephyrhills, FL.	ZPH	1,500

(23) Effective until the establishment of the Washington Tri-Area TCA or December 30, 1993, whichever occurs first: Airports within a 30-nautical-mile radius of the Washington National Airport and Andrews Air Force Base Airport.

Airport name	Arpt ID	Alt. (AGL)
Barnes Airport, Lisbon, MD	MD47	2,000
Davis Airport, Laytonsville, MD	W50	2,000
Fremont Airport, Kemptown, MD	MD41	2,000
Montgomery County Airpark Airport, Gaithersburg, MD.	GAI	2,000
Waredaca Farm Airport, Brookeville, MD.	MD16	2,000
Aqua-Land/Cliffton Skypark Airport, Newburg, MD.	2W8	1,000
Buds Ferry Airport, Indian Head, MD.	MD39	1,000
Burgess Field Airport, Riverside, MD.	3W1	1,000
Chimney View Airport, Fredericksburg, VA.	5VA5	1,000
Holly Springs Farm Airport, Nanjemoy, MD.	MD55	1,000
Lanseair Farms Airport, La Plata, MD.	MD97	1,000
Nyce Airport, Mount Victoria, MD	MD84	1,000
Parks Airpark Airport, Nanjemoy, MD.	MD54	1,000
Pilots Cove Airports, Tompkinsville, MD.	MD06	1,000
Quantico MCAF, Quantico, VA	NYG	1,000
Stewart Airport, St. Michaels, MD.	MD64	1,000
U S Naval Weapons Center, Dahlgren Lab Airport, Dahlgren, VA.	NDY	1,000

(24) Effective upon the establishment of the Washington, Tri-Area TCA: Airports within a 30-nautical-mile radius of the Washington National Airport, Andrews Air Force Base Airport, Baltimore-Washington International Airport, and Dulles International Airport.

Airport name	Arpt ID	Alt. (AGL)
Albrecht Airstrip Airport, Long Green, MD.	MD48	2,000
Armacost Farms Airport, Hampstead, MD.	MD38	2,000
Barnes Airport, Lisbon, MD	MD47	2,000
Carroll County Airport, Westminster, MD.	W54	2,000
Clearview Airpark Airport, Westminster, MD.	2W2	2,000
Davis Airport, Laytonsville, MD	W50	2,000
Fallston Airport, Fallston, MD	W42	2,000
Faux-Burhans Airport, Frederick, MD.	3MD0	2,000
Forest Hill Airport, Forest Hill, MD.	MD31	2,000
Fort Detrick Helipad Heliport, Fort Detrick (Frederick), MD.	MD32	2,000
Frederick Municipal Airport, Frederick, MD.	FDK	2,000
Fremont Airport, Kemptown, MD	MD41	2,000
Good Neighbor Farm Airport, Unionville, MD.	MD74	2,000
Happy Landings Farm Airport, Unionville, MD.	MD73	2,000
Harris Airport, Still Pond, MD	MD69	2,000
Hybarc Farm Airport, Chestertown, MD.	MD19	2,000
Kennersley Airport, Church Hill, MD.	MD23	2,000
Montgomery County Airpark Airport, Gaithersburg, MD.	GAI	2,000
Phillips AAF, Aberdeen, MD	APG	2,000
Pond View Private Airport, Chestertown, MD.	0MD4	2,000
Reservoir Airport, Finksburg, MD	1W8	2,000
Scheeler Field Airport, Chestertown, MD.	0W7	2,000
Stolcrest STOL, Urbana, MD	MD75	2,000
Tinsley Airstrip Airport, Butler, MD.	MD17	2,000
Walters Airport, Mount Airy, MD	0MD6	2,000
Waredaca Farm Airport, Brookeville, MD.	MD16	2,000
Weide AAF, Edgewood Arsenal, MD.	EDG	2,000
Woodbine Gliderport, Woodbine, MD.	MD78	2,000
Wright Field Airport, Chestertown, MD.	MD11	2,000
Aviacres Airport, Warrenton, VA	3VA2	1,500
Birch Hollow Airport, Hillsboro, VA.	W60	1,500
Flying Circus Aerodrome Airport, Warrenton, VA.	3VA3	1,500
Fox Acres Airport, Warrenton, VA.	15VA	1,500
Hartwood Airport, Somerville, VA	8W8	1,500
Horse Feathers Airport, Midland, VA.	53VA	1,500
Krens Farm Airport, Hillsboro, VA.	14VA	1,500
Scott Airpark Airport, Lovettsville, VA.	VA61	1,500
The Grass Patch Airport, Lovettsville, VA.	VA62	1,500
Walnut Hill Airport, Calverton, VA	58VA	1,500
Warrenton Air Park Airport, Warrenton, VA.	9W0	1,500
Warrenton-Fauquier Airport, Warrenton, VA.	W66	1,500
Whitman Strip Airport, Manassas, VA.	0V5	1,500
Aqua-Land/Cliffton Skypark Airport, Newburg, MD.	2W8	1,000
Buds Ferry Airport, Indian Head, MD.	MD39	1,000
Burgess Field Airport, Riverside, MD.	3W1	1,000
Chimney View Airport, Fredericksburg, VA.	5VA5	1,000
Holly Springs Farm Airport, Nanjemoy, MD.	MD55	1,000
Lanseair Farms Airport, La Plata, MD.	MD97	1,000
Nyce Airport, Mount Victoria, MD	MD84	1,000
Parks Airpark Airport, Nanjemoy, MD.	MD54	1,000
Pilots Cove Airport, Tompkinsville, MD.	MD06	1,000
Quantico MCAF, Quantico, VA	NYG	1,000
Stewart Airport, St. Michaels, MD.	MD64	1,000
US Naval Weapons Center, Dahlgren Lab Airport, Dahlgren, VA.	NDY	1,000

Issued in Washington, DC, on May 21, 1990.

Harold W. Becker,

Acting Director, Air Traffic Rules and Procedures Service.

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federal register

Friday
May 25, 1990

Part V

The President

Proclamation 6139—World Trade Week, 1990

Presidential Papers

Federal Register
Vol. 55, No. 102
Friday, May 25, 1990

Presidential Documents

Title 3–

The President

Proclamation 6139 of May 23, 1990

World Trade Week, 1990

By the President of the United States of America

A Proclamation

As we enter the last decade of the 20th century, it is fitting that we prepare to do business—global business—in the 21st. Because our participation in international trade has become essential to the Nation's strength and prosperity, it must continue to increase.

The prospects for expanded U.S. participation in world trade are improving dramatically. Nearly 500 years ago, the historic journey of Christopher Columbus helped to launch the exploration and development of a vast portion of the globe. Today the winds of change are leading us into uncharted areas of business and commercial opportunity. New markets are emerging, markets that will affect the social and economic development of entire nations.

The triumph of democratic ideals and the emergence of free market principles around the world are creating tremendous opportunities, not only for peoples who once suffered under the centralized planning of Marxist-Leninist regimes, but also for American business and industry. As more and more countries establish market systems and entrepreneurial economies, the American private sector can help to foster desperately needed innovation and flexibility. The U.S. Government is already committed to promoting free enterprise in those countries and to opening their markets to American business.

At the Uruguay Round of trade negotiations with 97 other countries, the United States is seeking the freer movement of goods, services, and capital across national boundaries. We are working diligently to bring those negotiations to a successful conclusion by the end of the year.

In the United States itself, we are equally committed to building and maintaining an economic environment that is favorable to trade and to improving our ability to compete. However, the United States Government can only provide the setting; the actual work must be done by individual business men and women. Toughened in recent years by fierce competition on a global scale, these Americans know that protectionism is not a means to progress and prosperity. Rather, U.S. business leaders have strengthened and renewed their commitment to excellence.

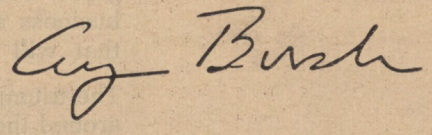
The owners, managers, and employees of American companies and farms know that improving their competitiveness requires the production of consistently high quality products and services that will attract buyers in every country. A growing number of U.S. firms are engaged in extensive efforts to enhance the quality of their operations through thoughtful, self-critical assessment and hard work. Still, we have only scratched the surface. We need to do much more in our national quest for excellence.

In today's highly competitive global economy, Americans must pursue export sales with the same energy and enthusiasm they devote to sales in this country. They can and should move quickly to take advantage of opportunities overseas. The risks are sometimes great, but the rewards are always enjoyed by many: companies benefit from profits and growth; workers benefit from more jobs; consumers benefit from a greater variety of goods and services at lower prices. The entire population gains.

The global flowering of freedom, the expansion of world markets, and the critical stage of the Uruguay Round make this World Trade Week an especially important one. I call on all Americans to respond to the challenge.

NOW, THEREFORE, I, GEORGE BUSH, 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 beginning May 20, 1990, as World Trade Week. I call upon the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of May, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.



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Editorial note: For the President's remarks on World Trade Week, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 21).

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Friday, May 25, 1990

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H.R. 2890/Pub. L. 101-297

To designate the Federal Building and United States Courthouse located at 750 Missouri Avenue in East St. Louis, Illinois, as the "Melvin Price Federal Building and United States Courthouse". (May 22, 1990; 104 Stat. 200; 1 page) Price: $1.00

S. 993/Pub. L. 101-298

Biological Weapons Anti-Terrorism Act of 1989. (May 22, 1990; 104 Stat. 201; 3 pages) Price: $1.00