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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.

OFFICE OF SPECIAL COUNSEL

5 CFR Parts 1262 and 1850

Implementation of the Whistleblower Protection Act; Correction

AGENCY: U.S. Office of Special Counsel.

ACTION: Final rule; correction.

SUMMARY: On November 16, 1990 (55 FR 47839), the U.S. Office of Special Counsel (OSC) published a rule adopting as final with minor changes an interim rule implementing the Whistleblower Protection Act of 1989 which was originally published on November 14, 1989 (54 FR 47341–47345). Reference to the portion of the interim rule which dealt with 5 CFR part 1850 (formerly 5 CFR part 1262) relating to nondiscrimination on the basis of handicap in programs or activities by OSC was inadvertently omitted from the amendatory instructions of the final rule. This document corrects that omission.

FOR FURTHER INFORMATION CONTACT: John Marshall Meisburg, Jr., at 202/653–7307.

SUPPLEMENTARY INFORMATION: In the final rule document 90–27092 beginning on page 47839 in the issue of Friday, November 16, 1990, make the following correction:

On page 47840, in the first column, add the following amendatory instruction after the amendatory instruction for part 1840:

PART 1850—ENFORCEMENT OF DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OFFICE OF SPECIAL COUNSEL

The portion of the interim rule redesignating 5 CFR part 1262 as 5 CFR part 1850 and making minor amendments to the newly designated part 1850, published on November 14, 1989, at 54 FR 47345, is adopted as final without change.

Dated: December 6, 1990.

Mary F. Wieseman,

Special Counsel.

[FR Doc. 90–29000 Filed 12–10–90; 8:45 am]

BILLING CODE 7400-02-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 37; Doc. No. 7891S]

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1991 and succeeding crop years, to: (1) Clarify the time limit for an insured producer to submit a report or a notice to FCIC; (2) allow for an extension of the sales closing date when such date falls on a weekend or Federal holiday; (3) clarify premium discount language applicable to good insuring experience and whole units; and (4) modify the restriction against insuring land which has been strip mined to provide crop insurance by written agreement between the insured and FCIC. The intended effect of this final rule is to provide that a sales closing date will be extended if the date falls on a weekend or Federal holiday and the insured's service office is not open on such date, and provide a clarification of premium discount if the insured did not select optional units and/or is eligible for good insuring experience.

EFFECTIVE DATE: January 10, 1991.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, room 4090–S, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Department Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness established for these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

David W. Gabriel, Acting Manager, FCIC, (1) Has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistant under No. 10.450.

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.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC published a notice of proposed rulemaking in the **Federal Register** on Tuesday, August 15, 1989, at 54 FR 33559, to amend the General Crop Insurance Regulations (7 CFR part 401), effective for the 1991 and succeeding crop years, to: (1) Clarify the time limit for an insured producer to submit a report or a notice to FCIC; and (2) modify the restriction against insuring land which has been strip mined. The intended effect of this rule was to provide language allowing the insured producer to submit required notices or reports on the next business day if the reporting of notification date falls on a

weekend or Federal holiday, or if the insured's service office is, for any reason, closed on such reporting or notification date, and to provide crop insurance on land which has been strip mined by written agreement between the insured and FCIC.

FCIC published a notice of additional proposed rulemaking on October 5, 1990, at 55 FR 40841, to further amend the General Crop Insurance Regulations (7 CFR part 401) to: (1) Include in the addition to the proposed amendment to paragraph 20 (Notices) of the General policy, similar clarifying language to the annual premium section (paragraph 5) to provide for a premium discount if the insured did not select optional units or is eligible for a good insurance experience discount.

The public was given 30 days in which to submit written comments, data, and opinions on the additional notice of proposed rulemaking, but none were received. Therefore, the notice of proposed rulemaking published at 54 FR 33559, as amended by the additional notice of proposed rulemaking published at 55 FR 40841 is hereby adopted as a final rule.

List of Subjects in 7 CFR Part 401

Crop insurance; General crop insurance policy.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR part 401), to be effective for the 1991 and succeeding crop years, in the following instances:

PART 401—GENERAL CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 401.8 is amended by revising paragraph (b); subparagraph (d)2.e.(12); and paragraphs 5., and 20., of the General Crop Insurance Policy to read as follows:

* * * * *

§ 401.8 The application and policy.

* * * * *

(b) The Corporation may reject or discontinue the acceptance of applications in any county or of any individual application upon its determination that the insurance risk is excessive. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications. If the sales closing date falls on a Saturday or Sunday or legal holiday when the service office is not open, the application must be submitted by the close of business on the next business day.

* * * * *

(d) * * *

2. Crop, Acreage, and Share Insured

* * * * *

e. * * *

(12) Which has been strip mined unless we agree in writing to insure such acreage.

* * * * *

5. Annual Premium

a. The annual premium is earned and payable at the time insurance attaches. The annual premium is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches, and where applicable, times any applicable premium adjustment factor shown on the actuarial table.

b. If you are eligible for a premium reduction based on your experience under previous crop policies, you may retain that experience under certain conditions as set out in the crop endorsement through the 1991 crop year.

c. Your premium payment, plus any accrued interest, will be considered delinquent if any amount due us is not paid on or before the termination date specified in the crop endorsement.

* * * * *

20. Notices

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice. If the date by which you are required to submit an application or a report or notice falls on a Saturday, Sunday, or Federal holiday if your service office is not open for business on such date such notice or report must be submitted on the next business day.

* * * * *

Done in Washington, DC, on December 4, 1990.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-28902 Filed 12-10-90; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 401

[Amdt. No. 65; Doc. No. 7886S]

General Crop Insurance Regulations; Soybean Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, by amending the Soybean Endorsement (7 CFR 401.117) to provide conditions for the retention of premium reduction based on good insuring experience. The intended effect of this rule is to restore provisions to the Soybean Endorsement that set out conditions to be met by eligible insureds for the retention of premium discount earned through good insuring experience.

DATES: This interim rule is effective on December 11, 1990. Written comments, data, and opinions on this interim rule must be submitted not later than February 11, 1991, to be sure of consideration.

ADDRESSES: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the Soybean Endorsement regulations affected by this rule under those procedures. The sunset review date established is October 1, 1992.

David W. Gabriel, Acting Manager, FCIC, (1) Has determined that this action is not a major role as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b)

major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith amends the General Crop Insurance Regulations (7 CFR part 401) to provide the conditions to be met by eligible insureds in order to retain the premium discount for good insuring experience. This technical amendment restores conditions which were mistakenly removed in a rule published on November 21, 1989, at 54 FR 48071.

The provisions for premium discount for good insuring experience remain in the Soybean Endorsement. This rule restores the certain conditions which must be met by a producer whose insuring experience entitles that producer to the discount. This action does not detract from the benefit of premium discount; merely adding those requirements necessary to receive such benefit.

In accordance with 5 U.S.C. 553(b)B, David W. Gabriel, Acting Manager, FCIC, has determined that the restoration of the conditions for premium discount to the Soybean Endorsement is necessary to correct a previous erroneous removal of the same provisions which bestow a benefit on some program recipients and which is not detrimental to any program recipient, and that publication as a proposed rule for notice and comment is impracticable, unnecessary, and contrary to the public interest. Therefore, good cause is shown for making this rule effective upon publication.

FCIC, consistent with the provisions of 5 U.S.C. 553, is soliciting comments on this rule for 60 days following publication in the **Federal Register**. This rule will be scheduled for review so that any amendment made necessary by public comments made be published as soon as possible.

Written comments should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this interim rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

This rule will be scheduled for review so that any amendment made necessary by public comment will be published in the **Federal Register** as quickly as possible.

List of Subjects in 7 CFR Part 401

Crop insurance, Soybeans.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the provisions of the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 and succeeding crop years, by amending the Soybean Endorsement (7 CFR 401.117), in the following instances:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 401.117 is amended by revising and reissuing section 3 to read as follows:

§ 401.117 Soybean endorsement.

* * * * *

3. Annual Premium.

(a) The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times any applicable premium adjustment percentage for which you may qualify as shown in the actuarial table, because:

(1) You have not selected optional units; or

(2) You are eligible for a good insuring experience discount.

(b) If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1983 crop year under the terms of the experience table contained in the soybean policy in effect for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction amount will not increase because of favorable experience;

(3) The premium reduction amount will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

* * * * *

Done in Washington, DC on December 4, 1990.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-28903 Filed 12-10-90; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 414

[Amdt. No. 3; Doc. No. 7873S]

Forage Seeding Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Forage Seeding Crop Insurance Regulations (7 CFR part 414), effective for the 1991 and succeeding crop years, to provide cancellation and termination dates for counties in New Hampshire, Pennsylvania, and Vermont, recently approved for such insurance. The intended effect of this rule is to provide the cancellation and termination dates for policyholders in those States.

EFFECTIVE DATE: January 10, 1990.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is June 1, 1995.

David W. Gabriel, Acting Manager, FCIC, (1) Has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith amends the Forage Seeding Crop Insurance Regulation (7 CFR part 414) to provide cancellation and termination dates for counties in New Hampshire, Pennsylvania, and Vermont, recently approved for such insurance.

On Thursday, September 20, 1990, FCIC published a notice of proposed rulemaking in the **Federal Register** at 55 FR 38693, to provide cancellation and termination dates for counties in New Hampshire, Pennsylvania, and Vermont, recently approved for such insurance. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the proposed rule published at 55 FR 38693 is adopted as a final rule.

List of Subjects in 7 CFR Part 414

Crop insurance, Forage seeding.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Forage Seeding Crop Insurance Regulations (7 CFR part 414), proposed to be effective for the 1991 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR part 414 is revised to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 414.7(d) is amended by revising paragraph 15.d. to read as follows:

§ 414.7 The application and policy.

* * * * *

(d) * * *

15. Life of Contract: Cancellation and Termination

* * * * *

d. The cancellation and termination dates are:

	Cancellation termination date
State:	
New Hampshire, New York, Pennsylvania, Vermont.	July 31.
All other states	April 15.

* * * * *

Done in Washington, DC on December 4, 1990.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-28905 Filed 12-10-90; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 430

[Amdt. No. 2; Doc. No. 7879S]

Sugar Beet Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Sugar Beet Crop Insurance Regulations (7 CFR part 430), effective for the 1992 and succeeding crop years, to: (1) Correct planting dates and clarify the insurance period in California; (2) change the end of insurance period for Texas; and, (3) change the definition of crop year in California and Texas. The intended effect of this rule is to simplify the sugar beet program in California and Texas with respect to planting dates and insurance period to more closely reflect farming practices.

DATES: January 10, 1990.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1994.

David Gabriel, Acting Manager, FCIC, (1) Has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC amends the Sugar Beet Crop Insurance Regulations (7 CFR part 430), effective for the 1992 and succeeding crop years, by (1) Correcting planting dates and clarifying the insurance period in California; (2) changing the end of insurance period for Texas; and, (3) changing the definition of crop year in California and Texas. This action will simplify the sugar beet program in California and Texas with respect to

Tom Vontz. 805-764-5648.

July 25, 1980, 2/21/84 11/29/85 12-26-85 3-5-86, 8-15-86, 2-3,-87,

planting dates and insurance period to more closely reflect farming practices for sugar beets.

On Thursday, September 20, 1990, FCIC published a notice of proposed rulemaking in the **Federal Register** at 55 FR 38693 to: (1) Correct planting dates and clarify the insurance period in California; (2) change the end of insurance period for Texas; and, (3) change the definition of crop year in California and Texas to simplify the sugar beet program in California and Texas with respect to planting dates and insurance period to more closely reflect farming practices. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the proposed rule published at 55 FR 38693 is adopted as a final rule without change.

List of Subjects in 7 CFR Part 430

Crop insurance; Sugar beet.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Sugar Beet Crop Insurance Regulations (7 CFR part 430), proposed to be effective for the 1992 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR part 430 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR 430.7(d) is amended revising paragraph 7, paragraph 15.e., and paragraph 16, to read as follows:

§ 430.7 The application and policy.

* * * * *

(d) * * *

7. Insurance Period

Insurance attaches when the sugar beets are planted and ends at the earliest of:

(a) Total destruction of the sugar beets;

(b) Harvest of the sugar beets on the unit;

(c) Final adjustment of a loss; or

(d) The following calendar dates;

(1) July 15 for Arizona and Imperial County, California;

(2) The dates established by practice as contained in the actuarial table for all other California counties;

(3) November 25 in Ohio;

(4) December 31 in Texas; and

(5) November 15 in all other states.

* * * * *

15. Life of Contract: Cancellation and Termination

* * * * *

(e) The cancellation and termination dates are

State and county	Cancellation and termination dates
Arizona and Imperial County, California.	August 31.
All other California Counties	March 31.
All other states	April 15.

* * * * *

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by:

(a) April 30 preceding the cancellation date for Arizona and Imperial County, California;

(b) November 30 preceding the cancellation date for all other California counties;

(c) December 31 preceding the cancellation date for all other states.

Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

* * * * *

Done in Washington, DC on December 4, 1990.

David Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-28906 Filed 12-10-90; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 433

[Amdt. No. 3; Doc. No. 7889S]

Dry Bean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Dry Bean Crop Insurance Regulations (7 CFR part 433), effective for the 1991 and succeeding crop years, to expand crop insurance coverage to all classes of dry beans. The intended effect of this final rule is to provide the provisions for insuring all classes of dry beans to include those classes not insurable in the past, provided the class of dry beans has been demonstrated to be adapted to the area.

EFFECTIVE DATE: January 10, 1990.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Office of the Manager, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1995.

David W. Gabriel, Acting Manager, FCIC, (1) Has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC published a notice of proposed rulemaking in the **Federal Register** on Friday, October 5, 1990, at 55 FR 40842, to amend the Dry Bean Crop Insurance Regulations (7 CFR part 433), effective for the 1991 and succeeding crop years, to provide the provisions for expanding crop insurance coverage to all classes of dry beans, and to include those classes not insurable in the past, provided the class of dry beans has been demonstrated to be adapted in the area.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the notice of

proposed rulemaking at 55 FR 40842 is hereby adopted as a final rule.

List of Subjects in 7 CFR Part 433

Crop insurance, Dry beans.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*). The Federal Crop Insurance Corporation amends the Dry Bean Crop Insurance Regulations (7 CFR part 433), effective for the 1991 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR part 433 is revised to read as follows:

Authority: 7 U.S.C. 1506, 1516.

§ 433.7 (Amended)

2. 7 CFR 433.7(d) is amended by revising subparagraph 2.a., to read as follows:

§ 433.7 The application and policy.

* * * * *

(d) * * *

2. Crop Acreage, and Share Insured

a. The crop insured will be dry beans ("beans") and will consist of:

(1) Dry edible beans, planted for harvest as dry beans, of a class designated in the actuarial table; and

(2) Bush varieties of garden seed beans (contract seed beans), planted for harvest as seed and grown under a contract (with a seed company executed before the acreage reporting date), which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

In addition to the classes of dry beans listed on the actuarial table for your county, we will insure other classes of beans provided:

(i) The class you intend to plant has been demonstrated to be adapted to the area. (Evidence of adaptability includes results of test plots and recommendations by universities and seed companies. Two years of personal experience producing the class in your production area may be submitted for this requirement.);

(ii) You submit your production report and prices received by the sales closing date, or the test plot results and price information on or before the sales closing date; and

(iii) We provide you, in writing, an approved insurance offer which you accept in writing.

* * * * *

Done in Washington, DC on December 4, 1990.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-28904 Filed 12-10-90; 8:45 am]

BILLING CODE 3410-08-M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R-0717]

RIN 7100-AB01

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for comment.

SUMMARY: The Board is amending Regulation CC to conform to recent amendments to the Expedited Funds Availability Act ("Act") (see the Cranston-Gonzales National Affordable Housing Act, Pub. L. No. 101-625, § 1001). The amendments extend the availability schedules for deposits to nonproprietary automated teller machines ("ATMs") for a period of two years. The amendments to the Act were signed into law on November 28, 1990, with a retroactive effective date of September 1, 1990. The Board has adopted these conforming changes to Regulation CC on an interim basis. The Board is requesting comments on the interim rule pending adoption of a final rule.

DATES: *Effective date:* September 1, 1990. *Comment date:* Comments must be submitted on or before January 11, 1991.

ADDRESSES: Comments, which should refer to Docket No. R-0717, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5 p.m. All comments received at the above address will be included in the public file and may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874), or Kathleen M. Connor, Senior Financial Services Analyst (202/452-3917), Division of Federal Reserve Bank Operations; Oliver Ireland, Associate General Counsel (202/452-3625), or Stephanie Martin, Attorney (202/452-3198), Legal Division. For information regarding modifications to disclosures or Appendix C, contact Thomas J. Noto, Staff Attorney (202/452-3667), or Jane E. Ahrens, Staff Attorney (202/452-3667), Division of Consumer and Community Affairs. For the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: The Expedited Funds Availability Act specifies the time periods within which funds deposited at ATMs must be made available for withdrawal. Different rules applied under the temporary schedule (which was effective from September 1, 1988, to August 31, 1990) to deposits at nonproprietary ATMs [1] than to deposits at proprietary ATMs, because of operational differences in the way these deposits are processed. During consideration of the Act, banks reported to the Congress on the processing limitations associated with accepting deposits at nonproprietary ATMs. They indicated that the account-holding bank does not have the information necessary to place holds on nonproprietary ATM deposits because the deposits are removed and processed by the ATM operator rather than the account-holding bank. Given these limitations, the Act allowed the account-holding bank to treat any such deposits as though they were composed of nonlocal checks under the temporary schedule. At that time, the Congress anticipated that the processing limitations that necessitated the special availability rule for nonproprietary ATM deposits under the temporary schedule would be addressed by the time the permanent schedule became effective in September 1990. Therefore, under the permanent schedule, deposits at nonproprietary ATMs generally had to be made available for withdrawal within the same time periods as deposits made at staffed teller facilities.

During the past two years, ATM networks, banks, and the Board have investigated a number of potential alternatives both to address the processing limitations and to facilitate compliance with the permanent schedule. A viable systems solution to address the processing limitations has not been identified. All of the identified solutions are costly and would likely result in increased fees for customers who make deposits at nonproprietary ATMs. The possible system solutions would degrade the efficiency of shared ATM networks and may slow the collection of checks, which would be contrary to the intent of the Act.

In addition, depository institutions and ATM operators have expressed concern that the potential for fraud will

[1] A *nonproprietary ATM* is defined in the Act as one that is not proprietary. In the Act, the term "proprietary ATM" means an automated teller machine that is (1) located at or adjacent to a branch of the receiving institution or in close proximity, as defined by the Board, or (2) owned by, operated exclusively for, or operated by the receiving institution.

increase if institutions must comply with the permanent availability schedule for nonproprietary ATMs. Under the permanent availability schedule, second-business-day availability is required for local checks. Thus, an account-holding bank that could not ascertain the composition of deposits at nonproprietary ATMs would have to provide second-business-day availability for all deposits made at nonproprietary ATMs in order to ensure compliance with the availability schedules, even though longer holds could apply with respect to similar deposits, i.e., nonlocal checks, made at a staffed teller facility. Thus, deposits of nonlocal checks at nonproprietary ATMs would be available for withdrawal several days before the checks could be presented and returned, and therefore such deposits would be an attractive vehicle for check fraud. Substantial increases in operating costs or fraud losses could lead some institutions to cease accepting deposits at nonproprietary ATMs, thereby limiting a convenient consumer banking service.

Based on this research and analysis, the Board submitted two reports [2] on this issue to the Congress that recommended that the Congress amend the Act to treat nonproprietary ATM deposits under the permanent schedule in the same manner as such deposits were treated under the temporary schedule; i.e., permit banks to make deposits at nonproprietary ATMs available for withdrawal as if they were nonlocal checks (not later than the fifth business day following the day of deposit). ATM networks and participating institutions also have made this recommendation to the Congress.

On November 28, 1990, the President signed into law the Cranston-Gonzales National Affordable Housing Act (Pub. L. 101–625; § 1001), which amended the Expedited Funds Availability Act to extend the schedules applicable to deposits at nonproprietary ATMs for a two-year period. The Board is amending Regulation CC to conform to this recent amendment of the Act.

Section 229.12 of Regulation CC sets forth the permanent availability schedule under which funds deposited in an account by local and nonlocal checks must be made available for withdrawal. A new § 229.12(f) has been added to provide a special rule for deposits made at nonproprietary ATMs. Section 229.12(f) provides that during the period from September 1, 1990, through November 27, 1992, a depositary bank may treat all deposits made by its customers at a nonproprietary ATM as though the deposits were nonlocal checks under the permanent schedule, i.e., make them available by the fifth business day after the day of deposit. Effective November 28, 1992, deposits of cash, "next-day" checks, and local checks at a nonproprietary ATM must be made available by the second business day following the banking day of deposit, and nonlocal checks deposited at a nonproprietary ATM must continue to be made available by the fifth business day following the banking day of deposit. This rule does not apply to deposits made at proprietary ATMs.

The Board also has made revisions to other paragraphs of § 229.12 to conform that section to the statutory requirements of the Act. Paragraphs (a), (b), (c), and (d) of § 229.12 were amended to add cross-references to the new paragraph (f) as well as to other paragraphs. In addition, in paragraph (b), which lists the types of deposits that must be accorded two-day availability under the permanent schedule, the Board has removed the language, "a check drawn on the Treasury of the United States that is deposited at a nonproprietary ATM." Deposits of these checks are now governed by the provisions of new paragraph (f) and are subject to a five-day availability schedule until November 27, 1992, and a two-day availability schedule after that date.

Section 229.16(b)(5) requires banks wishing to take advantage of the extended hold for deposits at nonproprietary ATMs to disclose this to their customers in their initial disclosures. Model Clause C–10, which can be used to make this disclosure, has been revised to reflect the new rules for nonproprietary ATM deposits. Conforming changes have also been made to the commentary to Appendix C and the commentary to § 229.16.

Section 229.18(e) requires banks to disclose changes in their availability policy to their consumer account holders. Changes other than those that result in faster availability must be disclosed 30 calendar days before they are implemented. Accordingly, banks wishing to take advantage of the extended hold for nonproprietary ATM deposits must provide 30-day advance notice to their consumer account holders. This requirement may be fulfilled by mailing Model C–10 prefaced with language indicating the effective date of the change.

The Board believes that it is necessary to amend the regulation with an interim amendment, so that the regulation conforms to the statutory requirements, and so that banks that permit their customers to make deposits at nonproprietary ATMs can rely on the Board's regulation in providing availability in accordance with the amended requirements. If the Board's rule is not effective immediately, banks that wish to take advantage of the provisions of the Act regarding nonproprietary ATMs, which reflect the intent of the Congress to reduce the risk for banks of accepting deposits at nonproprietary ATMs, would be in violation of Regulation CC because the current provisions call for faster availability of these deposits than is required under the amended Act. There was no opportunity for the Board to publish proposed regulations for comment prior to the effective date of the amendment to the Act, which was effective upon enactment. Accordingly, the Board, for good cause, finds that the notice and public comment procedure normally required is impractical and contrary to the public interest under 5 U.S.C 553(b)(B). The Board further finds that, for the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to make the interim amendment effective on September 1, 1990, without regard for the 30-day period provided for in U.S.C. 553(d).

Initial Regulatory Flexibility Analysis:

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 603(b)), a description of the reasons why the action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule, are contained in the supplementary information above. The Board's interim rule requires no additional reporting or recordkeeping requirements, nor are there relevant federal rules that duplicate, overlap, or conflict with the proposed rule.

Another requirement for the initial regulatory flexibility analysis is a description of, and where feasible, an estimate of the number of small entities to which the proposed rule shall apply. The interim rule will apply to all depository institutions, regardless of size, as required by the amendments to the Expedited Funds Availability Act. The rule should not have a signficant negative economic impact on small

[2] The reports on this subject were transmitted to Congress in October 1989 and July 1990. An earlier report submitted in October 1988 provided background information on the processing of deposits at nonproprietary ATMs but did not include a legislative recommendation because there was limited research available at that time.

institutions, but rather will decrease the risk to all depositary banks by enabling them to impose longer holds on deposits made to nonproprietary ATMS.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 12 CFR part 229 is amended as follows:

PART 229—[AMENDED]

1. The authority citation for part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100-86, 101 Stat. 552, 635, 12 U.S.C. 4001 *et seq.*

2. In § 229.12, paragraph (a) and the introductory text to paragraph (b) are revised, paragraph (b)(3) is removed, paragraphs (b)(4) and (b)(5) are redesignated as (b)(3) and (b)(4), newly redesignated paragrah (b)(4) is revised, paragraph (c)(1) introductory text and the first and third sentences of paragraph (d) are revised, and a new paragraph (f) is added to read as follows:

§ 229.12 Permanent availability schedule.

(a) *Effective date.* Except as provided in paragraph (f), the permanent availability schedule contained in this section is effective September 1, 1990.

(b) *Local checks and certain other checks.* Except as provided in paragraphs (d), (e), and (f) of this section, a depositary bank shall make funds deposited in an account by a check available for withdrawal not later than the second business day following the banking day on which funds are deposited, in the case of—

* * * * *

(4) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; or a cashier's, certified, or teller's check; if any check referred to in this paragraph (b)(4) is a local check that is not governed by the availability requirements of § 229.10(c).

(c) *Nonlocal checks*—(1) *In general.* Except as provided in paragraphs (d), (e), and (f) of this section, a depositary bank shall make funds deposited in an account by a check available for withdrawal not later than the fifth business day following the banking day on which funds are deposited, in the case of—

* * * * *

(d) *Time period adjustment for withdrawal by cash or similar means.* A depositary bank may extend by one business day the time that funds deposited in an account by one or more checks subject to paragraphs (b), (c), or (f) of this section are available for withdrawal by cash or similar means. * * * A depositary bank shall, however, make $400 of these funds available for withdrawal by cash or similar means not later than 5 p.m. on the business day on which the funds are available under paragraphs (b), (c), or (f) of this section. * * *

* * * * *

(f) *Deposits at nonproprietary ATMs.* (1)(i) A depositary bank shall make funds deposited in an account at a nonproprietary ATM by cash or check available for withdrawal not later than the fifth business day following the banking day on which the funds are deposited.

(ii) Paragraph (f)(1) of this section is effective September 1, 1990, through November 27, 1992.

(2)(i) A depositary bank shall make funds deposited in an account at a nonproprietary ATM available for withdrawal not later than the second business day following the banking day on which the funds are deposited, in the case of—

(A) Cash;

(B) A check described in § 229.10(c)(1)(i) through (vi); and

(C) A check described in paragraph (b) of this section.

(ii) A depositary bank shall make funds deposited in an account by a check described in paragraph (c) at a nonproprietary ATM available for withdrawal not later than the fifth business day following the banking day on which the funds are deposited.

(iii) Paragraph (f)(2) of this section is effective November 28, 1992.

Appendix C to Part 229—[Amended]

3. In model clause C-10, the heading and the first sentence under the subheading "Deposits at Automated Teller Machines" are revised to read as follows:

C-10—Automated Teller Machine Deposits (Permanent Schedule, Extended Holds)

Deposits at Automated Teller Machines

Funds from any deposits (cash or checks) made at automated teller machines (ATMs) we do not own or operate will not be available until the fifth business day after the day of your deposit. * * *

Appendix E to Part 229—[Amended]

4. Appendix E is amended as set forth below:

a. In the Commentary to § 229.12, a new sentence is added to the end of paragraph (a), the second paragraph of paragraph (b) is revised, and a new paragraph (f) is added to read as follows:

Section 229.12 Permanent Availability Schedule

(a) *Effective date.* * * * Paragraph (f) provides special effective dates for deposits made to nonproprietary ATMs.

(b) *Local checks and certain other checks.*

* * * * *

In addition, the proceeds of Treasury checks and U.S. Postal Service money orders not subject to next-day (or second-day) availability under § 229.10(c); checks drawn on Federal Reserve Banks and Federal Home Loan Banks; checks drawn by a state or unit of general local government; and cashier's, certified, and teller's checks not subject to next-day (or second-day) availability under § 229.10(c) and payable in the same check processing region as the depositary bank, must be made available for withdrawal by the second business day following deposit.

* * * * *

(f) *Deposits at nonproprietary ATMs.* The Act and regulation provide a special rule for deposits made at nonproprietary ATMs. Notwithstanding other provisions of the regulation concerning availability requirements, during the period from September 1, 1990, through November 27, 1992, a depositary bank may treat all deposits made by its customers at a nonproprietary ATM as though the deposits were nonlocal checks under the permanent schedule. Thus from September 1, 1990, to November 27, 1992, a deposit at a nonproprietary ATM on a Monday, including any deposit by cash or checks that would otherwise be subject to next-day (or second-day) availability, must be made available for withdrawal not later than Monday of the following week.

Effective November 28, 1992, deposits of cash, "next-day" checks, and local checks at a nonproprietary ATM must be made available by the second business day following the banking day of deposit. Nonlocal checks deposited at a nonproprietary ATM must continue to be made available by the fifth business day following the banking day of deposit. This rule does not apply to deposits made at proprietary ATMs.

b. In the Commentary to § 229.16, the first sentence of the seventh paragraph of paragraph (b) is revised to read as follows:

Section 229.16 Specific Availability Policy Disclosure

* * * * *

(b) * * *

* * * * *

A bank taking advantage of the extended time period for making deposits at nonproprietary ATMs available for withdrawal under § 229.12(f)(1) must explain this in the initial disclosure. * * *

* * * * *

c. In the Commentary to appendix C, under the subheading "Model C-10," the first sentence is revised to read as follows:

Appendix C—Model Forms, Clauses, and Notices

* * * * *

Model C-10.

This clause must be incorporated in the specific availability-policy disclosure by banks that reserve the right to delay availability of deposits at nonproprietary ATMs until the fifth business day following the date of deposit, as permitted by § 229.12(f)(1). * * *

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 5, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-28928 Filed 12-10-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-143-AD; Amendment 39-6828]

Airworthiness Directives; Airbus Industrie Model A300, A310, and A300-600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300, A310, and A300-600 series airplanes, which requires repetitive inspections to detect corrosion in the main landing gear (MLG) bogie beam, and repair or replacement of the MLG bogie beam, if necessary. This amendment is prompted by reports of in-service airplanes showing signs of deterioration of the protective paint and cadmium coating, corrosion, and cracking in both MLG bogie beams. This condition, if not corrected, could result in a ruptured MLG bogie beam and possible collapse of the MLG.

EFFECTIVE DATE: December 27, 1990.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Airbus Industrie Model A300, A310, and A300-600 series airplanes, which requires repetitive inspections to detect corrosion in the main landing gear (MLG) bogie beam, and repair or replacement of the MLG bogie beam, if necessary, was published in the **Federal Register** on August 15, 1990 (55 FR 33321).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

In its comments to the Notice, the manufacturer presented data to indicate that a reduction in the proposed compliance time for the inspection of certain older bogie beams is necessary. The manufacturer stated that inspection records provided by Airbus operators have indicated that, out of 272 bogie beams inspected, representing 38% of the fleet, 14 bogie beams (5%) were found corroded in the most sensitive area, and 2 of these had experienced a rupture. The inspection data also revealed that, for bogie beams never overhauled, the cases of steel corrosion occurred on those that had accumulated at least 5½ years; and for bogie beams already overhauled, the cases of steel corrosion occurred on those that had accumulated at least 4 years since overhaul. As a result of this data, both the manufacturer and the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, recommended that inspections of older bogie beams be conducted much sooner than the time proposed, in order to detect corrosion in a more timely manner.

Further, the manufacturer has issued Airbus Service Bulletin A300-32-394, Revision 3, dated October 10, 1990; A310-32-2053, Revision 1, dated March 5, 1990; and A300-32-6031, Revision 1, dated March 5, 1990. These revisions clarify the procedures for inspecting the bogie beams and revise the recommended inspection intervals. The French DGAC has classified these service bulletins as mandatory, and has issued a parallel AD 90-005-101(B), dated September 19, 1990, which requires that initial inspections of older bogie beams be performed within a shortened time schedule (approximately 30 days).

Additionally, the Air Transport Association (ATA) of America reported that, if the FAA were to reduce the compliance time, affected member operators would require more than 30 days to accomplish the requirements of this AD; the ATA recommended a compliance time of 45 days.

In consideration of this new data, the FAA has determined that the compliance time for the initial inspections of older bogie beams should be reduced from the proposed 6 months to 45 days. Failure to detect corrosion and cracking in a timely manner could result in a ruptured MLG bogie beam and possible collapse of the MLG. Accordingly, paragraph A. of the final rule has been revised to require that bogie beams, aged 6 years and 6 months since new and which have never been subject to a general overhaul, must be inspected within 45 days after the effective date of this AD.

In making this revision, the FAA finds that, with respect to the reduced compliance time, since a situation exists that requires immediate adoption of this requirement, notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Another commenter requested clarification of certain instruction in the referenced service bulletins prior to proceeding with the rule. The FAA notes, as described above, that the manufacturer has issued revised service information which clarifies the inspection procedures. The final rule has been revised to cite these latest revisions to the applicable service bulletins as the appropriate service information sources. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described above.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

It is estimated that 113 airplanes of U.S. registry would be affected by this AD, that it would take approximately 35 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $158,200.

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.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it 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 14 CFR part 39 of the Federal Aviation Regulations 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 11.69.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B4–100 and B4–200, A310–200 and –300, and A300–600 B4–600 series airplanes, without Messier Hispano Bugatti (MHB) Modification 784, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect and prevent corrosion and protection deterioration (paint and cadmium coating) and subsequent rupture of the main landing gear (MLG) bogie beam accomplish the following:

A. Perform an inspection of the inner side of the bogie beam between the two axles in accordance with Airbus Industrie Service Bulletins A300–32–394, Revision 3, dated October 10, 1990 (for Model A300 Series Airplanes); A310–32–2053, Revision 1, dated March 5, 1990 (for Model A310 series airplanes); or A300–32–6031, Revision 1, dated March 5, 1990 (for Model A300–600 series airplanes); as follows:

1. For bogie beams which have never been subject to a general overhaul, prior to reaching 6 years and 6 months since new, or within 60 days after the effective date of this Ad, whichever occurs later; or

2. For bogie beams which have been subject to a general overhaul, within 6 months after the effective date of this AD or prior to reaching 3 years and 6 months since overhaul, whichever occurs later.

Note: These service bulletins reference MHB Service Bulletin 470–32–659, Revision 1, dated January 8, 1990, for additional instructions.

B. If cracks or corrosion are found, prior to further flight, repair or replace bogie beam in accordance with Airbus Industrie Service Bulletins A300–32–394, Revision 3, dated October 10, 1990 (for Model A300 Series Airplanes); A310–32–2053, Revision 1, dated March 5, 1990 (for Model A310 series airplanes); or A300–32–6031, Revision 1, dated March 5, 1990 (for Model A300–600 series airplanes).

Note: These service bulletins reference MHB Service Bulletin 470–32–659 for additional instructions.

C. For bogie beams with traces of corrosion in a critical area as defined in MHB Service Bulletin 470–32–659, Revision 1, dated January 8, 1990, replace bogie beam within 10 months following the repair or since the reinstallation on the airplane, whichever occurs later.

D. For bogie beams having had paint restoration in a critical area, as defined in MHB Service Bulletin 470–32–659, Revision 1, dated January 8, 1990, perform repetitive inspections at intervals not to exceed 18 months.

E. If no corrosion or defects are found, repeat the inspection, required by paragraph A., above, at intervals not to exceed 3 years and 6 months.

F. Incorporation of MHB Modification 784, in accordance with MHB Service Bulletin 470–32–672, dated January 23, 1990, constitutes terminating action for the inspections required by paragraph A., D., and E., above

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspection (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective December 27, 1990.

Issued in Seattle, Washington, on November 29, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–28956 Filed 12–10–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–NM–135–AD; Amendment 39–6830]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 747 series airplanes, which requires modification of hydraulic lines in the elevator control system. This amendment is prompted by a report that damage to the horizontal stabilizers of the early production Model 747 airplanes could potentially cause the loss of fluid from all four hydraulic systems. This condition, if not corrected, could result in a loss of the primary flight controls in the event of major structural damage.

EFFECTIVE DATE: January 15, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Letcher, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S; telephone (206) 227–2670. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 747 series airplanes, which requires modification of hydraulic lines in the elevator control system, was published in the **Federal Register** on August 14, 1990 (55 FR 33125).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter concurred with the provisions of the proposed rule.

Another commenter requested that the proposed rule be revised to allow operators the option to deactivate hydraulic tubing in the critical areas rather than removing it entirely, which would be more expensive. The FAA will consider requests for alternate means of compliance for optional methods such as this on a case-by-case basis under the provisions of paragraph B. of this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 34 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 20 airplanes of U.S. registry will be affected by this AD, that it will take approximately 60 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost of required parts is estimated at $1,356 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $75,120.

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.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it 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 14 CFR part 39 of the Federal Aviation Regulations 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 airworthiness directive:

Boeing: Applies to Model 747 series airplanes, line numbers 1 through 39, certificated in any category. Compliance required within the next 4,500 hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent the loss of the airplane primary flight controls due to loss of hydraulic fluid from all four hydraulic systems, accomplish the following:

A. Modify the hydraulic lines in the elevator control system in accordance with Section III of the Accomplishment Instructions, Steps G through H, of Boeing Alert Service Bulletin 747–29A2063, Revision 5, dated June 7, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective January 15, 1991.

Issued in Renton, Washington, on November 29, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–28951 Filed 12–10–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–NM–261–AD; Amendment 39–6832]

Airworthiness Directives; Boeing Model 737–300, 737–400, 737–500, and 757–200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–300, 737–400, 737–500, and 757–200 series airplanes, which requires the inspection and repair or replacement, if necessary, of certain Transaero double flight attendant seats. This amendment is prompted by in-service reports of damaged seat bottoms caused by the apparent mis-manufacture of these seats. This condition, if not corrected, could result in injury to flight attendants.

EFFECTIVE DATE: December 26, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Terrell W. Rees, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2785. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Several operators of Boeing Model 737 and 757 series airplanes have reported instances of bent, fractured, broken, cracked, or otherwise damaged seat bottoms of certain double flight attendant seats manufactured by Transaero. These conditions were apparently caused by the incorrect manufacture of these seats. The location of diagonal stiffeners and the selection of fasteners do not conform to drawing specifications. Consequently, the seats are not satisfactorily withstanding the loads normally encountered in service. Tests conducted subsequent to the discovery of this problem indicate that these seats will perform as required when new, but as experience corroborates, will damage easily in service. Damaged seats have been reported after as little as two months in service.

This condition, if not corrected, could result in seat failures and possible injury to flight attendants.

Boeing issued an all-operator Telex M-7272-90-7083 on November 1, 1990, to notify its customers of this problem. The telex identified the affected airplanes, provided background history, and outlined suggested interim maintenance procedures. This telex also referenced a pending Transaero Service Bulletin 176, which will contain procedures for repairing or replacing the seat pans.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive inspections of these seat pans to detect damage. If damage is found, operators have the option of (1) installing a placard on the damaged seat, stating that the damaged seat is not to be occupied; (2) replacing the seat pan with a new unit and continuing the inspections for it; or (3) repairing the seat pan in a manner approved by the FAA. These actions may be terminated when the seat pan is replaced with a newly manufactured seat pan that is approved by the FAA.

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

The regulations 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 14 CFR part 39 of the Federal Aviation Regulations 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 airworthiness directive:

Boeing: Applies to Model 737-300, 737-400, and 737-500 series airplanes, and Model 757-200 series airplanes; equipped with Transaero P/N 91466 series double flight attendant seats; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent injury to flight attendants, accomplish the following:

A. Within 21 days after the effective date of this AD, inspect the front edge of the affected seat pans for areas of abnormal flexibility when hand pressure is applied perpendicular to the seat pan, and for permanent deflection or misfair of the seat pan edge when stowed.

1. If no obvious damage is detected, repeat the inspection at intervals not to exceed 30 days.

2. If any of the above conditions are found, prior to further flight, accomplish one of the following:

a. Install a placard stating that the damaged seat is not to be occupied; or

b. Replace the seat pan with a new seat pan of the same part number, and continue to inspect at intervals not to exceed 30 days thereafter in accordance with paragraph A. of this AD; or

c. Repair the seat pan in a manner approved by the Manager, Seattle Aircraft Certification Office, and continue to inspect at intervals not to exceed 30 days in accordance with paragraph A. of this Ad.

B. The actions required by paragraph A. of this AD may be terminated upon replacement of affected seat pans with seat pans that have been approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective December 26, 1990.

Issued in Renton, Washington, on November 30, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-28954 Filed 12-10-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-244-AD; Amendment 39-6829]

Airworthiness Directives; Boeing Model 747-400 and 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747-400 and 767-300 series airplanes, which currently requires a one-time inspection of cargo fire protection plumbing, replacement of the fire extinguisher discharge orifices if necessary, and reporting of all improper configurations detected. That amendment was prompted by a report from the manufacturer that fire protection components may have been incorrectly installed during production. This condition, if not corrected, could result in insufficient extinguishant concentration or duration in the event of a cargo compartment fire. This amendment increases the number of Model 767 series airplanes for which the inspection is applicable and adds an inspection of the Model 767 aft cargo compartment.

EFFECTIVE DATE: December 27, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. G. M. Dail, Seattle Aircraft Certification Office, Systems & Equipment Branch, ANM-130S; telephone (206) 227-2674. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: On September 6, 1990, the FAA issued AD 90-19-11, Amendment 39-6736, September 12, 1990), to require a one-time inspection of cargo fire protection plumbing on certain Boeing Model 747-400 and 767-300 series airplanes, replacement of the fire extinguisher discharge orifices if necessary, and reporting of any findings of improper configurations to the FAA.

That action was prompted by reports from the manufacturer indicating that the cargo compartment fire extinguishing discharge orifices on five Boeing Model 747-400 series airplanes may have been incorrectly configured in production. The installation of incorrect fire extinguisher discharge orifices could result in inadequate fire protection. If the orifice size is smaller than required, the quantity of agent discharged into the cargo compartment may be insufficient to maintain fire suppression. If the orifice is larger than required, the duration of fire protection would be shortened.

Since Model 767 series airplanes use this same orifice, the possibility exists for incorrect configurations to have been installed on those models as well.

Since issuance of that AD, Boeing has advised the FAA that 223 more Model 767 airplanes may have incorrect orifices installed and that the orifices in the aft cargo compartment of the Model 767 must also be checked.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-26A0068, Revision 1, dated September 18, 1990, which describes procedures for a one-time inspection of the forward and aft cargo compartments, and if necessary, replacement of the fire extinguisher discharge orifices with the correct part.

Since this condition is likely to exist on other airplanes of the same type design, this AD supersedes AD 90-19-11, to also require a one-time inspection of the forward and aft cargo compartment fire extinguisher orifices on the additional Model 767 airplanes in accordance with the service bulletin previously described, and reporting of improper configurations detected. The aft cargo compartment on the Model 767 airplanes that are subject to AD 90-19-11 must also be inspected.

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

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control Number 2120-0056.

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 14 CFR part 39 of the Federal Aviation Regulations 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 superseding Amendment 39-6736 (55 FR 33046, September 12, 1990), AD 90-19-11, with the following new airworthiness directive:

Boeing: Applies to Model 747-400 series airplanes listed in Boeing Alert Service Bulletin 747-26A2170, dated July 5, 1990; and Model 767 series airplanes listed in Boeing Alert Service bulletin 767-26A0068, Revision 1, dated September 18, 1990; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent insufficient cargo fire protection, which could result in significant damage to the airplane in the event of a cargo compartment fire, accomplish the following:

A. For Model 747-400 series airplanes, within 30 days after October 1, 1990 (the effective date of Amendment 39-6736, AD 90-19-11), inspect the cargo compartment fire extinguisher orifices in accordance with Boeing Alert Service Bulletin 747-26A2170, dated July 5, 1990. If the part number does not match any number specified as the correct number in the service bulletin, prior to further flight with cargo in that compartment, replace with a correct part.

B. For Model 767-300 series airplanes listed in Boeing Alert Service Bulletin 767-26A0068, dated July 5, 1990:

1. Within 30 days after October 1, 1990 (the effective date of Amendment 39-6736, AD 90-19-11), inspect the forward cargo compartment fire extinguisher orifices to determine the part number installed, in accordance with Boeing Alert Service Bulletin 767-26A0068, dated July 5, 1990. If the part number does not match any number specified as the correct number in that service bulletin, prior to further flight with cargo in that compartment, replace with a correct part.

2. Within 30 days after the effective date of this amendment, inspect the aft cargo compartment fire extinguisher orifices to determine the part number installed, in accordance with Boeing Alert Service Bulletin 767-26A0068, Revision 1, dated September 18, 1990. If the part number does not match any number specified as the correct number in that service bulletin, prior to further flight with cargo in that compartment, replace with a correct part.

C. For Model 767 series airplanes listed in Boeing Alert Service Bulletin 767-26A0068, Revision 1, dated September 18, 1990, other than those that are subject to paragraph B. of this AD, within 30 days after the effective date of this amendment, inspect the cargo compartment fire extinguisher orifices to determine the part number installed, in accordance with that service bulletin. If the

part number in the service bulletin does not match any number specified as the correct number in the service bulletin, prior to further flight with cargo in that compartment, replace with a correct part.

D. Within 10 days after the inspection required by paragraph A., B., or C. of this AD, if configuration discrepancies are discovered, submit a report of findings to the Manager, Seattle Manufacturing Inspection District Office, ANM-108S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The report must include the airplane serial number.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-6736, AD 90-19-11.

This amendment becomes effective December 27, 1990.

Issued in Renton, Washington, on November 29, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-28955 Filed 12-10-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-172-AD; Amendment 39-6834]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1-11 200 and 400 series airplanes, which requires repetitive visual inspections to detect cracks in the flight deck pilot's and co-pilot's side glazing frame at Pillars B and C, followed by an eddy current inspection to determine extent of damage, and repair or replacement, if necessary. This amendment is prompted by reports of cracks found in the direct view window aperture at Pillars B and C. This condition, if not corrected, could result in reduced structural capability of the glazing frame and possible rapid decompression of the airplane.

EFFECTIVE DATE: January 16, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148, Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all British Aerospace Model BAC 1-11 200 and 400 series airplanes, which requires inspections to detect cracks in the flight deck pilot's and co-pilot's side glazing frame at Pillars B and C, and repair or replacement, if necessary, was published in the **Federal Register** on September 20, 1990 (55 FR 38701).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately one manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,800.

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.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it 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 14 CFR part 39 of the Federal Aviation Regulations 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 airworthiness directive:

British Aerospace: Applies to all Model BAC 1-11 200 and 400 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the glazing frame and possible rapid decompression of the airplane, accomplish the following:

A. For airplanes operating at a maximum cabin differential pressure of 7.5 pounds per square inch (psi): Prior to the accumulation of 20,000 landings on the glazing frame since new, or within 1,600 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,600 landings, perform an internal and external visual inspection, or non-destructive testing (NDT) inspection, of the pilot's and co-pilot's direct view (DV) window aperture (flight deck side glazing frame at Pillars B and C), in accordance with the Accomplishment Instructions of British Aerospace Alert Service Bulletin 53-A-PM5985, Issue 1, dated March 21, 1990.

B. For airplanes modified for operation above 7.5 psi to a maximum of 8.2 psi cabin differential pressure: Prior to the accumulation of 14,000 landings on the

glazing frames since new, or within 1,100 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,110 landings, perform an internal and external visual inspection, or non-destructive testing (NDT) inspection, of the pilot's and co-pilot's DV window aperture (flight deck side glazing frame at Pillars B and C), in accordance with the Accomplishment Instructions of British Aerospace Alert Service Bulletin 53-A-PM5985, Issue 1, dated March 21, 1990.

C. If cracks are found during the inspections required by paragraphs A. and B. of this AD, prior to further flight, perform an eddy current inspection, in accordance with British Aerospace Alert Service Bulletin 53-A-PM5985, Issue 1, dated March 21, 1990; and

1. For cracks equal to or less than 0.2 inch, damage may be blended out in accordance with Table 1 or Table 2 of the service bulletin, as appropriate.

2. All other cracks must be repaired in accordance with the Structural Repair Manual, as specified in Table 1 and Table 2 of the service bulletin, as appropriate; or repaired in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate; or the glazing frame must be replaced with a serviceable part.

3. If blending has been previously accomplished, all cracks must be repaired in accordance with the BAC 1-11 Structural Repair Manual, as specified in Table 1 or Table 2 of the service bulletin, as appropriate; or repaired in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

4. Following repair or replacement, the inspections specified in paragraphs A. and B. of this AD are still required.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, Dulles International Airport, P.O. Box 17414, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective January 16, 1991.

Issued in Renton, Washington, on November 30, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-28950 Filed 12-10-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-161-AD; Amendment 39-6833]

Airworthiness Directives; SAAB-Scania Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain SAAB-Scania Model SF-340A series airplanes, which currently requires an eddy current inspection to detect cracks in the horizontal stabilizer, and repair, if necessary; and reinforcement of the horizontal stabilizer. This action requires, in addition to the previous requirements, the removal and replacement of the right and left drag angle and associated shims. This amendment is prompted by additional reports of damage in the area of the drag angle and fuselage skin that occurred during airframe fatigue tests after the horizontal stabilizers had been reinforced. This condition, if not corrected, could result in reduced structural integrity of the horizontal stabilizer.

EFFECTIVE DATE: January 16, 1991.

ADDRESSES: The applicable service information may be obtained from SAAB-Scania AB, Product Support, S-581.88, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone, (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-12-12, Amendment 39-6628 (55 FR 23189, June 7, 1990), applicable to certain SAAB-Scania Model SF-340A series airplanes, to require, in addition to the previous requirements, the removal and replacement of the right and left drag angle and associated shims, was published in the **Federal Register** on September 17, 1990 (55 FR 38083).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Since the issuance of the Notice, SAAB-Scania has issued Revision 1 to Service Bulletin 340-55-027, dated October 10, 1990. This revision clarifies the procedures for reinforcing the horizontal stabilizer and drag angle. The final has been revised to incorporate this latest revision to the service bulletin as an additional source of service information.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. The FAA has determined that this change will neither increase the economic burden on any operator, nor increase the scope of the rule.

It is estimated that 79 airplanes of U.S. registry will be affected by this AD, that it will take approximately 250 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for required parts is $4,936. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,179,944.

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.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Sujects 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 14 CFR part 39 of the Federal Aviation Regulations 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 49 U.S.C. 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39–6628 (55 FR 23189, June 7, 1990), AD 90–12–12, with the following new airworthiness directive:

SAAB–Scania: Applies to Model SF–340A series airplanes, Serial Numbers 004 through 138, inclusive, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the horizontal stabilizer, accomplish the following:

A. Prior to the accumulation of 16,000 landings or within 90 days after July 13, 1990 (the effective date of AD 90–12–12, Amendment 39–6628), whichever occurs later, accomplish the following:

1. Perform an eddy current inspection to detect cracks in the horizontal stabilizer, in accordance with SAAB-Scania Service Bulletin 340–55–013, dated December 1, 1989. If cracks are detected, repair prior to further flight, in accordance with the service bulletin.

2. Reinforce the horizontal stabilizer, in accordance with SAAB-Scania Service Bulletin 340–55–013, dated December 1, 1989.

B. Prior to the accumulation of 16,000 landings, or within 90 days after the effective date of this AD, whichever occurs later, accomplish the following in accordance with the Accomplishment Instructions in SAAB-Scania Service Bulletin 340–55–027, dated June 28, 1990, or Revision 1, October 10, 1990.

1. Remove the left and right drag angles and associated shims.

2. Perform a visual and dye penetrant inspections of the drag angle attaching holes; if cracks are found, repair prior to further flight.

3. Install new drag angles and associated shims.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM–113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania AB, Produce Support, S–581.88, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39–6628, AD 90–12–12.

This amendment becomes effective January 16, 1991.

Issued in Renton, Washington, on November 30, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–28952 Filed 12–10–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1316

Administrative Functions, Practices, and Procedures

AGENCY: Drug Enforcement Administration (DEA).

ACTION: Final rule.

SUMMARY: This final rule amends the regulations concerning administrative inspections which set forth the Drug Enforcement Administration's (DEA) authority to include the recently acquired authority to inspect any person who manufactures, distributes, imports or exports listed chemicals, tableting machines or encapsulating machines. This amendment addresses the DEA's authority regarding the Chemical Diversion and Trafficking Act of 1988 (CDTA).

EFFECTIVE DATE: December 11, 1990.

FOR FURTHER INFORMATION CONTACT: Margaret A. Brophy, Deputy Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: On October 4, 1989, a notice of proposed rulemaking was published in the **Federal Register** (54 FR 40888). The Administrator of the DEA proposed to amend the regulations concerning administrative inspections to include the authority to inspect persons regulated under the CDTA. The proposed rule provided the opportunity for interested parties to submit comments and objections. One party submitted comments to the proposed rule.

The comments addressed two areas: (1) The DEA has exceeded its inspection authority, and (2) the definition of controlled premises needed clarification. The comments stated that the DEA has attempted to exceed the authority granted by Congress under the CDTA, and recommended revision of the proposed rule and clarification of the definition of controlled premises.

The CDTA establishes a system which requires certain regulated persons to maintain records of specified transactions which involve chemicals listed in the CDTA and transactions with tableting and encapsulating machines. Section 6052 of the CDTA (21 U.S.C. 830 and 21 CFR parts 1310 and 1313) describes the responsibilities of a regulated person to keep and provide records and states that such records "shall be available for inspection and copying by the Attorney General." Similar language is found in the Controlled Substances Act (CSA), which incorporates the CDTA, for persons who handle controlled substances and are registered under 21 U.S.C. 823. Title 21 U.S.C. 827(b) states that a registrant shall keep and make available records for inspection and copying by officers and employees authorized by the Attorney General. Since the language in the CSA pertaining to controlled substances and the language in the CDTA pertaining to chemicals and machines are identical, it is apparent that Congress applied the DEA's existing inspection authority under the CSA to chemicals and machines.

The CSA provides a mechanism for the Attorney General and his designees to conduct administrative inspections of premises where records required to be kept under the CSA are located. This mechanism is outlined in 21 U.S.C. 880. This section authorizes the Attorney General to conduct administrative inspections of controlled premises to ensure the correctness of records. Under the scope of an administrative inspection, 21 U.S.C. 880(b), an inspector can inspect, copy and verify the correctness of required documents to facilitate the carrying out of the Attorney General's functions. With an inspection warrant, the inspector also has the authority to inspect controlled premises, equipment, other substances or materials, containers, labels, and all other things therein, appropriate for verification of documents. To achieve the DEA's objective it is vital that verification be a part of the investigative

process. Investigation without verification would nullify the CDTA.

In regard to the second comment, the definition of controlled premises is divided into two areas: 21 U.S.C. 880(a)(1) defines controlled premises as places where records required under the Act are kept or required to be kept. This definition, therefore, includes places where records required under the CDTA are kept or required to be kept, which is the regulated person's place of business where the transaction occurred. Title 21 U.S.C. 880(a)(2) defines controlled premises and pertains to persons registered under 21 U.S.C. 823 to handle controlled substances. This subsection is not applicable to persons regulated under the CDTA. The foregoing explanation fulfills the request that this definition be further clarified.

After reviewing the comments, the DEA has decided to maintain section 1316.03(a) as originally proposed as it has been determined that the original language is quite clear and does not cause confusion on which records are subject to the CDTA requirements.

The Acting Administrator of the Drug Enforcement Administration hereby certifies that this Final Rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This rule is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this rule has been reviewed by the Office of Management and Budget.

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

List of Subjects in 21 CFR Part 1316

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Research, Seizures and forfeitures.

For reasons set out in the preamble, part 1316, chapter II, title 21, Code of Federal Regulations is amended as follows:

PART 1316—[AMENDED]

1. The authority citation for part 1316, subpart A, continues to read as follows:

Authority: 21 U.S.C. 822(f), 830(a)(2), 871(b), 880, 958(f), 965.

2. Section 1316.03 is amended by revising paragraph (a) as follows:

§ 1316.03 Authority to make inspections.

* * * * *

(a) Inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under the Act and regulations promulgated under the Act, including, but not limited to, inventory and other records required to be kept pursuant to part 1304 of this chapter, order form records required to be kept pursuant to part 1305 of this chapter, prescription and distribution records required to be kept pursuant to part 1306 of this chapter, records of listed chemicals, tableting machines, and encapsulating machines required to be kept pursuant to part 1310 of this chapter, import/export records of listed chemicals required to be kept pursuant to part 1313 of this chapter, shipping records identifying the name of each carrier used and the date and quantity of each shipment, and storage records identifying the name of each warehouse used and the date and quantity of each storage;

* * * * *

Dated: October 16, 1990.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 90-28922 Filed 12-10-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8322]

RIN 1545-AJ74

Untimely Filing of Income Tax Returns by Nonresident Alien Individuals and Foreign Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to denial of deductions and credits to nonresident alien individuals and foreign corporations that do not file true and accurate income tax returns by the time limits set forth in the final regulations. These regulations are necessary so that the income tax returns will be filed in a timely manner.

EFFECTIVE DATE: The amendments are effective July 31, 1990, for taxable years ending after July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R(INTL-74-86) (202-566-3452, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations at §§ 1.874-1 and 1.882-4 have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control numbers 1545-0089 and 1545-0126. This information is required by the Internal Revenue Service to allow it to properly determine the taxable income of and tax owed by nonresident alien individuals and foreign corporations. The likely respondents are nonresident alien individuals and foreign corporations. The burdens on the nonresident alien individuals and foreign corporations are the burdens associated with Forms 1040NR and 1120F.

Comments concerning those burdens and suggestions for reducing those burdens should be directed to the Office of Management and Budget, Paperwork Reduction Project (1545-0089 and 1545-0126), Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, WAshington, DC 20224.

Background

On July 31, 1989, (54 FR 31545) the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 874 and 882 of the Internal Revenue Code. Written comments responding to this notice were received. A public hearing was not requested and none was held. After consideration of all comments regarding the proposed amendments, those amendments are adopted by this Treasury Decision with revisions in response to those comments. The comments and revisions are discussed below.

Explanation of Provisions

The proposed regulations at § 1.874-1(b) with regard to nonresident alien individuals and § 1.882-4(a)(3) with regard to foreign corporations provided that under sections 874(a) and 882(c)(2) otherwise allowable deductions and credits will be allowed only if a return is filed by the time limits as set forth in those regulations.

Under the proposed regulations, whether a return has been filed on a timely basis for purposes of section 874(a) or 882(c)(2) is dependent upon

whether the nonresident alien individual or foreign corporation has filed a return for the taxable year immediately preceding the taxable year for which deductions or credits are claimed. If a return was filed for the immediately preceding taxable year, a return for the current taxable year must be filed within one year of the extended due date, as set forth in sections 6072 and 6081, for filing that return. If a return has not been filed for the immediately preceding taxable year, or if the current year is the first year for which a return is required under section 874(a) or 882(c)(2), the current year's return must have been filed no later than the earlier of the date which is one year after the extended due date, as set forth in sections 6072 and 6081, for filing that return or the date the Internal Revenue Service mails a notice informing the taxpayer that a tax return has not been filed and that no deductions or credits may be claimed.

Commenters questioned the validity of the filing deadlines as set forth in the proposed regulations. The filing deadlines were not eliminated in the final regulations, however, since the statute clearly provides for the denial of deductions and credits if returns are not filed in a timely manner. This requirement is justified because of different administrative and compliance concerns with regard to nonresident alien individuals and foreign corporations.

In response to a commenter's suggestion, the final regulations modify the filing deadline for the first taxable year for which a return is required to be filed. Under the final regulations, the filing deadline for those returns will be the same as if a return was filed for the immediately preceding taxable year.

A new § 1.882–4(a)(3)(v) provides that in order to be eligible for any deductions and credits for purposes of computing the accumulated earnings tax of section 531, a foreign corporation must file a true and accurate return, on a timely basis, in the manner as set forth in paragraphs (a) (2) and (3) of that section.

In response to commenters' suggestions, several provisions of the proposed regulations have been clarified. The references to the filing deadlines have been clarified so as to set forth a specific number of months (i.e., 16 months for nonresident alien individuals and 18 months for foreign corporations) rather than referring, as in the proposed regulations, to one year after the extended due date. Paragraph (b)(3) of § 1.874–1 clarifies that the filing deadlines of that paragraph apply to a nonresident alien individual who has a permanent establishment or fixed base in the United States. Likewise, as provided in § 1.882–4(a)(3)(iii), the filing deadlines also apply to a foreign corporation which has a permanent establishment in the United States. Sections 1.874–1(b)(4) and 1.882–4(a)(3)(iv) have been clarified to provide that neither deductions nor credits need be reported on the protective returns filed pursuant to those sections.

Drafting Information

The principal author of these regulations is Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805 (f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business. The collections of information contained in this document, for which no substantive changes were proposed, are currently approved by the Office of Management and Budget under the Paperwork Reduction Act (OMB Control Nos. 1545–0089 and 1545–0126).

List of Subjects in 26 CFR [66] 1.861–1 Through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX REGULATIONS

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. The heading and text for § 1.874–1 are revised to read as follows:

§ 1.874–1 Allowance of deductions and credits to nonresident alien individuals.

(a) *Return required.* A nonresident alien individual shall receive the benefit of the deductions and credits otherwise allowable with respect to the income tax, only if the nonresident alien individual timely files or causes to be filed with the Philadelphia Service Center, in the manner prescribed in subtitle F, a true and accurate return of the income which is effectively connected, or treated as effectively connected, with the conduct of a trade or business within the United States by the nonresident alien individual. No provision of this section (other than paragraph (c)(2)) shall be construed, however, to deny the credits provided by sections 31, 32, 33, 34 and 852(b)(3)(D)(ii). In addition, notwithstanding the requirement that a nonresident alien must file a timely return in order to receive the benefit of the deductions and credits otherwise allowable with respect to the income tax, the nonresident alien individual may, for purposes of determining the amount of tax to be withheld under section 1441 from remuneration paid for labor or personal services performed within the United States, receive the benefit of the deduction for personal exemptions provided in section 151, to the extent allowable under section 873(b)(3) and paragraph (c)(3) of § 1.873–1, or in any applicable tax convention, by filing a claim therefor with the withholding agent. The amount of the deduction for the personal exemptions and the amount of the tax to be withheld under those circumstances shall be determined in accordance with paragraph (e)(2) of § 1.1441–3. The deductions and credits allowed such a nonresident alien individual electing under a tax convention to be subject to tax on a net basis may be obtained by filing a return of income in the manner prescribed in the regulations (if any) under the tax convention or under any other guidance issued by the Commissioner.

(b) *Filing deadline for return*—(1) *General rule.* As provided in paragraph (a) of this section, for purposes of computing the nonresident alien individual's taxable income for any taxable year, otherwise allowable deductions and credits will be allowed only if a true and accurate return for that taxable year is filed by the nonresident alien individual on a timely basis. For taxable years of a nonresident alien individual ending after July 31, 1990, whether a return for the current taxable year has been filed on a timely basis is dependent upon whether the

nonresident alien individual filed a return for the taxable year immediately preceding the current taxable year. If a return was filed for that immediately preceding taxable year, or if the current taxable year is the first taxable year of the nonresident alien individual for which a return is required to be filed, the required return for the current taxable year must be filed within 16 months of the due date, as set forth in section 6072 and the regulations under that section, for filing the return for the current taxable year. If no return for the taxable year immediately preceding the current taxable year has been filed, the required return for the current taxable year (other than the first taxable year of the nonresident alien individual for which a return is required to be filed) must have been filed no later than the earlier of the date which is 16 months after the due date, as set forth in section 6072, for filing the return for the current taxable year or the date the Internal Revenue Service mails a notice to the nonresident alien individual advising the nonresident alien individual that the current year tax return has not been filed and that no deductions or credits (other than those provided in sections 31, 32, 33, 34 and 852(b)(3)(D)(ii)) may be claimed by the nonresident alien individual.

(2) *Waiver.* The filing deadlines set forth in paragraph (b)(1) of this section may be waived by the District Director or Assistant Commissioner (International) in rare and unusual circumstances if good cause for such waiver, based on the facts and circumstances, is established by the nonresident alien individual.

(3) *Income tax treaties.* A nonresident alien individual who has a permanent establishment or fixed base, as defined in an income tax treaty between the United States and the country of residence of the nonresident alien individual, in the United States is subject to the filing deadlines as set forth in paragraph (b)(1) of this section.

(4) *Protective return.* If a nonresident alien individual conducts limited activities in the United States in a taxable year which the nonresident alien individual determines does not give rise to gross income which is effectively connected with the conduct of a trade or business within the United States as defined in sections 871(b) and 864 (b) and (c) and the regulations under those sections, the nonresident alien individual may nonetheless file a return for that taxable year on a timely basis under paragraph (b)(1) of this section and thereby protect the right to receive the benefit of the deductions and credits attributable to that gross income if it is later determined, after the return was filed, that the original determination was incorrect. On that timely filed return, the nonresident alien individual is not required to report any gross income as effectively connected with a United States trade or business or any deductions or credits but should attach a statement indicating that the return is being filed for the reason set forth in this paragraph (b)(4). If the nonresident alien individual determines that part of the activities which he or she conducts in the United States in a taxable year gives rise to gross income which is effectively connected with the conduct of a trade or business and part does not, the nonresident alien individual must timely file a return for that taxable year to report the gross income determined to be effectively connected, or treated as effectively connected, with the conduct of that trade or business within the United States and the deductions and credits attributable to the gross income. In addition, the nonresident alien individual should attach to that return the statement described in this paragraph (b)(4) with regard to the other activities. The nonresident alien individual may follow the same procedure if the nonresident alien individual determines initially that he or she has no United States tax liability under the provisions of an applicable income tax treaty. In the event the nonresident alien individual relies on the provisions of an income tax treaty to reduce or eliminate the income subject to taxation, or to reduce the rate of tax to which that income is subject, disclosure may be required pursuant to section 6114

(c) *Allowed deductions and credits*—(1) *In general.* Except for losses of property located within the United States, charitable contributions and personal exemptions (see section 873(b)), deductions are allowed to a nonresident alien individual only to the extent they are connected with gross income which is effectively connected, or treated as effectively connected, with the conduct of the nonresident alien individual's trade or business in the United States. Other than credits allowed by sections 31, 32, 33, 34, and 852(b)(3)(D)(ii), the nonresident alien individual is entitled to credits only if they are attributable to effectively connected income. See paragraph (a) of this section for the requirement that a return be timely filed. Except as provided by section 906, a nonresident alien individual shall not be allowed the credit against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

(2) *Verification.* At the request of the Internal Revenue Service, a nonresident alien individual claiming deductions from gross income which is effectively connected or treated as effectively connected, with the conduct of a trade or business in the United States and credits attributable to that income must furnish at the place designated pursuant to § 301.7605–1(a) information sufficient to establish that the nonresident alien individual is entitled to the deductions and credits in the amounts claimed. All information must be furnished in a form suitable to permit verification of the claimed deductions and credits. The Internal Revenue Service may require, as appropriate, that an English translation be provided with any information in a foreign language. If a nonresident alien individual fails to furnish sufficient information, the Internal Revenue Service may in its discretion disallow any claimed deductions and credits in full or in part.

(d) *Return by Internal Revenue Service.* If a nonresident alien individual has various sources of income within the United States, so that from any one source, or from all sources combined, the amount of income shall call for the assessment of a tax greater than that withheld at the source in the case of that individual, and a return of income has not been filed in the manner prescribed by subtitle F, including the filing deadlines set forth in paragraph (b)(1) of this section, the Internal Revenue Service shall:

(1) Cause a return of income to be made,

(2) Include on the return the income described in §§ 1.871–7 or § 1.871–8 of that individual from all sources concerning which it has information, and

(3) *Assess the tax.* If the nonresident alien individual is not engaged in, or does not receive income that is treated as being effectively connected with, a United States trade or business and § 1.871–7 is applicable, the tax shall be assessed on the basis of gross income without allowance for deductions or credits (other than the credits provided by sections 31, 32, 33, 34 and 852(b)(3)(D)(ii)) and collected from one or more sources of income within the United States. If the nonresident alien individual is engaged in a United States trade or business or is treated as having effectively connected income and § 1.871–8 applies, the tax on the income of the nonresident alien individual that is not effectively connected, or treated as effectively connected with the

conduct of a United States trade or business shall be assessed on the basis of gross income, determined in accordance with the rules of § 1.871–7, without allowance for deductions or credits (other than the credits provided by sections 31, 32, 33, 34 and 852(b)(3)(D)(ii)) and collected from one or more of the sources of income within the United States. Tax on income that is effectively connected, or treated as effectively connected, with the conduct of a United States trade or business shall be assessed in accordance with either section 1, 55 or 402(e)(1) without allowance for deductions or credits (other than the credits provided by sections 31, 32, 33, 34 and 852(b)(3)(D)(ii)) and collected from one or more of the sources of income within the United States.

(e) *Alien resident of Puerto Rico, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.* This section shall not apply to a nonresident alien individual who is a bona fide resident of Puerto Rico, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands during the entire taxable year. *See* section 876 and § 1.876–1.

Par. 3. The heading and text for § 1.882–4 are revised to read as follows:

§ 1.882–4 Allowance of deductions and credits to foreign corporations.

(a) *Foreign corporations*—(1) *In general.* A foreign corporation that is engaged in, or receives income treated as effectively connected with, a trade or business within the United States is allowed the deductions which are properly allocated and apportioned to the foreign corporation's gross income which is effectively connected, or treated as effectively connected, with its conduct of a trade or business within the United States. The foreign corporation is entitled to credits which are attributable to that effectively connected income. No provision of this section (other than paragraph (b)(2)) shall be construed to deny the credits provided by sections 33, 34 and 852(b)(3)(D)(ii) or the deduction allowed by section 170.

(2) *Return necessary.* A foreign corporation shall receive the benefit of the deductions and credits otherwise allowed to it with respect to the income tax, only if it timely files or causes to be filed with the Philadelphia Service Center, in the manner prescribed in subtitle F, a true and accurate return of its taxable income which is effectively connected, or treated as effectively connected, for the taxable year with the conduct of a trade or business in the United States by that corporation. The deductions and credits allowed such a corporation electing under a tax convention to be subject to tax on a net basis may be obtained by filing a return of income in the manner prescribed in the regulations (if any) under the tax convention or under any other guidance issued by the Commissioner.

(3) *Filing deadline for return.* (i) As provided in paragraph (a)(2) of this section, for purposes of computing the foreign corporation's taxable income for any taxable year, otherwise allowable deductions (other than that allowed by section 170) and credits (other than those allowed by sections 33, 34 and 852(b)(3)(D)(ii)) will be allowed only if a return for that taxable year is filed by the foreign corporation on a timely basis. For taxable years of a foreign corporation ending after July 31, 1990, whether a return for the current taxable year has been filed on a timely basis is dependent upon whether the foreign corporation filed a return for the taxable year immediately preceding the current taxable year. If a return was filed for that immediately preceding taxable year, or if the current taxable year is the first taxable year of the foreign corporation for which a return is required to be filed, the required return for the current taxable year must be filed within 18 months of the due date as set forth in section 6072 and the regulations under that section, for filing the return for the current taxable year. If no return for the taxable year immediately preceding the current taxable year has been filed, the required return for the current taxable year (other than the first taxable year of the foreign corporation for which a return is required to be filed) must have been filed no later than the earlier of the date which is 18 months after the due date, as set forth in section 6072, for filing the return for the current taxable year or the date the Internal Revenue Service mails a notice to the foreign corporation advising the corporation that the current year tax return has not been filed and that no deductions (other than that allowed under section 170) or credits (other than those allowed under sections 33, 34 and 852(b)(3)(D)(ii)) may be claimed by the taxpayer.

(ii) The filing deadlines set forth in paragraph (a)(3)(i) of this section may be waived by the District Director or Assistant Commissioner (International), in rare and unusual circumstances if good cause for such waiver, based on the facts and circumstances, is established by the foreign corporation.

(iii) A foreign corporation which has a permanent establishment, as defined in an income tax treaty between the United States and the foreign corporation's country of residence, in the United States is subject to the filing deadlines set forth in paragraph (a)(3)(i) of this section.

(iv) If a foreign corporation conducts limited activities in the United States in a taxable year which the foreign corporation determines does not give rise to gross income which is effectively connected with the conduct of a trade or business within the United States as defined in sections 882(b) and 864 (b) and (c) and the regulations under those sections, the foreign corporation may nonetheless file a return for that taxable year on a timely basis under paragraph (a)(3)(i) of this section and thereby protect the right to receive the benefit of the deductions and credits attributable to that gross income if it is later determined, after the return was filed, that the original determination was incorrect. On that timely filed return, the foreign corporation is not required to report any gross income as effectively connected with a United States trade or business or any deductions or credits but should attach a statement indicating that the return is being filed for the reason set forth in this paragraph (a)(3). If the foreign corporation determines that part of the activities which it conducts in the United States in a taxable year gives rise to gross income which is effectively connected with the conduct of a trade or business and part does not, the foreign corporation must timely file a return for that taxable year to report the gross income determined to be effectively connected, or treated as effectively connected, with the conduct of the trade or business within the United States and the deductions and credits attributable to the gross income. In addition, the foreign corporation should attach to that return the statement described in this paragraph (b)(3) with regard to the other activities. The foreign corporation may follow the same procedure if it determines initially that it has no United States tax liability under the provisions of an applicable income tax treaty. In the event the foreign corporation relies on the provisions of an income tax treaty to reduce or eliminate the income subject to taxation, or to reduce the rate of tax, disclosure may be required pursuant to section 6114.

(v) In order to be eligible for any deductions and credits for purposes of computing the accumulated earnings tax of section 531, a foreign corporation must file a true and accurate return; on a timely basis, in the manner as set forth in paragraph (a) (2) and (3) of this section.

(4) *Return by Internal Revenue Service.* If a foreign corporation has various sources of income within the United States and a return of income has not been filed, in the manner prescribed by subtitle F, including the filing deadlines set forth in paragraph (a)(3) of this section, the Internal Revenue Service shall:

(i) Cause a return of income to be made,

(ii) Include on the return the income described in § 1.882–1 of that corporation from all sources concerning which it has information, and

(iii) Assess the tax and collect it from one or more of those sources of income within the United States, without allowance for any deductions (other than that allowed by section 170) or credits (other than those allowed by sections 33, 34 and 852(b)(3)(D)(ii)).

If the income of the corporation is not effectively connected with, or if the corporation did not receive income that is treated as being effectively connected with, the conduct of a United States trade or business, the tax will be assessed under § 1.882–1(b)(1) on a gross basis, without allowance for any deduction (other than that allowed by section 170) or credit (other than the credits allowed by sections 33, 34 and 852(b)(3)(D)(ii)). If the income is effectively connected, or treated as effectively connected, with the conduct of a United States trade on business, tax will be assessed in accordance with either section 11, 55 or 1201(a) without allowance for any deduction (other than that allowed by section 170) or credit (other than the credits allowed by sections 33, 34 and 852(b)(3)(D)(ii)).

(b) *Allowed deductions and credits*—(1) *In general.* Except for the deduction allowed under section 170 for charitable contributions and gifts (see section 882(c)(1)(B)), deductions are allowed to a foreign corporation only to the extent they are connected with gross income which is effectively connected, or treated as effectively connected, with the conduct of a trade or business in the United States. Deductible expenses (other than interest expense) are properly allocated and apportioned to effectively connected gross income in accordance with the rules of § 1.861–8. For the method of determining the interest deduction allowed to a foreign corporation, see § 1.882–5. Other than the credits allowed by sections 33, 34 and 852(b)(3)(D)(ii), the foreign corporation is entitled to credits only if they are attributable to effectively connected income. See paragraph (a)(2) of this section for the requirement that a return be filed. Except as provided by section 906, a foreign corporation shall not be allowed the credit against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

(2) *Verification.* At the request of the Internal Revenue Service, a foreign corporation claiming deductions from gross income which is effectively connected, or treated as effectively connected, with the conduct of a trade or business in the United States or credits which are attributable to that income must furnish at the place designated pursuant to § 301.7605–1(a) information sufficient to establish that the corporation is entitled to the deductions and credits in the amounts claimed. All information must be furnished in a form suitable to permit verification of claimed deductions and credits. The Internal Revenue Service may require, as appropriate, that an English translation be provided with any information in a foreign language. If a foreign corporation fails to furnish sufficient information, the Internal Revenue Service may in its discretion disallow any claimed deductions and credits in full or in part. For additional filing requirements and for penalties for failure to provide information, see also section 6038A.

Dated: November 13, 1990.

Fred T. Goldberg,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90–28772 Filed 12–10–90; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 418

[BPD–670–FC]

Medicare Program; Hospice Care Amendments: Medicare

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: These rules amend the hospice care provisions on physician certification of terminal illness—

• To allow up to 8 days to obtain written certification of terminal illness, provided oral certification is obtained within 2 days after the initial period of care begins; and

• To modify the certification statement which, in its previous form, was shown to discourage physicians from certifying terminal illness and thereby discourage hospice participation in Medicare.

These changes are necessary—

• To conform HCFA rules to amendments made by section 6005(b) of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89); and

• To carry out the recommendations of the General Accounting Office (GAO), aimed at encouraging greater participation of hospices in the Medicare program.

These rules also simplify and clarify other hospice policies, remove outdated content, and correct cross-references.

DATES: *Effective date:* Except for § 418.22, which requires OMB approval before it becomes effective, the rules are effective January 10, 1991.

Comment date: We will consider comments received by February 11, 1991.

ADDRESSES: Please address written comments to: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–670–FC, P.O. Box 26676, Baltimore, Maryland 21207.

If your prefer, you may deliver your comments to: Room 309—Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or Room 132, East High Rise Building, 6325 Security Blvd., Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept fascimile (FAX) copies of comments.

In commenting, please refer to file code BPD–670–FC. Comments will be available for public inspection as they are received, beginning approximately 3 weeks from today, in Room 309G of the Department's offices at 200 Independence Ave., SW., Washington, DC on Monday through Friday from 8:30 a.m. to 5 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: John J. Thomas (301) 966–4623.

SUPPLEMENTARY INFORMATION:

I. Background

Hospice care is an alternative way of treating individuals who are terminally ill. The emphasis in hospice care is on controlling pain and providing services that enable the patient to remain at home as long as possible and to continue normal activities to the extent feasible. Hospices provide social and psychological, as well as medical services. Hospice staff work with the family—helping them to deal with the illness and the anticipated death of the patient. Hospices afford those who are caring for a patient occasional brief

periods of respite by providing inpatient care for the beneficiary.

Hospice care emerged in this country around 1975. Medicare coverage of hospice care was established by section 122 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248, commonly referred to as "TEFRA"). Since 1983, Medicare beneficiaries certified as terminally ill have had the option of electing hospice care in lieu of most other Medicare-covered services.

A. Statutory Amendment

Section 6005(b) of OBRA '89 (Pub. L. 101-239) amends section 1814(a)(7)(A)(i) of the Act, effective for services furnished on or after January 1, 1990—

• To require that the initial physician certifications of terminal illness be in writing; and

• To allow up to 8 days for the written certifications, provided oral certifications are made within 2 days after the first 90-day period of care begins.

B. Results of GAO Study

After a comprehensive study of the Medicare hospice benefit, GAO found that many physicians were concerned about the statement that they were required to use to certify terminal illness. That statement seemed to require certainty of prognosis, whereas the establishment of long term prognoses always involves some uncertainty. The GAO suggested that physician reluctance to provide certification could be overcome by modifying the statement to incorporate the concept that the certification is based on general knowledge of the illness and not on certain knowledge of the patient's prognosis.

II. Changes in the Regulations

1. We have revised § 418.22 of the Medicare rules to reflect both the statutory change and the recommendation that grew out of the GAO study. Specifically—

• Revised paragraph (a) allows up to 8 days after the initial period of care begins for the hospice to obtain written certifications of terminal illness, provided the hospice obtains oral certification within 2 days.

• Paragraph (b) sets forth the revised certification statement.

• Revised paragraph (c) clarifies which physicians must provide certification for the initial and subsequent periods of care.

• Paragraph (d) requires that hospice staff make appropriate entries in the patient's medical record as soon as they receive oral certifications, and file written certification in that record.

2. We have taken advantage of this opportunity to clarify and simplify the hospice provisions through the following non-substantive changes:

• Undesignated center headings are converted to subpart headings to facilitate references, and several section headings are revised to reflect more accurately the content of the sections.

• Four definitions are removed as unnecessary in these rules. "Carrier" and "Intermediary" are already in the basic definitions at the beginning of the HCFA rules. "Election period" is a matter of rules rather than definition, and this is provided in the new § 418.21. "Freestanding hospice" was used only in § 418.100 and has been removed as erroneous and misleading, since the requirements of that section apply to all hospices.

• Three definitions have been revised. The previous definition of "Hospice" limited the term to facilities that met all the conditions in part 418. We need a broader definition, since the term is also used in these rules for facilities that do not yet—or no longer—meet all those conditions. The revision of "Representative" is purely editorial, to provide better word order. The revision of "Terminally ill" conforms it to the change made in the required certification statement.

• A new § 418.21 is inserted to substitute for the definition of "Election period" and to set forth the rules for the three periods of hospice care that are available.

• Sections 418.24 and 418.28 are revised to improve readability and combine like requirements within sections.

• Section 418.26 is removed and its content is incorporated in § 418.24.

• Section 418.32 is removed as outdated, and outdated content is removed from §§ 418.98 and 418.204(b)(3).

• Several sections are amended to refer to the newly designated or redesignated subparts.

III. Waiver of Proposed Rulemaking

We ordinarily provide notice and opportunity for public comment before issuing final regulations. The notice of proposed rulemaking (NPRM) identifies the legal authority or the administrative necessity for the proposed rule. It also discusses the substance of, and the reasons for, the particular provisions being proposed. This procedure can be waived when an agency finds that it is impracticable, unnecessary, or contrary to the public interest, and incorporates in a final rule a finding of good cause for waiver.

In this particular case, we find that there is good cause to waive NPRM as unnecessary and contrary to the public interest.

We find that notice and opportunity for comment are unnecessary because—

• The statutory amendment is so clear and specific as to leave no room for alternative interpretations.

• Previous rules already require that certifications be in writing; therefore, implementation of the new law actually eases requirements rather than imposing new ones.

• The simplification and clarification of several sections involve no substantive changes.

We also find that it would be contrary to the public interest (as well as the interest of the program) to delay modification of a certification statement that has been shown to discourage the necessary physician certification, and thereby to discourage the participation of hospices in the Medicare program.

Although this rule is final, we will consider any comments received within the time frames specified under "**DATES**", above. Because of the large number of comments we receive in response to **Federal Register** publication, we cannot respond to them individually. However, if we revise these rules as a result of comments, we will discuss all timely comments in the preamble to the revised rules.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, a rule likely to result in—

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

• Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Since this rule does not meet any of the E.O. 12291 criteria, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act (RFA)

We generally prepare a regulatory flexibility analysis that is consistent

with the Regulatory Flexibility Act (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider hospices to be small entities.

This final rule extends from 2 to 8 the number of days within which hospices must obtain physician certification of terminal illness, provided the hospice obtains an oral certification within 2 days after the initial period of care begins. This extension should ease the burden on hospices and physicians.

Currently, if a hospice is unable to obtain a written certification within 2 days, the intermediary denies payment for all days of service from the day of admission to the date of certification. With the extension provided under the revised rules (which reflects recommendations made during the GAO survey, as well as the change in the law), hospices should be able to ensure full payment for services furnished to Medicare beneficiaries. This will more than compensate for the very small impact that may result from the requirement that hospice staff note the oral certifications in the patient's medical record.

The GAO report indicated that, as of September, 1989, there were 1,700 hospices in the United States, of which only 35 percent were participating in Medicare. We believe that—

- The extension of time for obtaining written certification of terminal illness will have a favorable economic impact on participating hospices and thus ensure that they will continue to furnish services to Medicare beneficiaries; and
- The cited economic advantage, plus the revised certification statement, which makes it easier to obtain the required physician certifications, will encourage additional hospices to participate in the Medicare program.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Since this rule applies only to hospices, we have determined and the Secretary certifies that the rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

V. Paperwork Reduction Act

Sections 418.22 and 418.24 of these rules contain information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The cited sections had been approved under OMB control number 0938-0246.

Since the certification statement set forth in § 418.22 has been revised, it is again subject to OBM review. When OMB approves the revised statement, we will publish a **Federal Register** notice to that effect.

If you comment on the revised certification statement, please send a copy of that comment directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Bldg., Washington, DC 20503, Attention: Allison Herron, Desk Officer for HCFA.

List of Subjects in 42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

PART 418—(AMENDED)

In 42 CFR chapter IV, part 418 is amended as set forth below:

A.1. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102, 1811–1814, 1815(e), 1861–1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395c–1395f, 1395g(e), 1395x–1395cc, and 1395hh).

2. The table of contents is revised to read as follows:

PART 418—HOSPICE CARE

Subpart A—General Provisions and Definitions

Sec.
418.1 Statutory basis.
418.2 Scope of part.
418.3 Definitions.

Subpart B—Eligibility, Election and Duration of Benefits

418.20 Eligibility requirements.
418.21 Duration of hospice care coverage—Election periods.
418.22 Certification of terminal illness.
418.24 Election of hospice care.
418.28 Revoking the election of hospice care.
418.30 Change of the designated hospice.

Subpart C—Conditions of Participation, General Provisions and Administration

418.50 Condition of participation—General provisions.
418.52 Condition of participation—Governing body.
418.54 Condition of participation—Medical director.
418.56 Condition of participation—Professional management.
418.58 Condition of participation—Plan of care.
418.60 Condition of participation—Continuation of care.
418.62 Condition of participation—Informed consent.
418.64 Condition of participation—Inservice training.
418.66 Condition of participation—Quality assurance.
418.68 Condition of participation—Interdisciplinary group.
418.70 Condition of participation—Volunteers.
418.72 Condition of participation—Licensure.
418.74 Condition of participation—Central clinical records.

Subpart D—Conditions of Participation: Core Services

418.80 Condition of participation—Furnishing of core services.
418.82 Condition of participation—Nursing services.
418.83 Nursing services—Waiver of requirement that substantially all nursing services be routinely provided directly by a hospice.
418.84 Condition of participation—Medical social services.
418.86 Condition of participation—Physician services.
418.88 Condition of participation—Counseling services.

Subpart E—Conditions of Participation: Other Services

418.90 Condition of participation—Furnishing of other services.
418.92 Condition of participation—Physical therapy, occupational therapy, and speech-language pathology.
418.94 Condition of participation—Home health aide and homemaker services.
418.96 Condition of participation—Medical supplies.
418.98 Condition of participation—Short term inpatient care.
418.100 Condition of participation—Hospices that provide inpatient care directly.

Subpart F—Covered Services

418.200 Requirements for coverage.
418.202 Covered services.
418.204 Special coverage requirements.

Subpart G—Payment for Hospice Care

418.301 Reimbursement for hospice care.
418.302 Payment procedures for hospice care.
418.304 Payment for physician services.
418.306 Determination of payment rates.
418.307 Periodic interim payments.
418.308 Limitation on the amount of hospice payments.
418.309 Hospice cap amount.
418.310 Reporting and recordkeeping requirements.
418.311 Administrative appeals.

Subpart H—Coinsurance

418.400 Individual liability for coinsurance for hospice care.
418.402 Individual liability for services that are not considered hospice care.
418.405 Reduction of Medicare reimbursement by individual coinsurance liability.

3. Subparts D, E, and F are redesignated as subparts F, G, and H, respectively.

B. Subpart A is amended as follows:

Subpart A—General Provisions and Definitions

§ 418.3 [Amended]

In § 418.3, the definitions of "*Carrier*", "*Election period*", "*Freestanding hospice*", and "*Intermediary*" are removed and the definitions of "*Hospice*", "*Representative*", and "*Terminally ill*" are revised to read as follows:

Hospice means a public agency or private organization or subdivision of either of these that—is primarily engaged in providing care to terminally ill individuals.

* * * * *

Representative means an individual who has been authorized under State law to terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill individual who is mentally or physically incapacitated.

* * * * *

Terminally ill means that the individual has a medical prognosis that his or her life expectancy is 6 months or less if the illness runs its normal course.

C. Subpart B is amended as follows:

Subpart B—Eligibility, Election and Duration of Benefits

1. A new § 418.21 is added, to read as follows:

§ 418.21 Duration of hospice care coverage—Election periods.

(a) Subject to the conditions set forth in this part, an individual may elect to receive hospice care during one or more of the following election periods:

(1) An initial 90-day period.

(2) A subsequent 90-day period.

(3) A subsequent 30-day period.

(b) The periods of care are available in the order listed and may be elected separately at different times.

§ 418.22 [Amended]

2. Section 418.22 is revised to read as follows:

§ 418.22 Certification of terminal illness.

(a) *Timing of certification*—(1) *General rule.* The hospice must obtain written certification of terminal illness for each of the periods listed in § 418.21, even if a single election continues in effect for two or three periods, as provided in § 418.24(c).

(2) *Basic requirement.* Except as provided in paragraph (a)(3) of this section, the hospice must obtain the written certification no later than two calendar days after the period begins.

(3) *Exception.* For the initial 90-day period, if the hospice cannot obtain the written certifications within two calendar days, it must obtain oral certifications within two calendar days, and written certifications no later than eight calendar days after the period begins.

(b) *Content of certification.* The certification must specify that the individual's prognosis is for a life expectancy of 6 months or less if the terminal illness runs its normal course.

(c) *Sources of certification.* (1) For the initial 90-day period, the hospice must obtain written certification statements (and oral certification statements if required under paragraph (a)(3) of this section) from—

(i) The medical director of the hospice or the physician member of the hospice interdisciplinary group; and

(ii) The individual's attending physician if the individual has an attending physician.

(2) For subsequent periods, the only requirement is certification by one of the physicians listed in paragraph (c)(1)(i) of this section.

(d) *Maintenance of records.* Hospice staff must—

(1) Make an appropriate entry in the patient's medical record as soon as they receive an oral certification; and

(2) File written certifications in the medical record.

§ 418.24 [Amended]

3. Section 418.24 is revised to read as follows:

§ 418.24 Election of hospice care.

(a) *Filing an election statement.* An individual who meets the eligibility requirement of § 418.20 may file an election statement with a particular hospice. If the individual is physically or mentally incapacitated, his or her representative (as defined in § 418.3) may file the election statement.

(b) *Content of election statement.* The election statement must include the following:

(1) Identification of the particular hospice that will provide care to the individual.

(2) The individual's or representative's acknowledgement that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the individual's terminal illness.

(3) Acknowledgement that certain Medicare services, as set forth in paragraph (d) of this section, are waived by the election.

(4) The effective date of the election, which may be the first day of hospice care or a later date, but may be no earlier than the date of the election statement.

(5) The signature of the individual or representative.

(c) *Duration of election.* An election to receive hospice care will be considered to continue through the initial election period and through the subsequent election periods without a break in care as long as the individual—

(1) Remains in the care of a hospice; and

(2) Does not revoke the election under the provisions of § 418.28.

(d) *Waiver of other benefits.* For the duration of an election of hospice care, an individual waives all rights to Medicare payments for the following services:

(1) Hospice care provided by a hospice other than the hospice designated by the individual (unless provided under arrangements made by the designated hospice).

(2) Any Medicare services that are related to the treatment of the terminal condition for which hospice care was elected or a related condition or that are equivalent to hospice care except for services—

(i) Provided by the designated hospice;

(ii) Provided by another hospice under arrangements made by the designated hospice; and

(iii) Provided by the individual's attending physician if that physician is not an employee of the designated hospice or receiving compensation from the hospice for those services.

(e) *Re-election of hospice benefits.* If an election has been revoked in accordance with § 418.28, the individual (or his or her representative if the individual is mentally or physically incapacitated) may at any time file an election, in accordance with this section, for any other election period that is still available to the individual.

§ 418.26 [Removed]

4. Section 418.26 is removed.

§ 418.32 [Removed]

5. Section 418.32 is removed.

D. Subpart C is amended as set forth below:

1. The subpart heading is revised and § 418.50(a) is revised, to read as follows:

Subpart C—Conditions of Participation—General Provisions and Administration

§ 418.50 Condition of participation—General provisions.

(a) *Standard: Compliance.* A hospice must maintain compliance with the

conditions of this subpart and subparts D and E of this part.

* * * * *

2. The undesignated center heading "Administration" is removed.

3. The undesignated center heading "Core Services" is revised to read:

Subpart D—Conditions of Participation: Core Services

§ 418.80 [Amended]

4. In § 418.80, the following changes are made:

a. The section heading is revised to read:

§ 418.80 Condition of participation: Furnishing of core services.

b. The phrase "§§ 418.82 through 418.88", wherever it appears, is changed to "this subpart".

5. The undesignated center heading "Other Services" is revised to read:

Subpart E—Conditions of Participation: Other Services

§ 418.90 [Amended]

6. In § 418.90, the following changes are made:

a. The section heading is revised to read:

§ 418.90 Condition of participation: Furnishing of other services.

b. The phrase "§§ 418.92 to 418.98" is changed to "this subpart".

§ 418.94 [Amended]

7. In § 418.94, the following changes are made:

a. In the introductory text to the section, "§ 405.1227" is changed to "§ 484.36".

b. In paragraph (b), "§ 405.1227(a)" is changed to "§ 484.36(c)".

§ 418.98 [Amended]

8. In § 418.98, the following changes are made:

a. In paragraphs (a)(2) and (b)(2), "(f)" is changed to "(e)".

b. Paragraph (c) is revised to read as follows:

(c) *Standard: Inpatient care limitation.* The total number of inpatient days used by Medicare beneficiaries who elected hospice coverage in any 12-month period preceding a certification survey in a particular hospice may not exceed 20 percent of the total number of hospice days for this group of beneficiaries.

9. The undesignated center heading "Freestanding Hospice with Inpatient Unit" is removed.

§ 418.100 [Amended]

10. In § 418.100, the following changes are made:

a. The section heading is revised to read:

§ 418.100 Condition of participation: Hospices that provide inpatient care directly.

b. The word "freestanding" is removed from the introductory text.

E. Newly redesignated subpart F is amended as follows:

§ 418.202 [Amended]

1. In § 418.202, in paragraph (e), "§ 418.100 (a) and (f)" is changed to "§ 418.202 (a) and (e)".

§ 418.204 [Amended]

2. Section 418.204 is amended by revising paragraph (b)(2) and removing paragraph (b)(3), to read as follows:

§ 418.204 Special coverage requirements.

* * * * *

(b) *Respite care.* (1) Respite care is short-term inpatient care provided to the individual only when necessary to relieve the family members or other persons caring for the individual.

(2) Respite care may be provided only on an occasional basis and may not be reimbursed for more than five consecutive days at a time.

* * * * *

F. Newly redesignated subpart G is amended by revising the subpart heading to read as follows:

Subpart G—Payment for Hospice Care

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare Hospital Insurance)

Dated: June 5, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: July 9, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-28756 Filed 12-10-90; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 90930-0301]

RIN 0648-AD72

Endangered and Threatened Species: Indus River Dolphin

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS has determined that the Indus River dolphin is endangered and should be added to the U.S. List of Endangered and Threatened Wildlife. Scientists estimate the population, which is found mainly in the lower Indus River in Pakistan, at about 500.

In a separate rule published in the Federal Register, the U.S. Fish and Wildlife Service, which is responsible for maintaining the List of Endangered and Threatened Species, is adding the Indus River dolphin to the list.

EFFECTIVE DATE: January 10, 1991.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz, NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, telephone (301) 427-2322.

SUPPLEMENTARY INFORMATION:

Background

Based on a review of the status of the Indus River dolphin (*Platanista minor*), NMFS determined that this species is endangered and should be added to the U.S. List of Threatened and Endangered Species under the Endangered Species Act (ESA), 16 U.S.C. 1531 *et. seq.* NMFS published its initial determination in a proposed rule on November 9, 1989 (54 FR 47094). In April 1987, NMFS notified the public of its intent to review the status of this species, and also included the Indus River dolphin in its list of candidate species (August 31, 1988; 53 FR 33516).

The status of the Indus River dolphin was reviewed by NMFS and Fish and Wildlife Service scientists, and the determination that the species is endangered was made using the best scientific information available. The status review concludes that the species is endangered because of the present destruction, modification, and curtailment of its habitat, overutilization of the species for commercial purposes, and inadequate existing regulatory mechanisms.

Notification of the Government of Pakistan

NMFS notified the Government of Pakistan of its intention to add this species to the U.S. List of Endangered and Threatened Wildlife. The Government of Pakistan forwarded extracts from two publications on the Indus River dolphin, but did not express any opinion regarding the listing of this species.

Public Comments

The only comment received on the proposed rule was from the Connecticut Cetacean Society International which

supports the proposed listing of the Indus River dolphin.

Critical Habitat

Critical habitat cannot be designated in foreign countries or other areas outside U.S. jurisdiction (see criteria for designating critical habitat at 50 CFR 424.12(h)).

Classification

The 1982 amendments to the ESA (Pub. L. 97-304) revised section 4(b)(1)(A) to clarify that only limited information may be considered in determining whether to list a species. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 657 2d 829 (6th Cir., 1981), NMFS has categorically excluded all endangered species listings from the environmental assessment requirements of the National Environmental Policy Act (48 FR 4413; February 6, 1984).

As noted in the conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act are not applicable to the listing process.

List of Subjects in 50 CFR Part 222

Administrative practice and procedure, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Reporting and recordkeeping requirements, Transportation.

Dated: December 5, 1990.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries.

For the reasons described in the preamble, 50 CFR part 222 is amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation of part 222 continues to read as follows:

Authority: 16 U.S.C. 1531-1543.

§ 222.23 [Amended]

2. Section 222.23(a) of subpart C is amended by adding the phrase "Indus River dolphin (*Platanista minor*);" immediately after the phrase "Chinese river dolphin (*Lipotes vexillfier*);" in the second sentence.

[FR Doc. 90-28981 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 238
Tuesday, December 11, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Quality Assurance in the Medical Use of Byproduct Material; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) staff plans to convene a public meeting with representatives of the Agreement States to discuss a proposed rule, draft regulatory guide, and other applicable guidance concerning quality assurance in the medical use of byproduct material.

DATES: The meeting will be held Tuesday and Wednesday, December 18 and 19, 1990 and will begin at 9 a.m. and end about 5 p.m.

ADDRESSES: Embassy Suite Hotel, 4650 W. Airport Freeway, Irving, TX 75062.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Regulation Development Branch, Mail Stop NL/S-129, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3797.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the **Federal Register** on January 16, 1990 (55 FR 1439) which described a performance-based quality assurance program that the NRC believes should be incorporated into each licensee's medical use program. The proposed rule also contains certain modifications to the definition of the term misadministration and to the related reporting and recordkeeping requirements. The NRC has also prepared a draft regulatory guide that contains specific quality assurance procedures that could be used by the licensees to establish a QA program that meets the performance-based rule.

The purpose of the meeting is to hold a roundtable discussion on the proposed rule, draft regulatory guide, and other applicable guidance with the representatives of the Agreement States.

The draft regulatory guide is available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street (Lower Level) NW., Washington, DC. A transcript of the meeting will be available by about January 14, 1991 at the NRC Public Document Room.

Conduct of the Meeting

The meeting will be chaired by Mr. John Telford, Chief, Rulemaking Section, Regulation Development Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission. The meeting will be conducted in a manner that will facilitate the orderly conduct of business.

The following procedures apply to public participation in the meeting:

1. At the meeting, questions or statements from attendees other than participants (i.e., representatives of the Agreement States and designated NRC staff) will be entertained as time permits.

2. Seating for the public will be on a first come-first served basis.

Dated at Rockville, Maryland, this 4th day of December 1990.

For the Nuclear Regulatory Commission.

Sher Bahadur,

Chief, Regulation Development Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 90-28966 Filed 12-10-90; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Part 35

Quality Assurance in the Medical Use of Byproduct Material; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) staff plans to convene a public meeting with representatives of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) to discuss a proposed rule, draft regulatory guide, and other applicable guidance concerning quality assurance in the medical use of byproduct material.

DATES: The meeting will be held Monday, December 17, 1990 and will begin at 9 a.m. and end about 4 p.m.

ADDRESSES: JCAHO, Conference room D, One Renaissance Boulevard, Oakbrook Terrace, IL 60181.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Regulation Development Branch, Mail Stop NL/S-129, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3797.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the **Federal Register** on January 16, 1990 (55 FR 1439) which described a performance-based quality assurance program that the NRC believes should be incorporated into each licensee's medical use program. The proposed rule also contains certain modifications to the definition of the term misadministration and to the related reporting and recordkeeping requirements. The NRC has also prepared a draft regulatory guide that contains specific quality assurance procedures that could be used by the licensees to establish a QA program that meets the performance-based rule.

The purpose of the meeting is to hold a roundtable discussion on the proposed rule, draft regulatory guide, and other applicable guidance with the representatives of the JCAHO.

The draft regulatory guide is available for inspection, and copying for a fee, at the NRC Public Document room, 2120 L Street (Lower Level) NW., Washington, DC. A transcript of the meeting will be available by about January 14, 1991 at the NRC Public Document Room.

Conduct of the Meeting

The meeting will be chaired by Mr. John Telford, Chief, Rulemaking Section, Regulation Development Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission. The meeting will be conducted in a manner that will facilitate the orderly conduct of business.

The following procedures apply to public participation in the meeting:

1. At the meeting, questions or statements from attendees other than participants (i.e., representatives of the JCAHO and designated NRC staff) will be entertained as time permits.

2. Seating for the public will be on a first come—first served basis.

Dated at Rockville, Maryland, this 4th day of December, 1990.

For the Nuclear Regulatory Commission.

Sher Bahadur,

Chief, Regulation Development Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 90-28965 Filed 12-10-90; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-258-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes Equipped With Main Wheel Assemblies, Part Number AHA1538 and AHA1663

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which would require repetitive inspections to detect defects in the main landing gear (MLG) wheel assembly grease retainer seals, and replacement of the seals, if necessary. This proposal is prompted by reports that certain seals can grip the axle or contact the wheel bearing. This condition, if not corrected, could result in seizure of the wheel and subsequent damage to the tire.

DATES: Comments must be received no later than February 1, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-258-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt on their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-258-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model ATP series airplanes. There have been recent reports that certain brake side hub half wheel bearing grease retainer seals have a tendency to grip the axle sleeve and allow the wheel to rotate around the grease retainer. Also, the valve side wheel bearing grease retainer seal can contact and possibly foul the wheel bearing. This condition, if not corrected, could result in seizure of the wheel and subsequent damage to the tire.

British Aerospace has issued Service Bulletin ATP-32-13, Revision 1, dated February 28, 1990, which describes procedures to replace certain valve side grease retainer seals with modified seals; and to perform repetitive inspections to detect damage to the wheel hub halves and wheel bearing grease retainer seals, and replacement, if necessary. This service bulletin references Dunlop Limited Service Bulletin 32-1032, Revision 1, dated February 13, 1990, for additional instructions. The United Kingdom CAA has classified both service bulletins as mandatory.

Dunlop limited has also issued Service Bulletin AHA1538/AHA1663-32-1042, dated April 10, 1990, which describes procedures to install improved grease retainer seals on both the brake side and the valve side hub halves (identified as Dunlop Modification C2614). The United Kingdom CAA has not classified this service bulletin as mandatory, but recommends installation of this modification when parts are available.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require replacement of certain wheel bearing grease retainer seals, and repetitive inspections to detect defects in the wheel hub halves and wheel bearing grease retainer seals, and replacement of seals, if necessary, in accordance with the service bulletins previously described.

It is estimated that 4 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required parts will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $160.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations 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 airworthiness directive:

British Aerospace: Applies to Model ATP series airplanes equipped with main wheel assemblies, Part Number AHA1538 and AHA1663, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent seizure of the main landing gear (MLG) wheel and subsequent damage to the tire, accomplish the following:

A. Within 30 days after the effective date of this AD, and thereafter at each wheel removal, on each wheel of the left and right main landing gear, perform a visual inspection of the wheel hub halves and wheel bearing grease retainer seals, in accordance with British Aerospace Service Bulletin ATP–32–13, Revision 1, dated February 28, 1990.

Note: The British Aerospace service bulletin references Dunlop Limited Service Bulletin 32–1032, Revision 1, dated February 13, 1990, for additional instructions.

1. Measure the diameter of the grease retainer seal locating groove for wear on the brake side half hub.

a. If the diameter of the groove exceeds 4.540 inches, prior to further flight, replace with a serviceable part, in accordance with Dunlop Limited Service Bulletin 32–1032, Revision 1, dated February 13, 1990.

b. If the diameter of the groove does not exceed 4.540 inches, prior to further flight, protect the bore of the hub half with an application of Alocrom, in accordance with the Dunlop Limited service bulletin.

2. Verify that the brake side grease retainer seal, Part Number AH089109, has the cross-section shown in Figure 2 of Dunlop Limited Service Bulletin 32–1032, Revision 1, dated February 13, 1990. If this part's configuration is different (has not been chamfered), prior to further flight, replace it with a modified Part Number AH089109, in accordance with the Dunlop Limited service bulletin.

3. Visually inspect the inner bore and outer circumference of brake side grease retainer seal, Part Number AH089109. If the external circumference and the internal bore of the grease retainer seal, Part Number AH089109, is scored or chipped, prior to further flight, replace it with a serviceable part in accordance with the Dunlop Limited service bulletin.

4. Verify that the valve side grease retainer seal is marked as Part Number AH089720. Prior to further flight, replace any grease retainer seals not marked Part Number AH089720 with one so marked.

5. Visually inspect the valve side grease retainer seal, Part Number AH089720. If the internal bore and the wheel bearing face of the grease retainer seal show signs of wear, prior to further flight, replace all defective grease retainer seals in accordance with the Dunlop Limited service bulletin.

B. Accomplishment of Dunlop Modification C2614, which consists of installing improved grease retainer seals on both the brake side and the valve side half hubs, in accordance with Dunlop Limited Service Bulletin AHA1538/AHA1663–32–1042, dated April 10, 1990, constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM–113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 30, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–28957 Filed 12–10–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 21 and 23

[Docket No. 084CE, Special Condition 23–ACE–55]

Special Conditions; Cessna Model 525 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Cessna Aircraft Co. Model 525 airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These design features include engine location, performance characteristics, and protection of electronic systems from lightning and high intensity radiated electromagnetic fields, for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: Comments must be received on or before January 10, 1991.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 084CE, room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 084CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Norman R. Vetter, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, room 1544, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments

specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 084CE" The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background

On February 14, 1990, the Cessna Aircraft Co., P.O. Box 7704, Wichita, KS 67277 made application for normal category type certification of the Model 525 airplane. This airplane is a five-to-seven place, all metal, low wing, T-tail, twin turbofan engine-powered monoplane with fully enclosed retractable landing gear. The Model 525 has engines mounted aft on the fuselage and is capable of Mach .785 performance.

Type Certification Basis

Type certification basis of the Model 525 airplane is: Federal Aviation Regulations (FAR) 23, effective February 1, 1965, through amendment 23–38, effective October 26, 1989, plus amendment 23–40, effective September 10, 1990; FAR 36, effective December 1, 1969, through the amendment effective on the date of type certification; exemptions, if any; and any special conditions that may result from this notice.

Discussion

Cessna plans to incorporate certain novel and unusual design features into the airplane for which the airworthiness regulations do not contain adequate or appropriate safety standards. These features include electronic systems, engine location, and certain performance characteristics necessary for this type of airplane that were not envisaged by the existing regulations.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.17(a)(2).

Cockpit Evacuation of Smoke

Small airplanes have typically been unpressurized where smoke could be evacuated by opening windows or, if pressurized, have had maximum operating altitudes such that the airplane could be readily depressurized to evacuate smoke without creating an unsafe condition. The Cessna Model 525 will not have smoke evacuation provisions because of higher differential pressures and longer times needed to depressurize and ventilate the cockpit. These proposed special conditions require the capability to evacuate smoke from the cockpit and require the ventilation air for normal operations to be free of harmful or hazardous concentrations of gases and vapors because of the need to maintain an acceptable environment at the maximum operating altitudes of this airplane.

Protection of Electronic Flight Instrument System (EFIS) and Autopilot Flight Director From Indirect Effects of Lightning

Concern for the vulnerability of airplane electrical and electronic systems to the effects of lightning has increased substantially over the past few years. This concern is due to the use of solid-state components and digital electronics in airplane systems that are susceptible to transient effects of induced electrical current and voltage caused by either a direct lightning strike to the airplane or by the electric fields created by a nearby lightning flash. These induced transient currents and voltages can degrade electronic system performance by damaging components or upsetting system functions.

Increased dependence on electronic equipment for safe operation of an airplane makes adequate protection of that equipment a primary requirement. These proposed special conditions will provide for the requisite protection from the indirect effects of lightning.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF incident on the external surface of aircraft. These induced transient currents and voltages can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the electromagnetic environment has undergone a transformation that was not envisioned when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the population of transmitters has increased significantly.

The combined effect of the technological advances in aircraft design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the aircraft. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems.

The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph (1) or, as an option to a fixed value using laboratory tests, in paragraph (2), as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment, defined below:

FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–500 KH$_z$	80	80
500–2000	80	80
2–30 MH$_z$	200	200
30–100	33	33
100–200	33	33

FIELD STRENGTH VOLTS/METER—Continued

Frequency	Peak	Average
200-400	150	33
400-1000	8.3K	2K
1-2 GH_z	9K	1.5K
2-4	17K	1.2K
4-6	14.5K	800
6-8	4K	666
8-12	9K	2K
12-20	4K	509
20-40	4K	1K

Or:

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions can withstand a peak of electromagnetic field strength of 100 volts per meter (v/m) in a frequency range of 10KHz to 18GHz. When using a laboratory test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

In view of the revised HIRF envelope, the requirement for the fixed value test has been changed to 100 v/m from the previously used value of 200 v/m. The applicant opting for the fixed value laboratory test, instead of the HIRF envelope, may be subject to post certification reassessment based on the finalized rule requirements. The applicants should be cautioned that choosing 100 v/m may make it difficult, under post certification reassessment requirements, to qualify the installations without upgrading the design. If the system should not meet the post certification reassessment requirements, additional protection provisions and/or testing may be required.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the aircraft. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements only apply to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof. Service experience alone is not acceptable since such experience in normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

EFIS

When part 23 airworthiness standards were promulgated, they did not address the electronic display systems (cathode-ray tube displays) that are presently available for installation in small airplanes. Revisions to part 23 have not included criteria needed to define a minimum level of safety for evaluation of technology used in electronic display systems that will be installed in small airplanes. Special conditions are proposed that will allow electronic display units to replace mechanical or electromechanical instruments, which present part 23 standards address. The EFIS installations must meet the legibility, sensor cur, redundancy, and reliability requirements defined in these proposed special conditions.

These proposed special conditions require a detailed examination of each item of equipment or component of the electronic instrument system. They will also require an investigation of the system installation to determine: (1) If the airplane is dependent upon its function for continued safe flight and landing; (2) if its failure will significantly reduce the IFR capability of the airplane; (3) if its failure will significantly reduce the ability of the crew to cope with these adverse operating conditions. Each component of the installation identified as being critical to the safe operation of the airplane will be required to comply with these proposed special conditions, and, therefore, will permit the approval of more advanced systems.

These proposed special conditions also require that essential components of the electronic display system that require electrical power be considered "essential loads" on the aircraft's power supply. The power source(s) and its distribution system must be able to supply power to the electronic display system as stated in the proposed special conditions since the operational reliability of the electronic display system is dependent on the power source of the airplane.

Section 23.1309 has been used since amendment 23-14 as a means of evaluating systems. The "no single fault" or "fail safe" concept, along with experience based on service-proven designs and good engineering judgment, has been used to successfully evaluate most airplane systems and equipment. However, the FAA is finding it difficult to apply the "single fault" concept and to utilize the application of "good engineering judgment" as a means of determining the likelihood or effects of certain failures to complex systems like those proposed in the Cessna Model 525. Therefore, there is a need to include the proposed additional reliability requirements in the certification basis. This will allow use of the latest available "rational method" of safety analysis of the proposed electronic display system and assure a level of safety to which the airplane is to be certified.

To develop rational methods for safety assessment of systems requires that an inverse relationship exist between the probability of a failure condition and its effect on the airplane. That is, the more serious the effect, the lower the probability must be that it will occur.

The availability of this "rational method" of safety analysis of systems, along with the difficulty in applying the existing "no single fault" or "fail-safe" concept, has prompted the FAA to propose these special conditions, since this installation is proposed to incorporate electronic flight displays.

These proposed special conditions provide reliability requirements that are based on the criticalness of the system's function. They will provide the standards needed for the certification of complex safety-critical electronic display systems being proposed for the Model 525 airplane.

It has been determined that some electronic display systems perform critical functions. Therefore, it will be necessary to show that the systems meet more stringent requirements. Systems that perform a function that is needed for continued safe flgiht and landing of the airplane must meet the requirement that there will be no failure of that system.

The proposed conditions also require that system failures that would reduce the airplane's capability or the ability of the crew to cope with adverse operating conditions, are not likely to occur. It is recognized that any electronic display system or other system failure will reduce the airplane's or crew's capability by some degree, but that reduction may not be serious enough to make the operation of the airplane potentially catastrophic.

Thrust Attenuation

The Model 525 design includes a system that permits the attenuating of engine thrust. Attenuation is accomplished by movable panels, mounted on the engine pylons downstream of the exhaust cones, that can be deployed into the exhaust streams. The thrust attenuators are designed to be used in both ground and flight operations and differ from thrust reversers in that attenuators do not provide for either zero or reverse thrust levels. These proposed special conditions provide requisite standards for thrust attenuating systems.

Engine Fire Extinguishing System

The Model 525 design includes engines mounted aft on the fuselage. The applicable existing regulations do not require fire extinguishing systems for engines. Aft mounted enigne installations, along with the need to protect such installed engines from fires, were not envisaged in the development of part 23; therefore, a special condition for a fire extinguishing system for the engines of the Model 525 is proposed.

Performance

Previous certification and operational experience with jet powered airplanes of similar design in the normal category reveal certain unusual characteristics compared to other airplanes certificated in the normal category. The average pilot, expected to be the operator of this class of airplane, is not likely to be familar with the characteristics applicable to jet powered airplanes. These characteristics have caused significant safety problems when pilots attempted takeoffs and landings using procedures and instincts developed with conventional part 23 airplanes, particularly with a large variation in temperature and altitude. In recognition of these characteristics, Special Civil Air Regulation No. SR-422, and follow-on regulations, established weight-altitude-temperature limitations and procedures for scheduling takeoff and landing for turbine engine-powered transport category airplanes, so the pilot could achieve reliable and repeatable results under all expected conditions of operation. Similar requirements have been applied to airplanes certified in the commuter category of part 23. This entails specific takeoff and landing performance tests. In conjunction with the development of takeoff and landing procedures, it was also necessary to establish required climb gradients and data for flight path determination under all approved weights, altitudes, and temperatures. This enables the pilot to determine, before takeoff, that a safe takeoff, departure, and landing at the destination can be achieved.

Current standards in part 23 did not envisage this type of airplane and the associated performance. Based upon the knowledge and experience gained during certification and operation of previous similar part 23 jet airplanes, special conditions are proposed for the performance requirements of takeoff, takeoff speeds, accelerate-stop distance, takeoff path, takeoff distance, takeoff run, and takeoff flight path.

General performance special conditions are proposed to require that procedures for takeoff, accelerate-stop, and landing be those established for operation in service, be executable by pilots of average skill, and include reasonably expected time delays.

Climb

To maintain a level of safety that is consistent with the requirements of the proposed special conditions for takeoff, takeoff speeds, takeoff path, takeoff distance, and takeoff run, it is appropriate to propose associated requirements that specify climb gradients, airplane configurations, and consideration of atmospheric conditions that will be encountered. Current standards in part 23 did not envisage this type of airplane and the associated climb considerations. Special conditions are proposed for climb with one engine inoperative, landing climb, and general climb conditions.

Landing

Landing distance determined for the same parameters, plus the effect of wind, is consistent with takeoff information for the range of weights, altitudes, and temperatures approved for operation. Further, it is necessary to consider time delays to provdie for in-service variation in the activation of deceleration devices, such as spoilers and brakes. Current standards in part 23 did not envisage this type of airplane and the associated landing performance considerations. Special conditions are proposed to address these items.

Minimum Control Speed

The Cessna Model 525 will be operated in an environment and in a manner requiring defined minimum control speeds, both in the air and on takeoff, to ensure safe operations. A requisite to sequentially establishing proper controllability from the start of takeoff until reaching the decision speed (V_1) proposed under the takeoff performance special conditions is identification of V_{MCG}, the minimum control speed on the ground. In the past, a requirement to define V_{MCG} has not been necessary for part 23 airplanes. However, the existence of V_{MCG} has been considered in determining V_1 decision speed and has been administered by established policy in Advisory Circular AC 23-8A.

Trim

Special conditions are proposed to maintain a level of safety that is consistent with the use of V_{MO}/M_{MO} and the requirements established for previous part 23 jet airplanes. Current standards in part 23 did not envisage this type of airplane and the associated trim considerations.

Static Longitudinal Stability

To maintain a level of safety consistent with that applied to previous part 23 jet airplanes, it is appropriate to define applicable requirements for static longitudinal stability. Current standards in part 23 did not envisage this type of airplane and the associated stability considerations. Special conditions are proposed to establish static longitudinal stability requirements that include a stick force versus speed specification and stability requirements applicable to high speed jet airplanes.

Demonstration of Static Longitudinal Stability

To maintain a level of safety consistent with the proposed static longitudinal stability requirements, it is necessary to establish corresponding requirements for the demonstration of static longitudinal stability. Current standards in part 23 did not envisage this type of airplane and the associated stability considerations. Special conditions are proposed to do so.

Static Directional and Lateral Stability

In keeping with the concept of V_{MO}/M_{MO} being a maximum operational speed limit, rather than a limiting speed for the demonstration of satisfactory flight characteristics, it is appropriate to extend the speed for demonstration of lateral/directional stability characteristics from the V_{MO}/M_{MO} of part 23 to the maximum speed for stability characteristics, V_{FC}/M_{FC}, for this airplane. Current standards in part 23 did not envisage this type of airplane and the associated stability considerations. Special conditions to do this are proposed.

Stall Characteristics

In order to maintain consistency with the stall warning requirements and the level of safety previously applied to other jet powered small airplanes, it is

appropriate to specify the conditions under which level flight, turning flight, and accelerated entry stall characteristics should be demonstrated. Current standards in part 23 did not envisage this type of airplane, the associated high thrust-to-weight ratio, and laminar flow airfoil characteristics. Special conditions are proposed to define stall characteristics demonstrations.

Stall Warning

Advisory Circular AC 23–8A provides guidelines for the application of the stall warning requirements currently specified in § 23.207(c). The FAA has recognized the problems associated with showing literal compliance with § 23.207(c) when airplanes with high power-to-weight ratios are being evaluated. Current standards in part 23 did not envisage this type of airplane and the associated stall warning considerations. This issue was discussed during the Small Airplane Airworthiness Review Conference held in St. Louis, Missouri, during the week of October 22–26, 1984 at which it was concluded that § 23.207(c) required revision to properly address this condition. Previous guidance relating to this matter was provided in FAA Order 8110.7 and AC 23–8. The service history of numerous airplanes that were certified using this earlier guidance, which is similar to that proposed for this special condition, has been satisfactory. Special conditions are proposed to specify appropriate requirements for stall warning for the Model 525.

Vibration and Buffeting

The Model 525 will be operated at high altitudes where stall-Mach buffet encounters (small speed margin between stall and transonic flow buffet) are likely to occur. This is not presently addressed in part 23. Information that will enable the flight crew to plan flight operations that will maximize maneuvering capability during high altitude cruise flight and preclude intentional operations exceeding the boundary of perceptible buffet is necessary. Buffeting is considered to be a warning to the pilot that the airplane is approaching an undesirable and eventually dangerous flight regime, i.e., stall buffeting, high speed buffeting or maneuvering (load factor) buffeting. In straight flight, therefore, such buffet should not occur at any normal operating speed up to the maximum operating limit speed, V_{MO}/M_{MO}. Sufficient information must be provided to the crew so that buffet encounters during normal flight operations can be avoided. Special conditions are proposed that will require buffet onset tests and the inclusion of this information in the Airplane Flight Manual (AFM) to provide guidance to the crew.

High Speed Characteristics and Maximum Operating Limit Speed

The Cessna Model 525 will be operated at high altitudes and high speeds. The proposed operating envelope includes areas in which Mach effects, which have not been considered in part 23, may be significant. These conditions may degrade the ability of the flight crew to promptly recover from inadvertent excursions beyond maximum operating speeds. The ability to pull a positive load factor is needed to assure, during recovery from upset, that the airplane speed does not continue to increase to a value where recovery may not be achievable by the average pilot or flight crew.

Additionally, to allow the aircraft designer to conservatively design to higher speeds than may be operationally required for the airplane, the concept of V_{DF}/M_{DF}, the highest demonstrated flight speed for the type design is appropriate for this airplane. This permits V_D/M_D, the design dive speed, to be higher than the speed actually required to be demonstrated in flight. Current standards in part 23 did not envisage this type of airplane and the associated high speed considerations. Accordingly, special conditions are proposed to allow determination of a maximum demonstrated flight speed and to relate the determination of V_{MO}/M_{MO} to this speed, V_{DF}/M_{DF}.

Airspeed Indicating System

To maintain a level of safety consistent with that applied to previous part 23 jet airplanes and to be consistent with the establishment of scheduled performance requirements, it is appropriate to establish applicable requirements for determining and providing airspeed indicating system calibration information. Additionally, it is appropriate to establish special conditions requiring protection of the pitot tube from malfunctions associated with icing conditions. Current standards in part 23 did not envisage this type of airplane and the associated airspeed indicating system requirements. Special conditions are proposed to establish airspeed indicating system calibration and pitot tube ice protection requirements applicable to normal category jet airplanes.

Static Pressure System

To maintain a level of safety consistent with that applied to previous part 23 jet airplanes and to be consistent with the establishment of scheduled performance requirements, it is appropriate to establish applicable requirements for providing static pressure system calibration information in the AFM. Since aircraft of this type are frequently equipped with devices to correct the altimeter indication, it is also appropirate to establish requirements to ensure the continued availability of altitude information when such a device malfunctions. Current standards in part 23 did not envisage this type of airplane and the associated static pressure system considerations. Special conditions to do this are proposed.

Minimum Crew

The Cessna Model 525 will operate at high altitudes and speeds and must be flown to a precise speed schedule to achieve required takeoff and landing distances. It employs operating considerations not envisaged in part 23 airworthiness standards. Therefore, it is appropriate to specify workload considerations. Special conditions are proposed to specify the items to be considered in workload determination evaluations used to determine the minimum required flight crew.

Operating Limitations and Operating Procedures

Previous certification and operational experience with jet powered airplanes of similar design in the normal category have shown that operating limitations appropriate to this type of airplane were not envisaged in part 23. Special conditions applicable to the establishment of operating procedures appropriate to this airplane are proposed.

To maintain a level of safety that is consistent with the requirements of the proposed special conditions for takeoff, takeoff speeds, takeoff path, takeoff distance, takeoff run, accelerate-stop distance, landing distance, and climb performance over the range of weights, altitudes, and temperatures approved for operation, it is appropriate to propose associated requirements that specify certain conditions that must be used in establishing operating limitations. Additionally, appropriate special conditions that implement these performance requirements are proposed.

Performance Information

Current standards in part 23 did not envisage this type of airplane and the associated performance considerations. To maintain a level of safety that is consistent with the proposed special conditions, it is appropriate to propose

associated requirements that specify the information that must be included in the AFM.

Airplane Flight Manual

To maintain a level of safety that is consistent with the proposed special conditions for operating procedures and performance information, it is appropriate to delete the option in the AFM requirements that allow operating procedures, performance information and loading information to be unapproved. A special condition is proposed to delete that option.

Airspeed Indicator

Current standards in part 23 did not envisage this type of airplane and the associated speed scheduling considerations. To maintain a level of safety that is consistent with the proposed special conditions for performance, including scheduled takeoff and landing indicator markings required by part 23 and to replace these markings with airspeed indicator markings consistent with the more complex performance requirements applicable to this airplane. Special conditions are proposed that specify the airspeed indicator markings applicable to these procedures.

Effects of Contamination on Natural Laminar Flow Airfoils

Airfoil configurations similar to the Cessna Model 525 have been found to have measurable degradations of handling qualities and performance when laminar flow was lost due to airfoil contamination. Tripping of the boundary layer could be caused from flight in precipitation conditions or by the presence of contaminations such as insects. If measurable effects are detected, it should be determined that the minimum flight characteristics standards continue to be met, and that any degradations to performance information are identified. This may be accomplished by a combination of analysis and testing. Current standards in part 23 did not envisage this type of airplane and the associated airfoil contamination considerations. Special conditions are proposed since existing regulations do not require these adverse effects to be evaluated.

Conclusion

In view of the design features discussed for the Model 525 airplane, the following special conditions are proposed. This action is not a rule of general applicability and affects only the model of airplane identified in these proposed special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions are as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

The Proposed Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes the following special condition as part of the type certification basis for the Cessna Model 525 airplane:

1. Cockpit Evacuation of Smoke

In the absence of specific requirements for evacuating smoke from the cockpit, the following applies: The ventilating air in the flight crew and passenger compartments must be free of harmful or hazardous concentrations of gases and vapors in normal operations and in the event of a reasonably probably failure or malfunctioning of the ventilation heating, pressurization or other system and equipment. If the accumulation of hazardous quantities of smoke in the cockpit area is reasonably probable, the evacuation of such smoke must be readily accomplished starting with full cockpit pressurization and without depressurizing beyond safe limits.

2. Protection of Electrical and Electronic Systems From Indirect Effects of Lightning

(a) Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to lightning.

(b) Each essential function of the system must be protected to ensure that the essential function can be recovered after the airplane has been exposed to lighting.

3. Protection of Electrical and Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

4. Electronic Flight Instrument Displays

In addition to, and instead of, the applicable airworthiness standards of part 23 and requirements to the contrary, for instruments, systems, and installations whose design incorporates electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument display or system, and/or system design functions that are determined to be required to continued safet flight and landing of the airplane, the following special conditions apply:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine whether the airplane is dependent upon its function for continued safe flight and landing and whether its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each system and each component identified by this examination upon which the airplane is dependent for proper functioning to ensure continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and examined to comply with the following requirements:

(1) It must be shown that there will be no single failure or probable combination of failures, under any foreseeable operating condition, that would prevent the continued safe flight and landing of the airplane, or it must be shown that such failures are extremely improbable.

(2) It must be shown that there will be no single failure or probable combination of failures, under any foreseeable operating condition, that would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, or it must be shown that such failures are improbable.

(3) Warning information must be provided to alert the crew to unsafe system operating conditions and to enable them to take appropriate corrective action. Systems, controls, and associated monitoring and warning means must be designed to minimize initiation of crew action that would create additional hazards.

(4) Compliance with the requirements of these special conditions may be shown by analysis and, where necessary, by appropriate ground, flight,

or simulator tests. The analysis must consider:

(i) Modes of failures, including malfunction and damage from foreseeable sources;

(ii) The probability of multiple failures, and undetected faults;

(iii) The resulting effects on the airplane and occupants, considering the state of flight and operating conditions; and

(iv) The crew warning cues, corrective action required, and the capability of detecting faults.

(5) Numerical analysis may be used to support the engineering examination.

(b) Electronic display indicators, including those incorporating more than one function, may be installed instead of mechanical or electromechanical instruments if, during normal modes of operation:

(1) The electronic display indicators:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight;

(ii) Do not inhibit the primary display of attitude, altitude, or airspeed; and

(iii) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units.

(2) The electronic display indicators, including their systems and installations, are designed so that one display of information essential to safety and successful completion of the flight remains available to the pilot, without need for immediate action by any crewmember for continued safe operation, after any single failure or probable combination of failures that is not shown to comply with paragraph (a)(1) of this special condition.

5. Thrust Attenuating Systems

Thrust attenuating systems must be designed and installed so that no unsafe condition will result during normal operation of the systems, or from any failure (or reasonably likely combination of failures) of the thrust attenuation systems under any anticipated condition of operation of the airplane, including ground operation. Failure of structural elements need not be considered if the probability of this kind of failure is extremely remote.

6. Engine Fire Extinguishing System

(a) Fire extinguishing systems must be installed and compliance must be shown with the following:

(1) Except for combustor, turbine, and tailpipe sections of turbine-engine installations that contain lines or components carrying flammable fluids for which a fire originating in these sections can be controllable, a fire extinguisher system must serve each engine compartment.

(2) The fire extinguishing system, the quantity of the extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires.

(3) The fire extinguishing system for a nacelle must be able to simultaneously protect each compartment of the nacelle for which protection is provided.

(b) Fire extinguishing agents must meet the following requirements:

(1) Be capable of extinguishing flames emanating from any burning of fluids or other combustible materials in the area protected by the fire extinguishing system.

(2) Have thermal stability over the temperature range likely to be experienced in the compartment in which they are stored; and

(3) If any toxic extinguishing agent is used, provisions must be made to prevent harmful concentrations of fluid from entering any personnel compartment even though a defect may exist in the extinguishing system.

(c) Fire extinguishing agent containers must meet the following requirements:

(1) Have a pressure relief to prevent bursting of the container by excessive internal pressures.

(2) The discharge end of each discharge line from a pressure relief connection must be located so the discharge of the fire extinguishing agent would not damage the airplane. The line must also be located or protected to prevent clogging caused by ice or other foreign matter.

(3) A means must be provided for each fire extinguishing agent container to indicate that the container has discharged or that the charging pressure is below the established minimum necessary for proper functioning.

(4) The temperature of each container must be maintained, under intended operating conditions, to prevent the pressure in the container from falling below that necessary to provide an adequate rate of discharge, or rising high enough to cause premature discharge; and

(5) If a pyrotechnic capsule is used to discharge the fire extinguishing agent, each container must be installed so that temperature conditions will not cause hazardous deterioration of the pyrotechnic capsule.

(d) Fire extinguisher system materials must meet the following requirements:

(1) No material in any fire extinguishing system may react chemically with any extinguishing agent so as to create a hazard; and

(2) Each system component in an engine compartment must be fireproof.

7. Performance: General

In addition to the requirements of § 23.45, the following apply:

(a) Unless otherwise prescribed, the applicant must select the takeoff, en route, approach, and landing configurations for the airplane.

(b) The airplane configurations may vary with weight, altitude, and temperature, to the extent they are compatible with the operating procedures required by paragraph (c) of this special condition.

(c) Unless otherwise prescribed, in determining the accelerate-stop distances, takeoff of flight paths, takeoff distances, and landing distances, changes in the airplane's configuration, speed, power, and thrust, must be made in accordance with procedures established by the applicant for operation in service.

(d) Procedures for the execution of balked landings and missed approaches associated with the conditions prescribed in special conditions 14 and 16 must be established.

(e) The procedures established under paragraphs (a), (b), and (d) of this special condition must:

(1) Be able to be consistently executed in service by crews of average skill;

(2) Use methods or devices that are safe and reliable; and

(3) Include allowance for any time delays, in the execution of the procedures, that may reasonably be expected in service.

8. Takeoff

Instead of complying with § 23.51, the following apply:

(a) The takeoff speeds described in special condition 9, the accelerate-stop distance described in special condition 10, the takeoff path described in special condition 11, and the takeoff distance and takeoff run described in special condition 12 must be determined:

(1) At each weight, altitude, and ambient temperature within the operational limits selected by the applicant; and

(2) In the selected configuration for takeoff.

(b) No takeoff made to determine the data required by this special condition may require exceptional piloting skill or alertness.

(c) The takeoff data must be based on a smooth, dry, hard-surfaced runway.

(d) The takeoff data must include, within the established operational limits of the airplane, the following operational correction factors:

(1) Not more than 50 percent of nominal wind components along the

takeoff path opposite to the direction of takeoff, and not less than 150 percent of nominal wind components along the takeoff path in the direction of takeoff.

(2) Effective runway gradients.

9. Takeoff Speeds

Instead of complying with § 23.53, the following apply:

(a) V_1 must be established in relation to V_{EF} as follows:

(1) V_{EF} is the airspeed at which the critical engine is assumed to fail. V_{EF} must be selected by the applicant, but may not be less than V_{MCG} determined under special condition 18.

(2) V_1, in terms of airspeed, is the takeoff decision speed selected by the applicant; however, V_1 may not be less than V_{EF} plus the speed gained with the critical engine inoperative during the time interval between the instant at which the critical engine fails and the instant at which the pilot recognizes and reacts to the engine failure, as indicated by the pilot's application of the first retarding means during the accelerate-stop test.

(b) V_2 min, in terms of airspeed, may not be less than:

(1) 1.2 V_{S1}.

(2) 1.10 time V_{MC} established under § 23.149.

(c) V_2, in terms of airspeed, must be selected by the applicant to provide at least the radient of climb required by special condition 14 (b) but may not be less than:

(1) V_2 min; and

(2) V_R plus the speed increment attained (in accordance with special condition 11) before reaching a height of 35 feet above the takeoff surface.

(d) V_{MU} is the airspeed at, and above, which the airplane can safely lift off the ground and continue the takeoff. V_{MU} speeds must be selected by the applicant throughout the range of thrust-to-weight ratios to be certified. These speeds may be established from free-air data if these data are verified by ground takeoff tests.

(e) V_R, in terms of airspeed, must be selected in accordnace with the conditions of subparagraphs (1) through (4) of this section:

(1) V_R may not be less than:

(i) V_1;

(ii) 105 percent of V_{MC};

(iii) The speed (determined in accordance with special condition 11(c)(2)) that allows reaching V_2 before reaching a height of 35 feet above the takeoff surface; or

(iv) A speed that, if the airplane is rotated at its maximum practicable rate, will result in a V_{LOF} of not less than 110 percent of V_{MU} in the all-engines-operating condition and not less than 105 percent of V_{MU} determined at the thrust-to-weight ratio corresponding to the one-engine-inoperative condition.

(2) For any given set of conditions (such as weight, configuration, and temperature), a single value of V_R, obtained in accordance with this section, must be used to show compliance with both the one-engine-inoperative and the all-engines-operating takeoff provisions.

(3) If must be shown that the one-engine-inoperative takeoff distance, using a rotation speed of 5 knots less than V_R, established in accordance with subparagraphs (1) and (2) of this section, does not exceed the corresponding one-engine-inoperative takeoff distance using the established V_R. The takeoff distances must be determined in accordance with special condition 12(a)(1).

(4) Reasonably expected variations in service from the established takeoff procedures for the operation of the airplane (such as over-rotation of the airplane and out-of-trim conditions) may not result in unsafe flight characteristics or in marked increases in the scheduled takeoff distances established in accordance with special condition 12.

(f) V_{LOF} is the airspeed at which the airplane first becomes airborne.

10. Accelerate-Stop Distance

In the absence of specific accelerate-stop distance requirements, the following apply:

(a) The accelerate-stop distance is the sum of the distances necessary to:

(1) Accelerate the airplane from a standing start to V_{EF} with all engines operating;

(2) Accelerate the airplane from V_{EF} to V_1, assuming that the critical engine fails at V_{EF}; and

(3) Come to a full stop form the point at which V_1 is reached assuming that, in the case of engine failure, the pilot has decided to stop as indicated by application of the first retarding means at the speed V_1.

(b) Means other than wheel brakes may be used to determine the accelerate-stop distance if that means:

(1) Is safe and reliable;

(2) Is used so that consistent results can be expected under normal operating conditions; and

(3) Is such that exceptional skill is not required to control the airplane.

(c) The landing gear must remain extended throughout the accelerate-stop distance.

11. Takeoff Path

In the absence of specific takeoff path requirements, the following apply:

(a) The takeoff path extends from a standing start to a point in the takeoff at which the airplane is 1,500 feet above the takeoff surface, or at which the transition from the takeoff to the en route configuration is completed and a speed is reached at which compliance with special condition 14(c) is shown, whichever point is higher. In addition:

(1) The takeoff path must be based on procedures prescribed in special condition 7.

(2) The airplane must be accelerated on the ground to V_{EF}, at which point the critical engine must be made inoperative and remain inoperative for the rest of the takeoff; and

(3) After reaching V_{EF}, the airplane must be accelerated to V_2.

(b) During the acceleration to speed V_2, the nose gear may be raised off the ground at a speed not less than V_R. However, landing gear retraction may not be begun until the airplane is airborne.

(c) During the takeoff path determination, in accordance with paragraphs (a) and (b) of this section:

(1) The slope of the airborne part of the takeoff path must be positive at each point;

(2) The airplane must reach V_2 before it is 35 feet above the takeoff surface and must continue at a speed as close as practical to, but not less than, V_2 until it is 400 feet above the takeoff surface;

(3) At each point along the takeoff path, starting at the point at which the airplane reaches 400 feet above the takeoff surface, the available gradient of climb may not be less than 1.2 percent;

(4) Except for gear retraction, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

(d) The takeoff path must be determined by a continuous demonstrated takeoff or by synthesis from segments. If the takeoff path is determined by the segmental method:

(1) The segments must be clearly defined and must be related to the distinct changes in the configuration, speed, and power or thrust;

(2) The weight of the airplane, the configuration, and the power or thrust must be constant throughout each segment and must correspond to the most critical condition prevailing in the segment;

(3) The flight path must be based on the airplane's performance without ground effect; and

(4) The takeoff path data must be checked by continuous demonstrated takeoffs, up to the point at which the

airplane is out of ground effect and its speed is stabilized, to ensure that the path is conservative relative to the continuous path. The airplane is considered to be out of the ground effect when it reaches a height equal to its wing span.

12. Takeoff Distance and Takeoff Run

In the absence of specific takeoff distance and takeoff run requirements, the following apply:

(a) Takeoff distance is the greater of:

(1) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, determined under special condition 11; or

(2) 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, as determined by a procedure consistent with special condition 11.

(b) If the takeoff distance includes a clear way, the takeoff run is the greater of:

(1) The horizontal distance along the takeoff path from the start of the takeoff to a point equidistant between the point at which V_{LOF} is reached and the point at which the airplane is 35 feet above the takeoff surface, as determined under special condition 11.

(2) 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to a point equidistant between the point at which V_{LOF} is reached and the point at which the airplane is 35 feet above the takeoff surface, as determined by a procedure consistent with special condition 11.

13. Takeoff Flight Path

In the absence of specific takeoff flight path requirements, the following apply:

(a) The takeoff flight path begins 35 feet above the takeoff surface at the end of the takeoff distance determined in accordance with special condition 12.

(b) The net takeoff flight path data must be determined so that they represent the actual takeoff flight paths (determined in accordance with special condition 11 and with paragraph (a) of this special condition) reduced at each point by a gradient of climb equal to 0.8 percent.

(c) The prescribed reduction in climb gradient may be applied as an equivalent reduction in acceleration along that part of the takeoff flight path at which the airplane is accelerated in level flight.

14. Climb: One Engine Inoperative

Instead of compliance with § 23.67, the following apply:

(a) Takeoff; landing gear extended. In the critical takeoff configuration existing along the flight path (between the points at which the airplane reaches V_{LOF} and at which the landing gear is fully retracted) and in the configuration used in special condition 11 without ground effect, unless there is a more critical power operating condition existing later along the flight path before the point at which the landing gear is fully retracted, steady gradient of climb must be positive at V_{LOF}, and with:

(1) The critical engine inoperative and the remaining engine at the power or thrust available when retraction of the landing gear is begun in accordance with special condition 11 and

(2) The weight equal to the weight existing when retraction of the landing gear is begun, determined under special condition 11.

(b) Takeoff; landing gear retracted. In the takeoff configuration existing at the point of the flight path at which the landing gear is fully retracted and in the configuration used in special condition 11 without ground effect, the steady gradient of climb may not be less than 2.4 percent at V_2, and with:

(1) The critical engine inoperative, the remaining engine at the takeoff power or thrust available at the time the landing gear is fully retracted, determined under special condition 11 unless there is a more critical power operating condition existing later along the flight path but before the point where the airplane reaches a height of 400 feet above the takeoff surface; and

(2) The weight equal to the weight existing when the airplane's landing gear is fully retracted, determined under special condition 11.

(c) Final takeoff. In the en route configuration at the end of the takeoff path, determined in accordance with special condition 11 the steady gradient of climb may not be less than 1.2 percent at not less than 1.25 V_S, and with:

(1) The critical engine inoperative and the remaining engine at the available maximum continuous power or thrust; and

(2) The weight equal to the weight existing at the end of the takeoff path, determined under special condition 11.

(d) Approach. In the approach configuration corresponding to the normal all-engines-operating procedure in which V_S for this configuration does not exceed 110 percent of the V_S for the related landing configuration, the steady gradient of climb may not be less than 2.1 percent with:

(1) The critical engine inoperative, and the remaining engine at the available takeoff power or thrust;

(2) The maximum landing weight; and

(3) The climb speed established in connection with normal landing procedures, but not exceeding 1.5 V_S.

15. Landing

Instead of compliance with § 23.75, the following apply:

(a) The horizontal distance necessary to land and to come to a complete stop from a point 50 feet above the landing surface must be determined (for each weight, altitude, temperature and wind within the operational limits established by the applicant for the airplane), as follows:

(1) The airplane must be in the landing configuration.

(2) A steady approach at a gradient of descent not greater than 5.2 percent (3 degrees), with an airspeed of not less than 1.3 V_S, must be maintained down to the 50-foot height.

(3) Changes in configuration, power or thrust, and speed, must be made in accordance with the established procedures for service operation.

(4) The landing must be made without excessive vertical acceleration, tendency to bounce, nose over, ground loop or porpoise.

(5) The landings may not require exceptional piloting skill or alertness.

(6) It must be shown that a safe transition to the balked landing conditions of special condition 16 can be made from the conditions that exist at the 50-foot height.

(b) The landing distance must be determined on a level, smooth, dry, hard-surfaced runway. In addition:

(1) The pressures on the wheel braking systems may not exceed those specified by the brake manufacturer;

(2) The brakes may not be used so as to cause excessive wear of brakes or tires; and

(3) Means other than wheel brakes may be used if that means:

(i) Is safe and reliable;

(ii) Is used so that consistent results can be expected in service; and

(iii) Is such that exceptional skill is not required to control the airplane.

(c) The landing distance date must include correction factors for not more than 50 percent of the nominal wind components along the landing path opposite to the direction of landing and not less than 150 percent of the nominal wind components along the landing path in the direction of landing.

(d) If any device is used that depends on the operation of any engine, and if the landing distance would be

noticeably increased when a landing is made with that engine inoperative, the landing distance must be determined with that engine inoperative unless the use of compensating means will result in a landing distance not more than that with each engine operating.

16. Balked Landing

Instead of compliance with § 23.77, the following apply: In the landing configuration, the steady gradient of climb may not be less than 3.2 percent, with:

(a) The engines at the power or thrust that is available eight seconds after initiation of movement of the power or thrust controls from the minimum flight idle to the takeoff position; and

(b) A climb speed of not more than 1.3 V_{S1}.

17. Climb: General

In the absence of specific general climb requirements, the following applies:

Compliance with the requirements of special conditions 14 and 16 must be shown at each weight, altitude, and ambient temperature within the operational limits established for the airplane and with the most unfavorable center of gravity for each configuration.

18. Minimum Control Speed

In addition to the requirements of § 23.149, the following apply:

(a) In establishing the minimum control speed required by this special condition, the method used to simulate critical engine failure must represent the most critical mode of powerplant failure with respect to controllability expected in service.

(b) V_{MCG}, the minimum control speed on the ground, is the calibrated airspeed during the takeoff run (when the critical engine is suddenly made inoperative) at which it is possible to recover control of the airplane with the use of primary aerodynamic controls alone (without the use of nose-wheel steering) to enable the takeoff to be safely continued normal piloting skill and rudder control forces not exceeding 150 pounds. In the determination of V_{MCG}, assuming that the path of the airplane accelerating with all engines operating is along the center line of the runway, the airplane's path from the point at which the critical engine is made inoperative to the point at which recovery to a direction parallel to the center line is completed may not deviate more than 30 feet laterally from the center line at any point. V_{MCG} must be established with:

(1) The airplane in each takeoff configuration or, at the option of the applicant, in the most critical takeoff configuration;

(2) Maximum available takeoff power or thrust on the operating engine;

(3) The most unfavorable center of gravity;

(4) The airplane trimmed for takeoff (all engines operating); and

(5) The most unfavorable weight in the range of takeoff weights.

19. Trim

Instead of compliance with § 23.161, the following apply:

(a) General. Each airplane must meet the trim requirements of this special condition after being trimmed, and without further pressure upon, or movement of, the primary controls or their corresponding trim controls by the pilot or the automatic pilot.

(b) Lateral and directional trim. The airplane must maintain lateral and directional trim with the most adverse lateral displacement of the center of gravity within the relevant operating limitations during normally expected conditions of operation (including operation at any speed from 1.4 V_{S1} to V_{MO}/M_{MO}).

(c) Longitudinal trim. The airplane must maintain longitudinal trim during:

(1) A climb with maximum continuous power at a speed not more than 1.4 V_{S1}, with the landing gear retracted, and the flaps

(i) retracted, and

(ii) in the takeoff position.

(2) A power approach with a 3 degree angle of descent, the landing gear extended, and with:

(i) The wing flaps retracted and at a speed of 1.4 V_{S1}; and

(ii) The applicable airspeed and flap position used in showing compliance with special condition 15.

(3) Level flight at any speed from 1.4 V_{S1} to V_{MO}/M_{MO}, with the landing gear and flaps retracted, and from 1.4 V_{S1} to V_{LE} with the landing gear extended.

(d) Longitudinal, directional, and lateral trim. The airplane must maintain longitudinal, directional, and lateral trim (and for the lateral trim, the angle of bank may not exceed five degrees) at 1.4 V_{S1} during climbing flight with:

(1) The critical engine inoperative;

(2) The remaining engine at maximum continuous power or thrust; and

(3) The landing gear and flaps retracted.

20. Static Longitudinal Stability

Instead of compliance with § 23.173 (b) and (c), the following apply:

(a) The airspeed must return to within the tolerances specified when the control force is slowly released at any speed within the speed range specified in § 23.173(a). The applicable tolerances are:

(1) The airspeed must return to within plus or minus 10 percent of the original trim airspeed; and

(2) The airspeed must return to within plus or minus 7.5 percent of the original trim airspeed for the cruising condition specified in § 23.175(b) and special condition 21.

(b) The average gradient of the stable slope of the stick force versus speed curve may not be less than 1 pound for each 6 knots.

21. Demonstration of Static Longitudinal Stability

Instead of compliance with § 23.175(b)(2), the following apply:

(a) The stick force curve must have a stable slope at all speeds within a range that is the greater of 15 percent of the trim speed plus the resulting free return speed range or 50 knots plus the resulting free return speed range, above and below the trim speed, except that the speed range need not include speeds less than 1.4 V_{S1}, nor speeds greater than V_{FC}/M_{FC}, nor speeds greater that require a stick force ore than 50 pounds, with:

(1) The wing flaps retracted;

(2) The center of gravity in the most adverse position;

(3) The most critical weight between the maximum takeoff and maximum landing weights;

(4) The maximum cruising power or thrust selected by the applicant as an operating limitation (see § 23.1521), except that the power or thrust need not exceed that required at V_{MO}/M_{MO}; and

(5) The airplane trimmed for level flight at the power or thrust required in subparagraph (4) of this section.

22. Static Directional and Lateral Stability

Instead of compliance with § 23.177, the following apply:

(a) The static directional stability (as shown by the tendency to recover from a skid with the rudder free) must be positive for any landing gear and flap position, and for any symmetrical power condition at speeds from 1.2 V_{S1} up to V_{FE}, V_{LE}, or V_{FC}/M_{FC} (as appropriate).

(b) The static lateral stability (as shown by the tendency to raise the low wing in a sideslip with the aileron controls free and for any landing gear position and flap position, and for any symmetrical power conditions) may not be negative at any airspeed (except speeds higher than V_{FE} or V_{LE}, when appropriate) in the following airspeed ranges:

(1) From 1.2 V_{S1} to V_{MO}/M_{MO}.

(2) From V_{MO}/M_{MO} to V_{FC}/M_{FC} unless the Administrator finds that the divergence is:

(i) Gradual;

(ii) Easily recognizable by the pilot; and

(iii) Easily controllable by the pilot.

(c) In straight, steady, sideslips (unaccelerated forward slips) the aileron and rudder control movements and forces must be substantially proportional to the angle of the sideslip. The factor or proportionality must lie between limits found necessary for safe operation throughout the range of sideslip angles appropriate to the operation of the airplane. At greater angles, up to the angle at which full rudder control is used or when a rudder pedal force of 180 pounds is obtained, the rudder pedal forces may not reverse and increased rudder deflection must produce increased angles of sideslip. Unless the airplane has a yaw indicator, there must be enough bank accompanying sideslipping to clearly indicate any departure from steady unyawed flight.

23. Wings Level Stall

Instead of compliance with § 23.201 (e) and (f), the following apply:

(a) The roll occurring between the stall and the completion of the recovery may not exceed approximately 20 degrees.

(b) Compliance with the requirements of this section must be shown within:

(1) Power—

(i) Off; and

(ii) The thrust necessary to maintain level flight at 1.6 V_{S1} (where V_{S1} corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(2) Flaps and landing gear in any likely combination of positions.

(3) Trim at 1.4 V_{s1} or at the minimum trim speed, whichever is higher.

(4) Representative weights within the range for which certification is requested.

(5) The most adverse center of gravity for recovery.

24. Turning Flight and Accelerated Stalls

Instead of compliance with § 23.203(c), the following apply: Compliance with the requirements of this section must be shown with:

(a) The thrust necessary to maintain level flight at 1.6 V_{S1} (where V_{S1} corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(b) Flaps and landing gear in any likely combination of positions.

(c) Trim at 1.4 V_{S1} or at the minimum trim speed, whichever is higher.

(d) Representative weights within the range for which certification is requested.

(e) The most adverse center of gravity for recovery.

25. Stall Warning

Instead of compliance with § 23.207(c), the following apply:

(a) The stall warning must begin at a speed exceeding the stalling speed by not less than five knots. For stalls where the pitch control reaches the stop without uncontrollable downward pitching motion (i.e. minimum steady speed), a lesser margin is acceptable if the stall warning has enough clarity, duration, distinctiveness or similar properties.

(b) The stall warning margin must not be above a speed at which warning would become objectionable in the normal operating range (i.e., adequate maneuvering capabililty exists prior to stall warning to conduct normal maneuvers).

26. Vibration and Buffeting

Instead of compliance with § 23.251, the following apply:

(a) The airplane must be designed to withstand any vibration and buffeting that might occur in any likely operating condition. This must be shown by calculations, resonance tests, or other tests found necessary by the Administrator.

(b) Each part of the airplane must be shown in flight to be free from excessive vibration, under any appropriate speed and power or thrust conditions up to at least the minimum value of V_D allowed in § 23.335. The maximum speeds shown must be used in establishing the operating limitations of the airplane in accordance with special condition 30. In addition, it must be shown by analysis or tests that the airplane is free from such vibration that would prevent safe flight under the conditions in § 23.629(f).

(c) Except as provided in paragraph (d) of this special condition, there may be no buffeting condition, in normal flight, including configuration changes during cruise, severe enough to interfere with the control of the airplane, to cause excessive fatigue to the crew, or to cause structural damage. Stall warning buffeting within these limits is allowable.

(d) There may be no perceptible buffeting condition in the cruise configuration in straight flight at any speed up to V_{MO}/M_{MO}, except that stall warning buffeting is allowable.

(e) With the airplane in the cruise configuration, the positive maneuvering load factors at which the onset of perceptible buffeting occurs must be determined for the ranges of airspeed or Mach number, weight, and altitude for which the airplane is to be certified. The envelopes of load factor, speed, altitude, and weight must provide a sufficient range of speeds and load factors for normal operations. Probable inadvertent excursions beyond the boundaries of the buffet onset envelopes may not result in unsafe conditions.

27. High Speed Characteristics

Instead of compliance with § 23.253, the following apply:

(a) Speed increase and recovery characteristics. The following speed increase and recovery characteristics must be met:

(1) Operating conditions and characteristics likely to cause inadvertent speed increases (including upsets in pitch and roll) must be simulated with the airplane trimmed at any likely cruise speed to V_{MO}/M_{MO}. These conditions and characteristics include gust upsets, inadvertent control movements, low stick force gradient in relation to control friction, passenger movement, leveling off from climb, and descent from Mach to airspeed limit altitudes.

(2) Allowing for pilot reaction time after effective inherent or artificial speed warning occurs, it must be shown that the airplane can be recovered to a normal attitude and its speed reduced to V_{MO}/M_{MO} without:

(i) Exceptional piloting strength or skill;

(ii) Exceeding V_D/M_D or V_{DF}/M_{DF}, or the structural limitations; and

(iii) Buffeting that would impair the pilot's ability to read the instruments or control the airplane for recovery.

(3) There may be no control reversal about any axis at any speed up to V_{DF}/M_{DF}. Any reversal of elevator control force or tendency of the airplane to pitch, roll, or yaw must be mild and readily controllable, using normal piloting techniques.

(b) Maximum speed for stability characteristics, V_{FC}/M_{FC}. V_{FC}/M_{FC} is the maximum at which the requirements of special conditions 21 and 22 must be met with flaps and landing gear retracted. It may not be less than a speed midway between V_{MO}/M_{MO} and V_{VD}/M_{DF} except that, for altitudes where Mach number is the limiting factor, M_{FC} need not exceed the Mach number at which effective speed warning occurs.

28. Airspeed Indicating System

In addition to the requirements of § 23.1323, the following apply:

(a) The airspeed indicating system must be calibrated to determine the system error in flight and during the accelerate-takeoff ground run. The ground run calibration must be determined:

(1) From 0.8 of the minimum value of V_1 to the maximum value of V_2, considering the approved ranges of altitude and weight; and

(2) With the flaps and power settings corresponding to the values determined in the establishment of the takeoff path under special condition 13, assuming that the critical engine fails at the minimum value of V_1.

(b) Each system must have a heated pitot tube or an equivalent means of preventing malfunction due to icing.

(c) The information showing the relationship between IAS and CAS, determined in accordance with paragraph (a) of this special condition, must be shown in the Airplane Flight Manual.

29. Static Pressure System

In addition to the requirements of § 23.1325, the following apply:

(a) The altimeter system calibration required by § 23.1325(e) must be shown in the Airplane Flight Manual.

(b) If an altimeter system is fitted with a device that provides corrections to the altimeter indication, the device must be designed and installed in such manner that it can be bypassed when it malfunctions, unless an alternate altimeter system is provided. Each correction device must be fitted with a means for indicating the occurrence of reasonably probable malfunctions, including failure, to the flight crew. The indicating means must be effective for any cockpit lighting condition likely to occur.

30. Maximum Operating Limit Speed

Instead of compliance with § 23.1505(c), the following applies:

The maximum operating limit speed (V_{MO}/M_{MO} airspeed or Mach number, whichever is critical at a particular altitude) is a speed that may not be deliberately exceeded in any regime of flight (climb, cruise, or descent), unless a higher speed is authorized for flight test or pilot training operations. V_{MO}/M_{MO} must be established so that it is not greater than the design cruising speed V_C and so that it is sufficiently below V_D/M_D or V_{DF}/M_{DF}, to make it highly improbable that the latter speeds will be inadvertently exceeded in operations. The speed margin between V_{MO}/M_{MO} and V_D/M_D or V_{DF}/M_{DF} may not be less than that determined under § 23.335(b) or found necessary during the flight tests conducted under special condition 27.

31. Minimum Flight Crew

Instead of compliance with § 23.1523, the following apply:

The minimum flight crew must be established so that it is sufficient for safe operation considering:

(a) The workload on individual crewmembers and each crewmember workload determination must consider the following:

(1) Flight path control,

(2) Collision avoidance,

(3) Navigation,

(4) Communications,

(5) Operation and monitoring of all essential airplane systems,

(6) Command decisions, and

(7) The accessibility and ease of operation of necessary controls by the appropriate crewmember during all normal and emergency operations when at the crewmember flight stations.

(b) The accessibility and ease of operation of necessary controls by the appropriate crewmember; and

(c) The kinds of operation authorized under § 23.1525.

32. Operating Limitations

Instead of the requirements of § 23.1583, the following apply:

(a) Airspeed limitations. The following airspeed limitations and any other airspeed limitations necessary for safe operation must be furnished:

(1) The maximum operating limit speed V_{MO}/M_{MO} and a statement that this speed limit may not be deliberately exceeded in any regime of flight (climb, cruise, or descent) unless a higher speed is authorized for flight test or pilot training.

(2) If an airspeed limitation is based upon compressibility effects, a statement to this effect and information as to any symptoms, the probable behavior of the airplane, and the recommended recovery procedures.

(3) The maneuvering speed V_A and a statement that full application of rudder and aileron controls, as well as maneuvers that involve angels of attack near the stall, should be confined to speeds below this value.

(4) The maximum speed for flap extension V_{FE} for the takeoff, approach, and landing positions.

(5) The landing gear operating speed or speeds, V_{LO}.

(6) The landing gear extended speed, V_{LE}, if greater than V_{LO}, and a statement that this is the maximum speed at which the airplane can be safely flown with the landing gear extended.

(b) Powerplant limitations. The following information must be furnished.

(1) Limitations required by § 23.1521.

(2) Explanation of the limitations, when appropriate.

(3) Information necessary for marketing the instruments, required by § 23.1549 through § 23.1553.

(c) Weight and loading distribution. The weight and extreme forward and aft center of gravity limits required by §§ 23.25 and 23.1589 must be furnished in the Airplane Flight Manual. In addition, all of the following information must be presented either in the Airplane Flight Manual or in a separate weight and balance control and loading document, which is incorporated by reference in the Airplane Flight Manual:

(1) The condition of the airplane and the items included in the empty weight, as defined in accordance with § 23.29.

(2) Loading instructions necessary to ensure loading of the airplane within the weight and center of gravity limits, and to maintain the loading within these limits in flight.

(d) Maneuvers. Acrobatic maneuvers, including spins, are unauthorized.

(e) Maneuvering flight load factors. The positive maneuvering limit load factors for which the structure is proven, described in terms of accelerations, and a statement that these accelerations limit the angle of bank in turns and limit the severity of pull-up maneuvers, must be furnished.

(f) Flight crew. The number and functions of the minimum flight crew must be furnished.

(g) Kinds of operation. The kinds of operation (such as VFR, IFR, day, or night) in which the airplane may or may not be used, and the meteorological conditions (such as icing conditions) under which it may or may not be used, must be furnished. Any installed equipment that affects any operating limitation must be listed and identified as to operational function.

(h) Additional operating limitations must be established as follows:

(1) The maximum takeoff weights must be established as the weights at which compliance is shown with the applicable provisions of part 23 (including the takeoff climb provisions of special condition 14 (a) through (c) for altitudes and ambient temperatures).

(2) The maximum landing weights must be established as the weights at which compliance is shown with the applicable provisions of part 23 (including the approach climb and balked landing climb provisions of special conditions 14 and 16 for altitudes and ambient temperatures).

(3) The minimum takeoff distances must be established as the distances at which compliance is shown with the applicable provisions of part 23 (including the provisions of special conditions 10 and 12 for weights, altitudes, temperatures, wind components, and runway gradients).

(4) The extremes for variable factors (such as altitude, temperature, wind, and runway gradients) are those at which compliance with the applicable provision of part 23 is shown.

(i) Maximum operating altitude. The maximum altitude established under § 23.1527 must be furnished.

(j) Maximum passenger seating configuration. The maximum passenger seating configuration must be furnished.

(k) Maximum operating temperature. The maximum operating temperature established under § 23.1521 must be furnished.

33. Operating Procedures

Instead of the requirements of § 23.1585, the following applies:

(a) Information and instruction regarding the peculiarities or normal operations (including starting and warming the engines, taxiing, operation of wing flaps, landing gear, and the automatic pilot) must be furnished, together with recommended procedures for:

(1) Engine failure (including minimum speeds, trim, operation of the remaining engine, and operation of flaps);

(2) Restarting turbine engines in flight (including the effects of altitude);

(3) Fire, decompression, and similar emergencies;

(4) Use of ice protection equipment;

(5) Operation in turbulence (including recommended turbulence penetration airspeeds, flight peculiarities, and special control instructions);

(6) Procedures for transition from landing approach to balked landing climb; and

(7) The demonstrated crosswind velocity and procedures and information pertinent to operation of the airplane in crosswinds.

(b) Information identifying each operating condition in which the fuel system independence prescribed in §23.953 is necessary for safety must be furnished, together with instructions for placing the fuel system in a configuration used to show compliance with that section.

(c) For each airplane, showing compliance with § 23.1353 (g)(2) or (g)(3), the operating procedures for disconnecting the battery from its charging source must be furnished.

(d) If the unusable fuel supply in any tank exceeds 5 percent of the tank capacity, or 1 gallon, whichever is greater, information must be furnished which indicates that, when the fuel quantity indicator reads "zero" in level flight, any fuel remaining in the fuel tank cannot be used safely in flight.

(e) Information on the total quantity of usable fuel for each fuel tank must be furnished.

(f) The buffet onset envelopes determined under special condition 24 must be furnished. The buffet onset envelopes presented may reflect the center of gravity at which the airplane is normally loaded during cruise if corrections for the effect of different center of gravity locations are furnished.

34. Performance Information

Instead of compliance with subparagraphs § 23.1587(a)(5), (a)(6), (a)(7), (a)(8), (c)(4), and (c)(5), the following apply:

(a) Each Airplane Flight Manual must contain the performance information computed under the applicable provisions of part 23 (including special conditions 8 through 17 for the weights, altitudes, temperatures, wind components, and runway gradients, as applicable) within the operational limits of the airplane, and must contain the following:

(1) The conditions under which the preformance information was obtained, including the speeds associated with the performance information;

(2) Procedures established under special condition 7 that are related to the limitations and information required by special condition 32 and by this special condition. These procedures must be in the form of guidance material, including any relevant limitations or information;

(3) An explanation of significant or unusual flight or ground handling characteristics of the airplane.

35. Airspeed Indicator

Instead of compliance with § 23.1545, the following applies:

The following markings must be made on each airspeed indicator:

A maximum allowable airspeed indication showing the variation of V_{MO}/M_{MO} with altitude or compressibility limitations (as appropriate), or a radial red line marking for V_{MO}/M_{MO} must be made at the lowest value of V_{MO}/M_{MO} established for any altitude up to the maximum operating altitude for the airplane.

36. Effects of Contamination on Natural Laminar Flow Airfoils

In the absence of specific requirements for airfoil contamination, airplane airfoil designs that have airfoil pressure gradient characteristics and smooth aerodynamic surfaces that may be capable of supporting natural laminar flow must comply with the following:

(a) It must be shown by tests, or analysis supported by tests, that the airplane complies with the requirements of §§ 23.141 through 23.253 and special conditions 19 through 27 with any airfoil contamination that would normally be encountered in serviced and that would cause significant adverse effects on the handling qualities of the airplanes resulting from the loss of laminar flow.

(b) Significant performance degradations identified as resulting from the loss of laminar flow must be provided as part of the information required by special conditions 33 and 34.

37. For the purpose of these special conditions, the following definitions apply:

(1) Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

(2) Essential Functions. Functions whose failure would contribute to or would cause a hazardous failure condition that would significantly impact the safety of the airplane or the ability of the flight crew to cope with adverse operating conditions.

38. Instead of complying with § 23.1581(b), the following applies:

Approved Information

a. Each part of the Airplane Flight Manual containing information prescribed in §§ 23.1583 through 23.1589 must be approved, segregated, identified and clearly distinguished from each unapproved part of that Airplane Flight Manual.

b. Each page of the Airplane Flight Manual containing information prescribed in this section must be of a type that is not easily erased, disfigured, or misplaced, and is capable of being inserted in a manual provided by the applicant, or in a folder, or in any other permanent binder.

Issued in Kansas City, Missouri on November 30, 1990.

Barry D. Clements,

Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-28953 Filed 12-10-90; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260-261, 262, 263, 264, 265, 266, 268, 270, and 271

[FRL-3868-1]

Waste Minimization Incentives

AGENCY: Environmental Protection Agency.

ACTION: Extension of a comment period for the notice and request for comment on desirable and feasible incentives to reduce or eliminate the generation hazardous wastes.

SUMMARY: On October 5, 1990 EPA published in the **Federal Register** (55 FR 40881) a "Notice and request for comment on desirable and feasible incentives to reduce or eliminate the generation of hazardous wastes," with the comment period ending on December 4, 1990. This notice extends the comment period to January 18, 1991.

DATES: EPA urges interested parties to comment on this notice in writing. Comments must be submitted on or before January 18, 1991.

ADDRESSES: All comments must be submitted in triplicate (original and two copies) to EPA RCRA Docket (room SE 201, mail code (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Place the docket number F-90-IRGP-FFFFF on your documents.

FOR FURTHER INFORMATION CONTACT: Contact: Manik Roy (703) 308-8402 or the RCRA Hotline, toll free at (800) 424-9346 or at (202) 382-3000.

Mary A. Gade,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 90-28962 Filed 12-10-90; 8:45 am]

BILLING CODE 90-28962

Notices

Federal Register
Vol. 55, No. 238
Tuesday, December 11, 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.

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 the Census.

Title: Quarterly Survey of the Finances of Public Employee Retirement Systems.

Form number(s): F-10.

Agency approval number: 0607-0143.

Type of request: Revision of a currently approved collection.

Burden: 362 hours.

Number of respondents: 91.

Avg hours per response: 1.

Needs and uses: This survey provides on a quarterly basis, nationwide data on the receipts, expenditures, and cash and security holdings of the 104 largest public-employee retirement systems. These 104 systems control billions of asset dollars and represent 90 percent of the total assets of all public employee retirement systems. The Census Bureau conducts this survey at the request of the Council of Economic Advisory and the Federal Reserve Board. Economists from these agencies, the Department of Treasury, the Bureau of Economic Analysis, and others use these data to monitor and analyze investment trends and to formulate governmental economic policies and investment decisions.

Affected public: State or local governments.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

OMB desk officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 5, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-28991 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-07-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 the Census.

Title: 1992 Census of Governments—Prelist Survey of Special Districts.

Form number(s): G-24.

Agency approval number: None.

Type of request: New collection.

Burden: 1,521 hours.

Number of respondents: 3,042.

Avg hours per response: 30 minutes.

Needs and uses: The Bureau of the Census will use the G-24 form to verify the existence of special governmental districts, obtain current addresses, and identify new districts for the 1992 Census of Governments. We will send computer listings of current special districts to officials in each of the 3,042 counties in the United States and ask county clerks or other officials to update the listings using the G-24 form. The Bureau needs an updated list of all special governmental districts to ensure complete coverage and a minimum number of postmaster returns and remailings in subsequent phases of the 1992 Census of Governments.

Affected public: State or local governments.

Frequency: Every five years.

Respondent's Obligation: Voluntary.

OMB desk officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 5, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-28992 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-588-401]

Calcium Hypochlorite From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative Review.

SUMMARY: On October 23, 1990 the Department of Commerce published the preliminary results of two administrative reviews of the antidumping duty order on calcium hypochlorite from Japan. The reviews cover two manufacturers/exporters of this merchandise to the United States and the periods April 1, 1988 through March 31, 1989 and April 1, 1989 through March 31, 1990.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: December 11, 1990.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On October 23, 1990, the Department of Commerce ("the Department") published in the **Federal Register** (55 FR 24748) the preliminary results of its

administrative reviews of the antidumping duty order on calcium hypochlorite from Japan (50 FR 15470, April 18, 1985). The Department has now completed the administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of the Reviews

Imports covered by these reviews are shipments of calcium hypochlorite from Japan. This merchandise is currently classifiable under HTS item number 2828.10.00.00. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the periods April 1, 1988 through March 31, 1989 and April 1, 1989 through March 31, 1990, and two manufacturers/exporters, Tohoku Tosoh Chemical Co., Ltd., and Nankai Chemical Industry Co., Ltd.

Final Results of Review

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as those presented in the preliminary results of review, and we determine that the following margins exist for the periods April 1, 1988 through March 31, 1989 and April 1, 1989 through March 31, 1990:

Manufacturer/ Exporter	Period	Margin (percent)
Tohoku Tosoh Chemical Co., Ltd.	04/01/88-03/31/89	*10.56
	04/01/89-03/31/90	*10.56
Nankai Chemical Industry Co., Ltd.	04/01/88-03/31/89	10.56
	04/01/89-03/31/90	10.56

* No shipments during the periods of review; margin from last review in which there were shipments.

The Department will instruct the Customs Service to assess antidumping duties at the above rates on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required. For any future entries of this merchandise from a new exporter, not covered in these administrative review, whose first shipment occurred after April 1, 1990, and who is unrelated to any reviewed firm, a cash deposit of 10.56 percent shall be required. For any shipments from the remaining known manufacturers/exporters not covered in this review, a cash deposit shall be required at the rates published in the last administrative review for those firms.

These deposit requirements are effective for all shipments of Japanese calcium hypochlorite entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with 19 U.S.C. 1675(a)(1), (c) and 19 CFR 353.22.

Dated: December 4, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-28993 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-703]

Granular Polytetrafluoroethylene Resin From Italy; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative Review.

SUMMARY: On October 10, 1990, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on granular polytetrafluoroethylene resin (PTFE) from Italy. The review covers one manufacturer/exporter of this merchandise to the United States and the period April 20, 1988 through July 31, 1989.

We gave interested parties an opportunity to comment on our preliminary results. We received comments from the respondent. Based on our analysis of those comments we have corrected certain clerical errors, and we have changed the final results from the preliminary results. The final margin is 20.79 percent.

EFFECTIVE DATE: December 11, 1990.

FOR FURTHER INFORMATION CONTACT: Simone Altfeld or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On October 10, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 41261) the preliminary results of its antidumping duty administrative review of the antidumping duty order on granular PTFE from Italy (53 FR 33163, August 30, 1988). We have now completed this administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of granular polytetrafluoroethylene resin, filled and unfilled, which during the period was provided for in Tariff Schedules of the United States (TSUS) item number 445.54, and is currently classifiable under Harmonized Tariff Schedules (HTS) item number 3904.61.90. Polytetrafluoroethylene dispersions in water and fine powders are not covered by this order. The TSUS and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/ exporter to the United States of Italian PTFE, Montefluos, and the period April 20, 1988 through July 1989.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received timely comments from Montefluos regarding clerical errors in the Department's calculations. We have corrected the following programming errors: the miscalculation of the value of the ESP offset and the inadvertent omission of a conversion from lira/kg. to lira/lb. in the calculation of differences in the merchandise.

Final Results of the Review

As a result of the correction of certain clerical errors, we have revised our preliminary results for Montefluos, and we determine the weighted-average margin to be:

Manufacturer/Exporter	Period	Margin (percent)
Montefluos, S.p.A.	04/20/88-07/31/89	20.79

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue

appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 20.79 percent shall be required. These deposit requirements are effective for all shipments of Italian granular PTFE resin, filled or unfilled, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 3, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-28994 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-057]

Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from one manufacturer/exporter and the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada. The review covers one manufacturer and/or exporter of this merchandise to the United States and the period January 1, 1989 through August 31, 1989. The review indicates the existence of dumping margins during the period

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 11, 1990.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-8312/3601.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 1989, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (54 FR 37496) of the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada (42 FR 41811, September 7, 1977). On September 28 and September 29, 1989, one manufacturer/exporter, Allatt Paving Division of Ingersoll-Rand Canada, Inc., and the petitioner, Blaw Knox, requested an administrative review of the antidumping finding. We initiated the review, covering the period January 1, 1989 through August 31, 1989, on October 25, 1989 (54 FR 43438). The Department is now conducting this review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act). The final results of the last administrative review in this case were published in the **Federal Register** on May 15, 1990 (55 FR 20175).

Scope of the Review

Imports covered by this review are shipments of replacement parts for self-propelled bituminous paving equipment, excluding attachments and parts for attachments. This merchandise is currently classifiable under HTS items 4016.93.10, 7315.11.00, 7315.89.50, 7315.90.00, 8336.50.00, 8479.99.00, 8481.20.00, 8482.10.10, 8483.90.90, 8539.29.20, 8544.20.00, 8544.41.00, 8544.51.80, 8544.60.20, and 9015.30.40. The HTS item numbers are provided for convenience and Customs purposes. The written description remain dispositive.

The review covers one exporter of this merchandise to the United States, Allatt Paving Division of Ingersoll-Rand (Allatt), and the period January 1, 1989 through August 31, 1989.

United States Price

In calculating United States price, the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and ESP were based on packed, f.o.b. prices to unrelated purchasers in the United States. We made adjustments, where applicable, for U.S. and foreign inland freight, U.S. duty, brokerage charges, and discounts. For ESP sales we also deducted commissions to unrelated parties, credit, and indirect selling expenses.

For end-user sales, we accounted for taxes imposed in Canada, but rebated or not collected by reason of the exportation of the merchandise to the United States, by adding imputed Canadian Federal sales taxes to the U.S. price pursuant to 19 U.S.C. 1677a(d)(1)(C). No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, we used home market price where sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Where sufficient quantities of such or similar merchandise were not sold in the home market or to third countries, we used constructed value in accordance with 19 U.S.C. 1677b(a)(2).

Home market price was based on the packed, ex-factory or delivered price to unrelated purchasers in the home market. Where applicable, we deducted discounts, inland freight, credit expenses, commissions to unrelated parties, and packing, and added U.S. packing. When making comparisons with PP sales we added U.S. credit expenses and commissions to unrelated parties. When making comparisons with ESP sales we also deducted indirect selling expenses from foreign market value in an amount not exceeding the indirect selling expenses incurred in the U.S. market. We also made circumstances-of-sale adjustments, where appropriate, pursuant to 19 U.S.C. 1677b(a)(4), in the amount of the difference in taxes between the Canadian and U.S. markets to ensure a tax-neutral margin.

For product codes where the respondent failed to provide any FMV information, we used best information available (BIA) to calculate FMV, which was the U.S. price of the subject merchandise plus 9.47 percent, the margin found in the last review for this company.

We calculated constructed value by adding material and fabrication costs, general expenses, profit, and U.S. packing. Since actual general expenses were greater than the statutory minimum of ten percent of the sum of materials and fabrication costs, we used actual general expenses. We used actual profit since it was above the statutory minimum.

No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison United States price to foreign market value, we preliminarily determine that the margin

for Allatt is 5.73 percent for the period January 1, 1989 through August 31, 1989.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice, and may request a hearing within 10 days of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs/written comments not later than 30 days after the date of publication. Rebuttal briefs, limited to issue raised in the case briefs, may be filed not later than 7 days after submission of the case briefs. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service will assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated anti dumping duties based on the above margin shall be required for Allatt. For any shipments from the remaining known manufacturers and/or exporters not covered in this review, as cash deposit shall be required at the rates published in the final results of the last administrative review for each of those firms. For any future entries of this merchandise from a new exporter not covered in this or in prior reviews, whose first shipment of covered merchandise occurred after August 31, 1989, and who is unrelated to the reviewed firm or any previously reviewed firm, a cash deposit of 5.73 percent shall be required. These deposit requirements are effective for all shipments of Canadian replacement parts for self-propelled bituminous paving equipment entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(1989).

Dated: December 4, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-28995 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-337-602]

Standard Carnations From Chile; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final reulsts of Antidumping Duty Administrative Review and intent to revoke in part.

SUMMARY: On October 22, 1990, the Department of Commerce published the revised preliminary results of its administrative review of the antidumping duty order on standard carnations from Chile. The review covers foru producers/exporters and the period November 3, 1986 through February 29, 1988.

We gave interested parties an opportunity to comment on our revised preliminary results. We received no comments. The final results are unchanged from those presented in the revised preliminary results of review.

EFFECTIVE DATE: December 11, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, telephone: (202) 5253.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 42615) the revised preliminary results of its administrative review of the antidumping duty order on standard carnations from Chile (52 FR 8939, March 20, 1987). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of standard carnations from Chile. During the review period such merchandise was classifiable under item 192.21 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item 0603.10.90. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review covers four producers/exporters of standard carnations from Chile to the United States and the period November 3, 1986 through February 29, 1988.

Final Results of Review

We invited interested parties to comment on the revised preliminary results. We received no comments. The final results are unchanged from those presented in the revised preliminary results of review, and we determine that the following margins exist for the period November 3, 1986 through February 29, 1988:

Producer/Exporter	Margin (percent)
Agricola Longotoma	28.78
Coexflor	0.00
Flores de Chile	0.04
Sociedad Agricola	0.00

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, as provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for shipments of standard carnations from Chile by these firms. Since the margin for Flores de Chile is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of antidumping duties on entries of standard carnations from Flores de Chile. For any future entries of this merchandise from a new exporter, not covered in this review, whose first shipments occurred after February 29, 1988 and who is unrelated to any reviewed firm, no cash deposit shall be required.

These cash deposit requirements are effective for all shipments of standard carnations from Chile, entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)) and 19 CFR 353.22 (1990).

Dated: December 4, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-28996 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-DS-M

Presbyterian University Hospital, et al., Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 90–197. *Applicant:* Presbyterian University Hospital, DeSoto at O'Hara Streets, Pittsburgh, PA 15213–2582. *Instrument:* Cell Transfer System, Model Quixcell 42. *Manufacturer:* Saxon Micro, United Kingdom. *Intended Use:* The instrument will be used for studies of human white blood cells infected with pathogenic viruses to discover whether viruses or bacteria are the causes of infection in certain white cells. *Application Received by Commissioner of Customs:* November 1, 1990.

Docket Number: 90–198. *Applicant:* Research Foundation of SUNY at Albany, AD–335, 1400 Washington Avenue, Albany, NY 12222. *Instrument:* Infrared Neon Gas Laser. *Manufacturer:* MPB Technologies Inc., Canada. *Intended Use:* The instrument will be used to measure gaseous hydrogen peroxide in the atmosphere at various locations seasons and times of the day. *Application Received by Commissioner of Customs:* November 2, 1990.

Docket Number: 90–199. *Applicant:* The Pennsylvania State University, 1600 Woodland Road, Abington, PA 19002. *Instrument:* Hi-Plan 2 Structures Apparatus Teaching Aid. *Manufacturer:* Hi-Tech Ltd., United Kingdom. *Intended Use:* The instrument will be used for educational purposes to demonstrate structural engineering principles to engineering and engineering technology students. *Application Received by Commissioner of Customs:* November 2, 1990.

Docket Number: 90–200. *Applicant:* University of California, Santa Barbara, Department of Electrical and Computer Engineering, Santa Barbara, CA 93106. *Instrument:* Metal-organic Chemical Vapor Deposition System. *Manufacturer:* Thomas Swan & Co., Ltd., United Kingdom. *Intended Use:* The instrument will be used for research in the following areas: Materials growth and processing, optoelectron integrated circuits and related components, high-speed devices and measurement techniques and optoelectronic computing. *Application Received by Commissioner of Customs:* November 6, 1990.

Docket Number: 90–201. *Applicant:* University of North Carolina at Chapel Hill, Purchasing Department, Chapel Hill, NC 27599–1100. *Instrument:* Spectrophotometer Accessory, RX–1000/S. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* The instrument is an accessory to an existing spectrofluorimeter used to study the calcium ion release process on a more physiological (10–1000 millisecond) time scale. *Application Received by Commissioner of Customs:* November 9, 1990.

Docket Number: 90–202. *Instrument:* Curie-Point Pyrolysis Head. *Manufacturer:* F.O.M. Institute, The Netherlands.

Docket Number: 90–203. *Instrument:* Curie-Point Pyrolysis Control Unit. *Manufacturer:* Horizon Instruments, United Kingdom. *Applicant:* Woods Hole Oceanographic Institution, Wood Hole, MA 02543. *Intended Use:* The instruments will be used for analysis of organic matter in marine samples (organisms, sediments, water-borne particulates) in relation to preservation of organic matter in sediments. Experiments will be conducted involving the analysis of whole samples and purified sub-fractions of organic matter from sediments etc. from a variety of locations by Curie-point pyrolysis. *Applications Received by Commissioner of Customs:* November 9, 1990.

Docket Number: 90–204. *Applicant:* Texas A&M University, Electron Microscopy Center, Biological Sciences Building West Room 119, College Station, TX 77843–2257. *Instrument:* Electron Microscope, Model JEM 2010/SEG/SIP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to study the microstructure of metals, metal alloys, ceramics, high-temperature superconductors, polymers, zeolites, minerals soils, and clays, and biological specimens that include plant and animal sections. *Application Received by Commissioner of Customs:* November 13, 1990.

Docket Number: 90–205. *Applicant:* National Institutes of Health, Gerontology Research Center, NIA, 4940 Eastern Avenue, room 3E16, Baltimore, MD 21224. *Instrument:* Spectrofluorimenter, Model SF–17. *Manufacturer:* Applied Photophysics, Ltd., United Kingdom. *Intended Use:* The instrument will be used to measure the speed of interaction of metal ions with membrane vesicles which contain specific transport systems for the metal ions. *Application Received by Commissioner of Customs:* November 4, 1990.

Docket Number: 90–206. *Applicant:* SUNY/College of Optometry, 100 East 24th Street, New York, NY 10010. *Instrument:* Infra-red Autorefractor, Model R–1. *Manufacturer:* Canon, Japan. *Intended Use:* The instrument will serve multiple important functions in an instruction program for optometry students which will include: Lab courses, vision training labs and related patient clinics, visual optics/physiological optics course and ocular disease clinics. *Application Received by Commissioner of Customs:* November 15, 1990

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–28997 Filed 12–10–90; 8:45 am]

BILLING CODE 3510–DS–M

Rice University, et al.; 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 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, 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: 90–112. *Applicant:* Rice University, Houston, TX 77251. *Instrument:* Mass Spectrometer, Model MAT 262V. *Manufacturer:* Finnigan MAT, GmbH, West Germany. *Intended Use:* See notice at 55 FR 30953, July 30, 1990. *Reasons:* The foreign instrument provides a multicollector system with six movable Faraday cups and negative ion analysis at full acceleration potential (10 kV).

Docket Number: 90–146. *Applicant:* U.S. DOE/Argonne National Laboratory, Argonne, IL 60439. *Instrument:* Mass Spectrometer, Model 30–01. *Manufacturer:* VG Instruments, United

Kingdom. *Intended Use:* See notice at 55 FR 35162, August 28, 1990. *Reasons:* The foreign instrument provides: (1) A Daly electron multiplier detector, (2) detection to 1 ppb and (3) a batch inlet system.

Docket Number: 90-156. *Applicant:* Washington University, St. Louis, MO 63130. *Instrument:* Mass Spectrometer, VG Sector 54. *Manufacturer:* VG Isotopes, Ltd., United Kingdom. *Intended Use:* See notice at 55 FR 35163, August 28, 1990. *Reasons:* The foreign instrument provides: (1) A 7-collector Faraday cup array, (2) A Daly collector and (3) an internal precision of 20 ppm or better for U, Nd, and Sr.

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. 90-8998 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-DS

National Technical Information Service

Withdrawal of Prospective Grant of Exclusive Patent Licensing and Availability of Inventions for Licensing

The National Technical Information Service (NTIS), U.S. Department of Commerce, hereby withdraws its notice, announced in the **Federal Register**, Vol. 54, No. 124, p. 27419, (June 29, 1989), of its intention to grant Gilead Sciences, Inc. of Foster City, CA an exclusive license under U.S. Patent Application Serial Number 7-351,502, "Method of Treatment of Hepatitis." The application describes and claims treatment of hepatitis B infections using 2',3'-dideoxyinosine (ddI), 2',3'-dideoxyadenosine (ddA) or 2',3'-dideoxyguanosine (ddG). NTIS solicits applications from parties interested in obtaining a license under the subject application in the United States and certain foreign countries.

Applicants should be aware that the use of ddI, ddA and ddG for treatment of retroviral infections is claimed in U.S. Patent 4,861,759 and counterpart filings in certain foreign countries. The use of those compounds solely for the treatment of AIDS is the subject of an exclusive license under the patent and its foreign counterparts to Bristol-Myers Squibb Company. Therefore NTIS requests that applicants for a license under 7-351,502 expressly address the issue of potential "cross-prescribing" for the respective therapies.

In addition, hepatitis B is considerably more prevalent in foreign countries than in the U.S. Applicants are invited to address the question of whether licensing of the invention in foreign countries should be handled differently or separately from licensing in the United States.

NTIS also announces the availability for licensing of a related case, U.S. Patent Application Serial Number 7-460,490, "Treatment of Human Retroviral Infections with 2',3'-dideoxyinosine (ddI)," and its counterpart filings in certain foreign countries. The application describes a preferred method and dosages for the short and long-term treatment of human retroviral infections, or retroviral-like infections, including acquired immunodeficiency syndrome (AIDS) and other manifestation of human immunodeficiency virus (HIV) infections, with 2',3'-dideoxyinosine (ddI), along with a protocol for halting and restarting 2',3'-dideoxyinosine to minimize certain side effects.

Copies of these patent applications may be purchased by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161 or by telephoning the NTIS Sales Desk at (703) 487-4650.

NTIS solicits applications from parties interested in obtaining a license under the subject patent applications. License application forms and other information may be obtained from NTIS, Center for the Utilization of Federal Technology, Box 1423, Springfield, VA 22151, Attention: Papan Devnani, Phone: (703) 487-4738.

Douglas J. Campion,

Patent Licensing Specialist, Center for the Utilization of Federal Technology.

[FR Doc. 90-28943 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products From Haiti

December 5, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels for the new agreement year.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated December 15, 1989, between the Governments of the United States and Haiti establishes limits and guaranteed access levels (GALs) for certain cotton and man-made fiber textile products for the period January 1, 1991 through December 31, 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 Correlation will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 6053, published on February 27, 1987; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 1990.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 26 and 30, 1986, as amended and extended by the Memorandum of Understanding dated December 15, 1989, between the Governments of the United States and Haiti; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended,

you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Haiti and exported during the twelve-month period beginning on January 1, 1991 and extending through December 31, 1991, in excess of the following designated levels:

Category	12-Month restraint level
331	424,000 dozen pairs.
340/640	424,000 dozen.
341/641	407,040 dozen.
347/348	477,000 dozen.
350	58,300 dozen.

Imports charged to these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In accordance with the provisions of the Special Access program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), you are directed to establish guaranteed access levels for properly certified cotton and man-made fiber textile products in the following categories which are assembled in Haiti from fabric formed and cut in the United States and re-exported to the United States from Haiti during the twelve-month period beginning on January 1, 1991 and extending through December 31, 1991.

Category	Guaranteed access level
331	500,000 dozen pairs.
340/640	440,000 dozen.
341/641	400,000 dozen.
347/348	800,000 dozen.
350	120,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration (Form ITA-370P) in accordance with the provisions of the certification requirements established in the directive of February 19, 1987, as amended, shall be denied entry unless the Government of Haiti authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-28926 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-DR-M

Announcing 1991 Agreement Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

December 5, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement of August 4, 1986, as amended, establishes limits for the period January 1, 1991 through December 31, 1991. A complete list of the 1991 limits is published below.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 52 FR 23491, published on June 22, 1987. Information regarding the 1991 Correlation will be published in the **Federal Register** at a later date.

Category	Twelve-month limit
Group I	
200-229, 300-326, 360-369, 400-414, 464-469, 600-629 and 665-670, as a group.	208,307,567 square meters equivalent.
Sublevels in Group I	
200	274,813 kilograms.
219	31,874,788 square meters.
218/225/317/326	60,815,875 square meters of which not more than 3,349,500 square meters shall be in Category 218(1)-yarn dyed fabric other than denim and jacquard.[1]
226/313	57,176,524 square meters.
314	15,419,822 square meters.
315	7,623,613 square meters.
369(1)[2] (shoptowels)	626,506 kilograms.
604	188,640 kilograms.
611	5,025,490 square meters.
Group II	
237, 239, 330-359, 431-459, 630-659 and 843/844(1), as a group.	758,254,839 square meters equivalent.
Sublevels in Group II	
237	921,733 dozen.
239	3,129,884 kilograms.
331	3,691,975 dozen pairs.
333/334	251,600 dozen.
335	309,728 dozen.
336	178,022 dozen.
338-0/339-0[3] (shirts and blouses other than tank tops and tops, knit).	2,632,598 dozen.
338-T/339-T[4] (tank tops & knit tops).	1,977,884 dozen.
340	2,520,991 dozen.
341	2,551,822 dozen.
342	467,831 dozen.
345	382,723 dozen.
347/348	6,025,907 dozen of which not more than 2,965,722 dozen shall be in Category. 347 and not more than 4,566,662 dozen shall be in Category 348.
350	115,573 dozen.
351	1,077,775 dozen.
352	5,421,507 dozen.
359(1)[5] (coveralls, overalls and jumpsuits).	494,984, kilograms.
359(2)[6] (outer vests)	1,031,650 kilograms.
434	9,565 dozen.
435	69,303 dozen.
436	90,265 dozen.
438	741,340 dozen.
442	79,040 dozen.
443	56,952 numbers.
443/444/643/644/843/844/(1) (made-to-measure suits).	50,448 numbers.
444	35,789 numbers.
445/446	1,225,337 dozen.
447/448	61,622 dozen.
631	511,575 dozen pairs.
633/634/635	1,128,555 dozen of which not more than 422,103 dozen shall be in Categories 633/634 and not more than 866,603 dozen shall be in Category 635.
636	239,589 dozen.
638/639	4,419,588 dozen.
640	770,835 dozen.
641	763,686 dozen.
642	190,531 dozen.
644	34,699 numbers.
645/646	1,270,704 dozen.
647	425,562 dozen.
648	957,117 dozen.

Category	Twelve-month limit
649	655,195 dozen.
650	135,492 dozen.
651	259,469 dozen.
652	3,983,325 dozen.
659(1) [7] (coveralls, overalls and jumpsuits).	547,087 kilograms.
659(2) [8] (swimsuits)	216,363 kilograms.
Group III	
831–842, 843/844 (excluding made-to-measure suits), and 847–859, as a group.	42,372,164 square meters equivalent.
Sublevels in Group III	
835	99,137 dozen.
836	132,970 dozen.
840	588,877 dozen.
842	217,836 dozen.
847	316,248 dozen.
Limits not in a group	
845(1) [9] (sweaters made in Hong Kong).	1,098,578 dozen.
845(2) [10] (sweaters assembled in Hong Kong from knit-to-shape component parts knitted elsewhere).	2,629,580 dozen.
846(1) [11] (sweaters made in Hong Kong).	177,650 dozen.
846(2) [12] (sweaters made in Hong Kong from knit-to-shape component parts knitted elsewhere).	428,070 dozen.

[1] Category 218(1): The Government of Hong Kong will continue to visa these products as 218.

[2] Category 369(1): only HTS number 6307.10.2005.

[3] Categories 338–O/339–O, all HTS numbers except 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[4] Categories 338–T/339–T: only HTS numbers 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[5] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[6] Category 359(2): only HTS Numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

[7] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69,1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[9] Category 845(1) only HTS numbers 6103.29.2074, 6104.29.2072, 6110.90.0024, 6110.90.0042 and 6117.90.0020.

[10] Category 845(2): only HTS numbers 6103.29.2070, 6104.29.2070, 6110.90.0022 and 6110.90.0040.

[11] Category 846(1): only HTS numbers 6103.29.2068, 6104.29.2068, 6110.90.0020, 3110.90.0038 and 6117.90.0018.

[12] Category 846(2): only HTS numbers 6103.29.2066, 6104.29.2064, 6110.90.0018 and 6110.90.0036.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–28924 Filed 12–10–90; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

December 5, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refers to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–8041. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated November 21 and December 4, 1986, as amended and extended, establishes limits for the period January 1, 1991 through December 31, 1991. The limits for Categories 345 and 645/646 are being reduced to account for special carryforward used in 1988.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 Correlation will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 1990

Commissioner of Customs
Department of the Treasury
Washington, DC 20229

Dear Commisioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Textile Agreement of November 21 and December 4, 1986, as amended and extended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of textiles and textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period beginning on January 1, 1991 and extending through December 31, 1991, in excess of the following restraint limits:

Category	Twelve-month restraint limit
Group I	
200, 201, 218–220, 222–229, 300–326, 360–363, 369–0,[1] 400, 410, 414, 464–469, 600–607, 611–622, 624–629, 665–669 and 670–0,[2] as a group.	381,524,000 square meters equivalent.
Sublevels within Group I	
200	379,250 kilograms.
201	1,378,000 kilograms.
218	7,687,500 square meters.
219	7,175,000 square meters.
300/301	2,578,757 kilograms.
313	42,025,000 square meters.
314	23,431,297 square meters.
315	16,240,000 square meters.
317/326	15,617,582 square meters.
363	922,500 numbers.
410	3,282,500 square meters.
604	307,682 kilograms.
607	922,500 kilograms.
611	3,075,000 square meters.
613/614	5,125,000 square meters.
619/620	87,365,000 square meters.
624	7,687,500 square meters.
625–629	13,120,000 square meters.

Category	Twelve-month restraint limit
669-P [3]	1,934,304 kilograms.
Group II	
237, 239, 330-354, 359, 431-448, 459, 630-654 and 659, as a group.	564,590,000 square meters equivalent.
Sublevels within Group II	
237	50,998 dozen.
239	851,767 kilograms.
333/334/335	230,625 dozen of which not more than 117,875 dozen shall be in Category 335.
336	48,738 dozen.
338/339	1,025,000 dozen.
340	533,000 dozen of which not more than 276,750 dozen shall be in Category 340-D.[4]
341	162,400 dozen.
342/642	170,951 dozen.
345	96,744 dozen.
347/348	379,250 dozen.
350	14,175 dozen.
351/651	194,732 dozen.
352	151,536 dozen.
353/354/653/654	240,126 dozen.
359-H [5]	2,183,017 kilograms.
433	13,395 dozen.
434	6,870 dozen.
435	32,558 dozen.
436	13,782 dozen.
438	55,259 dozen.
440	190,950 dozen.
442	46,578 dozen.
443	322,056 numbers.
444	50,754 numbers.
445/446	50,250 dozen.
447	85,731 dozen.
448	32,767 dozen.
459-W [6]	88,639 kilograms.
631	255,865 dozen pairs.
632	1,355,423 dozen pairs.
633/634/635	1,326,737 dozen of which not more than 150,450 dozen shall be in Category 633 and not more than 560,677 dozen shall be in Category 635.
636	241,302 dozen.
638/639	5,165,450 dozen.
640-D [7]	3,015,000 dozen.
640-O [8]	2,512,500 dozen.
641	1,004,848 dozen of which not more than 37,956 dozen shall be in Category 641-Y.[9]
643	744,440 numbers.
644	1,119,978 numbers.
645/646	3,394,751 dozen.
647/648	1,227,318 dozen.
650	20,742 dozen.
659-H [10]	1,191,303 kilograms.
659-S [11]	152,548 kilograms.
Group III	
831-844 and 847-859, as a group.	18,084,869 square meters equivalent.
Sublevel within Group III	
835	27,682 dozen.
Group IV	
845	2,315,056 dozen.
846	812,324 dozen.
Group VI	
369-L/670-L/870 [12]	60,137,028 square meters equivalent.

[1] Category 369-O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000 (Category 369-L).

[2] Category 670-O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020 (Category 670-L).

[3] Category 669-P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[4] Category 340-D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[5] Category 359-H: only HTS numbers 6505.90.1530 and 6505.90.2060.

[6] Category 459-W: only HTS number 6505.90.4060.

[7] Category 640-D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.2030 and 6205.90.4030.

[8] Category 640-O: all HTS numbers except 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.2030 and 6205.90.4030 (Category 640-D).

[9] Category 641-Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[10] Category 659-H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6080, 6505.90.7060 and 6505.90.8060.

[11] Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[12] Category 870; Category 369-L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000; Category 670-L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020.

Imports charged to these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The 1991 levels are subject to adjustment in the future according to the provisions of the Bilateral Textile Agreement of November 21 and December 4, 1986, as amended and extended, between the Governments of the United States and the Republic of Korea.

Category	Conversion factor
333/334/335	33.75
369-L/670-L/870	3.8
633/634/635	34.1
638/639	12.96

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-28927 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-DS-M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Peru

December 5, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Custom port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 13, 1985, as amended, between the Governments of the United States and Peru, establishes limits for the period January 1, 1991 through December 31, 1991.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 Correlation will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 1990

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner:

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 3, 1985, as amended, between the Governments of the United States and Peru; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products, produced or manufactured in Peru and exported during the twelve-month period beginning on January 1, 1991 and extending through December 31, 1991, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Limits not in a Group	
219	16,067,623 square meters.
220	9,962,304 square meters.
226/313	18,786,726 square meters of which not more than 3,543,320 square meters shall be in Category 226.
315	4,697,364 square meters.
317/326	19,822,874 square meters of which not more than 7,985,518 square meters shall be in Category 326.
338/339	693,000 dozen of which not more than 589,050 dozen shall be in Categories 338-S/339-S.[1]
Cotton Apparel Group	
237, 239, 330-336 and 340-359, as a group.	14,632,229 square meters equivalent.
Wool Group	
400 and 414-469, as a group.	3,762,573 square meters equivalent.

[1] Category 338-S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339-S: only HTS numbers 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

Imports charged to these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and Peru.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-28923 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

December 5, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs part or call (202) 566-8791. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated August 21, 1990 and September 28, 1990, concerning cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products establishes limits for the period beginning January 1, 1991 and extending through December 31, 1991.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 Correlation will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 1990

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated August 21, 1990 and September 28, 1990, concerning cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products from Taiwan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 1991 and extends through December 31, 1991, in excess of the following restraint limits:

Category	Twelve-month restraint limit
Group I	
200-224, 225/317/326, 226, 227, 229, 300/301/607, 313-315, 360-363, 369-L/670-L/870 [1], 369-S [2], 369-O [3], 400-414, 464-469, 600-606, 611, 613/614/615/617, 618, 619/620, 621-624, 625/626/627/628/629, 665, 666, 669-P [4], 669-T [5], 669-O [6], 670-H [7] and 670-O [8], as a group.	534,494,238 square meters equivalent.
Sublevels within Group I	
200	574,440 kilograms.
218	17,777,959 square meters.
219	13,073,676 square meters.
225/317/326	31,555,830 square meters.
226	5,726,376 square meters.
300/301/607	1,522,500 kilograms of which not more than 1,268,750 kilograms each shall be in Categories 300, 301 and 607.
313	61,551,570 square meters.
314	23,287,683 square meters.
315	17,844,299 square meters.
361	1,153,923 numbers.
363	11,671,038 numbers.
369-L/670-L/870	41,820,000 kilograms.
369-S	466,195 kilograms.
604	203,170 kilograms.
611	2,562,500 square meters.
613/614/615/617	15,892,373 square meters.
619/620	11,681,140 square meters.
625/626/627/628/629	15,199,922 square meters.
669-P	276,330 kilograms.
669-T	898,128 kilograms.
670-H	16,014,000 kilograms.
Group II	
237, 239, 330-332, 333/334/335, 336, 338/339, 340-345, 347/348, 349, 350/650, 351, 352/652, 353, 3554, 359-C/659-C [9], 359-H/659-H [10], 359-O [11], 431-444, 445/446, 447/448, 459, 630-632, 633/634/635, 636, 638/639, 640, 641-644, 645/646, 647/648, 649, 651, 653, 654, 659-S [12], 659-O [13], 831-844 and 846-859, as a group.	799,297,233 square meters equivalent.
Sublevels within Group II	
237	561,234 dozen.
239	5,075,000 kilograms.
331	489,813 dozen pairs.
333/334/335	246,000 dozen of which not more than 133,250 dozen shall be in Category 335.
336	95,619 dozen.
338/339	705,704 dozen.
340	1,111,110 dozen.
341	326,625 dozen.
342	204,044 dozen.
345	99,910 dozen.
347/348	1,064,931 dozen.
350/650	126,250 dozen.
351	339,461 dozen.
352/652	2,536,857 dozen.
359-C/659-C	1,447,200 kilograms.
359-H/659-H	4,630,891 kilograms.
433	14,074 dozen.
434	9,771 dozen.
435	23,206 dozen.
436	4,619 dozen.
438	26,079 dozen.
440	5,050 dozen.
442	43,390 dozen.
443	39,404 numbers.
444	56,119 numbers.
445/446	130,775 dozen.
447/448	19,232 dozen.
631	4,237,722 dozen pairs.
633/634/635	1,634,440 dozen of which not more than 959,317 dozen shall be in Categories 633/634 and not more than 850,077 dozen shall be in Category 635.
636	354,169 dozen.
638/639	6,592,119 dozen.
640	2,196,291 dozen of which not more than 1,361,080 dozen shall be in Category 640-Y. [14]
641	725,258 dozen of which not more than 253,840 dozen shall be in Category 641-Y. [15]
642	777,133 dozen.
643	468,925 numbers.
644	608,854 numbers.
645/646	4,107,691 dozen.
647/648	5,707,874 dozen.
651	425,708 dozen.
659-S	1,778,232 kilograms.
Group III	
845	845,278 dozen

[1] Category 870; Category 369-L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000; Category 670-L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020.

[2] Category 369-S: only HTS number 6307.10.2005.

[3] Category 369-O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6000 (Category 369-L); and 6307.10.2005 (Category 369-S).

[4] Category 669-P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[5] Category 669-T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.

[6] Category 669-O: all HTS numbers except 6305.31.0010, 6305.31.0020, 6305.39.0000 (Category 669-P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669-T).

[7] Category 670-H: only HTS numbers 4202.22.4030 and 4202.22.8050.

[8] Category 670-O: all HTS numbers except 4202.22.4030, 4202.22.8050 (Category 670-H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020 (Category 670-L).

[9] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[10] Category 359-H: only HTS numbers 6505.90.1530 and 6505.90.2060; Category 659-H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6080, 6505.90.7060 and 6505.90.8060.

[11] Category 359-O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359-C); 6505.90.1530 and 6505.90.2060 (Category 359-H).

[12] Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659-O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659-C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6080, 6505.90.7060, 6505.90.8060, (Category 659-H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.12.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659-S).

[14] Category 640-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[15] Category 641-Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

Imports charged to these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have bben exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement, effected by exchange of notes dated August 21, 1990 and September 28, 1990.

The conversion factors are as follows:

Category	Conversion factor
300/301/607	8.5
333/334/335	33.75
352/652	11.3
359-C/659-C	10.1
359-H/659-H	11.5
369-L/670-L/870	3.8
633/634/635	34.1
638/639	12.5

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-28925 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, February 5, 1991; Tuesday, February 12, 1991; Tuesday, February 19, 1991; and Tuesday, February 26, 1991 at 10 a.m. in room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20301.

Dated: December 6, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-28938 Filed 12-10-90; 8:45 am]

BILLING CODE 3810-01-M

Strategic Defense Initiative (SDI) Technology Applications Information System Data Base

AGENCY: Strategic Defense Initiative Organization, Office of Technology Applications, DoD.

ACTION: Notice.

SUMMARY: The Strategic Defense Initiative Organization, Office of Technology Applications (SDIO/TNO) has developed the Technology Applications Information System (TAIS) to identify emerging Strategic Defense Initiative technologies with spinoff potential and to expedite the transfer of these technologies to the commercial sector, federal agencies and researchers. The SDIO TAIS is a database that has recently been updated to include more than 1,400 unclassified, non-proprietary synopses of technology innovations and is accessible by computer modem.

In addition to these synopses, the TAIS contains descriptions of technological and business opportunities originating from three SDIO programs: the Innovative Science and Technology Program, the Small Business Innovation Research Program and a recent addition highlighting manufacturing technologies. This addition is the result of a new SDI program known as Manufacturing Operations Development and Integration Laboratories (MODILs) which has been established to develop manufacturing technologies unique to producing a strategic defense system. The program is currently focusing on technology needed to manufacture advanced optics and sensors.

The TAIS also provides a list of other technology transfer databases that are available and information on technology transfer and business assistance services provided by over 600 federal, state and local agencies.

Any U.S. citizen or corporation can gain access to the TAIS once a militarily critical technology data agreement has been completed and the Defense Logistics Agency has certified the user's eligibility under provisions of DOD Directive 5230.25, Control of Unclassified Technical Data with Military or Space Applications. Information regarding the qualifications for being certified to access militarily critical technology can be obtained by calling (800) DLA-DLSC. Information on use of the TAIS can be obtained by calling SDIO/TNO at (703) 693-1563.

FOR FURTHER INFORMATION CONTACT: The Strategic Defense Initiative Organization, Office of Technology Applications, The Pentagon, Washington, DC 20301-7100, (703) 693-1563.

Dated: December 6, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-28936 Filed 12-10-90; 8:45 am]

BILLING CODE 3810-01-M

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Publication of changes in Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 153. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 153 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: December 1, 1990.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Footnotes

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Fort Yukon, Galena, Indian Mountain, King Salmon, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a per diem rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for US Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[5] On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a per diem rate of $25 is prescribed instead of the rate prescribed in the table.

Dated: December 6, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

BILLING CODE 3810-01-M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
ALASKA:				
ADAK 5/	$ 46	$ 31	$ 77	12-01-90
ANAKTUVUK PASS	83	57	140	12-01-90
ANCHORAGE				
05-16--09-15	82	59	141	05-16-91
09-16--05-15	73	57	130	12-01-90
ATQASUK	129	86	215	12-01-90
BARROW	89	59	148	12-01-90
BETHEL	70	73	143	12-01-90
BETTLES	65	45	110	12-01-90
COLD BAY	71	54	125	12-01-90
COLDFOOT	75	47	122	12-01-90
CORDOVA	73	77	150	12-01-90
DILLINGHAM	76	38	114	12-01-90
DUTCH HARBOR-UNALASKA	91	54	145	12-01-90
EIELSON AFB				
05-15--09-15	67	57	124	05-15-91
09-16--05-14	55	54	109	12-01-90
ELMENDORF AFB				
05-16--09-15	82	59	141	05-16-91
09-16--05-15	73	57	130	12-01-90
FAIRBANKS				
05-15--09-15	67	57	124	05-15-91
09-16--05-14	55	54	109	12-01-90
FT. RICHARDSON				
05-16--09-15	82	59	141	05-16-91
09-16--05-15	73	57	130	12-01-90
FT. WAINWRIGHT				
05-15--09-15	67	57	124	05-15-91
09-16--05-14	55	54	109	12-01-90
HOMER	76	54	130	12-01-90
JUNEAU	64	59	123	12-01-90
KATMAI NATIONAL PARK	89	59	148	12-01-90
KENAI				
05-01--09-30	88	61	149	05-01-91
10-01--04-30	68	59	127	12-01-90
KETCHIKAN	66	67	133	12-01-90
KING SALMON 3/	75	59	134	12-01-90
KODIAK	61	57	118	12-01-90
KOTZEBUE	96	57	153	12-01-90
KUPARUK OILFIELD	75	52	127	12-01-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
MURPHY DOME				
05-15--09-15	$ 67	$ 57	$124	05-15-91
09-16--05-14	55	54	109	12-01-90
NOATAK	77	66	143	12-01-90
NOME	66	63	129	12-01-90
NOORVIK	77	66	143	12-01-90
PETERSBURG	66	61	127	12-01-90
POINT HOPE	99	61	160	12-01-90
POINT LAY	106	73	179	12-01-90
PRUDHOE BAY-DEADHORSE	64	57	121	12-01-90
SAND POINT	63	40	103	12-01-90
SEWARD	52	50	102	12-01-90
SHUNGNAK	77	66	143	12-01-90
SITKA-MT. EDGECOMBE	66	61	127	12-01-90
SKAGWAY	66	61	127	12-01-90
SPRUCE CAPE	61	57	118	12-01-90
ST. MARY'S	60	40	100	12-01-90
ST. PAUL ISLAND	81	34	115	12-01-90
TANANA	66	63	129	12-01-90
TOK	53	59	112	12-01-90
UMIAT	97	63	160	12-01-90
UNALAKLEET	58	47	105	12-01-90
VALDEZ				
05-01--10-31	108	61	169	05-01-91
11-01--04-30	71	57	128	12-01-90
WAINWRIGHT	90	75	165	12-01-90
WALKER LAKE	82	54	136	12-01-90
WRANGELL	66	61	127	12-01-90
YAKUTAT	70	40	110	12-01-90
OTHER 3, 4/	54	40	94	12-01-90
AMERICAN SAMOA	55	47	102	12-01-90
GUAM	99	59	158	12-01-90
HAWAII:				
ISLAND OF HAWAII: HILO	59	36	95	12-01-90
ISLAND OF HAWAII: OTHER	59	47	106	12-01-90
ISLAND OF KAUAI	87	61	148	12-01-90
ISLAND OF KURE 1/		13	13	12-01-90
ISLAND OF MAUI: KIHEI				
04-01--12-19	85	50	135	12-01-90
12-20--03-31	97	50	147	12-20-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
HAWAII: (CONT'D)				
ISLAND OF MAUI: OTHER	$ 59	$ 47	$106	12-01-90
ISLAND OF OAHU	86	40	126	12-01-90
OTHER	59	47	106	12-01-90
JOHNSTON ATOLL 2/	18	17	35	12-01-90
MIDWAY ISLANDS 1/		13	13	12-01-90
NORTHERN MARIANA ISLANDS:				
ROTA	45	31	76	12-01-90
SAIPAN	68	47	115	12-01-90
TINIAN	44	24	68	12-01-90
OTHER	20	13	33	12-01-90
PUERTO RICO:				
BAYAMON				
04-16--12-14	89	61	150	12-01-90
12-15--04-15	110	63	173	12-15-90
CAROLINA				
04-16--12-14	89	61	150	12-01-90
12-15--04-15	110	63	173	12-15-90
FAJARDO (INCLUDING LUQUILLO)				
04-16--12-14	89	61	150	12-01-90
12-15--04-15	110	63	173	12-15-90
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)				
04-16--12-14	89	61	150	12-01-90
12-15--04-15	110	63	173	12-15-90
MAYAGUEZ	117	50	167	12-01-90
PONCE	117	50	167	12-01-90
ROOSEVELT ROADS				
04-16--12-14	89	61	150	12-01-90
12-15--04-15	110	63	173	12-15-90
SABANA SECA				
04-16--12-14	89	61	150	12-01-90
12-15--04-15	110	63	173	12-15-90
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)				
04-16--12-14	89	61	150	12-01-90
12-15--04-15	110	63	173	12-15-90
OTHER	53	43	96	12-01-90
VIRGIN ISLANDS OF THE U.S.				
05-01--11-30	95	63	158	05-01-91
12-01--04-30	128	66	194	12-01-90
WAKE ISLAND 2/	4	17	21	12-01-90
ALL OTHER LOCALITIES	20	13	33	12-01-90

[FR Doc. 90-28937 Filed 12-10-90; 8:45 am]
BILLING CODE 3810-01-C

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before January 10, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: James O'Donnell (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from James O'Donnell at the address specified above.

Dated: December 5, 1990.

James O'Donnell,

Acting Director, for Office of Information Resources Management.

Office of Vocational and Adult Education

Type of review: Extension
Title: Carl D. Perkins Vocational Education Act of 1984—Reporting Requirements
Frequency: Biennial
Affected public: State or local governments
Reporting burden:
Responses: 4,212
Burden hours: 1,332,132
Recordkeeping burden:
Recordkeeper: 0
Burden hours: 0
Abstract: State Boards for Vocational Education must submit state plans under the Carl D. Perkins Vocational Education Act, as amended. The Department uses the information to determine compliance with the Act and to make grant awards.

Office of Vocational and Adult Education

Type of review: Reinstatement
Title: Application for Adult Education for the Homeless Program (Discretionary Grants)
Frequency: Annually
Affected public: State or local governments
Reporting burden:
Responses: 50
Burden hours: 1,000
Recordkeeping burden:
Recordkeepers: 0
Burden hours: 0
Abstract: This form will be used by applicants to apply for funding under the Adult Education for the Homeless Program direct grant programs. The Department uses the information to make grant and cooperative agreement awards.

[FR Doc. 90-28915 Filed 12-10-90; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Announcement of Dates, Locations and Times for Public Scoping Meetings on the Programmatic Environmental Impact Statement (PEIS) for the Department of Energy's Proposed Integrated Environmental Restoration and Waste Management Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announced on October 22, 1990, (55 FR 42633–8) that it intends to prepare a PEIS on the Department's proposed Integrated Environmental Restoration and Waste Management Program pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) as amended, and to conduct a series of public scoping meetings nationwide. A second notice was published on November 6, 1990, which identified the dates, locations, times and DOE points-of-contact for the ten (10) scoping meetings to be held in December 1990. Today's Notice supplements the October 22, 1990, and November 6, 1990, issuances and provides the dates, locations, times and DOE points-of-contact for the thirteen (13) scoping meetings to be held in January and February 1991. This notice also repeats the information on the first 10 scoping meetings, i.e., the complete listing of dates, locations, times and DOE points-of-contact are available in this one notice. The first two meetings were held in Columbia, South Carolina, and in Richland, Washington, on December 3, and December 4, 1990, respectively. Subsequent meetings will be held in the following locations: Atlanta, Georgia; St. Louis, Missouri; and Spokane, Washington, on December 6, 1990; Amarillo, Texas, on December 10, 1990; Oak Ridge, Tennessee; Portland, Oregon; and Chicago, Illinois, on December 11, 1990; and Seattle, Washington, on December 13, 1990; Oakland, California and Newburgh, New York, on January 8, 1991; Princeton, New Jersey, on January 10, 1991; Cincinnati, Ohio, on January 14, 1991; Albuquerque, new Mexico, and Las Vegas, Nevada, on January 15, 1991; Columbus, Ohio, on January 16, 1991; Idaho Falls, Idaho, and Paducah, Kentucky, on January 22, 1991; Denver, Colorado, on January 23, 1991; Boise, Idaho, on January 24, 1991; Tampa, Florida, on January 29, 1991; and Washington, DC., on February 7, 1991.

BACKGROUND: The PEIS will assess the potential environmental consequences of alternatives for implementing an integrated environmental restoration and waste management program. This program is expected to provide a broad, systematic approach to addressing cleanup activities and waste management practices. The Department is committed to ensuring that potential risks to human health and the environment from the cleanup of contamination resulting from past operations and future waste

management activities are at safe levels. DOE is further committed to full compliance with applicable environmental requirements and to the goal of completing environmental restoration by 2019.

ADDRESSES AND FURTHER INFORMATION: Written comments on the scope of the PEIS, questions concerning the program, and requests for copies of the draft PEIS should be directed to: Mr. William E. Wisenbaker, Acting Director, Division of Program Support, Office of Environmental Restoration (EM-43), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (301) 353-2950.

For further information on the DOE NEPA process please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH-25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600.

PUBLIC SCOPING MEETINGS AND INVITATION TO COMMENT: For the reader's convenience, the following is repeated from the October 22, 1990, Notice referenced above. DOE is committed to providing opportunities for the involvement of interested individuals and groups in this and other DOE planning activities. The public scoping process began with the October 22, 1990, **Federal Register** announcement that DOE will prepare a PEIS on its environmental restoration and waste management activities; this process will continue until February 19, 1991.

The public is invited to present oral or written comments concerning: (1) The scope of the PEIS; (2) the issues that should be addressed; and (3) the alternative integrated approaches to be analyzed in the PEIS. Written comments may be addressed to Mr. William E. Wisenbaker or the contact for the specific scoping meetings. These comments should be postmarked by February 19, 1991, to ensure consideration. The Department is holding scoping meetings to facilitate receipt of public comments on the PEIS. These meetings will begin in December 1990; a total of 23 scoping meetings will be held nationwide. The schedule for all 23 scoping meetings is shown below.

Oral and written comments will be given equal consideration. Instructions for submitting written comments are given above. People desiring to speak at the public scoping meetings should submit their requests to do so to the contact persons designated for that meeting. Oral presentation requests for each meeting should be received by DOE at least two days before the meeting.

The meetings will be chaired by a presiding officer. They will not be conducted as evidentiary hearings. Speaker will not be cross-examined, although the DOE representatives present may ask them clarifying questions.

To ensure everyone an adequate opportunity to speak, five minutes will be allotted for each speaker. Depending on the number of persons requesting to speak, the presiding officer may allow more time for speakers representing multiple parties or organizations. Persons wishing to speak on behalf of organizations should identify the organization in their request. Persons who have not submitted a timely request to speak may register at the meetings, and will be called on to speak if time permits. Written comments also will be accepted at the meetings, and speakers are encouraged to provide written versions of their oral comments for the record.

DOE will make a transcript of each meeting. Copies will be made available for inspection at the DOE Freedom of Information Reading Room (Room 1E-190), Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, during business hours, Monday through Friday and in local DOE reading rooms. Locations of local reading rooms for the scoping meetings are included in this Notice.

Issued in Washington, DC, this 6th day of December 1990.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

Scoping Meeting Schedule

Meeting: Columbia, SC
Date: Monday, December 3, 1990
Time: 9 a.m.-9:30 p.m.
Location: Park Inn International, 773 St. Andrews Road, Columbia, SC 29210, (803) 772-7275

Meeting: Atlanta, GA
Date: Thursday, December 6, 1990
Time: 9 a.m.-9:30 p.m.
Location: Holiday Inn, Atlanta Peachtree Corners, 6050 Peachtree Industrial Blvd., Norcross, GA 30071, (404) 448-4400

Contact For The Two Meetings Above

Mr. Stephen R. Wright, Director, Environmental Division, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, 1-800-242-8269

Public Reading Rooms For The Two Meetings Above

Aiken: Public Reading Room—DOE, Gregg Graniteville Library, 171 University Parkway, Aiken, SC 29801. Hours: 8 a.m.-6 p.m. Mon.-Fri., 12 p.m.-6 p.m. Sat.

Oak Ridge: U.S. Department of Energy, Oak Ridge Operation Office, Public Reading Room, P.O. Box 2001, Oak Ridge, TN 37831. Hours: 8:30 a.m.-4:30 p.m. Mon.-Fri.

Meeting: St. Louis, MO
Date: Thursday, December 6, 1990
Time: 9 a.m.-9:30 p.m.
Location: Clayton Plaza, 7730 Bonhomme Avenue, St. Louis, MO 63105

Meeting: Oak Ridge, TN
Date: Tuesday, December 11, 1990
Time: 9 a.m.-9:30 p.m.
Location: American Museum of Science and Energy, 300 South Tulane Avenue, Oak Ridge, TN 37830

Contact For The Two Meetings Above

Oak Ridge: Nelson Lingle, U.S. Department of Energy, Oak Ridge Operations Office, 200 Administration Road, Mail Stop EW-91, Oak Ridge, TN 37831-8541, (615) 576-0727

Public Reading Rooms For The Two Meetings Above

Oak Ridge: U.S. Department of Energy, Oak Ridge Operations Office, Public Reading Room, P.O. Box 2001, Oak Ridge, TN 37831, Hours: 8:30 a.m.-4:30 p.m. Mon.-Fri.

St. Louis, MO: St. Louis County Library, 1640 S. Lindbergh Blvd., St. Louis, MO 63131. Hours: 8:30 a.m.-9 p.m. Mon.-Fri., 8:30 a.m.-6 p.m., Sat.

St. Charles, MO: St. Charles County Library, Kisker Road Branch, Kisker Road, St. Charles, MO 63305. Hours: 8:30 a.m.-9 p.m., Mon.-Thurs., 8:30 a.m.-6 p.m., Sat.

Meeting: Richland, WA
Date: Tuesday, December 4, 1990
Time: 9 a.m.-9:30 p.m.
Location: Federal Building Auditorium, 825 Jadwin Avenue, Richland, WA 99352

Meeting: Spokane, WA
Date: Thursday, December 6, 1990
Time: 9 a.m.-9:30 p.m.
Location: Ridpath Hotel, W. 515 Sprague Avenue, Spokane, WA

Meeting: Portland, OR
Date: Tuesday, December 11, 1990
Time: 9 a.m-9:30 p.m.
Location: City Hall Council Chambers, 1220 SW Fifth Avenue, Portland, Oregon

Meeting: Seattle, WA
Date: Thursday, December 13, 1990
Time: 9 a.m.-9:30 p.m.
Location: Henry M. Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, WA

Contact For The Four Meetings Above

Richland: Ken Morgan, U.S. Department of Energy, 825 Jadwin, Mail Stop A775, Richland, WA 99352, (509) 376-7162

Public Reading Rooms For The Four Meetings Above

Richland: Department of Energy Richland Operations, Public Reading Room, Federal Building, Room 157, 825 Jadwin Avenue, Richland, WA 99325, (509) 376-8583. Hours: 8 a.m.-12 p.m., and 1 p.m.-4:30 p.m., Mon.-Fri., 9 a.m.-1 p.m., Sat.

Spokane: Crosby Library, Gonzaga University, E. 502 Boone, Spokane, WA 99258, (509) 328-4220. Hours: 8 a.m.-12 a.m., Mon.-Thurs., 8 a.m.-9 p.m., Fri., 9 a.m.-9 p.m., Sat., 11 a.m.-12 a.m., Sun.

Portland: Portland State University Library, 934 S.W. Harrison, Portland, OR 97207, (503) 464–4617. Hours: 8 a.m.–5 p.m., Mon.–Fri. Closed Saturdays and Sundays

Seattle: University of Washington, Suzzalo Library, FM–25 Government Publications, Seattle, WA 98195, (206) 543–4664. Hours: 10 a.m.–5 p.m., Mon.–Fri. Closed Saturdays and Sundays 8 a.m.–8 p.m. Mon.–Fri., 8 a.m.–6 p.m., Fri., 10 a.m.–5 p.m., Sat.

Meeting: Chicago, IL
Date: Tuesday, December 11, 1990
Time: 9 a.m.–9:30 p.m.
Location: Sheraton International Hotel at O'Hare, 6810 N. Mannheim Road, Rosemont, IL 60018

Contact For The Meeting Above

Ms. Kimberly Phillips, U.S. Department of Energy, Chicago Operations Office, 9800 S. Cass Avenue, Argonne, IL 60439, (708) 972–2028

Public Reading Room

Argonne, IL: U.S. Department of Energy, 9800 S. Cass Avenue, Argonne, Ill 60439. Hours: 8:30 a.m.–5 p.m., Mon.–Fri.

Meeting: Amarillo, TX
Date: Monday, December 10, 1990
Time: 9 a.m.–9:30 p.m.
Location: Amarillo Civic Center, 401 S. Buchanan, Amarillo, TX 79101

Contact For The Meeting Above

Patrick J. Higgins, Jr., Division Director, Environmental Management Staff, Albuquerque Operations Office, Department of Energy, P.O. Box 5400, Albuquerque, NM 87115, (800) 633–7156 (24 Hours)

Public Reading Room

DOE Public Reading Room, Reference Department, Lynn Library and Learning Center, Amarillo College, 2201 South Washington, 4th Floor, Amarillo, TX 79109, 806–371–5400. Hours: 7:45 a.m.–10 p.m., Mon.–Thur., 7:45 a.m.–5 p.m., Fri., closed Sat., 2–6 p.m., Sun.

Meeting: Oakland, CA
Date: Tuesday, January 8, 1991
Time: 9 a.m.–9:30 p.m.
Location: Hyatt Regency Oakland, 1001 Broadway, Oakland, CA 94607, (415) 893–1234

Contact For The Meeting Above

Ray Corey, U.S. Department of Energy, Lawrence Livermore Site Office, 7000 E. Avenue L–574, Livermore, CA 94550, (415) 423–2684

Public Reading Rooms For The Two Meetings Above

Oakland: U.S. Department of Energy, Public Reading Room, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612, (415) 273–4429. Hours: 8:30 a.m.–4:30 p.m. Mon.–Fri.

Berkeley: Berkeley Public Library, 2090 Kittredge Street, Berkeley, CA 94704, (415) 644–6100. Hours: 10 a.m.–9 p.m., Mon.–Thur., 10 a.m.–6 p.m., Fri.–Sat., 1 p.m.–5 p.m. Sun.

Davis: Davis Branch, Yolo County Library, 315 East 14th St., Davis, CA 95616, Contact: Mae Bolton, (916) 756–2332. Hours: 1 p.m.–9 p.m., Mon., 10 a.m.–9 p.m., Tues.–Wed., 10 a.m.–6 p.m., Thur.-Fri., 10 a.m.–5 p.m., Sat.

Palo Alto: Palo Alto Public Library, 1213 Newell Road, Palo Alto, CA 94303, contact: Roger Bonilla, (415) 329–2436. Hours: 10 a.m.–9 p.m., Mon.–Fri., 10 a.m.–6 p.m., Sat., 1 p.m.–5 p.m., Sun.

Semi Valley: Semi Valley Public Library, 2969 Tapo Canyon Road, Semi Valley, CA 93063, Contact: Gail Demirtos, (805) 526–1735. Hours: 10 a.m.–9 p.m., Mon.–Thurs., 10 a.m.–5 p.m., Fri. Sat. 1 p.m.–4 p.m., Sun.

Livermore: Livermore Public Library, 1000 South Livermore Ave., Livermore, CA 94550, (415) 373–550. Hours: 10 a.m.–9 p.m., Mon.–Thur., 10 a.m.–5 p.m., Fri.–Sat., 1 p.m.–4 p.m., Sun.

Meeting: Newburgh, NY
Date: Tuesday, January 8, 1991
Time: 9 a.m.–9:30 p.m.
Location: Holiday Inn, 90 Route 17K, Newburgh, NY 12550, (Across from the airport) (914) 5469020

Contact For The Meeting Above

Charles F. Baxter, U.S. Department of Energy, 26 Federal Plaza, Room 3437, New York, NY 10278, (212) 264–1021

Public Reading Rooms For The Meeting Above

U.S. Department of Energy, 26 Federal Plaza, Room 3437, New York, NY 10278, Contact: Charles F. Baxter, (212) 264–1021 Hours: 7 a.m.–5 p.m., Mon.–Fri.

Albany: New York State Library, Cultural Education Department, Madison Avenue, Empire State Plaza, Albany, NY 12230, Contact: Gerome Yavarkovski, (518) 473–1189,Materials available at the Circulation Desk, Hours: 9 a.m.–5 p.m., Mon.–Fri.

Springville: Concord Public Library, 23 N. Buffalo Street, Springville, NY 14141, (716) 592–7742, Contact: Annette Gernatt, Hours: 2 p.m.–9 p.m., Mon. 2 p.m.–7 p.m., Tues., 10 a.m.–12 noon and 2 p.m.–9 p.m., Thurs., 2 p.m.–9 p.m. Fri., 10 a.m.–12 noon, Sat.

Meeting: Princeton, NJ
Date: Thursday, January 10, 1991
Time: 9 a.m.–9:30 p.m.
Location: Ramada Inn at Princeton, 4355 Route 1, Princeton, NJ 08540 (609) 452–2400

Contact For The Meeting Above

Nelson Lingle, U.S. Department of Energy, Oak Ridge Operations Office, 200 Administration Road, Mail Stop EW–91, Oak Ridge, TN 37831–8541, (615) 576–0727

Public Reading Room For The Meeting Above

Trenton: Mercer County Library, Lawrenceville Branch, Lawrenceville, NJ, Hours: 9:30 a.m.–9 p.m., Mon.–Thurs., 9:30 a.m.–5:30 p.m., Fri., 10a.m.–3 p.m., Sat.

Albany: New York State Library, Cultural Educational Department, Madison Avenue, Empire State Plaza, Albany, NY 12230, Contact: Gerome Yavarkovski, (518) 473–1189, Materials available at the Circulation Desk, Hours: 9 a.m.–5 p.m., Mon.–Fri.

Springville: Concord Public Library, 23 N. Buffalo Street, Springville, NY 14141, (716) 592–7742, Contact: Annette Gernatt, Hours: 2 p.m.–9 p.m., Mon. 2 p.m.–7 p.m., Tues., 10 a.m.–12 noon and 2 p.m.–9 p.m., Thurs., 2 p.m.–9 p.m., Fri., 10 a.m.–12 noon, Sat.

Meeting: Princeton, NJ
Date: Thursday, January 10, 1991
Time: 9 a.m.–9:30 p.m.
Location: U.S. Department of Energy, Plasma Physics Laboratory, James Forrestal Campus, Highway 1 at Sayre Drive, Princeton, New Jersey 08542

Contact For The Meeting Above

Nelson Lingle, U.S. Department of Energy, Oak Ridge Operations Office 200 Administration Road, Mail Stop EW–91, Oak Ridge, TN 37831–8541, (615) 576–0727

Public Reading Room For The Meeting Above

Trenton: Mercer County Library, Lawrenceville Branch, Lawrenceville. NJ, Hours: 9:30 a.m.–9 p.m., Mon.–Thurs., 9:30 a.m.–5:30 p.m., Fri., 10 a.m.–3 p.m. Sat.

Meeting: Cincinnati, OH
Date: Monday, January 14, 1991
Time: 9 a.m.–9:30 p.m.
Location: Hilton North, 3855 Hauck Road, Cincinnati, OH 45231 (512) 563–6332

Meeting: Columbus, OH
Date: Wednesday, January 16, 1991
Time: 9 a.m.–9:30 p.m.
Location: Hyatt on Capital Square, 75 State Street, Columbus, OH 43215, (614) 228–1234

Contact For The Two Meetings Above

Nelson Lingle, U.S. Department of Energy, Oak Ridge Operations Office 200 Administration Road, Mail Stop EW–91, Oak Ridge, TN 37831–8541, (615) 576–0727

Public Reading Rooms For The Two Meetings Above

Cincinnati: Lane Library, 800 Vine Street, Cincinnati, OH 45202, Hours: 9 a.m.–9 p.m., Mon.–Thurs. 9 a.m.–5 p.m., Fri.–Sat.

Columbus: Portsmouth Public Library, 1220 Galia Street, Portmouth, OH 45667, Hours 9 a.m.–8 p.m., Mon.-Fri. 9 a.m.–5:30 p.m., Sat.

Meeting: Albuquerque. NM
Date: Tuesday, January 15, 1991,
Time: 9 a.m.–9:30 p.m.,
Location: Albuquerque Convention Center, 401 2nd Street NW., Albuquerque. NM 87102

Contact For The Meeting Above

Patrick J. Higgins, Jr. Division Directors, Environmental Management Office, Department of Energy, P.O. Box 5400, Albuquerque, NM 87115, (800) 633–7156 (24 Hours)

Public Reading Rooms For The Meeting Above

Albuquerque: U.S. Department of Energy, National Atomic Museum Public Reading Room, Building 20358 on Wyoming Blvd., Kirtland Air Force Base, Albuquerque, NM 87115, Contact: Loretta Helling, (505 845–4378 Hours: 9 a.m.–5 p.m., Mon.–Fri.

Albuquerque: General Publications Department, Zimmerman Library, University of New Mexico, Albuquerque, NM 87139, Contact: Eulalie W. Brown, (505) 277–5441, Hours 8 a.m.–9 p.m., Mon.-Thurs., 8 a.m.–5 p.m., Friday, 1 p.m.–5 p.m., Sat.–Sun.

Carlsbad: Carlsbad Public Library, 101 South Halagueno Street, Carlsbad, NM 88220, Contact: Mrs. Mary Elms, (505) 885-6776. Hours 8 a.m.-5 p.m., Mon.-Fri. 12 p.m.-5 p.m., Saturday.

Los Alamos: Mesa Public Library, 1742 Central Avenue, Los Alamos, NM 87545, Contact: Kathy Bjorklund, (505) 662-8253. Hours: 10 a.m.-9 p.m., Mon., 10 a.m.-6 p.m., Fri., 9a.m.-5 p.m., Saturday, 11 a.m.-5 p.m., Sunday

Meeting: Las Vegas, NV
Date: Tuesday, January 15, 1991
Time: 9 a.m.-9:30 p.m.
Location: U.S. Department of Energy, Nevada Operations Office Auditorium, 2753 South Highland Drive, Las Vegas, NV 89109

Contact For The Meeting Above

Karen Randolph, DOE Nevada Operations Office, P.O. Box 98518, Las Vegas, NV 89193, (702) 295-3521

Public Reading Rooms For The Meeting Above

Las Vegas: Government Documents Department, James R. Dickinson Library, University of Nevada, Las Vegas, 4805 South Maryland Parkway, Las Vegas, NV 89154, Contact: Ken Schott, (702) 739-3409. Hours 8 a.m.-6 p.m.

Department of Energy 2753 S. Highland Drive, Las Vegas, NV 89109, Contact: Cynthia Ortiz, (702) 295-1274. Hours: 7:30 a.m.-4:30 p.m., Mon.-Fri.

Beatty: Beatty Community Library, P.O. Box 129 Betty, NV 89003 Contact: Jay Wolf, (702) 553-2257. Hours: 8:15 a.m.-4:45 p.m.

Meeting: Idaho Falls, ID
Date: Tuesday, January 22, 1991
Time: 9 a.m.-9:30 p.m.
Location: West Bank Inn, 475 River Parkway, Idaho Falls, ID 83402 (208) 523-2310

Meeting: Boise, ID
Date: Thursday, January 24, 1991
Time: 9 a.m.-9:30 p.m.
Location: Red Lion Riverside, 2900 Chinden Blvd., Boise, ID 83714, (208) 343-1871

Contact For The Two Meetings Above

Jackie Clements, INEL Public Affairs Office, 785 DOE Place, MS 1215, Idaho Falls, ID 83515, (208) 526-8121

Public Reading Rooms For The Two Meetings Above

Idaho Falls: DOE-ID Public Reading Room, INEL Technical Library, 1776 Science Center Drive, Idaho Falls, Idaho 83402, (208) 526-1191 or (208) 526-1144, Hours: 8 a.m.-7 p.m., Mon.-Thurs., 8 a.m.-5 p.m., Fri. 9 a.m.-1 p.m., Sat., 8 a.m.-5 p.m., Summer, (Mon.-Fri.)

Pocatello: INEL Pocatello Office, 215 North 9th Pocatello, Idaho 83201, (208) 233-4732. Hours: 9 a.m.-7 p.m., Mon., 9 a.m.-5 p.m., Tues.-Fri.

Twin Falls: INEL Twin Falls Office, 1062 Blue Lakes Blvd. North, Suite 106, Twin Falls, Idaho 83001, (208) 734-0483. Hours: 8 a.m.-7 p.m.. Mon., 8 a.m.-5 p.m. Tues.-Fri.

Information Repositories

Boise: Boise Public Library, 715 South Capitol Boulevard, Boise, Idaho 83702, (208) 384-4076. Hours: 10 a.m.-6 p.m., Mon., 10 a.m.-9 p.m., Tues-Thurs., 10 a.m.-6 p.m., Fri., 1 p.m.-5 p.m., Sat. & Sun.

Moscow: Moscow-Latah County Library, 110 South Jefferson, Moscow, Idaho 83843, (208) 882-3925. Hours: 10 a.m.-9 p.m., Mon. & Thur., 10 a.m.-6 p.m., Tues., Wed. and Fri., 10 a.m.-5 p.m., Sat.

Idaho Falls: Idaho Falls Public Library, 457 Broadway, Idaho Falls, ID 83402, (208) 529-1450. Hours: 9 a.m.-9 p.m., Mon.-Thurs., 9 a.m.-5:30 p.m., Fri.-Sat.

Twin Falls: Twin Falls Public Library, 434 2nd Street East, Twin Falls, ID 83301, (208) 733-2964. Hours: 10 a.m.-6 p.m., Mon. & Fri., 10 a.m.-9 p.m., Tues., Wed., & Thurs., 12 p.m.-5 p.m., Sat.

Pocatello: Pocatello Library, 812 East Clark, Pocatello, ID 83201, (208) 232-1263. Hours: 10 a.m.-9 p.m., Mon.-Thurs., 10 a.m.-6 p.m., Fri. & Sat.

Meeting: Paducah, KY
Date: Tuesday, January 22, 1991
Time: 9 a.m.-9:30 p.m.
Location: J.R.'s Executive Inn, 1 Executive Boulevard, Paducah, KY 42001 (502) 443-8000

Contact For The Meeting Above

Nelson Lingle, U.S. Department of Energy, Oak Ridge Operations Office 200 Administration Road, Mail Stop EW-91, Oake Ridge, TN 37831-8541, (615) 576-0727

Public Reading Room For The Meeting Above

Paducah: Paducah Public Library, 555 Washington Avenue, Paducah, KY 42001. Hours: 10 a.m.-9 p.m., Mon.-Fri., 10 a.m.-6 p.m., Sat., 2 p.m.-6 p.m., Sun.

Meeting: Denver, Colorado Area
Date: Wednesday, January 23, 1991
Time: 9 a.m. to 9:30 p.m.
Location: Westminster City Park Recreation Center, 10455 N. Sheridan Blvd., Westminster, CO 80030

Contact For The Meeting Above

Ms. Beth Brainard, Office of Public Affairs, Attn: ER/WM PEIS, U.S. Department of Energy, Rocky Flats Office, P.O. Box 928, Golden, C 80402-0928, 1-800-446-7640

Public Reading Rooms For The Meeting Above

Rocky Flats Environmental Monitoring Council, 1536 Cole Blvd., Suite 150 Golden, CO 80401 (303) 232-1966, Contact: Howard Brown, Hours by appointment

Front Range Community College Library, 3645 West 112th Avenue, Westminster, CO 80030, (303) 469-4435. Hours: 12-8 p.m., Mon. & Tues., 9 a.m.-3:45 p.m., Wed.-Fri.

Meeting: Tampa, FL
Date: Tuesday, January 29, 1991
Time: 9 a.m.-9:30 p.m.
Location: Tampa Convention Center, 333 S. Franklin Street, Tampa, FL 33602 (813) 223-8511

Contact For The Meeting Above

Patrick J. Higgins, Jr., Division Director, Environmental Management Staff, Albuquerque Operations Office, Department of Energy, P.O. Box 5400, Albuquerque, NM 87115 (800) 633-7156 (24 Hours)

Public Reading Room For The Meeting Above

Largo: Largo Public Library, 351 East Bay Drive, Largo, FL 34640, Contact: Joanna Bromberg, (813) 587-6715. Hours: 9:30 a.m.-8 p.m., Mon.-Thur., 9:30 a.m.-5 p.m., Fri.-Sat.

Meeting:
Date: Thursday, February 7, 1991
Time: 9 a.m.-9:30 p.m.
Location: Holiday Inn Capitol, 550 C Street, SW, Washington, DC 20024 (202) 479-4000

Contact For The Meeting Above

W.E. Wisenbaker, Acting Director, Division of Program Support, Environmental Restoration (EM-43) U.S. Department of Energy, 1000 Independence, Avenue, SW., Washington, DC 20585, (301) 353-4500

Public Reading Room For The Meeting Above

Department of Energy, Freedom of Information Reading Room, 1000 Independence Ave., SW. Room 1E190, Washington, DC 20585, (202) 586-6020. Hours: 9 a.m.-4 p.m., Mon.-Fri.

[FR Doc. 90-28987 Filed 12-10-90; 8:45 am]
BILLING CODE 6450-01-M

Financial Assistance Award, Intent to Award a Grant to the United Nations Institute for Training and Research

AGENCY: U.S. Department of Energy, Bartlesville Project Office.

ACTION: Notice of non-competitive financial assistance (Grant) award with United Nations Institute for training and research.

SUMMARY: The Department of Energy (DOE), Bartlesville Project Office announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (B), it intends to make a Non-Competitive Financial Assistance (Grant) Award through the Pittsburgh Energy Technology Center to United Nations Institute for Training and Research (UNITAR) for a conference entitled "International Conference on Heavy Crude and Tar Sands."

SCOPE: The objective of the grant project is to cofund the fifth International Conference on Heavy Crude and Tar Sands. The purpose of the conference is to inform participants of the existence of heavy crude and tar sands and the possibilities for their development and utilization to meet energy demands of the future. More specifically, the conference plans to: (1) Discuss new technological breakthroughs in the exploration, production, refining, and marketing of heavy crude and tar sands, (2) facilitate contacts between large producers of heavy crude and more modest ones, and (3) encourage

governments to refine or establish appropriate legislation regarding exploration and production of heavy crude and tar sands.

In accordance with 10 CFR 600.7(b)(2)(i) criteria (B), a noncompetitive financial Assistance Award to UNITAR has been justified.

This effort would be conducted by the UNITAR using their own resources; however, DOE support of the activity would enhance public benefits to be derived by further understanding of heavy crude architecture. DOE knows of no other entity which is conducting or planning to conduct such an effort. This effort is considered suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a solicitation, and a competitive solicitation would be inappropriate.

The grant is for an estimated total value of $238,000. The DOE share of cofunding for the conference is estimated at $50,000 and shall be used to pay for the reasonable cost of staff, administrative support personnel, consultants, and experts as necessary for the Conference.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921-165, Pittsburgh, PA 15236, Attn: Debra E. Ball, Telephone: AC (412) 892-4959.

Carroll Lambton,

Deputy Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 90-28988 Filed 12-10-90; 8:45 am]

BILLING CODE 6450-01-M

Public Notice and Sources Sought for Operation of the National Institute of Petroleum and Energy Research (NIPER) Facility in Bartlesville, Oklahoma

AGENCY: U.S. Department of Energy, Pittsburgh Energy Technology Center.

ACTION: Public Notice and sources sought.

SUMMARY: This announcement is not a formal solicitation, and should not be construed as a commitment by the Government. It is intended for information and planning purposes only.

The U.S. Department of Energy, Bartlesville Project Office, is compiling a source list of potential offerors who are both interested in and capable of utilizing the facility and sharing in the operation of the National Institute of Petroleum and Energy Research (NIPER) facility located in Bartlesville, Oklahoma. This announcement further seeks public comment as to the most effective use of the facility as it relates to the Department's presently expanding Oil Research Program Implementation Plan. Although NIPER continues to perform important research services and plays an important role in the Department of Energy's Oil Program, the current programmatic needs are not sufficient to fully support and utilize the facility. Thus the Department is seeking comments from organizations, including profit and not for profit firms.

SUPPLEMENTARY INFORMATION: The National Institute for Petroleum and Energy Research (NIPER) was created in 1983 as a result of the defederalization of the Bartlesville Energy Technology Center. DOE continues to be committed to an active and effective petroleum research program of which NIPER is an integral part and to maintaining that part of the program in Bartlesville, Oklahoma, at the current facility.

NIPER is a government-owned facility that operates as a center for research on petroleum and other fossil fuel liquids. DOE-supported programs at NIPER include fundamental and applied research for improving the performance and predictability of enhanced oil recovery (EOR) processes in chemical flooding, carbon dioxide flooding, thermal recovery, microbial EOR and reservoir characterization and for improving our understanding of upgrading heavy oils and alternative feedstocks for solving refining problems. In addition, NIPER conducts research for other DOE and government offices, such as the Strategic Petroleum Reserve, Air Force and Navy Defense Fuel Supply Center, Environmental Protection Agency, and Federal Aviation Agency.

Historically, the NIPER Research and Development activities have functioned under four (4) types of programs:

- Base Program—Traditionally, a fundamental program to prepare for future energy needs. Previous emphasis was placed on basic research and high risk, long-term projects to build on the petroleum technology base but is now evolving to support DOE's new near, mid-term program emphasis. This program includes research proposed in an Annual Research Plan, approved and funded by DOE at $5M per annum. All Base Program work is non-fee bearing.
- Optional Program—Included research of joint interest beyond the Base Program and was funded cooperatively by DOE and various industrial companies and government agencies. The DOE contribution for the first year was $4M with a progressively reduced amount between FY1984 and FY1987.
- Supplemental Government Program—Includes energy-related research for non-DOE government agencies as well as DOE work not included in the Base Program. Unlike the Base Program, this category has the potential to be fee-bearing. This program was established to replace the Optional Program that ended in FY1988.
- Work for Others Program—Includes research performed by the operator of NIPER on its own behalf. It allows NIPER to solicit work from the private sector and others. It is exclusive of all work performed under the Base, Supplemental and Government Optional Programs.

The following table provides past and present funding levels and sources of funding at NIPER:

FY	Base	Optional*	GPP**	SGP***	Total
FY84	5,000,000	3,670,566	595,682	0	9,266,248
FY85	5,202,500	3,290,000	500,000	0	8,992,500
FY86	4,865,264	5,570,569	98,000	0	10,533,833
FY87	4,932,236	4,263,503	0	0	9,195,739
FY88	8,675,000	0	338,100	3,713,109	12,726,209
FY89	1,417,615	0	167,500	3,335,524	4,920,639
FY90	4,597,385	0	214,304	3,511,953	8,323,642
Total	34,690,000	16,794,638	1,913,586	10,560,586	63,958,810
Total Government Share is					$46,274,152
Total Contractor Share is					$17,684,658

*DOE total contribution was $9,670,566 with the remaining $7,124,072 contributed by the contractor.
**General Plant Property
***Includes Supplemental Government Program tasks for FY88-FY90
Sources of funding include: DOE (Army, Navy, Air Force), EPA, Federal Aviation, Treasury, Consumer Product Safety, Strategic Petro Reserve, and Fossil Energy.

Work-for-others includes industry and other project acquired through NIPER marketing efforts. This financial information is proprietary to the operator and are not included in the table.

In the process of defederalization of the facility in 1983, a small federal office, the Bartlesville Project Office (BPO) was established to plan, implement and manage DOE's contract research in petroleum which includes technical oversight of the NIPER operation.

BPO is the lead government agency for administering programs in EOR and Advanced Extraction and Process Technology (AEPT). These programs are carried out by a staff of 15 Federal personnel through management of a number of Fossil Energy projects executed by (1) NIPER, which utilizes the Federal equipment and facility, (2) industrial and university research organizations, and (3) National Laboratories. Typical BPO activities include: contract monitoring, performance of technical evaluations, development of project and procurement plans, dissemination of technical data, coordination with petroleum organizations, such as the Interstate Oil Compact Commission (IOCC) and the National Petroleum Council (NPC), implementation of international cooperative agreements and other activities related to petroleum research.

In addition, BPO operates and maintains the Tertiary Oil Recovery Information System (TORIS), a comprehensive body of information, data bases and programs that provide the capability for analytical studies, data base applications and project management related to petroleum. The TORIS system contains data bases of up-to-date information on enhanced oil recovery projects, reservoirs, and crude oil analysis.

Current Federal and Contractor Staffing for the facility is as follows:

	Contractor	Federal
Administrative Professional	21	2
Clerical/Support	49	3
Technical Professional	75	10
Technician	39	0
Total	184	15

In recent years, many studies have been performed to determine the important aspects of oil extraction and processing. In response to the results from several of these studies related to oil availability, DOE developed an Oil Research Program Implementation Plan (ORPIP/4/90) that redirected its research focus from "long-term, high-risk" research objectives to maximizing economic recovery of oil through a strategy of near,- mid-, and long-term objectives. As an integral part of that strategy, NIPR is addressing the new research strategy through an interdisciplinary team approach performing research focused on geoscience, extraction technology, crude oil analysis, thermodynamics and other research related to the ORPIP. FY1990 finds the NIPER research in transition, with components of both the old and new research objectives. In the next two years, the DOE-funded research will fully address the new focus of the ORPIP.

The following list includes, but not limited to, all potential applications of the Department's NIPER facilities located in Bartlesville, Oklahoma. It is not intended to be exhaustive in nature, and is provided in order that all interested organizations be made aware of the broad range of opportunities which are presently under consideration by the Department as potential near term uses for the unique facilities.

A. Research on-site

—DOE funded
  —FE program only
  —Other DOE programs
—Other Government agency funded
  —Petroleum related only
  —Other potential technical applications
—Privately funded
  —At full cost recovery
  —On non-interference basis
  —With certain rights to access and license technical data developed at private expense.
  —Performance of research activities at various locations within the continental United States, Alaska, Hawaii, and its United States territories.
  —Development, placement and/or management of research activities under subcontract to contract performers at various locations within the continental United States, Alaska, Hawaii, and its United States territories.
  —Performance of research for foreign entities.

B. Technical Support Services

—Assistance in evaluating existing technologies
—Assistance in preparing near-term and long-range program plans
—Assistance in preparing specific work requirements
—Assistance in evaluating contract performance
—Assistance in evaluating and preparing environmental safety and health and other related documents

C. Management Support Services

—Assistance in preparing and monitoring annual budgets
—Assistance in providing clerical, administrative, and procurement support at the NIPER facility
—Assistance in providing ADP support at the NIPER facility
—Assistance in the printing and publication of technical administration materials

D. Maintenance Support Services

—Physical plant, grounds, and building support

Request for Public Comment

The Department is extremely interested in receiving public input regarding both the present, and potential applications which should be considered in developing the most effective use of this facility. In addition, we are interested in receiving input regarding use of the facility in support of the new Oil Research Program Implementation Plan (ORPIR). The ORPIR is available upon written request to Herbert Tiedemann, Bartlesville Project Office, P.O. Box 1398, Bartlesville, Oklahoma 74005.

In addition to the basic DOE program, the Department is looking for creative ideas on utilizing the facility through private and public organizations, thereby contributing to its growth. Each party could benefit through the cost savings and efficiencies due to the other's support.

Interest in expanding use of the facility to include work in areas other than petroleum technology will be considered. Information provided in response to this announcement will be comprehensively assessed and analyzed by the Department for possible inclusion in a forthcoming competitive solicitation.

Guidelines

Methods of contracting are generally established for the DOE by the Federal Acquisition Regulations and the Federal Assistance Regulations.

Funding for any new approach is subject to congressional action and may range from the minimum monies necessary to operate the existing facility to major funding for a nation wide oil program. This request for new approaches is predicated upon future funding decisions and is not related to current levels of appropriations. The details of the new approaches should support the level of funding proposal so as to make your comments credible.

An excerpt from current congressional language states,

Notwithstanding any other provision of law, the Secretary of Energy may enter into a contract, agreement, or arrangement, including, but not limited to, a Management and Operating Contract as defined in the Federal Acquisition Regulations (17.601), with a profit-making or non-profit entity to conduct activities at the Department of Energy's research facilities at Bartlesville, Oklahoma: *Provided*, That any contract, agreement, or arrangement shall contain provisions encouraging use of the Department of Energy's Bartlesville facilities by interested third party sponsors * * *

Organizations interested in providing comments, as well as those interested in being placed on the Department's source list, for the upcoming solicitation are encouraged to submit a response to: U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. 10940, MS 921-165, Pittsburgh, Pa. 15236, Attention: Ronald J. Dunnington.

Responses must include: The company name, address, and point of contact, including telephone number, and be submitted within 30 days from publication of this announcement for consideration by DOE. Any questions concerning this announcement should be directed to Mr. Dunnington at (412) 892-6209.

Gregory J. Kawalkin,

Contracting Officer, Pittsburgh Energy Technology Center.

[FR Doc. 89-28989 Filed 12-10-89; 8:45 am]

BILLING CODE 6450-01-M

DOE's Response to Recommendation 90-7 of the Defense Nuclear Facilities Safety Board Concerning Ferrocyanide in the Single-Shell Tanks Used to Store High-Level Radioactive Waste at the Hanford Site

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d, the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 90-7 of the Defense Nuclear Facilities Safety Board, regarding single-shell high-level waste tanks at DOE's Hanford site, located near Richland, Washington. DOE hereby requests public comment on the response of the Secretary to Recommendation 90-7.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before January 10, 1991.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Donald K. Knuth, Deputy Assistant Secretary for Operations, Defense Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: December 4, 1990.

Steven D. Richardson,

Deputy Assistant Secretary for Nuclear Materials, Defense Programs.

The Honorable John T. Conway, Chairman, *Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Washington, DC 20004*

Dear Mr. Chairman: I am in receipt of your letter and recommendations of October 12, 1990 (Recommendation 90-7). As you know, the Department of Energy (DOE) submitted an Implementation Plan on August 10, 1990, that responded to four recommendations made by the Defense Nuclear Facilities Safety Board (DNFSB) concerning ferrocyanide in the single-shell tanks used to store high-level radioactive waste (HLW) at the Hanford Site.

The Department agrees with the need to accelerate and expand its programs to address HLW safety issues and will submit a supplement to its original Implementation Plan that is responsive to DNFSB Recommendation 90-7. the Department accepts the six recommendations that comprise DNFSB Recommendation 90-7, although the Department cannot implement immediately one recommendation given an unreviewed safety question involving the single-shell HLW tanks at Hanford that contain Ferrocyanide. Preparation and approval of detailed safety evaluations are required to support work on these tanks. The Department believes that tank temperatures are well below any known temperature which could cause a reaction and maintenance is controlled until the required safety evaluations are completed. Detailed responses to each section of DNFSB Recommendation 90-7 are provided as Enclosure 1.

The Department has undertaken many management actions to aggressively address HLW safety issues. A HLW Tanks Task Force and a HLW Tanks Advisory Panel have been established to ensure that potential safety concerns with HLW tanks are identified and addressed in a systematic and timely manner. The Task Force, established in August 1990 under the direction of the Director of Environmental Restoration and Waste Management, Mr. Leo P. Duffy, is working with all facilities having HLW tanks to identify and address potential safety issues and to perform a detailed reanalysis of the postulated hydrogen and ferrocyanide accidents at the Hanford Site. The Advisory Panel, originally formed in June 1990 and expanded in August, will work with the Task Force and with Mr. Duffy to ensure technical credibility as well as to make certain that the latest scientific and technological knowledge are considered. Professor Mujid Kazimi of the Massachusetts Institute of Technology chairs this Advisory Panel. These initiatives are described in the HLW Tanks Task Force Work Plan, which was provided to the Board previously.

The DOE Richland Operations Office has established a new project office to address HLW tanks management and safety issues. (The proposed organization structure and mission statements for this new office is provided for your information as Enclosure 2.)

I have discussed the importance of the Hanford HLW tanks safety issues with senior Westinghouse Electric Corporation executives and have received their commitment for managerial and technical support. The Westinghouse Hanford Company (WHC), in recognition of the seriousness and urgency of reaching an acceptable resolution to issues relating to waste tank safety and remediation, will implement a new organizational structure on December 1, 1990. (A copy of the new WHC organizational structure is provided for your information as Enclosure 3). This new structure is designed to address concerns expressed by the Board and by the Department. Management of HLW will become the responsibility of a separate organization reporting directly to the WHC President. New senior management with proven related technical, scientific, operating, and project experience are identified to head the organization. This organization will be responsible also for obtaining the technical resources, both internally (WHC and Westinghouse corporate) and externally, necessary to assist in the resolution of identified concerns, and to respond promptly to new issues. Although reorganization was not a DNFSB-identified issue, the lack of a focused contractor organization is believed to be the root cause of many of the Hanford deficiencies.

My policy and actions continue to emphasize that safety is the number one priority at DOE. All operations in and around the Hanford HLW tanks that have been identified as being of a safety concern are now strictly controlled, with extensive safety reviews and senior management approvals required before operation. Certain operations have been curtailed, including the deferral of pumping interstitial liquid from two single-shell tanks containing ferrocyanide, until a safety analysis has been completed. Hanford has been developing integrated program plans to address both the ferrocyanide and the hydrogen issues.

The Department has initiated programs to aggressively identify for resolution any potential safety issues concerning the HLW tanks in the DOE complex with the initial focus on the Hanford tanks, i.e., the ferrocyanide and hydrogen issues. All actions will be conducted in accordance with all applicable requirements. Internal safety oversight organizations are being kept informed so that they can discharge their independent review function. We continue to work closely with the State of Washington and the U.S. Environmental Protection Agency in implementing any programs that may potentially affect regulatory compliance with Federal and state environmental requirements at the Hanford Site.

As you may know, I visited Tank 101–SY recently with Washington Governor Booth Gardner. Resolution of the Hanford HLW safety issues is one of my top priorities, and I am committed to working closely with the DNFSB to address these safety issues. Please contact me or Mr. Duffy if we can be of further assistance to the Board in this matter.

Sincerely,

James D. Watkins,

Admiral, U.S. Navy (Retired).

Enclosures

Enclosure 1

Response to Defense Nuclear Facilities Safety Board Recommendation 90–7

Issued on October 12, 1990

In September 1990, the Westinghouse Hanford Company (WHC) established a Ferrocyanide Task Team to manage activities related to resolving the ferrocyanide issue. A program plan is being prepared by this Task Team that will incorporate recommendations made by the Defense Nuclear Facilities Safety Board (DNFSB), a General Accounting Office consultant, and Department of Energy (DOE) experts. The program plan will be developed with detailed information on activities, milestones, and schedules on a rolling 3-month basis as well as planning schedules for the remainder of the program. The DOE High-Level Waste (HLW) Tank Task Force is working closely with the Westinghouse Ferrocyanide Task Team to ensure adequacy of this ferrocyanide program plan, which will be the basis for supplementing the Implementation Plan submitted in August and will be responsive to DNFSB Recommendation 90–7.

Many actions related to the ferrocyanide issue have been undertaken since submittal of the Implementaiton Plan in August 1990. Some of these actions, together with DOE's response to each DNFSB recommendation, follow.

DNFSB Recommendation 90–7.1 *Immediate steps should be taken to add instrumentation as necessary to the single-shell tanks containing ferrocyanide that will establish whether hot spots exist or may develop in the future in the stored waste. The instrumentation should include, as a minimum, additional thermocouple trees. Trees should be introduced at several radial locations in all tanks containing substantial amounts of ferrocyanide to measure the temperature as a function of elevation at these radii. The use of infra-red techniques to survey the surface of waste in tanks should continue to be investigated as a priority matter, and on the assumption that this method will be found valuable, monitors based on it should be installed now in the ferrocyanide bearing tanks.*

DOE Response to DNFSB Recommendation 90–7.1 DOE accepts the intent of this recommendation, although DOE cannot add instrumentation to the "ferrocyanide" tanks immediately because of an unreviewed safety question involving these tanks. DOE is moving as quickly as possible to install improved temperature sensors at several radii in four tanks (104–BY, 105–BY, 106–BY, and 110–BY) that have substantial amounts of ferrocyanide and higher temperatures (130°F). The schedule for installing the improved temperature sensors in these four tanks (as well as planned actions for the other 18 HLW tanks at Hanford that contain substantial amounts of ferrocyanide) will be identified in the Implementation Plan. Work in and around any of the 22 ferrocyanide tanks will require performance of a detailed safety analysis and top management approval. Analyses of postulated accidents ahve been initiated to support preparation of procedures for work in and around those tanks that contain a substantial amount of ferrocyanide (e.g., monitoring for flammable gases and moisture in the dome space, core sampling, insertion of instrument trees). DOE estimates that it will take about 6 to 9 months to complete the safety analysis for installing the new instrument tree currently under development.

DOE believes that this delay is acceptable since preliminary modeling results indicate that the temperature inertia of these tanks is large and takes long periods of time to heat up and that heat transfer within a tank is sufficient to keep any localized "hot spots" well below the initial ferrocyanide reaction temperature of 430°F.

The instrumentation trees will be capable of measuring temperature at various levels in the waste as well as performing other functions. WHC is continuing to investigate the feasibility of using infra-red techniques for possible early application. In addition, Hanford is working with Westinghouse Science and Technology Center personnel, scientists from national laboratories, and manufacturers to obtain spark-proof instrumentation, such as ultrasonic detectors, and video cameras, including use of fiber otpics technology, for use in the HLW tanks.

DNFSB Recommendation 90–7.2 *The temperature sensors referred to above should have continuous recorded readouts and alarms that would signal at a permanently manned location any abnormally high temperatures and any failed temperature instrumentation.*

DOE Response to DNFSB Recommendation 90–7.2 DOE accepts this recommendation. Temperature data from these four critical ferrocyanide tanks will be recorded, monitored, and alarmed at an existing, continuously manned control room. Because this capability may take up to 9 months to design, procure and install, an interim monitoring and alarm capability (not continuously manned) will be installed in the BY Tank Farm for existing thermocouples in the 104–, 105–, 106– and 110–BY tanks during the first quarter in 1991. WHC had previously implemented stricter procedures to ensure quality of thermocouple data from all HLW tanks. Operational procedures are being implemented to require same day analysis of the temperature data from the HLW tanks for detection of early trends.

DNFSB Recommendation 90–7.3 *Instrumentation should also be installed to monitor the composition of cover gas in the tanks, to establish if flammable gas is present.*

DOE Response to DNFSB Recommendation 90–7.3 DOE accepts this recommendation. This capability is included in the design of the new instrument tree discussed above. Alternative instrumentation being considered to study the flammable gas accumulation issue for Tank 101–SY will be directly applicable to the ferrocyanide tanks.

DNFSB Recommendation 90–7.4 *The program of sampling the contents of these tanks should be greatly accelerated. The proposed schedule whereby analysis of two core samples from each single-shell tank is to be completed by September 1998, is seriously inadequate in light of the uncertainties as to the safety of these tanks. Furthermore, additional samples are required at several radii and at a range of elevations for the tanks containing substantial amounts of ferrocyanide.*

DOE Response to DNFSB Recommendation 90–7.4 DOE accepts this recommendation. The *Waste Characterization Plan for the Hanford Site Single-Shell Tanks* (WHC–EP–0210, Rev. 1) will be revised to reflect the critical need to obtain core samples from the tanks containing ferrocyanide as soon as possible, in accordance with procedural requirements. Sampling of ferrocyanide tanks will be initiated within the next 3 to 12 months, after completion of safety evaluations and the development of appropriate sampling techniques. Several core samples from different radii will be collected from the first few tanks considering the availability of riser locations, and need for statistically valid samples. The sampling and analysis protocol identified in the *Hanford Federal Facility Agreement and Consent Order* (commonly referred to as the Hanford Tri-Party Agreement, or TPA) are being reviewed to ensure that needed information is collected to address safety issues as well as TPA needs.

DNFSB Recommendation 90–7.5 *The schedule for the program on the study of the chemical properties and explosive behavior of the waste in these tanks is indefinite and does not reflect the urgent need for a comprehensive and definitive assessment of the probability of a violent chemical reaction. The study should be extended to other metallic compounds of ferrocyanide that are known or believed to be present in the tanks, so that conclusions can be generalized as to the range of temperature and other properties needed for a rapid chemical reaction with sodium nitrate.*

DOE Response to DNFSB Recommendation 90–7.5 DOE accepts this recommendation. A greatly expanded program is being aggressively pursued at the Hanford Site, the Los Alamos National Laboratory, and by

Fauske and Associates, Inc., a firm under contract to Westinghouse Hanford Company. Resulting studies will include effects of possible catalysts and diluents on reaction initiation temperature. These studies are part of the overall ferrocyanide program plan; a draft will be available in December 1990 for DOE review.

DNSFB Recommendation 90–7.6 *The Board had recommended "* * * that an action plan be devolved for the measures to be taken to neutralize the conditions that may be signaled by alarms." Two types of measures are implied: actions to respond to unexpected degradation of a tank or its contents, and actions to be taken if an explosion were to occur. Your implementation plan stated that "* * * current contingency plans * * * will be reviewed and revised if needed." We do not consider that this proposed implementation of the Board's recommendation is adequately responsive. It is recommended that a written action plan founded on demonstrated principles be prepared as soon as possible, that would respond to indications of onset of abnormal temperatures or other unusual conditions in a ferrocyanide-bearing tank, to counter any perceived growth in hazard. A separate emergency plan should be formulated and instituted, covering measures that would be taken in the event of an explosion or other event leading to an airborne release of radioactive material from the tanks, and that would protect personnel both on and off the Hanford site. The Board believes that even though it is considered that the probability is small that such an event will occur, prudence dictates that steps be taken at this time to prepare the means to mitigate the unacceptable results that could ensue.*

DOE Response to DNFSB Recommendation 9–7.6 DOE accepts this recommendation. Existing plans and procedures are being reviewed and an interim action plan to respond to the onset of abnormal conditions has been prepared and is undergoing internal Hanford review. DOE believes that the existing emergency preparedness plan for the Hanford Site is effective for previously identified potential accidents associated with waste tank operations. Joint exercises have been held with the State of Washington and local public safety agencies over the past few years. Given the potential for higher consequences of the postulated ferrocyanide accidents, DOE will review and update these procedures to ensure that they are adequate to respond to possible accidents in HLW tank farms.

Enclose 2

Mission

The Tank Farm Project Office (TFPO) plans, coordinates and provides general direction and integration of programs for the management, budgeting and storage of Hanford radioactive liquid waste in underground storage tanks, TFPO assures that all Tank Farm operations and maintenance are conducted in a safe and environmentally sound manner and are in compliance with the letter and interest of applicable regulations and standards.

The project support staff responsibilities include developing, planning and preparing budgets for the TFPO activities. Also, provides input to the Hanford Five-Year Plan for TFPO; performs schedule and budget performance activities for TFPO; provides document control services for the project office: provides interface with DOE–MQ and regulatory agencies for reporting and coordination; and prepares and disseminates reports to the proper agencies on TFPO activities.

Organizational Structure

1. Operations Branch
2. Safety Evaluation Branch
3. Corrective Actions Branch

Functions

1. Operations branch. a. Provides technical guidance during functional designs activities related to assigned waste storage facilities. Provides DOE approved functional design criteria to the contractor.

b. Plans, coordinates and provides general direction for the proper management of plant-generated radioactive liquid waste stored underground in Single Shell and Double Shell Tanks. The Tank farm Project Office also manages the Evaporator Facility located in the Tank Farms.

c. Assures that current approved safety analyses and operational safety requirements are in place for Tank Farm facilities.

d. Assures compliance with applicable environmental regulations for all Tank Farm operations.

e. Ensures that day-to-day operations and maintenance of the Tank Farms is in accordance with requirements.

2. Safety evaluation branch. a. Responsible for identifying safety issues for all single and double-shell storage tanks at Hanford.

b. Responsible for auditing existing records for each tank and establishing a historical file on each tank.

c. Responsible for analyzing data collected in the audits and personal interviews to identify any new safety or environmental issues that need to be resolved.

d. Establishes auditable records for each tank that can be used as reference files in the present and future.

e. Identifies all tank anomalies and conducts performance and risk assessment for tank characterization.

3. Corrective actions branch. a. Responsible for resolving all tank safety and operational concerns for tanks with potential safety questions.

b. Characterizes chemical and physical properties of tank contents.

c. Performs research and development activities on Single Shell and Double Shell tanks where needed to meet mission objectives.

d. Conducts engineering evaluations and safety analyses.

e. Conducts mock-up testing where necessary.

f. Implements corrective actions in conjunction with the Operations Branch.

g. Arranges for independent assessment review (peer) and oversight evaluations.

h. Issues requirement and restrictions for addition to tanks and mixing of tank contents.

Enclosure 3

Priority Message; November 16, 1990

To: All Westinghouse Hanford/BCSR Employees

Subject: We're Restructuring for Success in New Environmental Mission

Effective December 1, we are reorganizing to achieve success in carrying out our mission of waste management and environmental restoration. Our new organizational structure aggressively addresses the concerns of our DOE customer and oversight groups, including the DOE Tiger Team. I think you will agree that the new structure is a positive step in our transition.

In part, the reorganization results from our ongoing self-assessment, which indicates that we need to realign our talents and skills to focus on some major technical issues. It also is a product of listening to DOE, the states of Washington and Oregon, the public, various stakeholders and to you, our employees.

In the new organization, we have formed a staff-level organization dedicated to the waste tank farms; established an internal "Tiger Team"; restructured two groups that have key roles in our long-term environmental restoration and remediation mission; created a resource planning and integration department; consolidated employee development and technical activities in a central organization; and set up dedicated maintenance support in two line organizations.

Media reports of our restructuring will no doubt highlight some aspects of the new organization over others. I want you to know, however, that I consider every element of the new organization to be extremely important to achieving success. Our expectation is that the new organization will help all of us to be even more effective in doing our jobs.

I am pleased to announce that we have successfully recruited Dr. Harry Harmon to join us as vice president, Waste Tank Safety, Operations and Remediation. We are also fortunate to have Steve Marchetti join us as the director of the new Tank Farm Project, which will report to Harry, as will the tank safety group and others. Together, they will provide the leadership and technical expertise necessary for effectively resolving tank farm issues.

We selected Harry, who is manager of the Chemical Processes and Environmental Technology Department at the Westinghouse Savannah River Company, for his technical knowledge, reputation and demonstrated ability to solve tough problems involving nuclear and hazardous materials. His extensive research in nuclear materials processing will serve him well in effectively meeting the scientific and technical challenges associated with the tank farms, and in interacting with scientific oversight groups. His broad network of contacts in the chemical industry, developed in 17 years with du Pont and Westhinghouse at Savannah River, will assist us in recruiting additional technical expertise. Harry holds a Ph.D. in inorganic and nuclear chemistry from the University of Tennessee.

Steve, who earned his bachelor's degree at St. Francis College in Pennsylvania and a

master's at Duquesne University, is currently manager of the Projects Management Department at Savannah River. He has been with Westinghouse for 19 years, serving in a variety of waste management and radiation safety positions at the Bettis Atomic Power Laboratory, the Naval Reactors Facility at Idaho Falls, the Waste Isolation Pilot Plant, the West Valley Nuclear Services Company and other sites before going to Savannah River two years ago. Steve was also here at Hanford for three years in the late 1970s with Atlantic Richfield and Rockwell.

The new Tank Farm Project will have the dedicated resources necessary to direct all aspects of tank farm operations in 200 East and West. This will include maintenance, engineering, safety, health protection, environmental and quality assurance support, as well as planning and cost schedule/control systems to ensure all activities are defined, costed, scheduled and controlled in a disciplined manner.

Ron Bliss is appointed vice president, Restoration and Remediation. This organization is responsible for the central, long-term mission of Westinghouse Hanford—the environmental remediation of the Hanford Site—which is embodied in the 30-year Tri-Party Agreement between the DOE and the Environmental Protection Agency and the Washington Department of Ecology.

Ron's organization will comprise current operations engaged in environmental restoration, waste storage and processing operations, such as the Central Waste Complex, T Plant and Grout; project activities such as B Plant, the Liquid Effluent Retention Facility, the Hanford Waste Vitrification Plant (HWVP) and Waste Receiving and Packaging (WRAP) facility, which will be involved in future processing of waste; and the engineering, permitting and environmental resources needed to support remediation activities. This group will be responsible for meeting the key milestones of the Tri-Party Agreement. Ron is currently vice president of the Environmental and Waste Management organization.

Dr. Mike Korenko is appointed vice president of a newly structured Engineered Applications organization. It will have a key role in environmental restoration as it focuses our technical resources on developing and applying technology to waste management and environmental restoration and on addressing alternative technologies. It will also make recommendations on waste prevention, characterization, stabilization, retrieval, processing, disposal and utilization. It will support remediation activities through analytical laboratories management, safety analysis and configuration control. It will work closely with Battelle and other DOE sites, national labs, universities and the commercial sector in developing solutions to Hanford remediation problems. Mike is currently vice president, Engineering and Development.

The reorganization involves the consolidation of major facilities and projects, such as the FFTF, N Reactor, PUREX, PFP, SP-100 and FMEF, into a new Facility Operations Division. Wally Ruff is appointed the acting director of the division. This group will have its own dedicated maintenance support staff. Wally currently manages the Waste Management Division.

Roger Knight will continue as director of Operations Support Services, which will now encompass Safeguards and Security, the Fire Department and Emergency Preparedness—functions which support all Hanford contractors—as well as existing OSS activities. Maintenance support assigned to the Waste Tank Safety, Operations and Remediation and Facility Operations groups, however, will report directly to those line organizations. OSS will continue to provide maintenance support for the Restoration and Remediation organization and for other sitewide activities.

Dr. Ken Jordan is appointed director of Environment, Safety, Health and Quality Assurance. This department will assist all organizations in complying with environmental, safety, quality assurance, health protection and operational performance requirements called for by DOE Orders and federal and state regulations. It will be responsible for establishing our standards in these areas. Ken is currently manager of Quality Assurance.

Rich Slocum is appointed director of new organization, the Performance Assessment and Oversight Department. This new activity, totally independent of all other parts of the Company, represents an innovation approach to overall Company performance assessments. The department will perform an independent oversight function separate from that of Environment, Safety, Health and Quality Assurance. In effect, it will be an internal "Tiger Team." It will also have the responsibility of assessing the overall performance and effectiveness of all elements of the Westinghouse Hanford Company in managing the engineering and operations contract for the DOE. We want this group to find our problems so that we can fix them ourselves. We expect this group to be professional, thorough and tough. Rich is currently Support Services manager.

Hank McGuire is appointed director of a new department, Resource Planning and Program Integration. The primary job of this department will be comprehensive, realistic, long-term planning for effective use of resources. It will develop a system to help management set priorities, make recommendations on resource allocation in view of budget constraints, consolidate out-year programs for financial planning and provide management the tools and information to evaluate needs versus resources. Hank is currently manager of Environmental and Waste Program Integration.

Human Resources and Administration will continue to be directed by Jim Cassady, with added responsibility as the focal point for training related to the new mission. All employee training and retraining activities, with the exception of on-the-job or plant-specific training, will be consolidated within Human Resources Development. This will enable us to effectively development and implement a retraining plan due to Secretary Watkins February 1.

The functions of Controller, Communications, General Counsel and Information Resources Management remain essentially unchanged under Ernie Vodney, John Burk, Karen Hoewing and Ben Dole, respectively. However, the General Counsel's Office will assume responsibility for internal investigations.

In a related move, Dan Simpson has announced his intention to retire July 1, 1991, after 25 years with Westinghouse. He has been vice president, Safety, Quality Assurance and Security, since September 1988. He will serve as special assistant to the President's Office until his retirement, and focus on assisting the new Performance Assessment and Oversight and the Resource Planning and Program Integration departments with startup activities and other special assignments.

Also, Norm Boyter, who has been manager of the Defense Operations Division since August 1989, has accepted a new opportunity as manager of the Projects Management Department at Savannah River. He has made significant contributions here at Hanford in several key staff positions since 1987. We wish him well in his new assignment.

There will be a number of related reassignments and appointments made in the coming weeks to complete this restructuring. Your managers will be meeting with you to define any effect on your organization.

I am confident we have developed a framework for success in our new mission as well as for addressing several current and long-term priority issues. It is my hope that you will also see strengthened team efforts with the other Hanford contractors evolve through this reorganization.

I recognize the disruptive effects of changes such as these, but I am certain that your continued cooperation, patience and support will help us stay the course to leadership in environmental management. Each of you is key to making our new vision a reality, and to our success in carrying out the mission and meeting our commitments. Together, we can help create a positive legacy for future generations.

Roger Nichols,

President.

[FR Doc. 90-28990 Filed 12-10-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3863-3]

Science Advisory Board, Environmental Engineering Committee, Municipal Solid Waste Recycling Subcommittee; Teleconference Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Science Advisory Board's (SAB's) Environmental Engineering Committee (EEC), Municipal Solid Waste Recycling Subcommittee (MSWRS) will conduct a Teleconference Meeting on Wednesday, December 19,

1990. The meeting will be held in the Environmental Protection Agency's Headquarters Conference room 6, South, 401 M Street, SW., Washington, DC 20460. The teleconference will begin at 1:30 p.m. and adjourn no later than 4 p.m. on Wednesday, December 19, 1990.

The purpose of the teleconference is to conduct a consultative review to provide suggestions directly to the staff of the Environmental Criteria and Assessment Office (ECAO) of the Office of Health and Environmental Assessment (OHEA) for selection of members of an expert panel and discussion of related issues for the project entitled: "Potential Hazards of Municipal Solid Waste Recycling". For receiving materials pertinent to this teleconference, please call Mr. Randall Bruins, OHEA/ECAO at (513) 569-7539.

The teleconference is open to the public. Any member of the public wishing further information on the teleconference or those who wish to submit written comments or who wish to attend should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Marcy Jolly, Secretary, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, Washington, DC 20460, at (202) 382-2552 by December 17, 1990. Seating space is limited.

Dated: December 4, 1990.

Donald G. Barnes,

Director, Science Advisory Board (A-101).

[FR Doc. 90-28963 Filed 12-10-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-40021; FRL 3841-7]

Conditional Exemptions from TSCA Section 4 Test Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is granting conditional exemptions from Toxic Substances Control Act (TSCA) section 4 test rule requirements to certain manufacturers of chemicals substances subject to these rules.

DATES: These conditional exemptions are effective on December 11, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: This notice grants conditional exemptions from TSCA section 4 test rule requirements to all manufacturers of the chemical substances identified below who submitted exemption applications in accordance with 40 CFR 790.80. In each case, EPA has received a letter of intent to conduct the testing from which exemption is sought. Accordingly, the Agency has conditionally approved these exemption applications because the conditions set out in 40 CFR 790.87 have been met. All conditional exemptions thus granted are contingent upon successful completion of testing and submission of data by the test sponsors according to the requirements of the applicable test rule.

If the test requirements are not met and EPA terminates a conditional exemption under 40 CFR 790.93, the Agency will notify each holder of an affected conditional exemption by certified mail or **Federal Register** notice.

This conditional approval applies to all manufacturers which submitted exemption applications for testing of the chemical substances named in the final test rules listed below as of September 30, 1990. Any application received after that date will be addressed separately.

Chemicals	CAS No.	CFR Citation
C9 aromatic hydrocarbon fraction	70693-06-0	799.2175
commercial hexane:		
methylcyclopentane	96-37-7	
n-hexane	110-54-3	799.2155
2-ethylhexanoic acid	149-57-5	799.1650
isopropanol	67-63-0	799.2325
meta-cresols	108-39-4	799.1250
methyl ethyl ketoxime	96-29-7	799.2700
2-mercaptobenzothiazole	149-30-4	799.2475
monochlorobenzene	108-90-7	799.1051
1,2,4-trichlorobenzene	120-82-1	799.1053
1,1,1 trichloroethane	71-55-6	799.4400
tributyl phosphate	126-73-8	799.4360
Unsubstituted Phenylenediamines:		
m-phenylenediamine	108-45-2	799.3300
o-phenylenediamine	95-54-5	799.3300
p-phenylenediamine	106-50-3	799.3300

As provided in 40 CFR 790.80, processors are not required to apply for an exemption or conduct testing unless EPA so specifies in a test rule or in a special **Federal Register** notice.

Authority: 15 U.S.C. 2601, 2603.

Dated: November 30, 1990.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 90-28961 Filed 12-10-90; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Greece Westbound Conference

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-009238-027.

Title: Greece Westbound Conference.

Parties: Farrell Lines, Inc., P&O Containers Limited, Sea-Land Service, Inc., Zim Israeli Navigation Company, Ltd.

Synopsis: The proposed modification would amend Article 13 by decreasing the required notification period for a party to take independent action (I/A) from ten calendar days to five calendar days. Additionally, it would provide that the conference Secretary will call an explanatory meeting within two calendar days of receipt of a party's I/A notice.

Agreement No.: 203-011308.

Title: FMG/CSAV Cooperative Working Agreement—Atlas.

Parties: Flota Mercante Grancolombinan (FMG), Compania Sud Americana de Vapores (CSAV).

Synopsis: The proposed Agreement would permit FMG and CASV to operate a cooperative working agreement with up to six sailings per month, to consult and agree on sailing schedules, service frequency, ports to be served and port rotations, to regulate rates charges, practices and conditions, and to pool revenues. The Agreement would cover the trade between the East Coast of United States and Colombia, Panama and the West Coast of South

America. The parties have requested a shortened review period.

Agreement No.: 203–011309.

Title: FMG/CSAV Cooperation Working Agreement—Carat.

Parties: Flota Mercante Grancolombiana (FMG), Compania Sud Americana de Vapores (CSAV).

Synopsis: The proposed Agreement would permit FMG and CSAV to operate a cooperative working agreement with up to six sailings per month, to consult and agree on sailing schedules, service frequency, ports to be served and port rotations, to regulate rates, charges, practices and conditions, and to pool revenues. The Agreement would cover the trade between U.S. and Canadian Coast ports, Central America, the Caribbean Islands, the Caribbean Coast of Colombian and the Caribbean Coast of South America. The parties have requested a shortened review period.

Dated: December 5, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–28910 Filed 12–10–90; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; City of Los Angeles/Stevedoring Services of America Terminal Agreement

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.: 224–200449.

Title: City of Los Angeles/Stevedoring Services of America Terminal Agreement.

Parties: City of Los Angles (City), Stevedoring Services of America (SSA).

Synopsis: The Agreement provides for the 3-year preferential assignment of a City-owned crane at Berth 228. SSA will pay the City for use of the crane at the City's hourly tariff rates and will receive a credit of $184 per hour for maintaining the crane.

By Order of the Federal Maritime Commission.

Dated: December 5, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–28907 Filed 12–10–90; 8:45 am]

BILLING CODE 6730–01–M

Filing And Effective Date Of Agreement; Extension of the 1989 Memorandum of Settlement of the Port of Greater New York and New Jersey

The Federal Maritime Commission hereby gives notice that on December 3, 1990, the following agreement was filed with the Commission pursuant to section 5(d) of the Shipping Act of 1984 and was considered effective that date to the extent it constitutes an assessment agreement as described in section 3(3) of the Shipping Act of 1984.

Agreement No.: 224–000086–005.

Title: Extension of the 1989 Memorandum of Settlement of the Port of Greater New York and New Jersey.

Parties: New York Shipping Association, Inc. ("NYSA") International Longshoremen's Association, AFL–CIO ("ILA").

Synopsis: The Agreement extends the existing NYSA–ILA collective bargaining agreement to December 12, 1990, pending ratification of the November 28, 1990 Memorandum of Settlement of the Port of Greater New York and New Jersey.

By Order of the Federal Maritime Commission.

Dated: December 5, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–28908 Filed 12–10–90; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Diamond Cruise Ltd., Oy, C/O Richardson, Berlin & Morvillo, Market Square, 801 Pennsylvania Ave., s. 650, Washington, DC 20004.

Vessel: Radisson Diamond.

Dated: December 5, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–28909 Filed 12–10–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

The Dai-Ichi Kangyo Bank, Ltd; Acquisition 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 December 26, 1990.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant

Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Dai-Ichi Kangyo Bank, Limited,* Tokyo, Japan; to engage through The CIT Group Holdings, Inc., New York, New York, in acquiring certain commercial finance assets of Fidelcor Business Credit Corporation, Commercial Capital Corporation and Comwest Capital Corporation and thereby engage in making, acquiring, and servicing loans and other extensions of credit to businesses for its own account and for the account of others pursuant to §225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 5, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-28929 Filed 12-10-90; 8:45 am]

BILLING CODE 6210-01-M

First State Bancorp of Monticello, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company lsited in this notice has 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 225.24) 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)).

The application is available for imediate 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. Intersted pesons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 31, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 320 South LaSalle Street, Chicago, Illinois 60690:

1. *First State Bankcorp of Monticello, Inc.,* Monticello, Illinois; to acquire 100 percent of the voting shares of Atwood State Bank, Atwood, Illinois.

Board of Governors of the Federal Reserve System, December 5, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-28930 Filed 12-10-90; 8:45 am]

BILLING CODE 6210-01-M

KeyCorp, et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 31, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. *KeyCorp,* Albany, New York, and Key Bancshares of Wyoming, Inc., Cheyenne, Wyoming; to engage *de novo* through their subsidiary, The Key Trust Company of the West, Cheyenne, Wyoming, in performing functions or activities that may be performed by a trust company in the States of Idaho and Utah pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *HomeBanc Corporation,* Guntersville, Alabama; to engage *de novo* through its subsidiary, Valley Finance, Inc., Guntersville, Alabama, in making consumer loans pursuant to § 225.25(b)(1)(i); and serving as agent or broker for insurance directly related to the extension of credit by itself and limited to ensuring the repayment of the outstanding balance due on the extension of credit in the event of death, disability, or involuntary unemployment of the debtor pursuant to § 225.25(b)(8)(i)(A) of the Board's Regulation Y. These activities will be conducted in the State of Alabama.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *San Bancorp,* Sanborn, Iowa; to engage *de novo* in leasing of personal or real property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 5, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-28931 Filed 12-10-90; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Transmittal of the United States General Accounting Office Compliance Report for Fiscal Year 1991 to the President and the Congress

Pursuant to the Omnibus Budget Reconciliation Act of 1990, section 254(b), the United States General Accounting Office hereby reports that it has submitted its Compliance Report for Fiscal Year 1991 to the President, the President of the Senate, and the Speaker of the House of Representatives.

James L. Kirkman,

Director, Budget Issues, Accounting Financial Management Division.

[FR Doc. 90-28980 Filed 12-10-90; 8:45 am]

BILLING CODE 1610-01-M

Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Dai-Ichi Kangyo Bank, Limited,* Tokyo, Japan; to engage through The CIT Group Holdings, Inc., New York, New York, in acquiring certain commercial finance assets of Fidelcor Business Credit Corporation, Commercial Capital Corporation and Comwest Capital Corporation and thereby engage in making, acquiring, and servicing loans and other extensions of credit to businesses for its own account and for the account of others pursuant to §225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 5, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-28929 Filed 12-10-90; 8:45 am]

BILLING CODE 6210-01-M

First State Bancorp of Monticello, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company lsited in this notice has 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 225.24) 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)).

The application is available for imediate 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. Intersted pesons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 31, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 320 South LaSalle Street, Chicago, Illinois 60690:

1. *First State Bankcorp of Monticello, Inc.,* Monticello, Illinois; to acquire 100 percent of the voting shares of Atwood State Bank, Atwood, Illinois.

Board of Governors of the Federal Reserve System, December 5, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-28930 Filed 12-10-90; 8:45 am]

BILLING CODE 6210-01-M

KeyCorp, et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 31, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. *KeyCorp,* Albany, New York, and Key Bancshares of Wyoming, Inc., Cheyenne, Wyoming; to engage *de novo* through their subsidiary, The Key Trust Company of the West, Cheyenne, Wyoming, in performing functions or activities that may be performed by a trust company in the States of Idaho and Utah pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *HomeBanc Corporation,* Guntersville, Alabama; to engage *de novo* through its subsidiary, Valley Finance, Inc., Guntersville, Alabama, in making consumer loans pursuant to § 225.25(b)(1)(i); and serving as agent or broker for insurance directly related to the extension of credit by itself and limited to ensuring the repayment of the outstanding balance due on the extension of credit in the event of death, disability, or involuntary unemployment of the debtor pursuant to § 225.25(b)(8)(i)(A) of the Board's Regulation Y. These activities will be conducted in the State of Alabama.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *San Bancorp,* Sanborn, Iowa; to engage *de novo* in leasing of personal or real property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 5, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-28931 Filed 12-10-90; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Transmittal of the United States General Accounting Office Compliance Report for Fiscal Year 1991 to the President and the Congress

Pursuant to the Omnibus Budget Reconciliation Act of 1990, section 254(b), the United States General Accounting Office hereby reports that it has submitted its Compliance Report for Fiscal Year 1991 to the President, the President of the Senate, and the Speaker of the House of Representatives.

James L. Kirkman,

Director, Budget Issues, Accounting Financial Management Division.

[FR Doc. 90-28980 Filed 12-10-90; 8:45 am]

BILLING CODE 1610-01-M

SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708-885-2010
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800-523-5447
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404-934-9205
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214-638-1301
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818-376-2520
South Bend Medical Foundation, Inc., 530 North Lafayette Boulevard, South Bend, IN 46601, 219-234-4176
Southgate Medical Laboratory, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137, 800-338-0166
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 North Lee Street, Oklahoma City, OK 73102, 405-272-7052
St. Louis University Forensic Toxicology Laboratory, 3610 Rutgers Avenue, St. Louis, MO 63104, 314-577-8628

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 90-28803 Filed 12-10-90; 8:45 am]

BILLING CODE: 4160-20-M

Advisory Committee Meetings in January

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's advisory committees in the month of January 1991.

The Advisory Panel on Alzheimer's Disease will discuss plans for the third annual report and a special report on ethnic minority and cross cultural issues in Alzheimer's disease, plans for a hearing on values and goals relating to Alzheimer's disease, and other business before the Panel. Attendance by the public will be limited to space available.

The Extramural Science Advisory Board, NIMH, will discuss Brain Tissue Banking and Clinical Research Infrastructure. Attendance by the public will be limited to space available.

Notice of these meetings is required under the Federal Advisory Committee, Public Law 92-463.

Committee Name: Advisory Panel on Alzheimer's Disease.

Date and Time: January 9: 9 a.m., January 10: 8:30 a.m.

Place: Holiday Inn Crowne Plaza, Salon-Ballroom Level, 775 12th Street NW., Washington, DC 20005.

Status of Meeting: OPEN—January 9: 9 a.m.-5:30 p.m., January 10: 8:30 a.m-3:30 p.m.

Contact: George Niederehe, room 11C-03, Parklawn Building, 560 Fishers Lane, Rockville, MD 20857, (301) 443-1185.

Purpose: The Advisory Panel on Alzheimer's Disease assists the Secretary of Health and Human Services and the council on Alzheimer's Disease in the identification of priorities and emerging issues with respect to Alzheimer's disease and related dementias and the care of individuals with such disease and dementias.

Committee Name: Extramural Science Advisory Board, NIMH.

Date and Time: January 14: 8:30 a.m., January 15: 8:30 a.m.

Place: National Institutes of Health, Building 31, Conference room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: OPEN—January 14: 8:30 a.m.-5 p.m., January 15: 8:30 a.m.-3 p.m.

Contact: Tony Pollitt, room 17C-26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3657.

Purpose: The Extramural Science Advisory Board, NIMH, advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, on the direction, scope, balance, and emphasis on the Institute's extramural science programs.

Substantive information, a summary of the meeting, and a roster of committee members may be obtained from Ms. Joanna Kieffer, NIMH Committee Management Officer, room 9-105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443-4333.

Dated: December 5, 1990.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90-28999 Filed 12-10-90; 8:45 am]

BILLING CODE 4160-20-M

Agency for Toxic Substances and Disease Registry

[Announcement Number 107]

Public Health Conference Support Grant Program

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR), announces the availability of funds in Fiscal Year 1991 for the Public Health Conference Support Grant Program.

Authority

This program is authorized under sections 104(i) (14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9604(i) (14) and (15).

Eligible Applicants

Eligible applicants are states, and political subdivisions thereof, which may include state universities, state colleges, state research institutions, state hospitals and state and local health departments.

Availability of Funds

Approximately $75,000 will be available in Fiscal Year 1991 to fund approximately ten awards. It is expected that the average award will be $7,500 ranging from $5,000 to $10,000. The awards will be made for a 12-month budget and project period. Funding estimates may vary and are subject to change.

1. Grant funds may be used for direct cost expenditures: salaries, speaker fees, rental of necessary equipment, registration fees, transportation costs (not to exceed economy class fare) for non-federal employees.

2. Grant funds may not be used for the purchase of equipment, payments of honoraria, alterations or renovations, organizational dues, entertainment/personal expenses, cost of travel and payment of a full-time federal employee, for per diem or expenses other than local mileage for local participants, or reimbursement of indirect costs.

Although the practice of handing out novelty items at meetings is often employed in the private sector to provide participants with souvenirs, federal funds cannot be used for this purpose.

Purpose

This program will provide partial support for non-federal conferences on disease prevention, health promotion and information/education projects. Applications are being solicited for conferences on: (1) Health effects of toxic substances; (2) disease and exposure registries; (3) hazardous substance removal and remediation; (4)

emergency response to toxic and environmental disasters; (5) risk communication; (6) disease surveillance; and (7) investigation and research.

Evaluation Criteria

Applications for support of the types of conferences listed in the Purpose section above will be evaluated and ranked for funding. The major factors to be considered in the evaluation of responsive applications will include:

1. Proposed Program (50%)

The description of (a) the public health significance of the proposed conference including the degree to which the conference can be expected to influence public health practices; (b) the feasibility of the conference in terms of an operational plan; (c) clearly stated conference objectives and the potential for accomplishing those objectives; and (d) the method of evaluating the conference.

2. Program Personnel (30%)

The extent to which the proposal has described (a) the qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership, and (b) the competence of associate staff persons, discussion leaders, speakers and presenters to accomplish the proposed conference.

3. Applicant Capability (20%)

The description of (a) the adequacy and commitment of institutional resources to administer the program, and (b) the adequacy of the facilities to be used for the conference.

4. Program Budget (Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of grant funds.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (45 CFR part 100).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 13.161.

Application Submission and Deadline

The original and two copies of the Application Form PHS 5161-1 shall be submitted in accordance with the schedule below. The schedule also sets forth the earliest possible award date:

Application deadline	Earliest possible award date
January 29, 1991	April 15, 1991.
May 15, 1991	August 15, 1991.

Applications must be submitted on or before the deadline date to: Mr. Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the review committee. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures and an application package may be obtained from Mr. Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, telephone (404) 842-6630 or FTS 236-6630.

Technical assistance may be obtained from Mr. Peter Sherman, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E-33, Atlanta, Georgia 30333, telephone (404) 639-0730 or FTS 236-0730.

Please refer to Announcement Number 107 when requesting information and submitting any application on the Request for Assistance.

Dated: December 4, 1990.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 90-28977 Filed 12-10-90; 8:45 am]

BILLING CODE 4160-70-M

Food and Drug Administration

[Docket No. 90M-0334]

Dow Corning Wright; Premarket Approval of the Whiteside Total Hip System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Dow Corning Wright, Arlington, TN, for premarket approval, under the Medical Device Amendments of 1976, of the Whiteside Total Hip System. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 25, 1990, of the approval of the application.

DATES: Petitions for administrative review by January 10, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas J. Callahan, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1036.

SUPPLEMENTARY INFORMATION: On June 21, 1989, Dow Corning Wright, Arlington, TN 38002, submitted to CDRH an application for premarket approval of the Whiteside Total Hip System. The device is indicated for noncemented use in skeletally mature individuals undergoing primary surgery for rehabilitating hips damaged as a result of noninflammatory degenerative joint disease or any of its composite diagnoses of osteoarthritis, avascular necrosis, traumatic arthritis, slipped capital epiphysis, fused hip, fracture of the pelvis, and diastrophic variant. The Whiteside Total Hip System in indicated for use with the Dow Corning Wright Femoral Head to comprise a modular femoral component. The total hip system consists of a femoral component that is placed in the intramedullary canal of the femur, an acetabular component placed in the pelvis, and an optional acrylic sleeve. Regulatory review of safety and effectiveness data for the cemented use of the Whiteside Total Hip System is not required at this time because use of the device with bone cement has been

found to be substantially equivalent to a generic type of device marketed in interstate commerce prior to May 28, 1976 (see 21 CFR 888.3350).

On November 17, 1989, the Orthopedic and Rehabilitation Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 25, 1990, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Thomas J. Callahan (HFZ-410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 10, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice issued under the Federal Food, Drug, and Cosmetic Act (sections 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 21, 1990.

Elizabeth D. Jacobson,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 90-28932 Filed 12-10-90; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Institute of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on January 22 and 23, 1991, Building 31, Conference Room 10, Bethesda, Maryland.

This meeting will be open to the public on January 22, in Building 31, Conference Room 10, from 8:30 a.m. to 11 a.m. for opening remarks; report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on January 22 from 11 a.m. to 6 p.m., and on January 23 from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

In addition to the regular meeting of the National Advisory General Medical Sciences Council, the Council will be meeting on January 21, at the Hyatt Regency Hotel, Bethesda, Maryland, from 9 a.m. to 5 p.m., in a closed session for the review, discussion, and evaluation of individual grant applications for the National Center for Human Genome Research.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, room 4A52, Bethesda, Maryland 20892, Telephone: 301, 496-7301 will provide a summary of the meeting, roster of council members. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, room 953, Bethesda, Maryland 20892, Telephone: 301, 496-7061 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13-821, Biophysics and Physiological Sciences; 13-859, Pharmacological Sciences; 13-862, Genetics Research; 13-863, Cellular and Molecular Basis of Disease Research; 13-630, Minority Access Research Careers (MARC)); and 13-375, Minority Biomedical Research Support [MBRS].

Dated: November 29, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-28947 Filed 12-10-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Neurological Disorders and Stroke; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the Committees of the National Institute of Neurological Disorders and Stroke.

These meetings will be open to the public to discuss program planning, program accomplishments and special reports or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of committee: National Advisory Neurological Disorders and

Stroke Council and Its Planning Subcommittee

Date: January 23, 1991 (Planning Subcommittee)

Place: National Institutes of Health, Building 31, Conference room 8A28, 9000 Rockville Pike, Bethesda, MD 20892.

Open: 1 p.m.–3 p.m.

Closed: 3 p.m.–recess

Dates: January 24 and 25, 1991 (Council)

Place: National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Open: January 24, 9 a.m.–1 p.m.

Closed: January 24, 1 p.m.–recess, January 25, 8:30 a.m.–adjournment

Executive Secretary: John C. Dalton, Ph.D., Associate Director for Extramural Activities, NINDS, National Institutes of Health, Bethesda, MD 20892, Telephone: 301/496–9248.

Name of committee: Neurological Disorders Program Project Review A Committee

Date: February 24, 25, and 26, 1991

Place: Holiday Inn, Union Square, 480 Sutter Street, San Francisco, CA 94108.

Open: February 24, 7:30 p.m.–8 p.m.

Closed: February 24, 8 p.m.–recess, February 25, 8:00 a.m.–recess, February 26, 8:00 a.m.–adjournment

Executive Secretary: Dr. Katherine Woodbury, Federal Building, room 9C–14, National Institutes of Health, Bethesda, MD 20892, Telephone: 301/496–9223.

Name of committee: Training Grant and Career Development Review Committee

Dates: February 26 and 27, 1991.

Place: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Open: February 26, 7 p.m.–8 p.m.

Closed: February 26, 8 p.m.–recess, February 27, 8:30 a.m.–adjournment.

Executive Secretary: Dr. Herbert Yellin, Federal Building, room 9C–14, National Institutes of Health, Bethesda, MD 20892, Telephone: 301/496–9223.

Name of committee: Neurological Disorders Program Project Review B Committee.

Dates: February 28, March 1 and 2, 1991.

Place: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Open: February 28, 7:30 p.m.–8 p.m.

Closed: February 28, 8 p.m.–recess, March 1, 8 a.m.–recess, March 2, 8 a.m.–adjournment.

Executive Secretary: Dr. A. Beau White, Federal Building, room 9C–14, National Institutes of Health, Bethesda, MD 20892, Telephone: 301/496-9223.

(Catalog of Federal Domestic Assistance Program No. 9.853, Clinical Research Related to Neurological Disorders; No. 9.854, Biological Basis Research in the Neurosciences)

Dated: November 29, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–28948 Filed 12–10–90; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Vaccine Advisory Committee, Public Meeting

AGENCY: Office of the Assistant Secretary for Health.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing the forthcoming meeting of the National Vaccine Advisory Committee.

DATE: Date, Time and Place: January 7, 1991, at 9 a.m.; January 8, at 8:30 a.m.; Hubert H. Humphrey Building, Room 703A, 200 Independence Avenue SW., Washington, DC 20201. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Yuth Nimit, Ph.D., Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program, 5600 Fishers Lane, Parklawn Building, Room 13A–53, Rockville, Maryland 20857, (301) 443–0715.

AGENDA: *Open Public Hearing:* Interested persons may formally present data, information, or views orally or in writing on issues pending before the Advisory Committee or on any of the duties and responsibilities of the Advisory Committee as described below. Those desiring to make such presentations should notify the contact person before December 18, 1990 and submit a brief statement of the information they wish to present to the Advisory Committee. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 15 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Open Advisory Committee Discussion: There will be discussions on Subcommittee Report on Measles in the United States; Challenges and Opportunities of New Biotechnology in its Application to Vaccine Development and Licensure; and the National Vaccine Report to Congress. Meetings of the Advisory Committee shall be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notices. Changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items may ascertain from the contact person the approximate time of discussion. A list of Advisory Committee members and the charter of the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person. Summary minutes of the meeting will be made available upon request from the contact person.

Dated: December 4, 1990.

Yuth Nimit,

Executive Secretary, NVAC.

[FR Doc. 90–28982 Filed 12–10–90; 8:45 am]

BILLING CODE 4160-17-M

Indian Health Service; Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HG (Indian Health Service) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Public Health Service (PHS), chapter HG, Indian Health Service (IHS), 52 FR 47053–67, December 11, 1987, as most recently amended at 55 FR 34764–66, August 24, 1990, is amended to reflect the establishment of an organizational substructure for the Aberdeen Area Office to more accurately reflect current activities in the Area Office.

Under Chapter HG, Section HG–20, Functions, after the statement for the IHS Area Office (HGF), Information and Resources Management Programs, insert the following:

Aberdeen Area Office (HGFB)

Office of the Area Director (HGFB1). (1) Plans, develops, and directs the Area Program within the framework of IHS policy in pursuit of the IHS mission; (2) delivers and ensures the delivery of high quality comprehensive health services; (3) coordinates the Indian Health Services activities and resources internally and externally with those of other governmental and nongovernmental programs; (4) promotes optimum utilization of health care services through management and delivery of services to American Indians and Alaska Natives; (5) ensures the full

application of the principles of Indian preference and EEO; and (6) provides Indian tribes and other Indian community groups with optional ways of participating in the Indian health programs including an opportunity to participate in developing the goals and objectives for the Aberdeen Area Indian Health Service (AAIHS).

Office of Administrative Support (HGFB2). (1) Plans, coordinates, implements, and evaluates the administrative management support activities of the Aberdeen Area; (2) advises the Area Director on all matters relating to area management and administrative support activities; (3) provides guidance to the Area on financial management activities, including program policy inerpretation in budget formulation and execution, preparation of program planning and budgeting data and financial management of grants and contracts; (4) participates in the advises the Area Director on the allocation of the Area's personnel management resources and funding resources; (5) interprets policy an provides direction in the conduct of the Area's procurement, contracting, and grants activities; and (6) maintains necessary liaison with various components of the IHS in furtherance of the AAISH management activities.

Office of Environmental Health and Engineering (HGFB3). (1) Provides overall administration and direction for the sanitation and facilities construction program, the facilities management program, and the environmental health services program; and (2) advises the Area Director on all matters relating to environmental health and engineering activities.

Office of Planning and Legislation (HGFB4). (1) Advises on the development of strategic plans, strategies and innovative directions for the Area in relation to health needs, and program management as well as on their implications for Area legislation, regulations, policies, and operations; (2) coordinates the development of Area positions on national issues in the field of Indian health; (3) participates in the process of discharging the Area's responsibilities in the formulation, evaluation, and related functions concerning legislation and regulations; (4) assesses and interprets departmental policies and procedures while maintaining systems for their implementation and dissemination; (5) coordinates the formulation of and participates in the execution of area-wide executive policy; (6) provides consultation to the Area in program and management policy development, interpretation, and application; (7) maintains the Area documentation and issuance system; and (8) negotiates solutions and intra-departmental problems pertaining to Area organization, functions, delegations, procedures, and intra/inter-departmental policy needs.

Office of Tribal Health Management (HGFB6). (1) Serves as liaison with State and tribal governments as well as other Federal agencies; (2) provides technical assistance to tribal community health development programs; (3) develops and implements Area contracts and grants response system for Public Law 93–638; and (4) coordinates tribal training activities and special Indian health projects.

Office of Patient Care and Health Evaluation (HGFB7). (1) Plans, coordinates, implements, directs, and evaluates the Area health care program; (2) advises the Area Director on all matters related to health care programs operations including clinical services, preventive health and tribal programs; (3) provides for the evaluation of clinical services, preventive health and tribal programs; (4) monitors and reviews health care operations including coordinating the reviews by Medicare/Medicaid, Joint Commission on Accreditation of Healthcare Organization (JCAHO) survey teams, and other health professional review teams; (5) identifies additional program resources required and/or realigns existing resources to achieve effective and efficient program operation; (6) directs established routine health care program operations within the Area through the service unit directors; and (7) ensures that all health care services delivered in the Area are of the highest quality compatible with resouces available.

Aberdeen Area Service Units (HGFBD through HGFBH, HGFBJ through HGFBN, and HBFBP through HGFBS)

Cheyenne Rover Service Unit (HGFBD); Ft. Totten Service Unit (HGFBE); Rapid City Service Unit (HGFBG); Rosebud Service Unit (HGFBH); Sisseton Service Unit (HGFBJ); Standing Rock Service Unit (HGFBK); Belcourt Service Unit (HGFBL): Winnebago/Omaha Service Unit (HGFBM); Yankton Service Unit (HGFBN); Minne Toho Service Unit (HGFBP); Pine Ridge Service Unit (HGFBQ); Lower Brule Service Unit (HGFBR); Crow Creek Service Unit (HGFBS). (1) Plans, develops, and directs health programs within the framework of IHS policy and mission; (2) promotes activities to improve and maintain the health and welfare of the service population; (3) delivers quality health services; (4) coordinates service unit activities and resources with those of other governmental and nongovernmental programs; (5) participates in the development and demonstration of alternative means and techniques of health services management and health care.

Under Section HG–30, Order of Succession, following item number (5) add:

During the absence or disability of the Area Director of the Aberdeen Area Office, or in the event of a vacancy in that office, the first Area Office official listed below who is available shall act as the Area Director, except that during a planned period of absence, the Area Director may specify a different order of succession. The order of succession will be:

(1) Health Care Administrator, Office of the Area Director.

(2) Health System Administrator, Office of Administrative Support.

(3) Health System Administrator, Office of Patient Care and Health Evaluation.

(4) Supervisory Environmental Engineer, Office of Environmental Health and Engineering.

(5) Program Analysis Officer, Office of Planning and Legislation.

(6) Tribal Health Project Officer, Office of Tribal Health Management.

Section HG–40 Delegations of Authority. Add the following new paragraph:

All delegations and redelegations of authority made to IHS Area Offices which were in effect immediately prior to this reorganization, and which are consistent with the reorganization of January 18, 1989 shall continue in effect pending further redelegation.

Dated: November 30, 1990.

Everett R. Rhoades,

Assistant Surgeon General, Director.

[FR Doc. 90–28901 Filed 12–10–90; 8:45 am]

BILLING CODE 4160–16–M

Social Security Administration

Social Security Acquiescence; Rescissions of Extended (15-Month) Eligibility for Trial Work Period (SSR 82–67)

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Rescission of Social Security Ruling (SSR) 82–67.

SUMMARY: The Commissioner of Social Security gives notice of the rescission of SSR 82–67.

EFFECTIVE DATE: December 11, 1990.

FOR FURTHER INFORMATION CONTACT: John W. Modler, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1713.

SUPPLEMENTARY INFORMATION: Social Security Rulings make available to the public precedential decisions relating to the Federal Old-Age, Survivors, Disability, Supplemental Security Income (SSI), and Black Lung Benefits Programs. Social Security Rulings are based on case decisions made at all administrative levels of adjudication, Federal Court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

SSR 82-67 was published in the October 1982 quarterly edition of the Rulings. SSR 82-67 is based on section 303 of Public Law 96-265, the Social Security Disabilty Amendment of 1980. Section 303 amended titles II and XVI of the Social Security Act (the Act) to provide a Social Security disability beneficiary, or a recipient of SSI payments based on disability, who completes a 9-month trial work period and continues to have a disabling impairment, with a 15-month extended period of eligibility during which the individual could test his or her ability to work without losing his or her entitlement to Social Security benefits or eligibility for SSI payments. SSR 82-67 explains the Agency's policy for applying the extended period of eligibility established by section 303 of Public Law 96-265. The portion of SSR 82-67 which discusses title XVI cases does not reflect current law because of the amendment made by section 4(d) of Public Law 99-643 (the Employment Opportunities for Disabled Americans Act). Section 4(d) of Public Law 99-643 amended title XVI of the Act to eliminate the extended period of eligibility for title XVI cases, effective July 1, 1987. Moreover, effective January 1, 1988, section 9010 of Public Law 100-203 (the Omnibus Budget Reconciliation Act of 1987) lengthened this 15-month period in title II cases to 36 months. Because of these changes, SSR 82-67 is out of date. Consequently, we are rescinding this Ruling. We also plan to revise the regulations that contain our policy concerning the extended period of eligibility, see 49 FR 22268 (May 29, 1984), to reflect the changes in law.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivor's Insurance; 93.806—Special Benefits for Disabled Coal Miners; 93.807—Supplemental Security Income.)

Dated: November 16, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

[FR Doc. 90-28935 Filed 12-10-90; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-90-3078]

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) 708-0050. 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.

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: November 30, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Request For Financial Information.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The information provided on Form HUD-92068F will be used in evaluating a mortgagor's eligibility for assistance under the Department's mortgage assistance program.

Form number: HUD-92068F.

Respondents: Individuals or Households, Businesses or Other For-Profit, and Federal Agencies or Employees.

Frequency of submission: On Occasion.

Reporting burden:

	Number of Respondents	×	Frequency of Response	×	Hours per Response	=	Burden Hours
HUD-92068F	80,000		1		.5		40,000

Total estimated burden hours: 40,000.

Status: Reinstatement.

Contact: Tom Hitchcock, HUD, (202) 708-3664 Scott Jacobs, OMB, (202) 395-6880.

Dated: November 30, 1990.

[FR Doc. 90-28984 Filed 12-10-90; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-90-3079]

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) 708-0050. 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: December 3, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Preauthorized Debits.

Office: Housing.

Description of the need for the information and its proposed use: The preauthorized debit is a method for making monthly payments using electronic funds transfer to debit a program participant's checking or, in some instances, savings account. The program participant owes the Department a specific monthly amount and may elect to pay by this method. This form is needed to obtain the data to effect a preauthorized debit.

Form number: HUD-92090.

Respondents: Individuals or Households.

Frequency of submission: On Occasion.

Reporting burden:

Number of Respondents	×	Frequency of Response	×	Hours per Response	=	Burden Hours
HUD-92090	5,000		1	.25		1,250

Total estimated burden hours: 1,250

Status: Extension.

Contact: Betty Gray, HUD, (202) 708-1941, Scott Jacobs, OMB, (202) 395-6880.

Date: December 3, 1990.

[FR Doc. 90-28985 Filed 12-10-90; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-90-3062; FR 2811-N-02]

Fair Housing Initiatives Program Announcement of Funding Awards; Alaskan Human Rights State Commission, et al.

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fair Housing Initiatives Program (FHIP). This announcement contains the names and addresses of the award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Fair Housing Enforcement and section 3 Compliance, room 5208, 451 Seventh Street, SW., Washington, DC 20410-2000. Telephone number (202) 708-3214. A telecommunications device for deaf persons (TDD) is available at (202) 708-3214. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On February 10, 1989 (54 FR 6492), HUD published a final rule implementing the Fair Housing Initiatives Program (FHIP) authorized under section 561 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). Under FHIP, HUD provides funding to State and local governments or their agencies, and to other public or private entities formulating or carrying out programs to prevent or eliminate housing discrimination practices.

The FHIP has three funding categories: The Administrative Enforcement Initiative, the Education and Outreach Initiative, and the Private Enforcement Initiative. HUD has not solicited proposals under the Administrative Enforcement Initiative. This Notice announces the award winners under the Education and Outreach Initiative and the Private Enforcement Initiative.

On February 5, 1990 (55 FR 3800), the Department announced the availability of $3.6 million in FHIP funds for the Education and Outreach Initiative. Applications for funding, which were due on March 7, 1990, were reviewed, evaluated and scored based on the criteria in the final rule. As a result, a total of $3.6 million was awarded to forty-one organizations to carry out education and outreach projects.

On June 19, 1990 (55 FR 24965), HUD announced in the **Federal Register** the availability of $3.9 million in FHIP funds for the Private Enforcement Initiative. A maximum amount of $3 million was allocated for testing activities and approximately $900,000 for other enforcement activities. The application deadline was August 3, 1990. HUD has awarded 28 non-profit organizations $3.9 million for testing and other enforcement activities.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards under the Education and Outreach Initiative and the Private Enforcement Initiative.

Fair Housing Initiatives Program

Education and Outreach Grantees

1. Alaska State Commission for Human Rights, 800 A St., Anchorage, AK 99501, Ms. Paula M. Haley, $34,015.

2. Civil Rights Division, Arizona Attorney General's Office, 1275 West Washington, Phoenix, AZ 85007, Mr. Phillip A. Austin, $42,036.

3. City of Phoenix, Arizona, 550 W. Washington St., Phoenix, AZ 85003, Mr. Howard Marshall, $75,000.

4. Old Pueblo Community Housing Resource Board, P.O. Box 2241, Tuscon, AZ 85702, Ms. Herminia L. Cubillos, $30,000.

5. Fair Housing Council of San Diego, 4252 Boston Ave., San Diego, CA 92113, Ms. Mary S. Knoll, $28,456.

6. Housing for All, The Metro Denver Fair Housing Center, 1150 Lipan, Denver, CO 80204, Ms. Kathryn Cheever, $75,000.

7. Colorado Department of Institutions, 4131 S. Julian Way, Denver, CO 80236, Ms. Norleen Norden, $18,725.

8. Fair Housing Council of Greater Washington Inc., 1400 Eye St., NW., Washington, DC 20005, Ms. Ellen Shogan, $68,010.

9. National Fair Housing Alliance, 1400 Eye St., NW., Washington, DC 20005, Ms. Shanna Smith, $1,198,594.

10. National Council of La Raza, 810 First St., NE., Washington, DC 20002, Mr. Charles Kamasaki, $249,864.

11. International Association of Official Human Rights Agencies, 444 North Capitol St., NW., Washington, DC 20001, Mr. Arthur L. Green, $70,000.

12. National Association of Protection and Advocacy Systems, 220 Eye St., NE., Washington, DC 20002, Mr. Curtis L. Decker, $30,000.

13. Iowa Civil Rights Commission, 211 East Maple, Des Moines, IA 50319, Ms. Inga B. Langston, $75,000.

14. Caldwell Community Housing Resource Board, 1002 Blaine St., Caldwell, ID 83605, Mr. Andrew C. Thomas, $67,894.

15. Leadership Council for Metropolitan Open Communities, 401 South State St., Chicago, IL 60605, Mr. Kale Williams, $75,000.

16. Chicago Fair Housing Alliance, 1140 Wilmette Ave., Wilmette, IL 60091, Mr. Michael D. Roche, $47,795.

17. Wyandotte County Community Housing Resource Board, 7315 State Ave., Kansas City, KS 66112, Mr. Jack Delap, $30,000.

18. Kentucky Fair Housing Center Council, Kentucky Council on Human Relations Inc., P.O. Box 1293, Louisville, KY 40201, Mr. Bill Holiday, $42,192.

19. Lake Charles Community Housing Resource Board, P.O. Box 90670, Lake Charles, LA 70609, Ms. Mary Richardson, $40,000.

20. Massachusetts Commission Against Discrimination, One Ashburton Place, Boston, MA 02108, Ms. Berneta Walrauen, $65,569.

21. Massachusetts Association of Realtors, 256 Second Ave., Waltham, MA 02254, Ms. Maribeth Perry, $13,528.

22. York County Community Action Corporation, 11 Cottage St., Sanford, ME 04073, Ms. Barbara Crider, $43,803.

23. Legal Aid Society of Minneapolis, Inc., 323 Fourth Ave., Minneapolis, MN 55415, Mr. Stephen Scott, $46,903.

24. Montana Human Relations Commissions, P.O. Box 1728, Helena, MT 59624, Ms. Anne L. MacIntyre, $75,000.

25. Elizabeth City State University, Elizabeth City, NC 27909, Mr Ulysses Bell, $72,500.

26. Urban Housing Foundation, Inc., 2416 Lake St., Omaha, NE 68111, Ms. Deborah L. Brockman, $37,419.

27. Camden County Community Housing Resource Board, P.O. Box 2034, Camden, NJ 08101, Ms. Shirley W. Slayton, $75,000.

28. National Urban League, 500 East 62nd St., New York, NY 10021, Mr. Ronald Dozier, $256,932.

29. Suffolk County Housing Services Community, Housing Opportunities, Inc., 550 Smithtown Bypass, Long Island, NY 11787, Mr. David Berenbaum, $75,000.

30. New York State Division of Human Rights, 55 West 125 St., New York, NY 10027, Mr. Armando Martinez, $75,000.

31. Professional Housing Services, Inc., 4614 Prospect Ave., Cleveland, OH 44103, Ms. Charlett Bundy, $32,500.

32. The Cuyahoga Plan of Ohio, Inc., 1101 Euclid Ave., Cleveland, OH 44115, Mr. Charles Bromley, $74,064.

33. City of Tulsa Department of Human Rights, 200 Civic Center, Tulsa, OK 74103, Ms. Dyanne Mason, $30,000.

34. Multnomah County Community Development Division, 2115 Morrison St., Portland, OR 97214, Ms. Janet C. Hawkins, $75,000.

35. Booker T. Washington Center, Inc., 1720 Holland St., Erie, PA 16503, Ms. Dorothy Lockett, $28,492.

36. Temple University of the Commonwealth System of Higher Education, Montgomery Ave., Philadelphia, PA 19122, Dr. Ira Goldstein, $39,774.

37. Chattanooga Community Housing Resource Board, P.O. Box 908, Chattanooga, TN 37401, Ms. Marcia Lillich, $29,465.

38. City of El Paso Department of Community and Human Development, 2 Civic Plaza Center, El Paso, TX 79901, Ms. Deborah G. Hamlyn, $71,128.

39. Virginia Polytechnic Institute and University, 301 Burruss Hall, Blacksburg, VA 24061, Mr. Garnett S. Linkous, $52,092.

40. Fair Housing Council of Fox Valley, 110 North State St., Appleton, WI 54911, Mr. Richard H. Juengling, $9,972.

41. Metropolitan Milwaukee Fair Housing Council, 1442 N. Farwell Ave., Milwaukee, WI 53202, Mr. William R. Tisdale, $62,052.

Private Enforcement Grantees (Testing)

1. Operational Sentinel, 430 Sherman Ave., Palo Alto, CA 94306, Ms. Ann Marquart, $87,625.

2. Marin Housing Center, 88 Belvedere St., San Rafael, CA 94901, Ms. Nancy Kenyon, $87,828.

3. Fair Housing Council of Greater Washington, Inc., 1400 Eye St., N.W., Washington, D.C. 20005, Ms. Ellen Shogan, $128,612.

4. National Fair Housing Alliance, 1400 Eye St., Washington, D.C. 20005, Ms. Shanna L. Smith, $599,031.

5. Housing Opportunities Project for Excellence, Inc., P.O. Box 013183, Miami, FL 33101, Mr. James Howe, $70,000.

6. Metropolitan Fair Housing Services, Inc., Fulton County, Atlanta, GA 30307, Mr. Robert M. Shifalo, $214,400.

7. Leadership Council for Metropolitan Open Communities, 401 South State St., Chicago, IL 60605, Mr. Kale Williams, $87,132.

8. South Suburban Housing Center, 2057 Ridge Road, Homewood, IL 60430, Mr. Ken Chastain, $34,591.

9. HOPE, Inc., 154 South Main St., Lombard, IL 60148, Mr. Bernard J. Kleina, $50,000.

10. Interfaith Housing Center of the Northern Suburbs, 1140 Wilmette Ave., Wilmette, IL 60091, Ms. Barbara Boyts, $51,800.

11. Lawyer's Committee for Civil Rights Under Law of the Boston Bar Association, 294 Washington St., Boston, MA 02108, Ms. Barbara W. Rabin, $235,040.

12. Fair Housing Center of Metropolitan Detroit, 1249 Washington Blvd., Detroit, MI 48226, Mr. Clifford C. Schrupp, $198,760.

13. Concerned Citizens Coalition, 825 Third Ave., Great Falls, MT 59405, Mr. Ken Toole, $97,509.

14. Truckee Meadows Fair Housing, P.O. Box 3935, Reno, NV 89505, Mr. Ernest Nielsen, $67,659.

15. Housing Opportunities Made Equal of Buffalo, Inc., 700 Main St., Buffalo, NY 14202, Mr. Scott W. Gehl, $41,997.

16. Open Housing Center, Inc., 594 Broadway, New York, NY 10012, Ms. Elizabeth Hoeber, $154,338.

17. Westchester Residential Opportunities, Inc., 470 Mamaroneck Ave., White Plains, NY 10605, Ms. Blossum Blum, $64,390.

18. Fair Housing Contact Services, 33 South Main St., Akron, OH 44308, Mr. Donald Nighwander, $75,161.

19. The Cuyahoga Plan of Ohio, Inc., 1101 Euclid Ave., Cleveland, OH 44115, Ms. Susie Rivers, $156,233.

20. Professional Housing Services, Inc., 4614 Prospect Ave., Cleveland, OH 44103, Ms. Karen Gordon, $52,704.

21. Toledo Fair Housing Center, 1900 Monroe St., Toledo, OH 43624, Ms. Lisa Rice, $117,976.

22. Metropolitan Fair Housing Council of Greater Oklahoma City, P.O. Box 53143, Oklahoma City, OK 73117, Ms. Gwen McCormick, $98,337.

23. Urban League of Pittsburgh, Inc., 200 Ross St., Pittsburgh, PA 15219, Mr. Stuart Cohen, $118,161.

24. Housing Opportunities Corporation, 147 Jefferson, Memphis, TN 38103, Ms. Carol Gish, $128,514.

25. Housing Opportunities Made Equal of Richmond, Inc., 503 East Main St., Richmond, VA 23219, Ms. Constance K. Chamberlain, $74,142.

Private Enforcement Grantees (Non-Testing)

1. Operation Sentinel, 430 Sherman Ave., Palo Alto, CA 94306, Ms. Ann Marquart, $11,500.

2. Mental Health Law Project, 2021 L St., NW., Washington, DC 20036, Mr. Leonard S. Rubenstein, $86,865.

3. Leadership Council for Metropolitan Open Communities, 401 South State St., Chicago, IL 60605, Mr. Kale Williams, $131,486.

4. Fair Housing Council of Northern New Jersey, 345 Union St., Hackensack, NJ 07601, Ms. Lee Porter, $589,450.

5. Legal Aid Society of New York City, 15 Park Row, New York, NY 10038, Ms. Susan B. Lindenauer, $147,696.

Dated: December 3, 1990.

Gordon H. Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 90-28986 Filed 12-10-90; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-704930

Applicant: U.S. Fish and Widlife Service, Regional Director, Region 6, Denver, CO

The applicant requests amendment of their current permit to include the take of pallid sturgeon (*Scaphirhynchus albus*) for scientific purposes and the enhancement of propagation or survival in accordance with Recovery Plans or other Service work for this species.

PRT-754344

Applicant: Laidlaw Environmental Services, Buttonwillow, CA

The applicant requests a permit to take (captive via live traps) blunt-nosed lizards (*Gambelia silus*), San Joaquin kit foxes (*Vulpes macrotis mutica*), and giant kangaroo rats (*Dipodomys ingens*) which are inadvertently accessing their hazards waste disposal facility and release them back into the wild.

PRT-697819

Applicant: U.S. Fish and Widlife Service, Regional Director, Region 4

The applicant requests amendment to their current permit to allow take of additional species for the purposes of scientific research and enhancement of propagation or survival of the species in accordance with Recovery Plans or other Service work.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) room 430, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, 4401 N. Fairfax Drive, room 432, Arlington, VA 22203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: November 11, 1990.

Karen Willson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 90-28921 Filed 12-10-90; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; John Boyce, et al.

In accordance with Department policy, 28 CFR § 50.7, notice is hereby given that on November 29, 1990 a proposed Consent Decree in *United States* v. *John Boyce, et al.* Civil Action No. 84-168-C, was lodged with the United States District Court for the Northern District of West Virginia. Under the Consent Decree defendants Consolidation Coal Company, Eastern Associated Coal Company, Monongahela Power Company, and Westinghouse Electric Corporation agree to pay $500,000.00 in past response costs incurred by the Unites States at the "Big John Salvage" Superfund Site near Fairmont, West Virginia.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *John Boyce, et al.*, DOJ Ref. 90-11-3-52.

The proposed Consent Decree may be examined at the Office of the United States Attorney, room 247, Federal Building, 1125 Chapline Street, Wheeling, West Virginia 26003 and at the Region III office of the United States Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA

19107. The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, (202) 347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $5.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

George Van Cleve,

Environment and Natural Resources Division.

[FR Doc. 90-28918 Filed 12-10-90; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Notifications; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on October 11, 1990 has filed a written notification on behalf of Bellcore and Symbolics, Inc. ("Symbolics") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties to the venture and (2) the nature and objective of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

Symbolics is a California corporation having a place of business at 8 New England Executive Park, Burlington, MA 01803.

On August 30, 1990, Bellcore and Symbolics entered into an agreement, effective as of August 30, 1990, to engage in cooperative research of advanced animation software systems to better understand the communicating of multidimensional data as part of exchange and exchange access service.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 90-28919 Filed 12-10-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-24,683]

Diebold, Incorporated Canton, OH; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Correction

This noice corrects the location of Diebold, Incorporated in the **Federal Register** on page 41,902 of FR Document 90-24316.

Under Negative Determinations, TA-W-24,683, Diebold, Inc., Canton, Ohio, the negative determination covering the petitioning group of workers under TA-W-24,683 should be Diebold, Inc., Hamilton, Ohio instead of Diebold, Inc., Canton, Ohio.

Signed at Washington, DC, this 4th day of December 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-28972 Filed 12-10-90; 8:45 am]

BILLING CODE 4510-30-M

Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 1990.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act may be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,859; Jayco Manufacturing, Inc., Portage, PA

TA-W-24,850; Harbor Pallet, Hoquium, WA

TA-W-24,871; Fleck, Inc., Fayette, MS

TA-W-24,867; Wonderknit/Scoreboard, Galax, VA

TA-W-24,895; Amax Potash Corp, Dumas, TX

TA-W-24,781; L.A. Shirt Co., Inc., Northampton, PA

TA-W-24,916; New West Manufacturing, Hoquium, WA

TA-W-24,900; Capital Gears, Inc., St. Paul, MN

TA-W-24,911; Lone Star Industries, Inc., Bonner Springs, KS

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25,018; Yellow Front Stories, Roosevelt, UT

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,873; Friedrich Refrigeration Co., San Antonio, TX

Increased imports did not contribute importantly to work separations at the firm.

TA-W-24,876; Hamilton Production Equipment, Inc., Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,961; Team Bank, Wichita Falls Office, Wichita Falls, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,944; Emerson Quiet Kool, Dover, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,879; Parker Gas Treating Co., A & B Gas Plt, Fort Stockton, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,888; Unit Drilling Co., Tulas, OK

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24,869; Cabinet Industries, Inc., Danville, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,866; Superior Combustion Industries, Inc., Emmaus, PA

Increased imports did contribute importantly to worker separations at the firm.

TA-W-24,874; Friedrich Air Conditioning Co., San Antonio, TX

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partally separated as required for certification.

TA-W-24,904; Emerson Quite Kool, Woodbridge, NJ

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

TA-W-24,885; Sunbelt Specialized Services, S2S, Inc., Roby, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,910; I-Stat, Princeton, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,915; Nannette Manufacturing Co., Inc., Philadelphia, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,926; The Timken, Co., Columbus, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,897; Beth Energy Mines, Bethlehem Steel Corp., Eighty Four, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,901; Ciba-Geigy Corp., Toms River, NJ

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

TA-W-24,800; National Cooperative Refinery Assoc., McPherson, KS & Operating at Other Locations in The Following States:

TA-W-24,800A; Denver, CO
TA-W-24,800B; Gillette, WY
TA-W-24,800C; Midland, TX
TA-W-24,800D; Okc, OK
TA-W-24,800E; Cushing, OK
TA-W-24,800F; Aztec, NM

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-24,882; Randle Shake & Shingle, Randle, WA

A certification was issued covering all workers separated on or after August 29, 1989.

TA-W-24,791; Almet/Lawlite, Inc., Vernon, CA

A certification was issued covering all workers separated on or after August 22, 1989.

TA-W-24,831; Musebeck Shoe Co., Cedar Grove, WI

A certification was issued covering all workers separated on or after August 27, 1989.

TA-W-24,832; Musebeck Shoe Co., Oconomowoc, WI

A certification was issued covering all workers separated on or after August 27, 1989.

TA-W-24,924; Small A.C. Motors Co., Hendersonville, TN

A certification was issued covering all workers separated on or after September 21, 1989.

TA-W-24,823; The Gates Rubber Co., Denver, CO

A certification was issued covering all workers separated on or after August 23, 1989.

TA-W-24,928; Transco Exploration Co., Lake Charles, LA & Operating at Various Locations Locations in The Following States: TA-W-24,928A CO, TA-W-24,928C TX, TA-W-24,928B LA

A certification was issued covering all workers separated on or after September 18, 1989.

TA-W-24,864; Seismographic Service Corp., Tulsa, OK & Operating at Various Locations in The Following States: TA-W-24,864A CO, TA-W-24,864C TX, TA-W-24,864B OK

A certification was issued covering all workers separated on or after September 11, 1989.

TA-W-24,877; Mayer China Co., Beaver Falls, PA

A certification was issued covering all workers separated on or after September 10, 1989.

TA-W-24,877A; Shenango China, New Castle, PA

A certification was issued covering all workers separated on or after September 10, 1989.

TA-W-24, 877B; Syracuse China, Syracuse, NY

A certification was issued covering all workers separated on or after September 10, 1989.

TA-W-24,812; American Trim Products, South Boston, VA & Operating at The Other Following Locations: TA-W-24,812A Kenbridge, VA, TA-W-24,812B Putnam, CT

A certification was issued covering all workers separated on or after August 28, 1989.

TA-W-24,891; ABB kent, Inc., Edison, NJ

A certification was issued covering all workers separated on or after September 17, 1990.

TA-W-24,929; Tricor Drilling, Gaylord, MI

A certification was issued covering all workers separated on or after September 17, 1989 and before November 1, 1990.

TA-W-24,835; Raycord Co., Spartanburg, SC

A certification was issued covering all workers separated on or after August 28, 1989.

TA-W-24,934; Young Wireline Services, Inc., Charleston, WV

A certification was issued covering all workers separated on or after January 1, 1990 and before November 1, 1990.

TA-W-24,824; General Circuits, Inc., Rochester, NY

A certification was issued covering all workers separated on or after September 1, 1989 and before July 31, 1990.

TA-W-24,857; Magnetic Metal Corp., Camden, NJ

A certification was issued covering all workers separated on or after September 6, 1989.

TA-W-24,860; Oxford of Commerce, Oxford, GA

A certification was issued covering all workers separated on or after September 10, 1989 and before July 31, 1990.

TA-W-24,829; Litton Systems Encorder Div., Chatsworth, CA

A certification was issued covering all workers separated on or after February 23, 1990.

TA-W-24,818; Donenfeld Knitwear, Inc., Brooklyn, NY

A certification was issued covering all workers separated on or after August 26, 1989.

TA-W-24,834; Prime Technology, E.I. & S Div., Stoneham, MA

A certification was issued covering all workers separated on or after August 16, 1989.

TA-W-24,806; U-Brand Corp., Ashland, OH

A certification was issued covering all workers separated on or after August 17, 1989.

TA-W-24,807; U-Brand Corp., Shelby, OH

A certification was issued covering all workers separated on or after August 17, 1989.

TA-W-24,729 and TA-W-24, 729A; American Trim Products, Inc., New York, NY and Great Neck, NY

A certification was issued covering all workers separated on or after July 12, 1989.

TA-W-24,736 and TA-W-24,736A; Douglas and Lomason Co., Newnan, GA and Carollton, GA

A certification was issued covering all workers separated on or after August 1, 1989.

TA-W-24,878; Oxford Industries, Atlanta, GA & Operating at The Other following Locations: TA-W-24,878A Cumming, CA, TA-W-24,878C Chester, SC, TA-W-24,878B Maiden, NC

A certification was issued covering all workers separated on or after September 7, 1989.

I hereby certify that the aforementioned determinations were issued during the month of November 1990. Copies of these determinations are available for inspection in room C4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: December 4, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-28971 Filed 12-10-90; 8:45 am]

BILLING CODE 4510-30-0

Pension and Welfare Benefits Administration

[Application No. D-8437/D-8438 et al.]

Proposed Exemptions; Austin Radiological Money Purchase Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state the reasons for the writer's interest in pending exemption.

ADDRESS: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Austin Radiological Money Purchase Pension Plan (the Money Purchase Plan) and Austin Radiological Profit Sharing Pension Plan (the Profit Sharing Plan; collectively the Plans) Located in Austin, TX

[Application No. D-8437 and D-8438]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)91)(A) through (D) of the Code, shall not apply to certain interest-free extensions of credit in the form of overdrafts (the Loans) made during 1986 through 1987 to the Plans by NCNB Texas National Bank and is predecessors, fiduciaries of the Plans and parties in interest with respect to the Plans, provided that the terms and conditions of the Loans were at least as favorable to the Plans as those which the Plans would have received in similar transactions with unrelated parties.

EFFECTIVE DATE: If granted, the proposed exemption will be effective January 13, 1986.

Summary of Facts and Representations

1. Austin Radiological Association, a Texas professional association, is the sponsoring employer (the Employer) of the Plans. It is engaged in the practice of radiology at 4212 Medical Parkway, Austin, Texas. As of December 31, 1989, the Employer had 99 employees, consisting of doctors and support personnel.

The application for exemption is made by NCNB Texas National Bank (the Trustee), the current trustee of the Plans since July 1988, on behalf of itself, the predecessor Trustees, and the Plans.[1] The Trustee is a national bank regulated by the Comptroller of the Currency and the Federal Reserve System, of which it is a member bank. The Trustee provides a wide range of banking, trust, and other financial services throughout Texas. It is a wholly owned subsidiary of NCNB

[1] The subject application was filed with the Department of the Trustee after discovering that the Loans constituted prohibited transactions. The applicants represent that the Loans were the result of a predecessor Trustee's subsidiary bank permitting the overdrafts during 1986 and 1987.

Corporation, a bank holding company organized under the laws of North Carolina with its headquarters in Charlotte, North Carolina. NCNB Corporation is subject to and regulated under the Bank Holding Company Act of 1956. NCNB Corporation also owns banks operating in Florida, North Carolina, South Carolina, Georgia, Maryland, and Virginia.

The preceding trustees of the Plans were First RepublicBank Austin, N.A., a national banking association operating in Austin, Texas, and regulated by the Federal Reserve System, of which it was a member. It also was a subsidiary of First RepublicBank Corporation, a Texas corporation and bank holding company subject to and regulated under the Bank Holding Company Act of 1956. The First RepublicBank Corporation sought "open bank" assistance during the second quarter of 1988 from the Federal Deposit Insurance Corporation, whereupon the Comptroller of the Currency appointed the Federal Deposit Insurance Corporation to be Receiver of First RepublicBank Corporation.

On July 29, 1988, the Trustee acquired certain assets from some of the subsidiaries of First Republic Bank Corporation and assumed trusteeship of employee benefit plans, including the Plans, formerly trusteed by First RepublicBank Austin, N.A. The trustee of the Plans during 1985, 1986, and the first half of 1987 was InterFirst Bank Austin, N.A., a national banking association operating in Austin, Texas and regulated by the Federal Reserve System, of which it was a member. It was a subsidiary of InterFirst Banking System, a Texas corporation and bank holding company subject to and regulated under the Bank Holding Company Act of 1956. InterFirst Banking System was acquired by First RepublicBank Austin, N.A. replaced InterFirst Bank Austin, N.A. as the Trustee of the Plans.

The Trustee (including its predecessors) and the Employer are represented to be independent of each other, having no common shareholders, officers, or directors and neither owning shares of the other. There has been a commercial banking relationship between the Trustee (including its predecessors) and the Employer which is represented to be less than one percent of the Trustee's and its predecessors' commercial banking business.

2. The Plans are defined contribution plans with an individual account for each participant. As of December 31, 1989, the Money Purchase Plan's assets had a value of $616,309.01 and the Profit Sharing Plan's assets had a value of $6,027,654.80. As of March 31, 1990, there were 37 participants in the Money Purchase Plan and 66 participants in the Profit Sharing Plan. Participation in the Plans has been voluntary and available to all employees of the Employer upon completion of a minimum service requirement. As of January 1, 1985, contributions to and accruals in the Money Purchase Plan were frozen and, as of December 31, 1988, it was terminated. Prior to January 1, 1985, the Employer contributed to the Money Purchase Plan an amount which, including forfeitures, was equal to 10 percent of the total compensation paid to all participants. In addition, voluntary contributions made by participants were allocated to their respective individual accounts. The Profit Sharing Plan receives annual contributions from the Employer which, during the past five years, has averaged 7.5 percent of annual compensation paid to the participants when combined with current forfeitures. Also, voluntary contributions from participants are added to their respective individual accounts in the Profit Sharing Plan.

3. The assets of the Plans have been held in trust by the Trustee to be invested in accordance with written instructions of each participant in the Plans. Participants direct the investment of certain percentage balances in their respective accounts in lieu of specifying certain dollar amounts to be invested. Participants may choose from ten different investment alternatives during each calendar quarter by communicating in writing to the Administrative Committee of each of the Plans.[2] In turn, the Administrative Committee forwards to the Trustee the investment instructions of the participant before the beginning of the succeeding calendar quarter. The method for directing investments can result in cash flow problems because the Trustee is compelled to estimate the dollar value of each individual account as of the beginning of every calendar quarter.

One of the investment options available to the participants of the Plans since April 1984 has been units of an open-end collective trust fund. This fund is designated as the Real Estate Collective Investment Fund (RECIF) and has been maintained and trusteed by the Trustee and its predecessors. In its early years, RECIF's assets grew to a sum in excess of $80,000,000. The assets of RECIF were invested solely in commercial real estate located in regions of the southwestern part of the United States that have experienced adverse economic problems, causing a decline in the value of assets of the Plans beginning in 1986. On September 23, 1986, RECIF was terminated and is in the process of being liquidated.

All real estate properties held by RECIF are appraised every three years by independent MAI appraisers and during interim years updates of the appraisals are obtained from the last appraiser. In addition to the use of appraisals to determine the value of the units in RECIF held by the Plans, there are short-term cash balances. The applicants represent that determining the amount of accruals and cash necessary to retain operating reserves is performed by the Trustee's property management department.

4. During 1985, 19 participants of the Profit Sharing Plan and 16 participants of the Money Purchase Plan directed that a certain percentage of their respective individual account balances be invested by the Trustee in units of RECIF. All 16 participants in the Money Purchase Plan who directed investments into RECIF units were also participants in the Profit Sharing Plan that had directed an investment of a percentage of their account balances in RECIF. Prior to December 31, 1985, 11 participants in the Profit Sharing Plan and 9 participants in the Money Purchase Plan directed that their investments in RECIF were to be reduced and the cash obtained from such actions be placed in alternative investments. Using historical data, the Trustee determined the previous quarterly balance in each participant's account in the Plans. When processing the transactions as directed by the participants during December 1985, in order to reduce their respective balances in units of RECIF and to move the cash obtained by the reductions to selected alternative investments, the Trustee discovered that the cash available from the RECIF units was insufficient for making the alternative investments chosen by the participants of the Plans. This cash flow shortage arose because of rapidly rising values in the securities markets at the same time that there were drastically decreasing values in the commercial real estate in which RECIF was invested. These changing cash values of the individual accounts for December 31, 1985, resulted in an adjusted cash flow shortage of $43,047.64 for the Profit Sharing Plan and $40,508.79 for the Money Purchase Plan (a total of $83,555.43 for the Plans).

Since RECIF had always funded previous withdrawal requests, the

[2] Each of the Plans is administered by an Administrative Committee appointed by the Employer. The Administrative Committee serves as the named fiduciary of each of the Plans.

Trustee assumed that the additional $83,555.43 would be available from units of RECIF within two or three days. Also at the same time, the Trustee determined that the interests of the participants who were requesting withdrawal from RECIF would be best served by immediately providing funds for the change of investment media as requested. The assumption and determination by the Trustee caused it to allow an overdraft on January 13, 1986, for $83,555.43 in the form of an interest-free loan to the Plans from the Trustee, permitting 20 participants of the Plans to make their respectively chosen alternative investment for the calendar quarter ending March 31, 1986. During subsequent calendar quarters ending June 30, 1986, through March 31, 1987, additional overdrafts covered nine more extensions of credit by the Trustee to the Plans for changes of investments from RECIF to alternatives investments.[3]

5. As of March 31, 1987, the total sum of $227,343.42 had been extended as interest-free loans in the form of overdrafts by the Trustee to the Plans; this has included $122,698.59 to the Profit Sharing Plan and $104,844.83 to the Money Purchase Plan. Sixteen individuals were affected by the Loans, including 13 participants of the Money Purchase Plan, who were also the majority of the 16 participants of the Profit Sharing Plan involved in the transactions. Since March 31, 1987, the Trustee has not made any additional extensions of credit to the Plans.

As of December 31, 1989, there remained outstanding overdrafts in the sum of $74,286.17 to the Money Purchase Plan and the sum of $95,478.62 to the Profit Sharing Plan. The applicant represents that from March 31, 1986, the value of a unit in RECIF has declined from a high of $2,129.42 to a low of $796.16 on March 31, 1990. This decline is attributed primarily to the marked depreciation in the value of the real estate held by RECIF.

The applicants represent that the Trustee will continue to relinquish interest charges to the Plans on the Loans. The Loans have been formally documented by having the Plans execute non-interest bearing debentures with no security interest except the pro rata share of the liquidating proceeds received from RECIF. In order to retire the Loans from the Trustee, the debentures are structured so that 50 percent of the future liquidating distributions from RECIF that are distributed to the Profit Sharing Plan and 40 percent of future liquidating distributions that are distributed to the Money Purchase Plan are to be applied to retire the Loans. This partitioning structure was created because the Loans that were extended by the Trustee to the Profit Sharing Plan represent 50 percent of its RECIF investments and the Loans to the Money Purchase Plan represent 40 percent of its RECIF investments.

Initially, when liquidating distributions were received from RECIF beginning in September 1986, the predecessor Trustee would apply the entire distribution against the Loans.[4] In this regard, the applicants represent that the Trustee will return, with interest,[5] to the individual accounts of the participants who have remained invested in RECIF, the pro rata share of all the initial liquidating distributions that previously went to the Trustee to reduce the Loans.

Any excess proceeds received by the Trustee from the liquidation of RECIF will be allocated to the individual accounts in the Plans of participants who have remained invested in RECIF at the time of its termination. If the proceeds in liquidation of RECIF are less than the Loans to the Plans, no other assets of the Plans or the participants can be used to reimburse the Trustee for the Loans.

6. The applicants and the Administrative Committee represent that the Loans to the Plans from the Trustee resulted in no unrecoverable expense to the Plans and no risk to the participants of the Plans. The applicants and the Administrative Committee also represent that the Loans facilitated the participants and served their best interests by enabling them to obtain better investments for their respective individual accounts in the Plans. The applicants realize that the overdrafts should not have been allowed and represent that the Trustee will not permit any such overdrafts in the future.

7. In summary, the applicants represent that the proposed exemption satisfies the criteria of section 408(a) of the Act because (a) The Loans are evidenced in written documents which do not provide for payments of interest by the Plans; (b) the Loan transactions protect the participants and their beneficiaries of the Plans from possible declines in values of the RECIF properties and permit new, higher yielding investments without expense or penalty; (c) the terms for repayment of the Loans will be limited to cash proceeds received from liquidation of RECIF commercial properties and no other assets of the Plans or their participants and beneficiaries will be used or affected by the repayments of the Loans; and (d) upon liquidation of RECIF investments, any proceeds of the liquidation in excess of the Loans will be allocated to the individual accounts in the Plans remaining invested in RECIF at the time of its termination.

For further information contact: Mr. C. E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

First National Bank Employees Profit Sharing Plan (the Plan)

Located in Killeen, TX

[Application No. D-8468]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of six secured promissory notes (the Notes) by the Plan to the First National Bank, a party in interest with respect to the Plan, for the greater of either the outstanding principal plus the accrued, unpaid interest owing on the Notes on the date of the Sale, or their fair market value as determined by a qualified, independent appraiser on the date of the Sale.

Summary of Facts and Representations

1. The application for an exemption is made by the First National Bank (the Bank) on behalf of itself and the Plan. The Bank is the sponsoring employer of the Plan. It is located in Killeen, Texas and is organized under the national banking laws of the United States as a

[3] The applicants represent that Prohibited Transaction Class Exemption 80-26 (PTE 80-26, 45 FR 28545, April 29, 1980) can not be relied upon with respect to the extension of credit by the Trustee to the Plans. PTE 80-26, in relevant part, provides exemptive relief where the proceeds of a loan are used only for payment of ordinary operating expenses of a plan, including payment of benefits and periodic premiums under an insurance or annuity contract, or for a period of no more than three days for a purpose incidental to the ordinary operation of the plan.

[4] The Department is proposing exemptive relief solely for the transactions as specified. No exemptive relief or opinion is provided herein concerning the application of all of the funds received from RECIF toward repayment of the loans.

[5] It is represented that the interest rate the Trustee will apply will be the prime rate that the Trustee charged its commercial customers at the time of each previous liquidating distribution.

national banking association and regulated by the Office of the Comptroller of the Currency. The Bank provides retail and commercial banking services to Killeen, Fort Hood, and other communities in Bell County in central Texas. It is a subsidiary of First Community Bancshares, Inc., which owns 83.33 percent of the outstanding shares of the Bank. First Community Bancshares, Inc., located in Houston, Texas is a bank holding company organized under the laws of Texas and the Bank Holding Company Act of 1956 and regulated by the Federal Reserve System.

The Bank has one banking affiliate, Fort Hood National Bank which is a national banking association located in Fort Hood, Texas. Also, the Bank has one non-banking affiliate, First Community Services, Inc., a Texas corporation, which provides data processing services to the Bank, its banking affiliate, and its parent holding company.

2. The Plan is a qualified profit sharing plan with 166 participants and total assets of $2,197,651, as of December 31, 1989. The Plan, which was established during 1960 by the Bank, covers employees of Fort Hood National Bank and First Community Services. The fiduciaries of the Plan exercising investment discretion for the Plan are Sylvan A. Gilliland, Senior Vice President and Chief Financial Officer of the Bank; James D. Dreibelbis, President of Conroe Center, a branch of the Bank; Lawrence Joe Padgett, President of First Community Services; Debra Norman, Vice President of Fort Hood National Bank; and Patricia L. Watts, Assistant Vice President of the Bank.

As of December 31, 1989, approximately 13 percent of Plan assets were invested in the Notes, having a total outstanding balance of $286,131.16. The Notes, in their original principal amounts, ranged from $25,000 to $125,000, having terms of 10 to 15 years, maturing between 1992 and 1996, and bearing fixed interest rates from 7.5 percent to 14 percent. None of the debtors or obligors under the Notes are parties in interest with respect to the Plan. No expenses or other fees with respect to the Notes were ever paid by the Plan. All costs incurred with respect to the Notes were paid by the Bank.

The Notes have been appraised by Dowling & Co. Consultants, an independent appraisal firm located in Austin, Texas. Mr. R. Dowling, the president of the firm, has determined that the Notes have a total fair market value of $253,103.54. The respective Notes were given the following individual values: Ernesto Hernandez—$73,002.06; Pranat, Inc.—$40,615.59; Purser Construction—$25,037.29; Carolyn Renegar—$5,696.96; Hayel and Nadla Safady—$101,353.08; and Skyline Baptist—$7,378.56.

3. Midway through 1988, new management took over the Bank. New fiduciaries were also appointed for the Plan at this time, resulting in a review of the investment portfolio of the Plan. Recognizing the depressed real estate market and generally languishing economy in Texas at that time, the newly appointed fiduciaries adopted a new investment policy, effective at the beginning of 1989, that excluded new commercial loans as investments for the Plan.

The Department began an examination of the Plan during March of 1989. During this examination, the Department questioned the prudence of the Plan continuing to hold two delinquent Notes issued by Messrs. Safady and Hernandez, respectively, and requested that they be removed from the Plan.[6] In addition, the Department encouraged the Bank to dispose of the remaining Notes by either selling them to unrelated third parties with respect to the Plan, or by the Bank purchasing them from the Plan pursuant to an exemption from the prohibited transaction provisions of the Act.

Based on the advice of legal counsel, the Bank determined that the Notes could not be sold to unrelated parties because such sale would require a release and reestablishment of the attendant security interests. The applicant represents that such action would jeopardize the credit position of the purchaser of the note; and, as to the Note involved in the bankruptcy proceedings, its sale would lower its priority in the bankruptcy proceedings. One of the other Notes is subject to a homestead exemption, and is represented by the applicant that a refinancing of such note would drastically lower the possibility of recovering the outstanding debt. In addition, the Bank represents that it would be difficult to impossible to sell the Notes to unaffiliated financial institutions in or out of the geographic area because of the generally depressed real estate market in Texas.

4. In order to resolve any issues with respect to the Notes, the Bank has agreed that upon obtaining the requested exemption it will purchase for cash all of the Notes held by the Plan. The Bank will pay the greater of the outstanding balance plus accrued interest owing on the Notes on the date of Sale, or the fair market value of the Notes on the date of Sale. The Bank represents that the Notes are now being paid down and are current, with the exception of the Hernandez Note. No expenses will be incurred by the Plan from the Sale.

The applicant represents that the Sale of the Notes to the Bank will facilitate compliance with the Department's suggestions to dispose of the Notes as investments for the Plan. At the same time the Sale will enable the Plan to comply with the changed investment policy adopted by the newly appointed fiduciaries. The applicant also represents that the Sale of the Notes to the Bank serves the best interests of the Plan and its participants and beneficiaries by ensuring an expedient sale and fair return.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because (a) The Sale of the Notes will be a one time sale for cash; (b) the Plan will not be required to pay any fees or commissions in connection with the Sale; (c) the Plan will sell the Notes to the Bank for an amount representing either the greater of the fair market value of the Notes as of the date of the Sale or the outstanding principal balance of the Notes plus accrued interest at the time the Sale is consummated; (d) the Notes will be appraised by a qualified, independent appraiser; and (e) the Sale of the Notes will permit the Plan to reinvest the proceeds of the Sale in improved and new income-producing assets.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his

[6] As of March 1, 1989, the Safady and Hernandez Notes were delinquent. The Safady Note had been renewed on February 10, 1989, with $89,766 principal outstanding and $24,770 in interest due on the Note. As of December 1987 Hernandez had filed under Chapter 13 of the Bankruptcy Act, which permits it to remain 90 days delinquent. Approximately $90,106 was due on the Hernandez Note at the time.

duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not disruptive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 6th day of December 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90-28969 Filed 12-10-90; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 90-86; Exemption Application No. D-8305 et al.]

Grant of Individual Exemptions; Kenosha Laborer's Local 237 Pension Plan; Carpenters Trust of Kenosha, WI, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the right of the participants and beneficiaries of the plans.

Kenosha Laborer's Local 237 Pension Plan; Carpenter's Trust of Kenosha, WI; and Kenosha Building & Construction Trades Welfare Fund (together, the Plans) Located in Kenosha, Wisconsin

[Prohibited Transaction Exemption 90-86; Exemption Application No. D-8305]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed acquisition by the Plans of limited partnership units in the Kenosha Civic Center II Associates, a limited partnership which is a party in interest with respect to the Plans, provided the Plans pay no more than the fair market value of the interests on the date of the acquisition.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 12, 1990 at 55 FR 37585.

Written Comments: The Department received one written comment with respect to the proposed exemption. The comment requested that the exemption not be granted because the proposed transaction was too risky an investment, and that security of the funds should have the highest priority.

Mr. Robert B. Schneider of Johnson Heritage Trust Company (JHTC), the Plan's independent fiduciary, responded to the comment. Mr. Schneider represents that JHTC has reviewed the proposed transaction thoroughly. Mr. Schneider states that given the worst case scenario (that is, assuming that no increase in value would occur to the housing development), the Plans would be receiving an annual cash return which would provide a desirable percentage return on their investments given the possible risks in the project. The cash flow return, together with the potential for capital appreciation in the value of the investment, makes the investment desirable. In his opinion, Mr. Schneider states that the investment imposes no great risk to the Plans and, in fact, could enhance each Plan's investment portfolio. Mr. Schneider also cited the small percentage of each Plan's assets (approximately 1-2%) to be invested in the proposed transaction. In addition, JHTC will monitor the investment by each Plan in the housing development and will take the steps necessary to protect the interest of each Plan in the investment.

The Department has considered the entire record, including the written comment and JHTC's response to the comment, and has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

United Artists Communications, Inc. (Rowley United Division) Retirement Plan (the Plan) Located in Dallas, Texas

[Prohibited Transaction Exemption 90-87; Exemption Application No. D-8395]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) of certain real property (the Property) from the Plan to United Artists Realty Corporation, a party in interest with respect to the Plan, provided that the Plan receives no less than either the sum of $165,000 or the fair market value of the Property at the time of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 17, 1990, at 55 FR 42088.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is subject to the exemption.

Signed at Washington, DC, this 6th day of December, 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90-28970 Filed 12-10-90; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meetings

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Revision of notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

DATE AND TIME: Monday, December 17, 1990, 8:30 a.m. to 5:30 p.m.

Tuesday, December 18, 1990, 8:30 a.m. to 5:30 p.m.

PLACE: December 17, 1990, Curran Conference room, 4th floor, City Hall, 100 North Holliday Street, Baltimore, MD 21202.

December 18, 1990, Peabody Court Hotel, Second floor, 612 Cathedral Street, Baltimore, Maryland 21201.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., suite 815, Washington, DC 20006 (202) 254-5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: On Monday, December 17, 1990 the Commission will discuss issues relating to HIV disease in African American communities. On Tuesday, December 18, 1990, the Commission will receive technical briefing on health care financing issues.

Interpreting services are available for deaf people. Please call our TDD number (202) 254-3816 to request services no later than December 11, 1990.

Dated: December 6, 1990.

Maureen Byrnes,

Executive Director.

[FR Doc. 90-28939 Filed 12-10-90; 8:45 am]

BILLING CODE 6820-CN-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Adoption of Principles of Public Information

AGENCY: U.S. National Commission on Libraries and Information Science (NCLIS).

ACTION: Public notice.

Principles of Public Information

Preamble

From the birth of our nation, open and uninhibited access to public information has ensured good government and a free society. Public information helps to educate our people, stimulate our progress and solve our most complex economic, scientific and social problems. With the coming of the Information Age and its many new technologies, however, public information has expanded so quickly that basic principles regarding its creation, use and dissemination are in danger of being neglected and even forgotten.

The National Commission on Libraries and Information Science, therefore, reaffirms that the information policies of the U.S. government are based on the freedoms guaranteed by the Constitution, and on the recognition of public information as a national resource to be developed and preserved in the public interest. We define *public information* as information created, compiled and/or maintained by the Federal Government. We assert that public information is information owned by the people, held in trust by their government, and should be available to the people except where restricted by law. It is in this spirit of public ownership and public trust that we offer the following Principles of Public Information.

1. The public has the right of access to public information. Government agencies should guarantee open, timely and uninhibited access to public information except where restricted by law. People should be able to access public information, regardless of its format, without any special training or expertise.

2. The Federal Government should guarantee the integrity and preservation

of public information, regardless of its format. By maintaining public information in the face of changing times and technologies, government agencies assure the government's accountability and the accessibility of the government's business to the public.

3. The Federal government should guarantee the dissemination, reproduction, and redistribution of public information. Any restriction of dissemination or any other function dealing with public information must be strictly defined by law.

4. The Federal Government should safeguard the privacy of persons who use or request information, as well as persons about whom information exists in government records.

5. The Federal Government should ensure a wide diversity of sources of access, private as well as governmental, to public information. Although sources of access may change over time and because of advances in technology, government agencies have an obligation to the public to encourage diversity.

6. The Federal Government should not allow cost to obstruct the people's access to public information. Costs incurred by creating, collecting and processing information for the government's own purposes should not be passed on to people who wish to utilize public information.

7. The Federal Government should ensure that information about government information is easily available and in a single index accessible in a variety of formats. The government index of public information should be in addition to inventories of information kept within individual government agencies.

8. The Federal Government should guarantee the public's access to public information, regardless of where they live and work, through national networks and programs like the Depository Library Program. Government agencies should periodically review such programs as well as the emerging technology to ensure that access to public information remains inexpensive and convenient to the public.

Conclusion

The National Commission on Libraries and Information Science offers these Principles of Public Information as a foundation for the decisions made throughout the Federal Government and the nation regarding issues of public information. We urge all branches of the Federal Government, state and local governments and the private sector to utilize these principles in the development of information policies and in the creation, use, dissemination and preservation of public information. We believe that in so acting, they will serve the best interests of the nation and the people in the Information Age.

Adopted June 29, 1990.

For further information contact: Jane Williams, Research Associate, U.S. National Commission on Libraries and Information Science, 1111 18th Street NW., suite 310, Washington, DC 20036, (202) 254–3100.

Dated: December 6, 1990.

Jane Williams,

Research Associate.

[FR Doc. 90–29001 Filed 12–10–90; 8:45 am]

BILLING CODE 7527-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts National Council; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on December 15, 1990, from 9 a.m. 5 p.m. in the Windsor room at the Hay Adams Hotel, One LaFayette Square, NW., Washington, DC 20006.

This meeting will be open to the public on a space available basis. The topics for discussion will be policies and procedures for the implementation of programs authorized by the National Foundation on the Arts and the Humanities Act of 1965 as amended.

Any interested persons may attend this meeting as observes. Seating space for observers is limited.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: December 4, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–28916 Filed 12–10–90; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting Revision

The **Federal Register** notice previously published on November 27, 1990 (55 FR 49355) announcing the Advisory Committee on Nuclear Waste (ACNW) meeting scheduled for December 12–13, 1990 has been revised to include a closed session regarding the election of ACNW Officers for Calendar Year 1991. This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy 5 U.S.C. 552b(c)(6). All other items pertaining to this meeting remain the same as previously published.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: December 5, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90–28959 Filed 12–10–90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste Working Group on the Role of Expert Judgment in the Assessment of Strategies in Nuclear Waste Disposal; Meeting

The Working Group on the Role of Expert Judgment will hold a meeting on January 25, 1991, Room P-110, 7920 Norfolk Avenue, Bethesda, Maryland.

The entire meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Friday, January 25, 1991, 8:30 a.m. until the conclusion of business.

The Working Group will discuss the role and the extent of expert judgment in the site characterization and licensing process with respect to the disposal of nuclear waste. Discussions will include the results of studies supported by the Department of Energy and the Nuclear Regulatory Commission relating to the performance assessment for high-level waste repositories. Participants will present information and results on the role of expert judgment in the regulatory decision process, the clear identification of the extent to which such judgment is used, the minimization of reliance on such judgment, and strategies to deal with cascading effect (propagation of uncertainty) associated with the use of subjective judgment. In addition to the manner in which expert judgment is used, the discussion will also involve how such experts are identified and selected. Although the focus will be primarily directed to the assessment of performance for a high-level waste repository, the use of experts in other areas may factor in the discussions.

Oral statements may be presented by members of the public with the concurrence of the Working Group Chairman; written statements will be accepted and made available to the Group. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Working Group, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW staff members named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Working Group, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Working Group will then hear presentations by and hold discussions with the invited speakers from DOE, the Nuclear Waste Technical Review Board, the Electrical Power Research Institute (EPRI), National Laboratories, and other interested persons regarding this review.

Further information regarding the agenda for this meeting, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Ms. Charlotte Abrams (telephone 301/492-8371 between 7:45 a.m. and 5:30 p.m.) or cognizant ACNW staff member, Mr. Giorgio Gnugnoli (telephone 301/492-9851 between 8:15 a.m. and 6 p.m.). Persons planning to attend this meeting are urged to contact the above named individuals one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 4, 1990.

Richard K. Major,

Chief, Nuclear Waste Branch.

[FR Doc. 90-28960 Filed 12-10-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312]

Sacramento Municipal Utility District, (Rancho Seco Nuclear Generating Station); Exemption

I

The Sacramento Municipal Utility District (the licensee) is the holder of a Facility Operating License No. DPR-54, which authorizes the operation of the Rancho Seco Nuclear Generating Station (the Facility) at a steady-state reactor power level not in excess of 2772 megawatts thermal. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

In a letter on July 24, 1990, the licensee submitted a request for an exemption from performing an annual exercise of the emergency plan, activation of the alert and notification system, and distribution of public information brochures as required by 10 CFR 50.47 and 10 CFR part 50, appendix E.

The facility consists of a pressurized water reactor (PWR) located at the licensee's site in Sacramento County, California.

II

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances.

Section 50.12(a)(2)(ii) of 10 CFR part 50 provides that special circumstances exist when application of the regulations in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

Section 50.12(a)(iii) of 10 CFR part 50 provides that special circumstances exist when compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

Section 50.12(a)(2)(vi) of 10 CFR part 50 provides that special circumstances exist when there is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption.

By letter dated July 24, 1990, the licensee requested exemptions from the following requirements:

(1) 10 CFR 50.47(b)(14) requires periodic drills and exercises and 10 CFR part 50, appendix E, section IV.F, requires annual (onsite) emergency preparedness exercises and biennial (offsite) emergency preparedness exercises. The offsite exercises require State and local government participation. NUREG-0654/FEMA-REP-1, Rev. 1 titled, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," also recommends in Appendix 3 that a complete cycle test of the siren system be conducted at least annually and as required for formal exercises.

(2) 10 CFR 50.47(b)(7) requires the periodic dissemination of information to the public on actions to be taken in an emergency and 10 CFR part 50, appendix E, section IV.D.2, sets an annual frequency for dissemination of this information to the public within the plume exposure pathway (10-mile radius) emergency planning zone (EPZ).

In the same letter, the licensee supplied the following information in support of its request.

- The licensee states that Rancho Seco is permanently shut down and completely defueled and, therefore, the potential for postulated accidents are much less than those considered when the NRC promulgated the emergency preparedness regulation.
- The licensee points out that it has submitted the "Long Term Defueled

Condition Emergency Plan" and the supporting accident analysis for NRC review. The licensee states that the Environmental Protection Agency (EPA) plume exposure protective action guides (PAGs) will not be exceeded (offside) for any postulated event at Rancho Seco in the defueled condition.

• The licensee states that it successfully passed the 1989 annual exercise.

• The licensee provides letters from State and local officials which approve the licensee's decision to seek relief from the requirement for an exercise.

• The licensee concludes that activation of the alert and notification system, annual distribution of information to the public and full (State and local) participation exercises are not required for a shut-down, defueled facility.

• The licensee offers to perform communications drills in lieu of the annual exercise. The licensee states that the scope of the drills will include the annual communication drill necessary to ensure that State and local authorities are notified of emergencies in a timely manner.

III

The NRC staff is reviewing the licensee's defueled emergency plan, has examined the licensee's dose calculations supporting the defueled emergency plan, and has independently calculated the offsite doses resulting from a fuel handling accident. Both the licensee's and the staff's calculations show that the offsite doses resulting from a fuel handling accident would not exceed the EPA PAGs offsite. For example, the lower level EPA PAG for protective action is 1 Rem whole-body dose. The staff's calculations show that the accumulated whole-body radiation dose at the site boundary for the *30* days following a fuel handling accident would be approximately 0.14 Rem. Thus, the long times that are available permit *ad hoc* actions by State and local authorities to avoid exceeding EPA PAGs for the public. The NRC staff considers that onsite emergency plans for a defueled plant are required to provide for the protection of individuals on site and provide notifications and training for officials offsite. Exercises of offsite plans, testing of the alert and notification system, and distribution of public information materals are not required.

On September 23, 1988, the Commission promulgated new emergency preparedness regulations for fuel loading and low power testing. These regulations in 10 CFR 50.47(d) do not require exercises with offsite officials, prompt public notification systems (such as sirens), or the distribution of public information materials. This is precisely the relief sought by the licensee for the defueled condition.

The new (low-power) regulations were promulgated because:

• The fission product inventory during low power testing is much less than during full power operation.

• At low power there is a significant reduction in the required capacity of systems designed to mitigate the consequences of accidents.

• The time available for taking actions to identify accident causes and mitigate accident consequences at low power is much longer than at full power.

IV

Because the risk of a defueled nuclear power plant is significantly less than even that on a fueled plant operating at low power, the Commission concludes that the emergency preparedness requirements of 10 CFR 50.47(d) regarding offsite preparedness are more appropriate for the Rancho Seco Nuclear Generating Station than the requirements of 10 CFR 50.47(b). Therefore, it is not necessary for the Rancho Seco Nuclear Generating Station, in its defueled condition, to conduct biennial offsite exercises, test its sirens or distribute public information materials. Therefore, based on a consideration of the facts presented in section III above and as requested by the licensee, the Commission finds the following factors support the granting of the requested exemptions:

• The reactor has been shut down since June 1989, the fuel has been removed from the reactor vessel and is stored in the spent fuel pool. Consequently, EPA PAGs will not be exceeded offsite and no offsite public protective actions will be warranted in case of an accident.

• Emergency plans for a defueled plant were not contemplated when the regulation was adopted.

• Requiring offsite exercises, testing of sirens, and dissemination of public information would not significantly reduce the risk to the public from any credible accident that has been postulated for a defueled nuclear plant.

V

For these reasons the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), (a)(2)(ii), (iii), and (vi) the exemptions requested by the licensee's letter of July 24, 1990, and authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security, and special circumstances are present as contemplated in the regulation.

Accordingly, the Commission hereby approves the following exemptions, applicable to Rancho Seco in its defueled condition:

(1) "The Rancho Seco Nuclear Generating Station is exempt from the requirement of 10 CFR part 50, appendix E, Section IV.F.3, for the conduct of biennial offsite full-participation emergency preparedness exercises, including any testing of the siren system."

(2) "The Rancho Seco Nuclear Generating Station is exempt from the requirements of 10 CFR 50.47(b)(7) and 10 CFR Part 50, appendix E, Section Part IV.D, requiring the dissemination of public information materials.

Pursuant to 10 CFR 51.32, the Commission has previously determined that the granting of these Exemptions will have no significant impact on the quality of the human environment and an environmental) impact statement is not required (55 FR 35481 August 22, 1990).

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 30 day of November, 1990.

Dennis M. Crutchfield, Director,

Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-28964 Filed 12-10-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-28741; License No. 03-23185-01; EA 90-210]

I

Tumbleweed X-Ray Co., Greenwood, AR; Order Modifying License (Effective Immediately)

Tumbleweed X-Ray Company (Licensee or Tumbleweed) is the holder of Materials License No. 03-23185-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 34 on July 25, 1985 (Tumbleweed X-Ray Company previously held NRC Materials License No. 35-21425-01). The license authorizes the possession and use of sealed radioactive sources (iridium-192 and cobalt-60) in various industrial radiography devices. The license was due to expire on September 30, 1988, but remains active due to a timely renewal application having been submitted by the Licensee in August 1988.

II

Under 10 CFR 34.43, personnel performing licensed radiographic operations are required to perform a radiation survey of the camera and guide tube to determine that the sealed source has been returned to its shielded position after each exposure. Under 10 CFR 34.44, an assistant radiographer using radiographic exposure devices must be under the personal supervision of a radiographer. The personal supervision shall include watching the assistant's performance of operations.

On November 26, 1990, the Licensee informed NRC Region IV that David Martin, an assistant radiographer employed by Tumbleweed, may have received a radiation overexposure to his right hand. The Licensee believes the overexposure is connected to an incident that occurred on November 12, 1990, during radiography being performed at a facility in Burns Flat, Oklahoma. Kevin Hill was the radiographer conducting radiographic operations with Mr. Martin that day. The Licensee's radiation safety officer, who contacted NRC in regard to this incident, stated that he learned of the incident and apparent overexposure on November 25, 1990.

Based on information the Licensee submitted to NRC Region IV on November 28, 1990, and NRC Region IV's initial inquiry into this incident on November 29, 1990, NRC believes that: (1) On November 12, 1990, a serious radiation injury occurred to the right hand of David Martin; (2) on that day, David Martin failed to perform a radiation survey after exposing the source and attempting to retract it and prior to approaching the source and guide tube; and (3) during these events Kevin Hill, the radiographer, failed to properly supervise Mr. Martin and failed to watch his performance of operations and that these violations of NRC requirements of November 12, 1990, contributed to this occurrence. Additional violations may be identified as a result of our continuing review of this incident.

In a telephone discussion with NRC Region IV on November 29, 1990, the Licensee agreed to prohibit both the radiographer and assistant radiographer involved in this incident from conducting any activities that involve the use of licensed radioactive materials without prior NRC approval.

III

The circumstances surrounding the November 12, 1990, incident reflect inadequate regard by the individuals involved for NRC requirements designed to ensure the safe use of licensed radioactive material and raise significant concerns relative to adequate protection of the public health and safety. Pending completion of a review of this incident, the NRC does not have reasonable assurance that licensed activities will be properly conducted with these individuals present. Therefore, I have determined that the public health and safety require that this Order be issued. Pursuant to 10 CFR 2.204, I have also determined that the public health and safety require that this Order be immediately effective.

IV

Accordingly, pursuant to section 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204, 10 CFR part 30 and 10 CFR part 34, it is hereby ordered, effective immediately, that License No. 03-23185-01 is modified as follows:

1. Kevin Hill, a radiographer, is prohibited from conducting any activities involving licensed radioactive materials;

2. David Martin, an assistant radiographer, is prohibited from conducting any activities involving licensed radioactive materials.

The Regional Administrator, NRC Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

V

The Licensee, Kevin Hill, David Martin, or any person adversely affected by this Order may submit an answer to this Order or request a hearing on this Order within twenty days of its issuance. The answer shall set forth the matters of fact and law on which the Licensee, Kevin Hill, David Martin or other person adversely affected relies and the reasons why the Order should not have been issued. Any answer filed within twenty days of the date of this Order may include a request for a hearing. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee or Kevin Hill or David Martin requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee, Kevin Hill, David Martin, or any other person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

On the Licensee's, Kevin Hill's and David Martin's consent to the provisions set forth in section IV of this Order or or the failure of the Licensee or Kevin Hill, David Martin to file an answer within the specified time and in the absence of any request for a hearing within the specified time this Order shall be final without further Order or proceeding. A request for a hearing shall not stay the immediate effectiveness of this confirmatory order.

Dated at Rockville, Maryland this 4th day of December 1990.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

[FR Doc. 89-28967 Filed 12-10-90; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

International Postal Rates and Fees; Proposed Changes

AGENCY: Postal Service.

ACTION: Proposed changes in international postal rates and fees.

SUMMARY: Pursuant to its authority under 39 U.S.C. 407, the Postal Service is proposing changes in international postal rates and fees to become effective simultaneously with changes to domestic rates and fees.

As required under the Postal Reorganization Act, the proposed changes would result in international postal rates that (i) did not apportion the costs of the services so as to impair the overall value of the service to the users, (ii) were fair and reasonable, and (iii) were not unduly or unreasonably discriminatory or preferential.

DATES: Comments on the proposed changes must be received on or before January 1, 1991.

ADDRESSES: Written comments should be directed to the Director, Office of Rates, Rates and Classification Department, U.S. Postal Service, Washington, DC 20260–5350. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 1140, 475 L'Enfant Plaza West, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John F. Alepa (202) 268–2650.

SUPPLEMENTARY INFORMATION: The proposed international rates and fees, shown in the tables below, are needed by the Postal Service to accommodate changes in the cost of providing international mail service. In addition the Postal Service believes that the proposed changes would result in improved international mail service.

Several changes in rate application/classification are proposed. They include:

1. Establishment of separate rates for surface Publishers Periodicals and surface Books and Sheet Music sent to Canada. The current rates for these types of Other Articles (AO) mail make no distinction between mail sent to Canada and mail sent to all other countries.

2. Establishment of a 38 cent bulk letter rate to Canada. The new bulk rate is restricted to pieces weighing one ounce or less. A 500 piece, per mailing, minimum requirement applies.

3. Establishment of new country groups for Air AO rate applications. The new groups are identified as the Western Hemisphere Group (except Canada and Mexico), the Pacific Rim Group, the European Group, and the Asian/African Group. As under current rate application, separate, ungrounded, Air AO rates apply to Canada and to Mexico.

The Postal Service proposes that the adjustments in international rates and fees become effective simultaneously with changes in domestic rates and fees. Coordination of changes in domestic and international rates and fees is more efficient for both the Postal Service and mailers. Changes to domestic rates and fees are expected to be adopted in the near future.

In the tables below, some international fees are marked with an asterisk. The asterisk indicates that the Postal Service is proposing an international fee which is the same as the corresponding proposed domestic fee. Once domestic fees are adopted, the Postal Service will publish any necessary changes to international fees in the **Federal Register.**

This proposal does not address rate changes for Express Mail International (EMIS), International Priority Airmail (IPA), or International Surface Air Lift (ISAL) service. New EMIS and IPA rates are under review. New rates for ISAL service are set forth in **Federal Register** 55 FR 43268.

Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written comments on the proposed changes.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

I. Letters and Letter Packages

I. A. Canada and Mexico (Air) [1]

Weight steps not over		Canada [2]	Mexico
Lbs.	Ozs.		
0	.5	—	$0.35
0	1	$0.40	0.45
0	1.5	—	0.55
0	2	0.63	0.65
0	3	0.86	0.90
0	4	1.09	1.15
0	5	1.32	1.40
0	6	1.55	1.65
0	7	1.78	1.90
0	8	2.01	2.15
0	9	2.24	2.40
0	10	2.47	2.65
0	11	2.70	2.90
0	12	2.93	3.15
1	0	3.25	4.15
1	8	3.85	6.15
2	0	4.45	8.15
2	8	5.38	10.15
3	0	6.31	12.15
3	8	7.24	14.15
4	0	8.17	16.15

[1] Mail paid at these rates receive First-Class service in the U.S. and airmail service in Canada and Mexico.

[2] A 4 pound maximum applies except for registered items sent to Canada which may weigh up to 66 pounds. For Canada-bound registered items weighing over 4 pounds, the rate is $1.86 for each additional pound up to a 66 pound limit.

I. B. Countries Other than Canada or Mexico (Surface)

Weight steps not over [1]		All countries (other than Canada and Mexico)
Lbs.	Ozs.	
0	[2] 1	.70
0	2	.95
0	3	1.20
0	4	1.45
0	5	1.70
0	6	1.95
0	7	2.20
0	8	2.45
0	12	3.95
1	0	5.55
1	8	7.65
2	0	9.75
2	8	11.85
3	0	13.95
3	8	16.05
4	0	18.15

[1] Pieces weighing one-half ounce or less will be accepted at the Air LC rate of 50 cents and accorded air service.

[2] A 4-pound maximum applies.

I. C. Countries Other than Canada or Mexico (Air)

Ounces (up to and including)	All countries (other than Canada and Mexico)
.5	$0.50
1.0	.95
1.5	1.34

Rate is 39 cents for each additional .5 ounce up to and including 32 ounces; then 39 cents per additional ounce over 32 ounces. Maximum weight 64 ounces.

I. D. Bulk Rate (to Canada only): 38 cents per piece. Applies only to letters weighing 1 ounce or less. Mailers must present a minimum quantity of 500 pieces. All mail must bear the appropriate Canadian post code. The mail must be presorted by the first two characters of the Canadian post code and the pieces must be trayed in accordance with Postal Service distribution schemes for Canadian mail. Mail must be trayed and labeled to the destination specified by the Postal Service when there are at least 200 pieces in the mailing for one or more of those destinations. When there are less than 200 pieces for one or more of the destinations, mail must be trayed to the U.S. dispatching exchange office.

II. Post/Postal Cards and Aerogrammes

II. A. Surface

(1) Canada: 30 cents each.

(2) Mexico: 30 cents each.

(3) All other countries: 35 cents each.

II. B. Air

(1) Canada: 30 cents each.

(2) Mexico: 30 cents each.

(3) All countries (except Canada and Mexico): 40 cents each.

II. C. Aerogrammes: 45 cents each.

III. Other Articles (AO)

III. A. Regular Printed Matter and Small Packets (Surface)

Weight steps not over	Canada	Mexico	All other countries
1 oz.	$0.36	$0.35	$0.48
2	0.58	0.51	0.70
3	0.80	0.66	0.92
4	1.02	0.86	1.14
6	1.26	1.06	1.45
8	1.50	1.26	1.80
10	1.74	1.46	2.07
12	1.98	1.66	2.38
14	2.22	1.91	2.69
16	2.46	2.16	3.20
18	2.66	2.41	3.26
20	2.86	2.66	3.52
22	3.06	2.91	3.78
24	3.26	3.16	4.04
26	3.46	3.46	4.30
28	3.66	3.76	4.56
30	3.86	4.06	4.82
32	4.06	4.36	5.08
3 lbs	5.26	5.86	6.73
4 lbs	6.46	7.36	8.38
Each addl. 1 lb.	1.20	1.50	1.65
Maximum weight: [1]			
M-bag rate [2]			
Per pound or fraction	.96	1.20	1.32

[1] a. For regular printed matter maximum weight is 22 pounds to Mexico; 4 pounds to Canada and most other countries. b. For Small Packets, maximum weight, to Canada and Mexico, is 32 ounces; to most other countries, 4 pounds.

[2] Direct sacks to one addressee. Minimum weight 15 lbs. Maximum weight 66 lbs.

III. B. Publishers Periodicals (Surface)

Weight steps not over [1]	Canada	All other countries
1 oz	$0.30	$0.30
2	0.34	0.38
3	0.44	0.46
4	0.54	0.54
6	0.65	0.68
8	0.76	0.82
10	0.87	0.96
12	0.98	1.10
14	1.09	1.24
16	1.20	1.36
18	1.31	1.48
20	1.42	1.60
22	1.53	1.72
24	1.64	1.84
26	1.75	1.96
28	1.86	2.08
30	1.97	2.20
32	2.08	2.32
3 lbs.	2.88	3.22
4 lbs.	3.68	4.12
Each additional. 1 lb.	0.80	0.90
M-bag rate [2]		
Per pound or fraction	0.64	0.72

[1] Weight limit to most countries is 4 pounds; some 22 pounds. If mailed by publisher or news agent weight limit to Canada is 30 pounds.

[2] Direct sacks to one addressee. Minimum weight 15 lbs. Maximum weight 66 lbs.

III. C. Books and Sheet Music (Surface)

Weight steps not over	Canada	All other countries
1 lb.	$1.20	1.36
2	2.08	2.32
3	2.88	3.22
4	3.68	4.12
5	4.48	5.02
6	5.28	5.92
7	6.08	6.82
8	6.88	7.72
9	7.68	8.62
10	8.48	9.52
11	9.28	10.42
Each additional pound	0.80	0.90
M-bag rate [2]		
Per pound or fraction	0.64	0.72

[1] Weight limit to most countries is 11 pounds, some 22 pounds.

[2] Direct sacks to one addressee. Minimum weight 15 lbs. Maximum weight 66 lbs.

III. D. 1. Printed Matter, Matter for the Blind, and Small Packets (Air)

Weight steps not over [1]	Canada	Mexico
.5 oz.		$0.35
1	$0.38	0.40
1.5		0.53
2	0.60	0.63
3	0.82	0.85
4	1.04	1.07
5	1.26	1.29
6	1.48	1.51
7	1.70	1.73
8	1.92	1.95
9	2.14	2.17
10	2.36	2.39
11	2.58	2.61
12	2.80	2.83
16	3.12	3.55
24	3.72	4.40
32	4.32	5.25
2.5 lbs.	5.12	6.10
3.0 lbs.	5.92	6.95
3.5 lbs.	6.72	7.80
4.0 lbs.	7.52	8.65
Each additional ½ pound over 4 pounds	0.80	0.85
M-bag rate [2]		
Per pound or fraction	1.28	1.36

[1] Maximum weight to Canada is 4 pounds; to Mexico 22 pounds.

[2] Direct sack to one addressee. Minimum weight 15 lbs. Maximum weight 66 lbs.

III.D.2. Printed Matter, Matter for the Blind, and Small Packets (Air)

AIR AO POSTAL RATE GROUPS [1]

Weight steps [2] not over	Western hemisphere except Canada/Mexico	Europe	Asia/Africa	Pacific Rim
1 oz.	$0.70	$0.85	$0.93	$0.95
2	1.07	1.35	1.57	1.61
3	1.44	1.85	2.21	2.27
4	1.81	2.35	2.85	2.93
6	2.18	3.01	3.76	3.85
8	2.55	3.67	4.67	4.77
10	2.92	4.33	5.58	5.69
12	3.29	4.99	6.49	6.61
14	3.66	5.65	7.40	7.53
16	4.03	6.31	8.31	8.45
18	4.40	6.97	9.22	9.37
20	4.77	7.63	10.13	10.29
22	5.14	8.29	11.04	11.21
24	5.51	8.95	11.95	12.13
26	5.88	9.61	12.86	13.05
28	6.25	10.27	13.77	13.97
30	6.62	10.93	14.68	14.89
32	6.99	11.59	15.59	15.81
2.5 lbs.	8.39	14.09	19.14	19.41
3.0 lbs.	9.79	16.59	22.69	23.01
3.5 lbs.	11.19	19.09	26.24	26.61

AIR AO POSTAL RATE GROUPS [1]—Continued

Weight steps [2] not over	Western hemisphere except Canada/Mexico	Europe	Asia/Africa	Pacific Rim
4.0 lbs.	12.59	21.59	29.79	30.21
Each additional ½ pound	1.40	2.50	3.55	3.60
M-Baq Rate [3] per pound or fraction	2.24	4.00	5.68	5.76

[1] Weight limit to most countries is 4 pounds; some 22 pounds. If mailed by publisher or news agent weight limit is 30 pounds to Canada.
[2] See section III.D.3.
[3] Direct sack to one addressee. Minimum weight 15 lbs. Maximum weight 66 lbs.

III.D.3. Air AO Postal Rate Groups

Pacific Rim Group	European Group	Asian/African Group	Asian/African Group	Western Hemisphere Group (Except Canada & Mexico)
Australia	Albania	Afghanistan	Malawi	Antigua & Barbuda
China	Andorra	Algeria	Maldives	Anguilla
Fiji	Austria	Angola	Mali	Argentina
Hong Kong	Azones	Ascension	Malta	Aruba
Indonesia	Belgium	Bahrain	Mauritania	Bahamas
Japan	Bulgaria	Bangladesh	Mauritius	Barbados
Korea, Democratic People Rep.	Corsica	Benin	Mongolia	Belize
Korea, Republic of (South)	Czechoslovakia	Bhutan	Morocco	Bermuda
Lao	Denmark	Botswana	Mozambique	Bolivia
Macao	Estonia	Brunei	Nauru	Brazil
Malaysia	Faroe Islands	Burkina Faso	Nepal	British Virgin Islands
New Zealand	Finland	Burma	New Caledonia	Cayman Islands
Papua New Guinea	France	Burundi	Niger	Chile
Philippines	Germany, Federal Republic of	Cameroon	Nigeria	Colombia
Singapore	Gibralter	Cape Verde	Oman	Costa Rica
Taiwan	Great Britain & No. Ireland	Central African Republic	Pakistan	Cuba
Thailand	Greece	Chad	Pitcairn Islands	Dominica
Vietnam	Greenland	Comoros	Qatar	Dominican Republic
	Iceland	Cote D'Ivoire (Ivory Coast)	Rwanda	El Salvador
	Ireland	Cyprus	Sao Tome & Principle	Falkland Islands
	Italy	Djibouti	St. Helena	French Guiana
	Latvia	East Timor	Saudi Arabia	Grenada
	Liechtenstein	Egypt	Senegal	Guadaloupe
	Lithuania	Equatorial Guinea	Seychelles	Guatemala
	Luxembourg	Ethiopia	Sierra Leone	Guyana
	Madeira Islands	French Polynesia	Solomon Islands	Haiti
	Monaco	Gabon	Somalia	Honduras
	Netherlands	Gambia	South Africa	Jamaica
	Norway	Ghana	Sri Lanka	Martinique
	Poland	Guinea	Sudan	Montserrat
	Portugal	Guinea Bissau	Swaziland	Netherlands Antilles
	Romania	India	Syria	Nicaragua
	San Marino	Iran	Tanzania	Panama
	Spain	Iraq	Togo	Paraguay
	Sweden	Israel	Tonga	Peru
	Switzerland	Jordan	Tristan Da Cunha	Saint Christopher & Nevis
	Turkey	Kampuchea	Tunisia	Saint Lucia
	USSR	Kenya	Tuvalu	St. Pierre & Miquelon
	Vatican City State	Kiribati	Uganda	Saint Vincent & The Grenadines
	Yugoslavia	Kuwait	United Arab Emirates	Suriname
		Lebanon	Vanuatu	Trinidad and Tobago
		Lesotho	Wallis & Futuna Islands	Turks & Caicos Islands
		Liberia	Western Samoa	Uruguay
		Libya	Yemen, Rep. of	Venezuela
		Madagascar	Zaire	
			Zambia	
			Zimbabwe	

IV. Parcel Post

IV.A.1. Canada (Surface)

Rate is $4.85 for 1 pound and over, up to 2 pounds; then $1.45 for each additional pound or fraction. Maximum weight is 66 pounds; minimum weight one pound.

IV.A.2. Countries Other than Canada (Surface)

Pounds (Up to and including)	Bahamas [1], Bermuda, Caribbean Islands, Central America, Mexico, St. Pierre & Miguelon	All other countries [2]
2	$6.00	$6.55
3	7.85	8.65
4	9.70	10.75
5	11.55	12.85
6	13.40	14.95
7	15.25	17.05
8	17.10	19.15
9	18.95	21.25
10	20.80	23.35
For each additional pound or fraction	1.85	2.10

[1] Maximum weight 44 pounds.
[2] Maximum weight 50 pounds.

IV.B.1. Canada (Air)

Rate is $5.00 for 1 pound and over, up to 2 pounds; then $1.40 for each additional pound or fraction. Maximum weight is 66 pounds; except 22 pounds to Canadian Armed Forces; minimum weight is one pound.

IV.B.2. Countries Other than Canada (Air)

Weight steps	Parcel post [1] rate groups				
	A	B	C	D	E
First 1 pound	$6.00	$7.75	$9.25	$10.70	$12.30
Each additional pound or fraction up to 5 pounds	3.00	4.25	5.00	6.00	7.00
Each additional pound or fraction over 5 pounds	2.00	3.00	4.00	5.00	6.00

[1] See section IV.B.2. Air Parcel Post Rate Groups.

IV. B. 2. Parcel Post Rate Groups

Country	Rate group	Maximum weight limits for air parcel post
Afghanistan	D	44
Albania	C	44
Algeria	D	44
Andorra	B	44
Angola	E	22
Anguilla	A	22
Antigua and Barbuda.	A	22
Argentina	D	44
Aruba	A	44
Ascension	No Air Service	
Australia	D	44
Austria	B	44
Azores	C	44
Bahamas	A	22
Bahrain	D	22
Bangladesh	E	22
Barbados	B	44
Belgium	D	44
Belize	A	44
Benin	C	44
Bermuda	A	44
Bhutan	E	22
Bolivia	B	44
Botswana	E	22
Brazil	E	44
British Virgin Islands.	A	44
Brunei	D	22
Bulgaria	D	44
Burkina Faso	D	44
Burma	D	22
Burundi	E	44
Cameroon	D	44
Canada	Separate Rage Group.	66
Cape Verde	D	22
Cayman Islands	A	44
Central African Republic.	E	44
Chad	D	44
Chile	D	22
China (Peoples Republic of).	D	44
Colombia	B	44
Comoros	E	44
Congo	D	44
Corsica	E	44
Costa Rica	A	44
Cote d'Ivoire (Ivory Coast).	D	44
Cuba	No Parcel Post Service.	
Cyprus	C	44
Czecholovakia	C	33
Denmark	C	44
Djibouti	D	44
Dominica	A	22
Dominican Republic.	A	44
Eat Timor	No Parcel Post Service.	
Ecuador	C	44
Egypt	D	44
El Salvador	B	44
Equatorial Guinea	D	44
Estonia	E	22
Ethiopia	D	44
Falkland Islands	D	44
Farce Islands	C	44
Fiji	B	44
Finland	D	44
France	E	44
French Guiana	C	44
French Polynesia	D	44
Gabon	D	44
Gambia	B	22
Germany, Federal Republic of.	C	44
Ghana	D	22
Gibraltar	C	44
Great Britain and Northern Ireland.	C	50
Greece	C	44
Greenland	D	44
Grenada	A	44
Guadeloupe	A	44
Guatemala	A	44
Guinea	B	44
Guinea-Bissau	B	22
Guyana	B	44
Haiti	A	44
Honduras	B	44
Hong Kong	C	44
Hungary	C	44
Iceland	C	44
India	D	44
Indonesia	E	22
Iran	D	44
Iraq	D	44
Ireland (Eire)	C	50
Israel	C	33
Italy (Including San Marino).	C	44
Jamaica	A	22
Japan	E	44
Jordan	C	44
Kampuchea	No Parcel Post Service.	
Kenya	D	44
Kirabati	B	44
Korea, Democratic People's Republic.	No Parcel Post Service.	

Country	Rate group	Maximum weight limits for air parcel post
Korea, Republic of (South).	C	44
Kuwait	C	44
Lao	E	44
Latvia	E	22
Lebanon	C	11
Lesotho	E	22
Liberia	C	22
Libya	D	44
Liechtenstein	B	44
Lithuania	E	22
Luxenbourg	B	44
Macao	C	44
Madagascar	E	44
Madeira Islands	B	44
Malawi	D	22
Malaysia	D	22
Maldives	D	22
Mali	C	44
Malta	C	22
Martinique	A	44
Mauritania	D	44
Mauritius	E	22
Mexico	A	44
Monaco	E	44
Mongolia	No Parcel Post Service.	
Montserrat	A	44
Morocco	C	44
Mozambique	E	22
Nauru	C	44
Nepal	D	44
Netherlands	C	44
Netherlands Antilles.	A	44
New Caledonia	D	44
New Zealand	D	44
Nicaragua	B	44
Niger	D	44
Nigeria	C	22
Norway	D	44
Oman	D	22
Pakistan	D	22
Panama	A	44
Papua New Guinea.	D	44
Paraguay	D	44
Peru	B	44
Philippines	D	44
Pitcairn Islands	B	22
Poland	B	33
Portugal	C	22
Qatar	C	44
Reunion	E	44
Romania	C	44
Rwanda	D	44
Saint Christoper & Nevis.	A	44
Saint Helena	C	44
Saint Lucia	A	44
Saint Pierre & Miguelon.	A	44
Saint Vincent & the Grenadines.	A	22
San Marino	C	44
Sao Tome & Principe.	D	44
Saudia Arabia	D	22
Senegal	D	44
Seychelles	D	22
Sierre Leone	D	44
Singapore	D	22
Solomon Islands	C	44
Somalia	D	44
South Africa (including South West Africa & Namibia).	D	22
Spain	C	44
Sri Lanka	D	44
Sudan	D	44
Suriname	B	44
Swaziland	D	44
Sweden	D	44
Switzerland	B	44
Syria	C	44
Taiwan	C	44
Tanzania	E	22
Thailand	D	44
Togo	D	44
Tonga	B	22
Trinidad & Tobago	B	22
Tristan da Cunha	E	22
Tunisia	C	44
Turkey	C	44
Turks and Caicos Islands.	A	22
Tuvalu	B	44
Uganda	D	22
Union of Soviet Socialist Republics.	E	22
United Arab Emirates.	D	44
Uruguay	B	44
Vanuatu	B	44
Vatican City State	C	44
Venezuela	B	44
Vietnam	No Parcel Post Service.	
Wallis & Futuna Islands.	D	44
Western Samoa	B	22
Yemen, Republic of.	E	44
Yugoslavia	C	33
Zaire	E	33
Zambia	E	44
Zimbabwe	E	44

V. Fees for Special Mail Services

V. A. Nonstandard Surcharge

1. Letters (weighing one ounce or less): 10* cents.

2. Regular Printed Matter (weighing one ounce or less): 10* cents.

V. B. Customs Clearance and Delivery Fee: $3.40

*V. C. Inquiry Fees $6.00**

*V. D. Return Receipt (requested at time of mailing): $1.00**

V. E. Registered Mail

Limit of indemnity	Fee
1. Canada	
$000.00 to $100	$4.50*
$100.01 to $500	4.85*
$500.01 to $1,000	5.25*
2. All other countries	
$24.60	4.40

V. F. Insured Mail

Limit of Indemnity [1]

Not over	Fees	
	Canada	All other countries
50	$0.75*	$1.60
100	1.60*	2.40
200	2.40*	3.50
300	3.50*	4.60
400	4.60*	5.40
500	5.40*	6.20
600	6.20*	6.60
700		6.90
800		7.20
900		7.50
1,000		7.80
1,100		8.10
1,200		8.40

[1] Limits vary by country.

V. G. Money Orders

1. Orders Issued on Domestic Form [1]

Amount of money order	Fee
$0.01 to $700	$.75*

2. Orders Issued on International Form (when payable in the Dominican Republic, Japan, Mexico, or Sierra Leone): $3.00 per money order.

3. Charge for a photostat of a paid money order issued on a domestic form or pursuant to an international authorization form: $2.50*.

V. H. Special Handling

Weight	Fee
Not more than 10 pounds	$1.80*
More than 10 pounds	$2.50*

V. I. Special Delivery

Class of mail	Not over 2 pounds	Over 2 pounds
1. Letters	$5.60*	$6.00*
2. Post cards	5.60*	6.00*
3. Other articles	5.90*	6.75*

[1] Service is not available to all countries. See IMM for service availability. Where service is available, the maximum amount of a money order is $700, except that the limit is $200 when payable in Great Britian and $400 when payable in Norway

V. J. Restricted Delivery (Not Over 2 Pounds).—$2.50*

V. K. Recorded Delivery (Not Over 2 Pounds).—$0.090

V. L. Certificates of Mailing

	Fee
1. Piece Mailings	
a. Basic Service (Form 3817)	$0.50*
b. Firm Book Mailing (Form 3877)	0.20*
2. Bulk Mailings	
a. Up to 1,000 identical pieces	2.50*
b. Each additional 1,000 pieces	0.30*
3. Duplicate Copy	0.50*

V. M. Return Charges

For returned publishers' periodicals originally mailed to Canada by publishers or registered news agents (IMM 781.5a).

Weight [1] not over	Charges
1 oz	$0.30*
2	0.53*
3	0.76*
4	0.99*
6	1.17*
8	1.29*
10	1.41*
12	1.53*
14	1.65*
16	1.77*

[1] For weights over 1 pound, use the domestic 8th zone fourth-class rate.

V. N. International Reply Coupons

Selling price for U.S. issued coupons: 95 cents.

V. O. International Business Reply

1. Envelopes (up to 2 oz.): $0.95.
2. Cards: $0.50.

[FR Doc. 90-28944 Filed 12-10-90; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency clearance officer—Kenneth Fogash (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002.

Form T-1, File No. 270-121
Form T-2, File No. 270-122
Form T-3, File No. 270-344

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted for OMB approval revisions to Forms T-1 and T-2, and new Form T-6 under the Trust Indenture Act of 1939 ("Act") which have been adopted to implement the amendments to the Act effected by the Trust Indentgure Reform Act of 1990. The forms are as follows: Form T-1, Statement of Eligibility Under the Trust Indenture Act of 1939 of a Corporation Designated to Act as Trustee, Form T-2, Statement of Eligibility Under the Trust Indenture Act of 1939 of the an Individual Designated to Act as Trustee, and Form T-6, Application Under section 310(a)(1) of the Trust Indenture Act for Determination of Eligibility of a Foreign Person to Act as Institutional Trustee.

In the usual case, the staff expects that the trustee will not be serving as trustee under an indenture that is in default. For that reason, the trustees would only have to provide minimal disclosure. The staff estimates that approximately 500 institutional trustees may avail themselves of Form T-1 per year at an estimated average burden of 15 hours per response. The staff estimates that approximately 36 individuals trustees may avail themselves of Form T-2 per year at an estimated average burden of 9 hourts per response. The staff estimates that approximately 15 instititutional trustees may avail themselves of Form T-6 per year at an estimated average burden of 17 hours per response.

In cases where indenture securities are in default, trustees would be required to respond to all of the items of the forms, and the staff estimates that the estimated average burgen would be 44 hours per response for the Form T-1, 28 hours for the Form T-2, and 46 hours for the Form T-6. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 5, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 89-28975 Filed 12-10-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28672; File No. SR-Amex-90-23]

Self-Regulatory Organizations; Filing of Proposed Rule Change Relating to Specialist, Registered Options Trader and Registered Equity Market Maker Trading for Hedging Purposes.

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 November 1, 1990, the American Stock Exchange, Inc. ("Amex" 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 Amex. 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 Amex is proposing to amend Exchange Rule 950 to permit specialists and Registered Options Traders ("ROTs") to initiate proprietary orders from the floor in Amex-traded index warrants for the purpose of hedging positions in Amex-traded index options. The rule change also specifies that specialists and Registered Equity Market Makers ("REMM") registered in index warrants may initiate proprietary orders from the floor in Amex-traded options for the purpose of hedging their warrant positions. The text of the proposed rule change is attached as Exhibit A.

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 Amex 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. The Amex 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 the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Amex is proposing to add Commentary .04 to Exchange rule 950 to permit specialists and ROTs to initiate proprietary orders from the floor in Amex-traded index options. The rule change also specifies that specialists and REMMs registered in index warrants may initiate proprietary orders from the floor in Amex-traded options for the purpose of hedging their warrant positions.

This proposal is based on the fact that warrants derived from the same or a similar index as that from which a particular class of options is derived may be an appropriate instrument with which to offset the risk of positions in the options. This is of particular significance to specialists and ROTs making a market in such options, since they should have adequate assurance that, when necessary, they will be able to establish an appropriate hedge against positions acquired in connection with their market maker responsibilities.

Generally, under section 11(a)(1) of the Act and Exchange rules 110 and 111 (made applicable to Exchange options transactions by Exchange rule 950), no member, except under certain circumstances, may initiate transactions in any Exchange-traded security for an account in which he has an interest while on the floor of the Exchange. Except under certain circumstances, this prohibition has historically been interpreted to apply even to orders transmitted by a member from the floor to his or an unaffiliated member's upstairs offices and then routed to an unaffiliated broker on the floor for execution, since the original communication from the floor has been considered to be the action which actually initiated the order. Clearly, the liquidity of the marketplace will benefit if the members making a market in certain index options are readily able to use appropriate Amex-traded warrants as a hedge against their market maker positions, and vice-versa.

Section 11(a)(1) of the Act includes an exemption for transactions effected as bona fide hedges. Inasmuch as the nature of certain index options and index warrants may allow the use of an appropriate position in one to offset the risk of a position in the other, such complementary transactions would seem to satisfy the generally accepted requirements of a bona fide hedge, which, as stated by the SEC in a 1979 release adopting certain interpretations under section 11(a)(1) and expanding the applicability of the bona fide hedge exemption, involve an "appreciable offset of risk for all or part of the position being hedged." [1]

However, neither Exchange rules 110 nor 111 (nor Exchange Rule 950, which makes these rules applicable to Exchange options transactions) currently includes a general exemption for bona fide hedge transactions from the prohibition against initiating orders while on the floor. These rules, adopted many years ago, were based largely on concerns that allowing members to enter proprietary orders while on the floor would give them a time and place advantage over orders being entered from off the floor. Nevertheless, it has always been recognized that certain transactions, because of their particular nature and importance to the efficient operation of the marketplace, should not be subject to these restrictions. Thus, for example, exemptions have been established for transactions by a market maker in any security in which he is so registered, bona fide arbitrage transactions, and transactions effected to offset others made in error. In addition, rule 111 contains an exemption for transactions initiated by a specialist registered in rights in a security which is the subject of the rights for the purpose of acquiring or liquidating a hedge against the rights. It would seem appropriate to adopt similar exemptive language for specialists and ROTs wishing to hedge their positions in Amex-traded index options with positions in appropriate Amex-traded index warrants. Similarly, it seems appropriate to allow specialists and REMMs in the index warrants the same flexibility in hedging their positions with index options.

The concerns over the potential for a time and place advantage on which Exchange rules 110 and 111 were in large part based are, of course, countered by the general nature of the products on which the proposal focuses. Since neither product is derivative of the other, and both are derivative of market indices, there appears to be little possibility that activity in one would influence trading or prices in the other. Prices in each will change on the basis of their respective indices. While this in itself is sufficient to moot any concerns over a possible time and place advantage, certain products by their nature will offer additional assurances. For instance, with respect to options on the Japan Index, which recently commenced trading on the Exchange, and warrants on the Nikkei Index, which began trading on the Exchange earlier this year, the stocks composing the indices from which each product is derived do not even trade during Amex trading hours, further removing any possible time and place advantage for traders on the Amex floor. Finally, to ameliorate any remaining concerns over a possible time and place advantage, the proposed exemption requires that a hedging order initiated from the floor must be transmitted to an upstairs office or to a booth on the floor before being given to a broker for execution.

Since the exemption will generally involve options-related positions, it is proposed that it be adopted as Commentary .04 to Exchange rule 950, which, as noted above, makes Exchange rules 110 and 111 applicable to Exchange options transactions. Additional commentary will apply the exemption to any specialist or REMM registered in Amex-traded index warrants to the extent they wish to hedge their warrant positions by taking a position in appropriate Amex-traded index options.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it protects investors and the public interest by helping to foster liquidity in the marketplace for the securities on which it focuses.

B. Self-Regulatory Organization's Statement on Burden on Competition

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

No written comments were solicited or received with respect to 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 (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,

[1] *See* SEC Rel. No. 34-15533, 1979 Fed. Sec. L. Rep. (CCH) ¶22,808B.

(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 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 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-90-23 and should be submitted by January 2, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 4, 1990.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

American Stock Exchange, Inc.; Proposed Rule Changes

It is proposed that the following provisions of the American Stock Exchange Rules be amended as set forth below. Brackets [ ] indicate material to be deleted; italics material to be added.

Rule 950. (a) The following Floor Rules shall apply to Exchange option transactions and other transactions on the Exchange in option contracts: 100, 101, 103, 104, 105, 106, 109, [110], 112, 117, 123, 129, 130, 135, 150, 151, 152, 153, 155, 157, 170, 172, 173, 174, 175, 176, 177, 180, 181, 183, 184, 185, 192 and 193. Unless the context otherwise requires, the term "stock" wherever used in the foregoing Rules shall be deemed to include option contracts. Except as otherwise provided in this Rule, all other Floor Rules (series 100 et seq.) shall not be applicable to Exchange option transactions.

(b) Unchanged.

(c) The provisions of Rules *110* and 111 and Commentary thereto, with the exception of paragraphs (a)(1), (b) and (e) of [such] Rule *111* and the Commentary insofar as it relates to such paragraphs, shall apply to Exchange option transactions. In addition, the following commentary shall also apply:

. . . Commentary

.01–.03 Unchanged.

.04(a) Specialists registered in options on a broad-based market index, and Registered Options Traders, may, while on the Floor, initiate transactions in Exchange-traded warrants on the same or another broad-based market index for the purpose of acquiring or liquidating a bona fide hedge against such options, and the provisions of Rule 110 and of paragraphs (a) through (e) of Rule 111 shall not apply to such transactions.

(b) Specialists and Registered Equity Market Makers registered in warrants on a broad-based market index may, while on the Floor, initiate transactions in Exchange-traded options on the same or another broad-based market index for the purpose of acquiring or liquidating a bona fide hedge against such warrants, and the provisions of Rule 110 and of paragraphs (a) through (e) of Rule 111 shall not apply to such transactions. Nothing contained in this Commentary .04(b) shall be construed to limit the activities of Registered Options Traders.

(c) Any transaction initiated by a member while on the Floor for the purpose of acquiring or liquidating a bona fide hedge as described in Commentary .04(a) or (b) must be transmitted to an upstairs office or to a booth on the Floor, before being given to a broker for execution.

[FR Doc. 90-8976 Filed 12-10-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28671; International Series Rel. No. 202; File No. SR-Amex-90-22]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Foreign Issuers and Rights Offerings

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 October 31, 1990, the American Stock Exchange, Inc. ("Amex" 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 Exchange proposes to amend sections 110 and 340 of the Amex *Company Guide* to modify the procedure for foreign issuers seeking relief under the "custom and tradition" rule and to allow listed companies to issue nontransferable rights.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Foreign Issuers. Several years ago, the Exchange amended its listing guidelines to provide added flexibility in listing the securities of a foreign issuer which did not satisfy corporate governance requirements such as (i) The election and composition of the board of directors; (ii) quarterly reporting; (iii) shareholder approval; and (iv) quorum. Pursuant to these so-called "custom and tradition" rules, a non-U.S. issuer is eligible to list, provided that it furnishes an opinion from foreign counsel that the nonconforming practice is consistent with the laws, customs and practices of its country of origin.[1] Similar rules were adopted by the NYSE [2] and the National Association of Securities Dealers ("NASD").[3]

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[1] *See* Securities Exchange Act Rel. No. 24634 (June 23, 1987), 52 FR 24230 (June 29, 1987) by which the Commission approved proposed rule changes submitted by the Amex and the New York Stock Exchange ("NYSE") to amend the Exchanges' listing standards for foreign companies (File Nos. SR-Amex-86-6 and SR-NYSE-86-14).

[2] *Id*

[3] *See* Securities Exchange Act Rel. No. 24632 (June 23, 1987), 52 FR 24233 (June 29, 1987) (Order

Continued

To further facilitate the listing process for non-U.S. issuers, it is proposed to amend the *Company Guide* to allow consideration of any nonconforming practice in the four corporate governance areas which is not prohibited by foreign law. A similar rule change was recently adopted by the NYSE.[4]

Nontransferable Rights. Companies issue subscription rights as an inexpensive means to raise new capital from their existing shareholders. In this process, whole or fractional rights, entitling the holders to subscribe for new shares at a discounted price, are distributed for each outstanding share of common stock. Subscription rights ordinarily expire within twenty to thirty days and usually trade at a price well below a dollar.

Section 340 of the *Company Guide* requires that subscription rights be freely transferable. This provision was originally adopted to assure that all shareholders—even those who do not choose to exercise their rights—are able to sell them and thereby receive some monetary value. This was particularly important since the price of the underlying stock would be reduced by the value of the right which was distributed.

In recent years, however, a number of Amex companies, citing tax [5] and other concerns—including the fact that neither the NYSE nor the NASD have such a policy—have sought to distribute nontransferable rights to their shareholders. When nontransferable rights are distributed, the price of the underlying security is not reduced by the value of the right, assuring that no shareholder suffers any economic loss. In view of these circumstances, and after considering that, as a practical matter, rising commission fees would discourage small investors from selling their rights, it is proposed that Section 340 and the related provision in the Form SD-1 Listing Agreement be amended to eliminate this restriction.

2. Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) and 6(b)(8) in particular in that they are intended to remove impediments to and perfect the mechanism of a free and open market and a national market system, and assure that the rules of the Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will remove or lessen existing burdens on competition by facilitating the entry of foreign issuers to the U.S. capital markets and eliminating an outdated policy to which only Amex listed companies are subject.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to 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 is 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 the 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 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-90-22 and should be submitted by January 2, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 4, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-28973 Filed 12-10-90;8:45am]

BILLING CODE 8010-01-M

approving File No. SR-NASD-86-27 relating to eligibility standards for issuers of NASDAQ National Market System ("NMS") securities). See also Securities Exchange Act Rel. Nos. 24633 (June 23, 1987), 52 FR 24234 (June 29, 1987) (Order approving amendments to the transaction reporting plan for NASDAQ/NMS securities) and 24634, *supra* note 1.

[4] *See* Securities Exchange Act Rel. No. 27554 (December 20, 1989), 54 FR 53227 (December 27, 1989) (File No. SR-NYSE-89-16).

[5] One such issue is the possibility that outside investors would subscribe to a sufficiently large enough number of shares so as to constitute (for tax purposes) a "change of control," thereby jeopardizing the company's ability to preserve its tax-loss carryforward.

[Rel. No. 34-28670; International Series Rel No. 201; File No. SR-NYSE-90-55]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Listing Warrants Based on the European 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 November 9, 1990, the New York Stock Exchange, Inc. ("NYSE" 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 NYSE proposes to approve for listing and trading under § 703.17 of the Exchange's *Listed Company Manual* warrants based on the European Index ("European Index" or Index"), a stock index established by London & Bishopsgate International, Inc. and licensed by the NYSE, which includes 102 companies spanning 10 European countries and 26 industrial sectors.

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 statutory basis for, the proposed rule change and discussed any

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission recently approved an NYSE proposal to list index warrants based on established domestic and international stock indexes (hereinafter referred to as "Index Warrant Approval Order").[1] The NYSE now proposes to list index warrants based on the European Index, a capitalization-weighted index. The European Index includes 102 companies representing 10 European countries and 26 industrial sectors.[2] The market capitalization of the European Index on June 29, 1990 was about $950 billion.

Such Index warrant issues will conform to the listing guidelines under § 703.17, which provide that: The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in § 102.01 of the *Listed Company Manual*; (2) the term of the warrants shall be for a period of at least one year; and (3) the minimum public distribution of such issues shall be 1,100,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

European Index warrants will be direct obligations of their issuer subject to cash-settlement in U.S. dollars, 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" would receive payment in U.S. dollars to the extent that the European Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the European Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Pursuant to the Index Warrant Approval Order, the NYSE has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts that would be applicable to transactions in Index warrants. Specifically, rule 405, Supplementary Material .30 applies the options suitability standard in rule 723 to recommendations regarding index warrants, and recommends that index warrants be sold only to options-approved accounts. Rule 408, Supplementary Material .10 requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day entered. In addition, the NYSE, prior to the commencement of trading in Index warrants, will distribute a circular to its membership calling attention to specific risks associated with warrants on the European Index.

In the Index Warrant Approval Order, the Commission noted that, with respect to index warrants based on a foreign index, there should be adequate surveillance sharing agreements with respect to the component stocks of the underlying index. In this regard, the Exchange notes that at the present time it has surveillance sharing agreements in the United Kingdom with the Securities Association, in France with the Societe des Bourses Francaises and in Germany with the Frankfuter Wertpapierborse (Frankfurt Stock Exchange).[3]

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or 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 submissions should file six copies thereof with the 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 January 2, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 4, 1990.

Margaret H. McFarland,

Deputy Secretary.

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[1] *See* Securities Exchange Act Rel. No. 28153 (June 26, 1990), 55 FR 27734.

[2] The countries that have companies included in the Index are Belgium, France, Germany, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland, and the United Kingdom. See Exhibit A to this filing for a list of the stocks included in the Index and the weighting of each country in the Index as of June 29, 1990.

[3] Based on the Index value on June 29, 1990, issues from the United Kingdom, Germany, and France represented 38.71%, 21.58%, and 13.02%, respectively, of the Index's value.

[Rel. No. IC—17694; 812-7328]

Equitable Capital Partners, L.P. et al.; Application

December 5, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application under section 57(i) of the Investment Company Act of 1940 (the "1940 Act") and rule 17d-1 thereunder.

APPLICANTS Equitable Capital Partners, L.P. and Equitable Capital Partners (Retirement Fund), L.P. (the

"Partnerships"), Equitable Deal Flow Fund. L.P. ("Institutional Fund I"), and Equitable Capital Management Corporation ("Equitable Capital").

RELEVANT 1940 ACT SECTIONS: Order requested under section 57(i) and rule 17d-1.

SUMMARY OF APPLICATION: Applicants seek an amendment to an existing order (Investment Company Act Rel. No. 16522 (Aug. 11, 1988) (the "Existing Order")) to (i) Permit certain affiliated persons of the Equitable Life Assurance Society of the United States ("Equitable Life") or any of its subsidiaries to serve as directors of Equitable Capital; (ii) permit Equitable Life and its subsidiaries (other than Equitable Capital) and certain other affiliates of Equitable Capital to invest as limited partners in certain limited partnerships that will invest in entities in which the Partnerships also invest; and (iii) amend and restate all of the conditions and undertakings contained in the Existing Order.

FILING DATES: The application was filed on May 22, 1990, and amendments thereto were filed on June 12, 1990 and November 7, 1990. By letter dated December 4, 1990, counsel for applicants agreed to submit an additional amendment to the application, the substance of which is reflected in this notice.

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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 28, 1990, and should be accompanied by proof of service on applicants, 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 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. Applicants, 1285 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272-3043, or Jeremy N. Rubenstein, 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 may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

Each Partnership is a Delaware limited partnership that has elected to operate as a business development company under the 1940 Act. The Partnerships invest parimarily in subordinated debt and related equity securities issued in conjunction with the "mezzanine financing" of privately-structured leveraged buyouts and other enhanced yield transactions ("Leveraged Tranactions"). The securities in which the Partnerships invest are referred to as "Enhanced Yield Investments." The Partnerships have filed a joint registration statement on Form N-2 (File No. 33-20093) under the Securities Act of 1933 (the "1933 Act") with respect to an offering of limited partnership interests and have raised a total of $504.7 million in gross proceeds.

2. Equitable Capital, an independent, wholly owned subsidiary of Equitable Life, is the managing general partner of, and the investment adviser to, each of the Partnerships. Each Partnership has four independent general partners who are not "interested persons" of such Partnerships within the meaning of section 2(a)(19) of the 1940 Act (the "Independent General Partners"). *See* Investment Company Act Release No. 16444 (June 21, 1988). Institutional Fund I is a privately-offered Delaware limited partnership with an investment objective substantially similar to that of the Partnerships. It is excluded from the definition of "investment company" by section 3(c)(1) of the 1940 Act. The general partner of Institutional Fund I is a limited partnership of which Equitable Capital and Equitable Life are partners. Equitable Capital also serves as the investment adviser to Institutional Fund I. In addition, Equitable Capital serves as the general partner and manager of Equitable Capital Private Income and Equity Partnership II, L.P., also excluded from the definition of "investment company" by section 3(c)(1) of the 1940 Act (the "Institutional Fund II", and together with Institutional Fund I, the "Institutional Funds").

3. The Existing Order permits the Partnerships to purchase Enhanced Yield Investments in joint transactions with each other and/or with "Equitable Affiliates," a term that includes Equitable Life (and its subsidiaries other than Equitable Capital); Institutional Fund I; funds that may be organized or sponsored by Equitable Capital in the future and have investment objectives similar to the Partnerships (such as Equitable Capital Partners II, L.P. and Equitable Capitals Partners (Retirement Fund) II, L.P. both of which were recently formed (the "Equitable Capital Partners II Partnerships")); and Equitable Capital advisory accounts that have similar investment objectives. For purposes of this definition, a Partnership is not an Equitable Affiliate with respect to the other Partnership and a Sponsor Limited Partnership (as defined below) is not an Equitable Affiliate.

4. The application for the Existing Order sets forth certain guidelines to which the Partnerships' investments are subject (the "Guidelines").[1] The Guidelines relate to various aspects of the Enhanced Yield Investments and are designed, *inter alia*, to limit potential conflicts of interest between the Partnerships and Equitable Affiliates by delineating specific categories of eligible investments for the Partnerships. With respect to any proposed investment that does not meet the Guidelines, the Independent General Partners must make determinations as to several factors before the investment is made. In addition, the relief provided by the Existing Order is subject to several conditions that relate to the operations of the Partnerships and to coinvestments by the Partnerships with each other and with Equitable Affiliates.

5. Condition (ix) under the Existing Order is designed to ensure that neither Equitable Life nor any subsidiary of Equitable Life influences the identification, selection, or structure of any Enhanced Yield Investment. Condition (ix)(b) effectively prohibits certain persons who may be officers, directors, and/or employees of Equitable Life (or its subsidiaries) from serving on the board of directors of Equitable Capital. Applicants seek to amend the Existing Order to permit any such person to serve as a director of Equitable Capital. Applicants assert that the relief requested will not affect the Partnerships' policies or management structure, including the substantive obligations imposed on the Independent General Partners or the process by which Enhanced Yield Investments are evaluated, allocated, and disposed of by the Partnerships.

6. Equitable Life and other Equitable Affiliates now desire to invest indirectly in leveraged buyout transactions through limited partnerships organized by sponsors of such transactions ("Sponsor Limited Partnerships"). The Partnerships desire the ability to invest directly in securities of issuers in which

[1] The Guidelines are summarized in the Notice to the Existing Order. See Investment Company Act Release No. 16483 (July 15, 1988).

such Sponsor Limited Partnerships also may invest. However, it is contemplated that a Sponsor Limited Partnership typically will purchase the common stock (together, in unusual instances, with a debt component) of the portfolio company, and the Partnerships will purchase Enhanced Yield Investments. Because the Existing Order contemplates joint transactions involving "parallel investments," i.e., it requires that the securities purchased by the Equitable Affiliates be of the same type as those purchased by the Partnerships, applicants seek to amend the Existing Order to permit the investments described above.

7. The Independent General Partners of the Partnerships have retained independent counsel to advise them in the performance of their duties. In addition, the Independent General Partners will cause the Partnerships to retain independent consultants (the "Independent Consultants"). The Independent Consultants will assist the Independent General Partners in making required findings as to fairness and absence of overreaching with respect to investments by the Partnerships in transactions involving certain Sponsor Limited Partnerships or any proposal to dispose or change the material terms of, or make a Follow On Investment (as defined in the application) in, such an investment. In addition, the Independent General Partners may consult with the Independent Consultants if the Partnerships or any Equitable Affiliate (other than the Equitable Capital Partners II Partnerships, which will be required to dispose of securities held by them as coinvestments with the Partnerships on a lock-step basis) propose to dispose of certain securities purchased in a coinvestment by the Partnerships with an Equitable Affiliate.

8. To ensure that the Independent Consultants are independent, no Independent Consultant will be an "affiliated person" of the Partnerships, Equitable Capital, any Equitable Affiliate, or the company which is the subject of the transaction, or an "affiliated person" of such "affiliated person," within the meaning of the 1940 Act, and no Independent Consultant will have had, at any time since the beginning of the last two fiscal years, a material business or professional relationship with the Partnerships or the Equitable Capital Partners II Partnerships (other than as Independent Consultant to the Independent General Partners thereof), any Equitable Affiliate, any portfolio company, or the sponsor or Sponsor Limited Partnership involved in the transaction for which the Independent Consultant is retained.[2] For these purposes, a material business or professional relationship will be deemed not to exist so long as the aggregate total revenues received by any Independent General Consultant from any of the entities above during the two most recent fiscal years (other than fees to be paid in connection with their assistance to the Independent General Partners thereof) represent no more than 10% (with respect to an entity) or 5% (with respect to an individual), as the case may be, of the aggregate total revenues earned by such Independent Consultant during the same period. In addition, an Independent Consultant with respect to a transaction will not be involved in such transaction as a sponsor or investor or in any other respect.

Applicant's Legal Analysis

1. Applicants submit that the requested modification of the Existing Order, to permit any person who serves as an officer, director, or employee of Equitable Life or any other Equitable Affiliate to serve on Equitable Capital's board of directors, is consistent with the provisions, policies, and purposes of the 1940 Act. Applicants state that the structure and organization of Equitable Capital will continue to provide substantial protection against the overreaching sought to be prevented by the Existing Order. Applicants submit that the detailed policies and procedures followed by the Partnerships and the Independent General Partners in considering the acquisition or disposition of Enhanced Yield Investments, which are the central concern of the Existing Order, would not be affected by the relief described above. In particular, the Independent General Partners will continue to determine whether each proposed Enhanced Yield Investment meets the Guidelines or otherwise is fair and reasonable, does not involve overreaching, and is consistent with the interests of the limited partners of the Partnerships.

2. Equitable Life is a controlling person of the Partnerships by virtue of its ownership of Equitable Capital. Persons who are copartners of Equitable Life or other Equitable Affiliates are subject to the prohibitions of section 57(a)(4) of the 1940 Act and rule 17d-1 thereunder. Thus, investments by Equitable Affiliates in Sponsor Limited Partnerships that invest in the common stock of companies in which the Partnerships purchase Enhanced Yield Investments may be prohibited. Moreover, such investments would not satisfy the Existing Order's Guideline requiring parallel investments by the Partnerships and the Equitable Affiliates. Applicants seek to modify the Existing Order to permit these investments.

3. Sponsors normally create Sponsor Limited Partnerships as the first step toward financing several leveraged transactions to be identified later by the sponsor. Investors, such as the Equitable Affiliates, invest in a "blind pool" and are completely dependent on the sponsor or the general partner to identify suitable investments for the Sponsor Limited Partnership. Although an Equitable Affiliate may hold the largest partnership interest in a Sponsor Limited Partnership, it will not, as a limited partner, be able to cause a Sponsor Limited Partnership to structure a transaction in a manner that would adversely affect an investment in the same company by the Partnerships. No Equitable Affiliate will have any rights with respect to the securities of any such company other than an indirect interest resulting from its status as a limited partner of a Sponsor Limited Partnership. In addition, applicants have agreed to certain conditions that are designed to minimize the potential for conflicts of interest among Equitable Affiliates and the Partnerships. For example, if a Partnership proposes to make an Enhanced Yield Investment in any company in which a Sponsor Limited Partnership is significantly invested (as specified in the conditions), then the Independent General Partners will be required to consult with the Independent Consultants and make specific findings with respect to the suitability of the investment.

4. Absent the requested relief, Equitable Affiliates would be prevented from participating in desirable investment opportunities without any demonstrable benefit to the Partnerships. Applicants submit that participation by an Equitable Affiliate as a limited partner in Sponsor Limited Partnerships, under the conditions set forth below, is consistent with the purposes of section 57(a) of the 1940 Act. Applicants assert that the requested relief is supported by prior orders permitting sponsors of leveraged transactions to coinvest directly with

[2] By letter dated December 5, 1990, counsel for the applicants represented to the staff of the Division of Investment Management that the applicants intend to amend the application during the notice period to provide that an Independent Consultant will not have a material business or professional relationship with the sponsor or Sponsor Limited Partnership involved in a transaction for which the Independent Consultant is retained. The relief described herein is contingent on such an amendment.

public business development companies controlled by them. E.g., ML-Lee Acquisition Fund II, L.P., Investment Company Act Release No. 17123 (Sept. 1, 1989).

Applicants' Conditions

The relief granted pursuant to the Existing Order and the instant application will be subject to the following conditions:

(i) Other than Temporary Investments (as defined in the application for the Existing Order) and investments described below, each investment made by a Partnership will have to meet, in the determination of the Independent General Partners of such Partnership, as described below, the Guidelines or be approved by the Independent General Partners. However, deviation from Managed Company Guideline 1 [3] is permitted only in cases involving a Sponsor Limited Partnership, as described in the application.

(ii)(a) Equitable Capital will evaluate each proposed Enhanced Yield Investment opportunity to ascertain whether it may be an appropriate investment for the Partnerships. If it determines that a proposed investment is appropriate, Equitable Capital will bring such investment to the attention of the Independent General Partners of each Partnership for review in the manner specified in the application for the Existing Order.

(b) If the Independent General Partners of a Partnership determine that the investment meets the applicable Guidelines, the investment will be eligible for investment by the Partnership, and, subject to items (iii) and (vi) below, each such investment will be acquired by the Partnership, unless the other Partnership is prevented from investing because of limitations imposed by its investment policies set forth in the Partnerships' registration statement, by federal income tax requirements that could result in unrelated business taxable income for its partners, or for any other similar reason. In a case where one Partnership is subject to such limitations, neither Partnership will invest. A Partnership will not acquire an Enhanced Yield Investment from the other Partnership or any Equitable Affiliate.

(c) If there are presented to the Independent General Partners more investments than a Partnership has available funds to acquire, the Independent General Partners will have to determine, with the advice of Equitable Capital, the order of priority of such investments.

(d) If a proposed investment does not meet the Guidelines, the Independent General Partners will have to make the determinations specified in paragraph (iv) below in the manner specified in the application for the Existing Order.

(iii)(a) Each investment proposed as an Enhanced Yield Investment will be allocated to the Partnerships and Equitable Affiliates investing therein according to a ratio based on the amount of capital that each such investor has indicated to Equitable Capital is available for investment (including all borrowings that have been committed but not yet drawn down) in Mezzanine, Other, Follow On, and Bridge Investments (all as defined in the application), as the case may be, provided that (1) With respect to each such proposed investment of at least $10 million in size, each Partnership and each Equitable Affiliate will be allocated a minimum amount of $1 million, (2) with respect to each such proposed investment of less than $10 million in size, neither a Partnership nor any Equitable Affiliate will be required to coinvest less than $1 million, and (3) a Follow On Investment in a portfolio company in which the Partnerships and Equitable Affiliates have invested will be allocated according to the ratio of available capital that each such investor initially invested in Mezzanine, Bridge, or Other Investments in such portfolio company.

(b) The Equitable Capital Partners II Partnerships together will have the right to an allocation of at least 25% of any proposed Enhanced Yield Investment which meets the investment objective of such partnerships during the time that the Partnerships are entitled to a 25% allocation right of any proposed Enchanced Yield Investment. Under the terms of their respective Amended and Restated Agreements of Limited Partnership, the Partnerships together have the right to an allocation of at least 25% of any proposed Enhanced Yield Investment after each such Partnership has become at least 75% invested and prior to the time each has become fully invested. Each of the Partnerships is now 75% invested, so that their allocation right is equal to the right of the Equitable Capital Partners II Partnerships, i.e., at least 25% of any proposed Enhanced Yield Investment. Institutional Fund II has no allocation rights, although Equitable Capital may grant allocation rights to other Equitable Affiliates, subject to the rights of the Partnerships and provided that no Equitable Affiliates will have the right to an allocation that is greater than the allocation right in effect for the Partnerships.

(c) Proposed Enhanced Yield Investments will be allocated between the Partnerships based on the ratio of available capital which each Partnership has indicated is available for investment (including all borrowings that have been committed but not yet drawn down). With respect to Equitable Capital Partners, L.P., the determination of available capital during the first two years of the investment period will be made as if such Partnership has borrowed an amount equal to 50% of the net proceeds available for investment and thereafter will be made based on the actual percentage of borrowings made by such Partnership (including all borrowings that have been committed but not yet drawn down). This allocation formula is designed to ensure that the overall allocation of Enhanced Yield Investments to Equitable Capital Partners, L.P., which has the right to borrow up to 50% of the net proceeds available for investment, is made so that the allocation of investments between the Partnerships remains as constant as practicable throughout the term of the Partnerships and so that the portfolio investments made by each Partnership will be as similarly constituted as possible.

(d) Equitable Capital will provide the Independent General Partners with information concerning the amount of capital which Equitable Affiliates have available for investment (including all borrowings that have been committed but not yet drawn down) in order to assist the Independent General Partners with their review of the Partnerships' investment for compliance with these allocation procedures.

(iv) Prior to committing to a particular investment that does not meet the Guidelines, the Independent General Partners of a Partnership will be required to make findings recorded in the records of the Partnership that (a) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the limited partners of the Partnership and do not involve overreaching of the Partnership or such partners on the part of any person concerned and (b) the proposed transaction is consistent with the interests of the limited partners of the Partnership and is consistent with the

[3] Managed Company Guideline 1 requires parallel investments. It generally provides that if an Equitable Affiliate invests in securities of a portfolio company in which the Partnerships also invest, each Partnership will purchase the same class of securities acquired by the Equitable Affiliate and the terms of the purchase will be identical in all material respects to those obtained by the Equitable Affiliate.

policy of the Partnership as recited in filings made by such Partnership under the 1933 Act, its registration statement and reports filed under the Securities Exchange Act of 1934, and its reports to partners. If a non-Guideline investment is deemed eligible for investment in accordance with the above procedure, then, subject to items (iii) and (vi), such investment will be acquired by the Partnership, unless the other Partnership is prevented from investing because of limitations imposed by its investment policies set forth in the registration statement, by federal income tax requirements that could result in unrelated business taxable income for its partners, or for any other similar reason. In a case where one Partnership is subject to such limitations, neither Partnership will invest. No Partnership will purchase a non-Guideline investment from the other Partnership or any Equitable Affiliate.

(v) Other than as permitted pursuant to the application, no Equitable Affiliate, Independent General Partner, or any other "affiliated person" of a Partnership (as defined in section 2(a)(3) of the 1940 Act) will participate in a transaction in which a Partnership invests unless such participation is permitted by the 1940 Act or any other separate exemption obtained thereunder. Neither Partnership will invest in any securities issued in transactions sponsored by any Equitable Affiliate, including Donaldson, Lufkin & Jenrette, Inc. or its subsidiaries, ("DLJ"), all subsidiaries of Equitable Life, or purchase securities in which DLJ is acting as a managing or lead underwriter.

(vi) If securities constituting an Enhanced Yield Investment are proposed to be purchased by a Partnership, coinvestments in such securities by the other Partnership or one or more Equitable Affiliates must be made in accordance with the lock-step provisions of Managed Company Guideline 1 and the terms of purchase (including terms as to purchase price, settlement date, registration rights, if any, and other rights provided to purchasers of such investments) will be identical.

(vii) Disposition of securities held by the Partnership will be as follows:

(a) The Partnerships will participate in the disposition of securities held by them as coinvestments on a proportionate basis and on the same terms and conditions (a "lock-step disposition"), except for a disposition resulting solely from actions taken in connection with a source of financing to Equitable Capital Partners, L.P.

(b) The Partnerships and the Equitable Capital Partners II Partnerships will participate in the disposition of securities held by them as coinvestments in a lock-step disposition, except for a disposition resulting solely from actions taken in connection with a source of financing to Equitable Capital Partners, L.P. or Equitable Capital Partners II, L.P.

(c) If the Partnerships or any Equitable Affiliate, other than the Equitable Capital Partners II Partnerships, propose to dispose of a security purchased in a coinvestment by the Partnership with an Equitable Affiliate, the Partnerships and any Equitable Affiliate holding such security will participate in the disposition of such security on a lock-step basis, unless, in the case of a sale proposed by an Equitable Affiliate, the Independent General Partners of a Partnership, who may consult with Independent Consultants, determine that a Partnership should not participate in such sale or not participate on a lock-step basis based on findings (to be recorded in the records of the Partnership) that the retention or sale, as the case may be, of the securities is fair to the Partnership and that such Partnership's participation or choice not to participate in the sale is not the result of overreaching by Equitable Capital or an Equitable Affiliate. If the Independent General Partners of both Partnerships do not make such a finding, then both Partnerships must participate with Equitable Affiliates in such sale on the basis of a lock-step disposition.

(d) If at any time the result of a proposed disposition of any portfolio security head by a Partnership would be to alter the proportionate holdings of each class of securities held by a Partnership and any Equitable Affiliate, then the Independent General Partners of the Partnership, who may consult with Independent Consultants, must determine that such a result is fair to the Partnership and is not the result of overreaching by an Equitable Affiliate.

(viii) The Independent General Partners of each Partnership will be provided quarterly for review all information concerning coinvestments made by the Partnerships including investments made by an Equitable Affiliate which one or more of the Partnerships declined to participate in, so that they may determine whether all investments made during the preceding quarter, including those investments such Independent General partners decline to make, comply with the conditions set forth above. The Independent General Partners of each Partnership will consider on a quarterly basis the continuing appropriateness of the standards established for investments by the Partnership. In this regard, the Independent General Partners will consider whether use of such standards continues to be in the best interests of the Partnership and the limited partners and does not involve overreaching of the Partnership or its limited partners on the part of any party concerned.

(ix) Equitable Capital has in place and will maintain the following policies and procedures to ensure that neither Equitable Life nor any subsidiary of Equitable Life influences or (other than the institutional Funds) participates in the identification, selection, arranging, negotiation, or documentation of any Enhanced Yield Investment:

(a) Equitable Capital will evaluate each proposed Enhanced Yield Investment Opportunity to ascertain whether it may be an appropriate investment for the Partnerships. If it determines that a proposed investment is appropriate, Equitable Capital will present such investment to the Independent General Partners of each Partnership, either certifying that such investment meets the Guidelines or, if it does not, seeking approval of such investment by the Independent General Partners, and the Independent General Partners shall either approve or disapprove such investment before Equitable Capital presents such proposed investment to Equitable Life or any Equitable subsidiary.

(b) All determinations by Equitable life whether to buy or sell Enhanced Yield Investments involving coinvestments with the Partnerships will be made by persons who are not officers or employees of Equitable Capital. All similar determinations by Equitable subsidiaries will be made by appropriate persons of such subsidiaries who are not officers or employees of Equitable Capital.

(c) Equitable Capital maintains separate books and records for its own affairs and has a capitalization and financial structure separate from Equitable Life and other Equitable subsidiaries.

(x) (a) Equitable Capital will notify promptly the Independent General Partners of the Partnerships of the identity of, and percentage ownership interest in, each Sponsor Limited Partnership in which an Equitable Affiliate is or becomes a limited partner. If at the time an Equitable Affiliate subscribes to become a limited partner in a Sponsor Limited Partnership the sponsor has already targeted a company

for a Leveraged Transaction, the Partnerships will not provide financing for such transaction. All sponsors will be unaffiliated with Equitable Capital.

(b) If (1) Equitable Affiliates, in the aggregate, own as limited partners more than 5% of the total limited partner interests in a Spoor Limited Partnership (a "5% SLP") or (2) Equitable Affiliates, in the aggregate, have invested more than $20 million in a Sponsor Limited Partnership (a "$20 Million SLP), then any proposed Enhanced Yield Investment by the Partnerships in a transaction in which it is also proposed that a 5% SLP or a $20 Million SLP will also make an investment, and any proposed Enhanced Yield Investment by a Partnership in any entity in which a 5% SLP or a $20 Million SLP is then invested, will be submitted to the Independent General Partners for approval. In these cases, a Partnership will not make the proposed investment unless the Independent General Partners of such Partnership, who will consult with Independent consultants, make the determinations in subparagraph (c) below.

(c) If a Partnership proposes to dispose of, waive, or amend the material terms or conditions of, or make a Follow On Investment in, securities of a portfolio company in which a 5% SLP or a $20 Million SLP has also invested, such transaction by the Partnership will have to be approved by the Independent General Partners, who will consult with Independent Consultants, on the basis that the terms thereof, including the consideration to be paid or received, are reasonable and fair to the limited partners of the Partnership and do not involve overreaching of such Partnership or of its limited partners on the part of any person concerned, and the proposed transaction is consistent with the interests of the limited partners of the Partnership and is consistent with the policy of such Partnership as recited in filings made by such Partnership with the Commission under the 1933 Act, its registration statement and reports filed under the Securities Exchange Act of 1934, and its reports to partners.

(xi) No changes will be made in the Guidelines or the conditions until an amendment of the order is obtained from the Commission.

(xii) If, under a Partnership Agreement, a Partnership is or becomes authorized to make in-kind distributions of portfolio securities to its partners, no such in-kind distributions will be made until such Partnership has either obtained a no-action letter from the staff of the SEC or, in the alternative, has obtained an order pursuant to section 206A of the Investment Advisers Act of 1940 permitting such distribution.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-28914 Filed 12-10-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for waivers of compliance with certain requirements of the federal safety laws and regulations. The individual petitions are described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

The Atchison, Topeka and Sante Fe Railway Co.

Docket Number H-90-3

The Atchison, Topeka and Santa Fe Railway Company (ATSF) is granted a limited suspension of compliance from certain sections of 49 CFR part 231, Safety Appliance Standards, and 49 CFR part 232, Railroad Power Brakes and Drawbars, to allow it to perform rail tests of RoadRailer equipment. Participants in the test program will include the Norfolk Southern Corporation (NS), Mark VII Transportation Company, Triple Crown Services, Inc., a subsidiary of the (NS), and RoadRailer.

The RoadRailer semi-trailers, by design, cannot be subjected to traditional switching procedures that are conducted in railroad classification yards. The RoadRailer semi-trailer has no safety appliances and the limited suspension of compliance will permit non-compliance with all the provisions of the Safety Appliance Standards (49 CFR part 231). These regulatory standards include provisions for the number, location and dimensional specifications for the handholds, ladders, sill steps and hand brakes that are required for each railroad freight car. The RoadRailer coupler assembly will only couple to another RoadRailer vehicle or to a specially designed adaptor mechanism between the locomotive and a RoadRailer semi-trailer and is not of the standard height required in the Railroad Power Brakes and Drawbar Regulations (49 CFR 232.2).

The ATSF plans to operate a test train in December, 1990, in conjunction with the NS from Knoxville, Tennessee, to Los Angeles, California, via Kansas City, Missouri, and return to Ft. Wayne, Indiana. The purpose of the test is to determine the marketing and operational feasibility of such an operation on the ATSF.

In its operation of the RoadRailer test train, the ASTF intends to work with the NS and Triple Crown Services and to use its procedures and materials to assure a safe test operation. Approximately 40 RoadRailer units will be in the test train. The RoadRailers will be provided by Triple Crown Services from its existing fleet. The railroads will provide locomotives on their respective lines. In addition, certain business/inspection cars will be included in the test train consist.

The NS presently operates RoadRailers under conditional waivers, FRA Docket Numbers SA-87-2 and PB-87-4. One of the conditions of the NS waiver is that it may not interchange RoadRailers with any other railroad unless the condition is modified by the FRA. The test program will be subject to the following conditions:

1. That the test limited suspension of compliance shall expire on January 1, 1991;

2. That the test limited suspension of compliance shall include only the NS and the ATSF railroads;

3. That for the purpose of this test, the NS shall be permitted to interchange RoadRailers with the ATSF;

4. That the inspection, testing and maintenance of the RoadRailers while they are on the ATSF railroad shall be performed by, or under the direct supervision of, qualified Triple Crown Service employees;

5. That all train crews who are not familiar with, and are assigned to operate, the RoadRailer test train be provided with adequate instructions regarding train handling, or be accompanied by NS operating personnel who have experience in operating RoadRailer trains; and

6. That the FRA shall be notified when the test is completed, and if any unusual incidents occur.

Gulf States Steel, Inc.

Docket Numbers LI-90-3 and RSGM-90-12

Gulf States Steel, Incorporated (GSS) seeks waivers of compliance from certain sections of 49 CFR part 229,

Locomotive Safety Standards, and 49 CFR part 223, Safety Glazing Standards, to permit operation of its eight locomotives. The locomotives are generally operated within the confines of the steel plant located in Gadsen, Alabama, but on regular occasions they come out of the plant and onto the yard tracks of the Norfolk Southern Corporation and the CSX Transportation.

The GSS is seeking a waiver of compliance with § 223.11 of the Safety Glazing Standards—Requirements for Existing Locomotives—for eight locomotives (RSGM-90-12). The justification for the waiver is based upon the fact that the locomotives are operated by use of a remote control device by an operator either standing on the ground or on the steps when one of the subject locomotives is being moved. Since the locomotive cab is rarely occupied, the company takes the position that the certified glazing is not necessary.

The GSS is also seeking a waiver of compliance with § 229.123 of the Locomotive Safety Standards—Pilots, snowplows, end plates—for eight locomotives. The GSS is requesting that it be permitted to increase the height of the end plate above the top of the rail from the maximum allowable 6 inches to 7 inches because the height if the 132 pound rail used in the railroad switching yard is 7 inches high.

Texas, Oklahoma and Eastern Railroad Co.

Docket Number PB-90-5

The Texas, Oklahoma and Eastern Railroad Company (TOE) is seeking a waiver of compliance from certain sections of the Railroad Power Brakes and Drawbars Regulations, 49 CFR part 232. The TOE is requesting that it be permitted to continue to operate 46 hopper cars used to transport wood chips without retainer valves as an integral part of each car's air brake system. The cars are used at all points from, to and between Valliant, Oklahoma, and Perkins, Arkansas, on the DeQueen and Eastern Railroad (DQE) as well as the TOE. The TOE and the DQE have run through operations between the two railroads.

Section 232.12(c) states in part—"Retaining valves and retaining valve pipes must be inspected and known to be in condition for service." The maximum load for each car is 110,000 pounds and they will be operated at a maximum speed of 35 mph. The maximum grade on the lines of the TOE and DQE is 1.5 percent for a distance of 800 feet. The TOE states that they have operated the subject cars without retainer valves for several years with no problems.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number H-90-3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before February 1, 1991 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on November 27, 1990.

Philip Olekszyk,

Acting Associate Administrator for Safety.

[FR Doc. 90-28978 Filed 12-10-90; 8:45 am]

BILLING CODE 4910-06-M

Maritime Administration

Values for War Risk Insurance

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Determination of ship values for war risk insurance, effective July 1, 1990.

SUMMARY: Pursuant to the procedure stated at 46 CFR 309.1, the required biannual notice is hereby given of the stated valuations of individual vessels upon which interim binders for war risk hull insurance have been issued. The valuations set forth herein constitute just compensation for the vessels to which they apply, and have been computed in accordance with sections 902(b) and 1209(a)(2) of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1242(b), and 1289(a)(2)). The authority to make these vessel valuations was delegated to the Maritime Administrator by the Secretary of Transportation by DOT Order 1100.60 (August 6, 1981). Such stated valuations apply to vessels covered by interim binders for war risk hull insurance, Form MA-184, prescribed by 46 CFR part 308. In accordance with Public Law 101-115, authority to issue such war risk insurance will expire on June 30, 1995.

The interim binders listed below shall be deemed to have been amended as of July 1, 1990, by inserting in the space provided therefor, or in substitution for any value appearing in such space, the stated valuations of the respective vessels that appear on the list. Such stated valuations shall apply with respect to insurance attached during the period July 1, 1990 to December 31, 1990 inclusive, subject to reservation by the Maritime Administration of the right to revise the values assigned herein. The assured shall have the, within 60 days after the date of publication of this notice, or within 60 days after the attachment of the insurance under the interim binder to which a specific valuation applies, whichever date is later, to reject such valuation and proceed as authorized by 46 App. U.S.C. 1289(a)(2).

(Catalog of Federal Domestic Assistance Program No. 20.803 War Risk Insurance)

By Order of the Maritime Administrator

Dated: December 6, 1990.

Joel C. Richard,

Assistant Secretary.

FEDERAL REGISTER LIST OF SHIP VALUATIONS

Binder	Official	Vessel name	Valuation
3721	680897	1ST LT. ALEX BONNYMAN	(*)
3686	668348	ADABELLE LYKES	$5,660,000.00
3344	533270	ADMIRALTY BAY	7,000,000.00
3537	513704	ALISON C.	1,825,000.00

FEDERAL REGISTER LIST OF SHIP VALUATIONS—Continued

Binder	Official	Vessel name	Valuation
3511	3046	ALPHA SEA	6,500,000.00
2764	523846	AMERICA SUN	7,000,000.00
3360	577343	AMERICAN HERITAGE	4,500,000.00
3648	612715	AMERICAN RESOLUTE	12,480,000.00
3642	517617	AMERICAN TROJAN	2,380,000.00
3495	614544	ARCO ALASKA	25,000,000.00
3048	548424	ARCO ANCHORAGE	14,000,000.00
3518	623291	ARCO CALIFORNIA	25,000,000.00
3194	559400	ARCO FAIRBANKS	14,000,000.00
3604	586633	ARCO INDEPENDENCE	31,000,000.00
3142	556666	ARCO JUNEAU	14,000,000.00
2900	536496	ARCO PRUDHOE BAY	6,500,000.00
2948	539313	ARCO SAG RIVER	6,500,000.00
3605	580245	ARCO SPIRIT	31,000,000.00
3591	549197	ARCO TEXAS	11,000,000.00
3469	601377	ARGONAUT	12,480,000.00
1716	292191	ASHLEY LYKES	2,265,000.00
3345	535357	ASPEN	7,000,000.00
3385	586128	ATIGUN PASS	19,000,000.00
3608	646348	ATLANTA BAY	5,500,000.00
3337	530141	AUSTRAL RAINBOW	5,000,000.00
3510	3234	BALTIMORE SEA	7,040,000.00
3315	582451	BIEHL TRADER	4,400,000.00
3316	584627	BIEHL TRAVELER	4,400,000.00
3628	633428	BLUE RIDGE	27,000,000.00
3408	586130	BROOKS RANGE	19,000,000.00
3623	543461	CG-461	12,000.00
3624	543481	CG-481	12,000.00
3625	543809	CG-809 CG-B61	22,000.00
3685	668349	CHARLOTTE LYKES	5,660,000.00
3215	562416	CHELSEA	3,000,000.00
3144	557503	CHERRY VALLEY	3,000,000.00
3724	689194	CHESAPEAKE BAY	27,500,000.00
3286	577738	CHESTNUT HILL	4,500,000.00
3394	588320	CHEVRON ARIZONA	8,200,000.00
2985	541563	CHEVRON CALIFORNIA	6,500,000.00
3308	577356	CHEVRON COLORADO	8,200,000.00
3372	584696	CHEVRON LOUISIANA	8,200,000.00
2992	542850	CHEVRON MISSISSIPPI	6,500,000.00
3309	566080	CHEVRON OREGON	8,200,000.00
3310	570709	CHEVRON WASHINGTON	8,200,000.00
3626	638709	COAST RANGE	27,000,000.00
3590	280243	COHO	2,850,000.00
3654	648470	COLUMBIA BAY	5,500,000.00
3528	590414	CORNUCOPIA	19,000,000.00
3749	578746	COURIER	7,200,000.00
3704	279938	COVE LEADER	4,100,000.00
3702	644295	COVE LIBERTY	4,100,000.00
370	279438	COVE TRADER	3,300,000.00
3722	671969	CPL LOUIS J. HAUGE	(*)
3544	632750	CYGNUS	11,250,000.00
3725	689193	DELAWARE BAY	27,500,000.00
2806	528567	EDGAR M. QUEENY	4,000,000.00
2086	500702	ELIZABETH LYKES	1,885,000.00
3658	657540	ENERGY INDEPENDENCE	43,700,000.00
2980	541414	EXPORT FREEDOM	6,240,000.00
3065	548442	EXPORT PATRIOT	6,240,000.00
2593	282272	EXXON BALTIMORE	3,300,000.00
3056	524619	EXXON BATON ROUGE	6,390,000.00
3683	658495	EXXON BAYTOWN	73,205,000.00
3465	600478	EXXON BENICIA	22,000,000.00
3595	283784	EXXON BOSTON	3,300,000.00
3668	658493	EXXON CHARLESTON	64,000,000.00
3412	588443	EXXON GALVESTON	2,500,000.00
2603	275519	EXXON JAMESTOWN	3,000,000.00
3723	692967	EXXON LONG BEACH	80,000,000.00
3716	692966	EXXON MEDITERRANEAN	80,000,000.00
2606	298216	EXXON NEW ORLEANS	5,000,000.00
3460	600477	EXXON NORTH SLOPE	22,000,000.00
3057	526792	EXXON PHILADELPHIA	6,390,000.00
3058	523626	EXXON SAN FRANCISCO	6,390,000.00
2609	273896	EXXON WASHINGTON	3,000,000.00
3673	658494	EXXON WILMINGTON	64,650,000.00
3709	536850	FALCON COUNTESS	5,000,000.00
3710	533611	FALCON DUCHESS	5,000,000.00
3713	538811	FALCON PRINCESS	5,000,000.00
3609	640014	FLORIDA BAY	9,435,000.00
3540	514966	FREEPORT I	5,000,000.00
3541	516720	FREEPORT II	5,000,000.00
3538	292748	GALE B.	1,630,000.00

FEDERAL REGISTER LIST OF SHIP VALUATIONS—Continued

Binder	Official	Vessel name	Valuation
2421	513140	GENEVIEVE LYKES	1,885,000.00
3610	643069	GEORGIA BAY	8,125,000.00
3346	526588	GLACIER BAY	7,000,000.00
3729	561433	GOLDEN ENDEAVOR	4,500,000.00
2791	526792	GOLDEN GATE	5,515,000.00
3512	566090	GOLDEN MONARCH	4,500,000.00
3739	650771	GREAT LAKES	7,050,000.00
3783	907989	GREEN BAY	16,130,000.00
3784	561453	GREEN HARBOUR	8,000,000.00
3780	562594	GREEN ISLAND	8,000,000.00
3787	907990	GREEN LAKE	18,500,000.00
3790	934702	GREEN RIDGE	7,400,000.00
3777	559623	GREEN VALLEY	8,000,000.00
3788	677648	GREEN WAVE	7,400,000.00
3745	684689	GUS W. DARNELL	(*)
387	280564	JAMES LYKES	2,200,000.00
1304	287103	JEAN LYKES	2,200,000.00
3366	500799	JOE SEVIER	320,000.00
389	282772	JOHN LYKES	2,200,000.00
390	281326	JOSEPH LYKES	2,200,000.00
3491	621042	KAUAI	39,400,000.00
3456	586127	KENAI	19,000,000.00
3398	586129	KEYSTONE CANYON	19,000,000.00
598	266730	KEYSTONER	1,400,000.00
3287	579572	KITTANNING	4,500,000.00
3746	684692	LAWRENCE H. GIANELLA	(*)
3622	550598	LB-726	12,000.00
3623	550599	LB-727	12,000.00
1352	287416	LESLIE LYKES	2,200,000.00
2403	512187	LETITIA LYKES	1,885,000.00
3815	572359	LIBERTY BELLE	4,500,000.00
3311	582506	LNG AQUARIUS	85,000,000.00
3371	588005	LNG AQUARIUS	85,000,000.00
3407	588006	LNG CAPRICORN	85,000,000.00
3429	595752	LNG GEMINI	85,000,000.00
3631	619531	LNG LAKE CHARLES	87,500,000.00
3454	595753	LNG LEO	85,000,000.00
3463	595756	LNG LIBRA	85,000,000.00
3632	619532	LNG LOUISIANA	87,500,000.00
3467	595754	LNG TAURUS	85,000,000.00
3475	595755	LNG VIRGO	85,000,000.00
2062	299938	LOUISE LYKES	1,885,000.00
3546	632749	LYRA	10,500,000.00
3730	2774	M.P. GRACE	3,400,000.00
3701	655330	MAJ STEPHEN W. PLESS	(*)
2763	524219	MANUKAI	12,500,000.00
2803	528400	MANULANI	12,500,000.00
3492	618705	MAOI	650,000.00
3687	668347	MARGARET LYKES	5,660,000.00
2814	529399	MARINE CHEMIST	4,500,000.00
2777	245851	MARINE DUVAL	2,270,000.00
2133	246836	MARINE FLORIDIAN	2,270,000.00
1513	289873	MARJORIE LYKES	2,265,000.00
3539	299786	MARTHA B.	2,550,000.00
3415	591709	MAUI	32,010,000.00
3740	650770	MICHIGAN	4,895,000.00
3152	542026	MOBIL ARCTIC	14,000,000.00
2442	286479	MOBIL MERIDIAN	3,300,000.00
3301	578288	MORMACSKY	3,145,000.00
3302	569257	MORMACSTAR	3,145,000.00
3303	573770	MORMACSUN	3,145,000.00
1243	286650	NANCY LYKES	2,200,000.00
3656	628783	NEW YORK SUN	20,000,000.00
3802	8093	OCEAN CHALLENGER	29,000,000.00
3801	8042	OCEAN CONQUEROR	29,000,000.00
3804	8197	OCEAN EXPLORER	48,335,000.00
3805	8259	OCEAN NAVIGATOR	48,335,000.00
3803	8157	OCEAN VICTOR	29,000,000.00
3508	5886	OCEAN VOYAGER	12,000,000.00
2745	523341	OMI CHAMPION	7,000,000.00
3470	522864	OMI CHARGER	7,000,000.00
3576	638899	OMI DYNACHEM	32,800,000.00
3577	642151	OMI HUDSON	32,800,000.00
3471	520839	OMI LEADER	7,000,000.00
2614	520728	OMI WABASH	7,000,000.00
2591	518738	OMI WILLIAMETTE	7,000,000.00
2827	529795	OVERSEAS ALASKA	5,515,000.00
3672	514928	OVERSEAS ALICE	6,455,000.00
2862	530877	OVERSEAS ARCTIC	5,515,000.00
3535	630050	OVERSEAS BOSTON	15,000,000.00

FEDERAL REGISTER LIST OF SHIP VALUATIONS—Continued

Binder	Official	Vessel name	Valuation
3378	583412	OVERSEAS CHICAGO	12,000,000.00
3409	590624	OVERSEAS HARRIETTE	5,500,000.00
3533	553137	OVERSEAS JUNEAU	14,000,000.00
3406	590623	OVERSEAS MARILYN	5,500,000.00
3718	656742	OVERSEAS NEW ORLEAN	33,000,000.00
3386	588001	OVERSEAS NEW YORK	12,000,000.00
3383	586647	OVERSEAS OHIO	12,000,000.00
3717	647470	OVERSEAS PHILADELPHIA	33,000,000.00
3671	517186	OVERSEAS VALDEZ	6,455,000.00
3480	518125	OVERSEAS VIVIAN	6,455,000.00
3399	588955	OVERSEAS WASHINGTON	12,000,000.00
3747	571049	PATRIOT	7,200,000.00
3742	684688	PAUL BUCK	(*)
3700	641084	PFC EUGENE A. OBREGON	(*)
3719	679513	PFC JAMES ANDERSON, JR.	(*)
3741	674269	PFC WILLIAM B. BAUGH	(*)
3655	638073	PHILADELPHIA SUN	20,000,000.00
3690	673003	PRESIDENT EISENHOWER	25,000,000.00
3689	674310	PRESIDENT F.D. ROOSEVELT	25,000,000.00
3483	530138	PRESIDENT GRANT	12,000,000.00
3726	530139	PRESIDENT HARRISON	12,000,000.00
3485	530137	PRESIDENT HOOVER	12,000,000.00
3030	544900	PRESIDENT JEFFERSON	6,000,000.00
3121	552109	PRESIDENT JOHNSON	6,000,000.00
3041	546725	PRESIDENT MADISON	6,000,000.00
3678	655397	PRESIDENT MONROE	26,500,000.00
3120	552108	PRESIDENT PIERCE	6,000,000.00
2398	511653	PRESIDENT TAFT	3,040,000.00
3484	530140	PRESIDENT TYLER	12,000,000.00
3679	653424	PRESIDENT WASHINGTON	26,500,000.00
3705	634621	PRIDE OF TEXAS	10,560,000.00
3396	570108	PRINCE WILLIAM SOUND	17,000,000.00
3720	684591	PVT HARRY FISHER	(*)
3748	573810	RANGER	7,200,000.00
3743	684691	RICHARD G. MATHIESEN	(*)
3607	644241	RICHMOND BAY	5,500,000.00
3147	557033	ROBERT E. LEE	8,000,000.00
3779	519102	ROVER	8,000,000.00
3750	577241	ROVER	7,200,000.00
2162	502928	RUTH LYKES	1,885,000.00
3179	559035	SAM HOUSTON	8,000,000.00
3744	684690	SAMUEL L. COBB	(*)
2918	535020	SANSINENA II	6,500,000.00
3423	504015	SANTA ADELA	1,885,000.00
2752	502726	SANTA JUANA	1,885,000.00
3731	1876	SASSTOWN	1,800,000.00
3734	3459	SAVANNAH SEA	7,040,000.00
3453	715572	SEA ADVENTURE	10,500,000.00
3776	569153	SEA CAT	150,000.00
3786	588561	SEA HORSE	150,000.00
3451	715571	SEA LEADER	10,500,000.00
3781	557400	SEA LION	150,000.00
3782	530856	SEA MULE	150,000.00
3778	555604	SEA OX	150,000.00
3452	715570	SEA PIONEER	10,500,000.00
3785	565697	SEA TIGER	150,000.00
3796	515155	SEA-LAND CHALLENGER	4,000,000.00
3100	552818	SEA-LAND CONSUMER	10,000,000.00
3794	518444	SEA-LAND CRUSDAER	4,000,000.00
3488	604246	SEA-LAND DEFENDER	20,000,000.00
3513	604247	SEA-LAND DEVELOPER	20,000,000.00
3795	516464	SEA-LAND DISCOVERY	4,000,000.00
3534	606062	SEA-LAND ENDURANCE	20,000,000.00
3797	544303	SEA-LAND EXPEDITION	6,000,000.00
3489	604428	SEA-LAND EXPLORER	20,000,000.00
3514	604249	SEA-LAND EXPRESS	20,000,000.00
3527	606065	SEA-LAND FREEDOM	20,000,000.00
3516	606061	SEA-LAND INDEPENDENCE	20,000,000.00
3529	606064	SEA-LAND INNOVATOR	20,000,000.00
3487	604245	SEA-LAND LIBERATOR	20,000,000.00
3526	606066	SEA-LAND MARINER	20,000,000.00
3450	593980	SEA-LAND PACER	7,800,000.00
3486	604244	SEA-LAND PATRIOT	20,000,000.00
3131	552819	SEA-LAND PRODUCER	10,000,000.00
3517	606063	SEA-LAND VOYAGER	20,000,000.00
3699	641083	SGT. MATEJ KOCAK	(*)
3688	668350	SHELDON LYKES	5,660,000.00
3627	641804	SIERRA MADRE	27,000,000.00
3611	645759	SOUTH CAROLINA BAY	9,250,000.00
3707	653210	SPIRIT OF TEXAS	10,560,000.00

FEDERAL REGISTER LIST OF SHIP VALUATIONS—Continued

Binder	Official	Vessel name	Valuation
3706	642934	STAR OF TEXAS	10,560,000.00
3148	557034	STONEWALL JACKSON	8,000,000.00
233	277623	SYOSSET	2,280,000.00
3606	640635	TALLAHASSEE	5,500,000.00
3507	3460	TEXAS CITY SEA	7,040,000.00
2927	283897	TEXAS SUN	3,300,000.00
3536	516158	THERESA F	1,825,000.00
405	283413	THOMPSON LYKES	2,200,000.00
3431	586131	THOMPSON PASS	19,000,000.00
3732	1778	TIMBO	1,800,000.00
3391	585629	TONSINA	19,000,000.00
3657	275583	TROPIC SUN	2,610,000.00
3727	550200	ULTRAMAR	6,200,000.00
3728	555146	ULTRASEA	6,200,000.00
2270	505786	VALLEY FORGE	6,175,000.00
3652	642492	VIRGINIA BAY	9,435,000.00
3361	551001	WA-1-0001	12,000.00
3362	567451	WA-2-0451	15,000.00
3621	608713	WA-3-0576	22,000.00
3622	608714	WA-3-0577	25,000.00
3735	3233	YORKTOWN SEA	7,040,000.00
411	282126	ZOELLA LYKES	2,200,000.00

"Casualty" value as defined and determined by each individual MSC charter agreement.

[FR Doc. 90-28979 Filed 12-10-90; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date December 4, 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 Office 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.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0192.

Form Number: ATF F 5110.11, ATF REC 5110/02.

Type of Review: Extension.

Title: Distilled Spirits Plant (DSP) Warehousing Records and Reports.

Description: The information collected is used to account for the proprietor's tax liability adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends, audit plant operations, monitor industry activities and compliance to provide for an efficient allocation of field personnel.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 260.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 6,240 hours.

OMB Number: 1512-0216.

Form Number: ATF F 5120.17.

Type of Review: Extension.

Title: Monthly Report to Wine Cellar Operations.

Description: Report used to monitor wine operations, insure collection of wine tax revenue, and insure wine is produced in accordance with law and regulation. ATF F 5120.17 provides raw data for ATF's Monthly Statistical Release on Wine which is used by ATF and other Federal agencies, along with industry itself, as a tool in trend analysis and planning.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1,573.

Estimated Burden Hours Per Response: 1 hour, 6 minutes.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 20,764 hours.

OMB Number: 1512-0392.

Form Number: ATF REC 5190/1.

Type of Review: Extension.

Title: Record of Things of Value Furnished to Retailers Under the Federal Alcohol Administration Act.

Description: These records (bills or sale, invoices) are used to show compliance with provisions of the Federal Alcohol Administration Act which prevents wholesalers, producers, or importers from giving things of value to retail liquor dealers. These records are commercial invoices showing the furnishing of goods to retailers.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Recordkeepers: 12,665.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: Other (Recordkeeping).

Estimated Total Recordkeeping Burden: 1 hour.

Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-28912 Filed 12-10-90; 8:45 am]

BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 5, 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.

Bureau of the Public Debt

OMB Number: 1535–0059.
Form Number: PD 1832.
Type of Review: Reinstatement.
Title: Special Form of Detached Assignment for United States Treasury Registered Securities.
Description: This form is used by individuals and court appointed representatives for an assignment for unsigned or incorrect assignments of United States registered Treasury securities.
Respondents: Individuals or households, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 125 hours.
Clearance Officer: Rita DeNagy, (202) 447–1640, Bureau of the Public Debt, room 137, BEP Annex, 300 13th Street, SW., Washington, DC 20239–0001.
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. 90–28913 Filed 12–10–90; 8:45 am]
BILLING CODE 4810–40–M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 5, 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.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0059.
Form Number: ATF F 5120.29.
Type of Review: Extension.
Title: Bonded Wineries—Formula and Process for Wine, Letterhead Applications and Notices Relating to Formula Wine.
Description: ATF F 5120.29 is completed by proprietors of bonded wineries who intend to produce wine, to ensure that the formulas and processes used in the production of wine are in accordance with the regulations of the Federal Alcohol Administration Act and the Internal Revenue Code.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 600.
Estimated Burden Hours Per Response: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,200 hours.

OMB Number: 1512–0163.
Form Number: ATF F 5210.5.
Type of Review: Extension.
Title: Manufacturer of Tobacco Products Monthly Report.
Description: ATF F 5210.5 (3068) documents a tobacco products manufacturer's accounting of cigars and cigarettes. The form describes the tobacco products manufactured, articles produced, received, disposed of and statistical classes of large cigars. ATF examines and verifies entries on these reports so as to identify unusual activities, errors and omissions.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 129.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 1,548 hours.

OMB Number: 1512–0198.
Form Number: ATF F 5110.28, ATF REC 5110/03.
Type of Review: Extension.
Title: Distilled Spirits Plant (DSP) Processing Records and Reports.
Description: The information collected is necessary to account for and verify the processing of distilled spirits on bond. It is used to audit plant operations, monitor industry activities for the efficient allocation of personnel resources and the compilation of statistics.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 146.
Estimated Burden Hours Per Response: 2 hours.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 4,234 hours.
Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 90–28933 Filed 12–10–90; 8:45 am]
BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

December 5, 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.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0052.
Form Number: ATF F 5130.9.
Type of Review: Extension.
Title: Brewer's Monthly Report of Operations.
Description: ATF F 5130.9 is a periodic report detailing specific operations and activities to account for taxable commodities used in operations. For this reason, ATF F 5130.9 is a method to safeguard tax revenue. ATF F 5130.9 shows taxable and non-taxable removals, overages, shortages and losses at breweries. ATF can pinpoint

problems at breweries on a timely basis and take steps to protect the revenue.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 245.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 2,940 hours.

OMB Number: 1512–0092.

Form Number: ATF F 5100.31.

Type of Review: Extension.

Title: Application for Certification/Exemption of Label/Bottle Approval Under the Federal Alcohol Administration Act.

Description: The Federal Alcohol Administration Act regulates the labeling of alcoholic beverages and designates the Treasury Department to oversee compliance with regulations. This form is completed by the regulated industry and submitted to Treasury as an application to label their products. Treasury oversees label applications to prevent consumer deception and to deter falsification of unfair advertising practices on alcoholic beverages.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 6,060.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 27,300 hours.

OMB Number: 1512–0207.

Form Number: ATF F 5110.43, ATF REC 5110/04.

Type of Review: Extension.

Title: Distilled Spirits Plant (DSP) Denaturation Records and Reports.

Description: The information collected is necessary to account for and verify the denaturation of distilled spirits. It is used to audit plant operations, monitor the industry for the efficient allocation of personnel resources, and compile statistics for government economic planning.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 97.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 1,164 hours.

Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90–28934 Filed 12–10–90; 8:45 am]

BILLING CODE 4810-31-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 238
Tuesday, December 11, 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 ENERGY REGULATORY COMMISSION

December 5, 1990.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), U.S.C. 552B:

DATE AND TIME: December 12, 1990, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 928th Meeting—December 12, 1990, Regular Meeting (10:00 a.m.)

CAH-1.
Docket No. E-7319-002, Wolverine Power Company
CAH-2.
Project Nos. 588-005 and 2683-007, James River II, Inc.
CAH-3.
Project Nos. 9340-004 and 005, Lawrence E. and Veronica P. Smith
CAH-4.
Project No. 4797-003, Cogeneration, Inc.
Project No. 5797-004, B & C Energy, Inc.
CAH-5.
Project Nos. 8435-010, 8466-012 and 8812-009, Independence Electric Corporation
CAH-6.
Project No. 7270-005, Northern Wasco County People's Utility District
CAH-7.
Project No. 2516-015, Potomac Edison Company
CAH-8.
Project No. 2088-019, Oroville-Wyandotte Irrigation District
CAH-9.
Project No. 10655-004, Manter Corporation
CAH-10.
Project No. 1957-004, Wisconsin Public Service Corporation
CAH-11.
Project No. 6221-000, Weyerhaeuser Company
CAH-12.
Project No. 4720-016, City of Farmington, New Mexico
CAH-13.
Project No. 3924-018, Malad Hydro Partners
CAH-14.
Project No. 3218-016, City of Orrville, Ohio
Project No. 4474-024, Borough of Cheswick, Pennsylvania, and Allegheny Valley North Council of Governments
Project No. 4675-014, Borough of Charleroi, Pennsylvania, Washington County Board of Commissioners, and Pennsylvania Renewable Resources, Inc.
Project No. 7041-013, Potter Township, Pennsylvania
Project No. 7307-011, City of Grafton, West Virginia
Project Nos. 7568-010 and 7909-011, County of Allegheny, Pennsylvania
Project No. 7660-014, Borough of Point Marion, Pennsylvania
Project No. 8654-014, Noah Corporation
Project No. 8908-015, Borough of Brownsville, Pennsylvania, Washington County Board of Commissioners, and Pennsylvania Renewable Resources, Inc.
Project No. 8990-012, Noah Corporation
Project No. 9042-015, Gallia Hydro Partners
CAH-15.
Project No. 10890-000, L. B. Industries, Inc.
CAH-16.
Project No. 1651-010, Swift Creek Power Company, Inc.

Consent Agenda—Electric

CAE-1.
Docket Nos. ER90-402-000 through ER90-405-000, ER90-407-000 through ER90-410-000, ER90-414-000 through ER90-436-000 and ER90-440-000, Southern Company Services, Inc.
CAE-2.
Docket No. ER90-564-000, New England Power Pool
CAE-3.
Docket No. ER91-24-000, Northern States Power Company (Wisconsin)
CAE-4.
Docket No. RM84-9-001, Calculation of Cash Working Capital Allowance for Electric Utilities
CAE-5.
Docket No. ER85-477-007, Southwestern Public Service Company
CAE-6.
Docket No. ER90-355-001, Pacific Gas and Electric Company
Docket No. EL89-34-002, Northern California Power Agency v. Pacific Gas and Electric Company
CAE-7.
Docket Nos. ER88-630-006, ER88-631-006 and ER89-38-006, New England Power Company
CAE-8.
Docket No. EL89-10-001, Consumers Power Company
Docket No. ER89-256-002, Palisades Generating Company
CAE-9.
Docket No. EL89-55-001, New England Power Company
CAE-10.
Docket No. RM87-26-004, Revision of Rate Schedule Filings Under Sections 205 and 206 of the Federal Power Act
CAE-11.
Docket No. EL90-31-000, Missouri Basin Municipal Power Agency, Complainant v. Midwest Energy Company and Iowa Resources, Inc. Respondents
CAE-12.
Docket No. EL90-49-000, North Carolina Electric Membership Corporation v. Virginia Electric and Power Company
Docket No. EL90-51-000, Virginia Municipal Electric Association No. 1 v. Virginia Electric and Power Company
Docket No. EL90-52-000, Central Virginia Electric Cooperative, Inc. and Craig-Botetourt Electric Cooperative, Inc. v. Virginia Electric and Power Company
Docket No. ER90-540-000, Virginia Electric and Power Company
CAE-13.
Omitted
CAE-14.
Docket No. RM90-12-000, Generic Determination of Rate of Return on Common Equity for Public Utilities

Consent Agenda—Oil and Gas

CAG-1.
Docket No. RP91-24-000, Colorado Interstate Gas Company
CAG-2.
Docket Nos. RP91-23-000 and CP89-174-006, Northwest Pipeline Corporation
CAG-3.
Docket No. RP91-21-000, Florida Gas Transmission Company
CAG-4.
Docket No. RP91-26-000, El Paso Natural Gas Company
CAG-5.
Docket Nos. RP90-122-004, RP88-191-024 and RP85-178-071, Tennessee Gas Pipeline Company
CAG-6.
Docket Nos. TM91-2-28-001, 002, TM91-3-28-001 and 002, Panhandle Eastern Pipe Line Company
CAG-7.
Docket No. TM91-2-30-002, Trunkline Gas Company
CAG-8.
Docket No. GT91-9-000, Carnegie Natural Gas Company
CAG-9.
Docket No. PR90-11-000, Gulf States Pipeline Corporation
CAG-10.

Docket No. RP91-8-002, National Fuel Gas Supply Corporation
CAG-11.
Docket No. RP90-167-001, ANR Pipeline Company
CAG-12.
Docket No. RP89-185-005, Panhandle Eastern Pipe Line Company
CAG-13.
Docket Nos. CP90-2154-001, RP85-177-093, RP88-67-041, RP89-255-003, and RP90-119-005, Texas Eastern Transmission Corporation
Docket No. RP90-15-001, Equitrans, Inc. v. Texas Eastern Transmission Corporation
CAG-14.
Docket No. IS90-11-002, Amerada Hess Pipeline
Docket No. IS90-12-002, ARCO Pipe Line Company
Docket No. IS90-13-002, BP Pipeline (Alaska) Inc.
Docket No. IS90-14-002, Exxon Pipeline Company
Docket No. IS90-15-002, Mobil Alaska Pipeline Company
Docket No. IS90-16-002, Phillips Alaska Pipeline Corporation
Docket No. IS90-17-002, Unocal Pipeline Company
CAG-15.
Docket No. RP84-53-011, Ozark Gas Transmission System
CAG-16.
Docket Nos. RP90-139-003, RP89-224-002, and RP89-203-005, Southern Natural Gas Company
CAG-17.
Docket Nos. TA84-2-37-004, and FA84-9-000, Northwest Pipeline Corporation
CAG-18.
Docket Nos. IS86-3-001, IS87-1-002, and IS87-13-001, ARCO Pipe Line Company
CAG-19.
Omitted
CAG-20.
Docket No. RP88-226-000, Eastern Shore Natural Gas Company
Docket No. RM91-2-000, Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs
CAG-21.
Docket No. RM91-21-2-000, Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs
Docket No. RP89-173-010, Northwest Pipeline Corporation
CAG-22.
Docket No. RM91-2-000, Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs
Docket No. RP89-139-000, Michigan Gas Storage Company
CAG-23.
Docket No. RM91-2-000, Mecnanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs
Docket Nos. RP88-80-000, RP88-223-000, RP88-251-000, RP89-150-000, RP89-153-000, RP89-154-000, RP89-184-000, RP90-73-000, TM89-3-17-000, TM89-4-17-000, TM89-8-17-000, TM89-10-17-000, TM89-11-17-000, TM89-12-17-000, TM90-3-17-000, and TM90-7-17-000, Texas Transmission Corporation
CAG-24.
Docket No. RP89-50-000 and 010, Florida Gas Transmission Company
CAG-25.
Docket No. RP90-69-003, Colorado Interstate Gas Company
CAG-26.
Docket Nos. RP89-179-000, CP89-1488-000 and CP89-1489-000, Western Gas Interstate Company
CAG-27.
Docket Nos. RP84-42-000, RP72-133-000, TA80-1-11-000, TA80-2-11-000, TA81-1-11-000, TA82-1-11-000, TA82-1-11-000, TA82-2-11-000, TA83-1-11-000, TA83-2-11-001, TA84-1-11-000, TA84-2-11-000 (Phase I), United Gas Pipe Line Company
CAG-28.
Docket Nos. RP88-197-000 and RP88-236-000, Williston Basin Interstate Pipeline Company
CAG-29.
Docket No. ST91-238-000, Monterey Pipeline Company Docket No. ST91-239-000, Exxon Gas System, Inc.
CAG-30.
Docket No. CP89-1851-003, Altamont Gas Transmission Company
CAG-31.
Docket No. CP89-93-006, Williams Natural Gas Company
CAG-32.
Omitted
CAG-33.
Docket No. CP90-2049-000, Arkia Energy Resources, a Division of Arkla, Inc.
CAG-34.
Docket No. CP90-134-000, Algonquin Gas Transmission Company
CAG-35.
Docket No. CP90-138-000, Mid Louisiana Gas Company
CAG-36.
Docket No. CP84-31-004, Texas Gas Transmission Corporation and CSX NGL Corporation
CAG-37.
Docket No. CP90-1537-000, Northern Natural Gas Company, Division of Enron Corp.
CAG-38.
Omitted
CAG-39.
Docket No. CI90-141-000, Ocean State Power
CAG-40.
Docket No. CP87-411-000, Pacific Interstate Transmission Company
CAG-41.
Docket Nos. CP89-637-001, 002, 004 and 005, ANR Pipeline Company
Docket Nos. CP88-178-000 and 001, Indiana Ohio Pipeline Company
Docket No. CP88-178-002, Trunkline Gas Company
Docket No. CP90-1726-000, Great Lakes Gas Transmission Company
Docket Nos. CP89-638-000, 001 and 002, CNG Transmission Corporation
Docket Nos. CP90-687-000 and 001, Transcontinental Gas Piple Line Corporation
Docket Nos. CP90-688-000 and 001, Texas Gas Transmission Corporation
CAG-42.
Docket No. CP90-1777-000, Trans-Colorado Pipeline Company
CAG-43.
Docket Nos. CP90-1372-000, CP90-1373-000, CP90-1374-000 and CP90-1375-000, Altamont Gas Transmission Company
CAG-44.
Docket Nos. CP89-460-000, 001 and CP90-1-000, Pacific Gas Transmission Company
CAG-45.
Docket No. CP90-1363-000, Natural Gas Pipeline Company of America
CAG-46.
Docket No. CP90-2294-000, Transwestern Pipeline Company
CAG-47.
Docket No. CP90-1864-000, Cornerstone Pipeline Company
CAG-48.
Docket No. CP91-248-000, Pacific Offshore Pipeline Company
CAG-49.
Docket Nos. RP88-67-035 and CP90-186-001, Texas Eastern Transmission Corporation
CAG-50.
Docket Nos. RP89-251-010 and TA90-1-1-010, Alabama-Tennessee Natural Gas Company
CAG-51.
Docket No. RP91-11-001, Arkla Energy Resources
CAG-52.
Docket Nos. RP91-29-000 and 001, Tennessee Gas Pipeline Company
CAG-53.
Docket No. RP91-31-000, Natural Gas Pipeline Company of America
CAG-54.
Docket No. RP91-33-000, ANR Pipeline Company
CAG-55.
Docket Nos. CP90-154-001 and CP90-333-001, Tennessee Gas Pipeline Company
Docket No. CP90-910-001, Tennessee Gas Pipeline Company, United Gas Pipe Line Company and Midwestern Gas Transmission Company
CAG-56.
Docket No. CP88-166-001, MIGC, Inc.
CAG-57.
Docket No. CP89-2062-001, Overthrust Pipeline Company
CAG-58.
Docket No. CP91-155-000, Southwestern Gas Pipeline, Inc.
CAG-59.
Docket No. CP89-2114-001, United Gas Pipe Line Company
CAG-60.
Docket No. CP91-319-000, Transcontinental Gas Pipe Line Corporation
CAG-61.
Docket No. CP91-560-000, Tennessee Gas Pipeline Company

Hydro Agenda

H-1.
Project No. 9556-002, Kamargo Corporation
Project No. 9557-002, Black River Hydro Corporation
Project No. 9564-002, Norwood Hydro Corporation
Project No. 9565-002, Raymondville Hydro Corporation

Project No. 9566-002, East Norfolk Hydro Corporation
Project No. 9553-002, School Street Hydro Corporation
Project No. 9563-002, Herrings Hydro Corporation
Project No. 9552-002, Deferiet Corporation
Project No. 9554-002, Colton Hydro Corporation
Project No. 9555-002, Higley Corporation
Project No. 9567-002, Hannawa Corporation
Project Nos. 2320-002, 2330-002, 2539-002, and 2569-002, Niagara Mohawk Power Corporation. Order on remand.

H-2.
Project No. 9554-002, Colton Hydro Corporation. Order on application for preliminary permit.

H-3.
Project No. 9555-002, Higley Corporation. Order on application for preliminary permit.

H-4.
Project No. 9552-002, Deferiet Corporation. Order on application for preliminary permit.

H-5.
Project No. 9567-002, Hannawa Corporation. Order on application for preliminary permit.

Electric Agenda

E-1.
Docket No. ER91-11-000, Nevada Sun-Peak Limited Partnership. Order on rate filing.

E-2.
Docket No. EC90-16-001, Kansas City Power & Light Company. Order on requests for rehearing.

E-3.
Docket Nos. ER82-427-000 and ER83-310-000, Southern California Edison Company. Opinion on exceptions to an initial decision.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1.
Docket No. RM91-3-000, Revisions to Regulations Governing Self Implementing Transportation Under Act 284 of the Commission's Regulations. Notice of Proposed Rulemaking.

PR-2.
Docket Nos. IS87-14-000, *et al.*, and OR88-3-000, Buckeye Pipe Line Company. Opinion and Order on initial decision.

PR-3.
Docket No. RM91-2-001, Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs
Docket Nos. RP88-80-014, RP88-223-006, RP88-251-007, RP89-150-004, RP89-153-003, RP89-154-002, RP89-184-002, RP90-73-002, RP90-96-002, TM89-3-17-002, TM89-4-17-002, TM89-7-17-001, TM89-8-17-001, TM89-10-17-001, TM89-11-17-001, TM89-12-17-001, TM90-3-17-001 and TM90-7-17-002, Texas Eastern Transmission Corporation
Docket Nos. RP86-119-016, TA84-2-9-016 and TA85-1-6-004, Tennessee Gas Pipeline Company
Docket No. RP88-226-002, Eastern Shore Natural Gas Company
Docket No. RP88-205-008, Alabama-Tennessee Natural Gas Company
Docket Nos. RP85-209-031, RP86-93-011, RP86-158-014, CP86-264-007, RP87-34-014, TC88-6-012, RP88-8-014, RP88-27-026, RP88-92-024, RP88-265-009, RP88-263-017, RP88-264-022, RP84-42-010, RP89-138-011, CP88-6-009, CP88-329-010, CP88-478-005 and IN86-5-016, United Gas Pipe Line Company
Docket No. CP88-440-005, Southern Natural Gas Company
Docket No. CP87-524-012, Texas Gas Transmission Corporation. Order on rehearing of Order No. 528.

II. Producer Matters

PF-1.
Reserved

III. Pipeline Certificate Matters

PC-1.
Docket No. RM87-5-006, Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines. Sunset date.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 90-29026 Filed 12-6-90; 4:36 pm]
BILLING CODE 6717-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 13, 1990, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Closed Session *

1. Special Orders
—Competition Study Report
2. Enforcement Actions
3. Other Prior Approvals
—St. Louis Farm Credit Bank
—St. Paul Farm Credit Bank
—Louisville Farm Credit Bank

Open Session

4. Consent Calendar
—St. Paul BC—Request for Single Credit Status for Country Lake Foods
5. Regulations
—Proposed Amendments to FCA Regulation 12 CFR Parts 611, 620, and 621 Disclosure to Shareholders
—Proposed Lending Authority
6. Other
—FCA Mission—Consideration of Policy Statement

Dated: December 6, 1990.

Curtis M. Anderson,
Secretary, Farm Credit Administration Board.
[FR Doc. 90-2904 Filed 12-6-90; 4:48 pm]
BILLING CODE 6705-01-M

* Session closed to the public—exempt pursuant to 5 U.S.C. § 552b(c)(4), (8), (9), and (10).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:30 A.M., Monday, December 17, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
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 holding company applications scheduled for the meeting.

Dated: December 7, 1990.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-29138 Filed 12-7-90; 3:57 pm]
BILLING CODE 6210-01-M

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, December 18, 1990.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, N.W., Washington, D.C. 20423.

STATUS: The purpose of the conference is for the Commission to discuss among

themselves, and to vote on, the agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Ex Parte No. 334 (Sub-No. 8), *Joint Petition for Rulemaking on Railroad Car Hire Compensation*, and Ex Parte No. 334 (Sub-No. 8A), *Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. 10706 and Motion to Dismiss.*

Ex Parte No. MC-194, *Limitation of Smoking on Interstate Passenger Carrier Vehicles.*

Ex Part No. MC-199, *Petition for Declaratory Order—Yellow Freight System, Inc.—Retention of Documents.*

Ex Parte No. MC-196, *Investigation of Motor Carrier Collective Ratemaking and Related Procedures and Practices.*

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of External Affairs, Telephone: (202) 275-7252, TDD: (202) 275-1721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-28949 Filed 12-6-90; 1:36pm]

BILLING CODE 7035-01-M

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant To The Government in the Sunshine Act

(Public Law 94-409) [5 U.S.C. Section 552b]

An additional item to be added to the agenda of the open meeting to be held at 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815; Correction

ACTION: Notice of correction of previous published agenda.

SUMMARY: This notice corrects the agenda previously published in the **Federal Register** November 26, 1990 [55 FR 49199] by adding an additional item to be discussed at the open meeting of the Commission to be held in Chevy Chase, Maryland. The following item has been added to the agenda: Quorums for Original Jurisdiction Cases.

Dated: November 30, 1990

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 90-29092 Filed 12-7-90; 11:19 am]

BILLING CODE 4410-01-M

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant to the Government in the Sunshine Act

(Public Law 94-409) [5 U.S.C. Section 552b]

Time and date for the open meeting to be held at 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815; Correction

ACTION: Notice of correction of time and date.

SUMMARY: This notice corrects the time and date previously published in the **Federal Register** November 29, 1990 [55 FR 49590] for an open meeting of the Commission to be held in Chevy Chase, Maryland. The previous time and date for the open meeting was 9:00 a.m., Tuesday, December 4, 1990. The open meeting has been extended and set for 9:00 a.m., Tuesday, December 4, 1990 and 11:00 a.m. to 4:00 p.m., Wednesday, December 5, 1990.

Dated: November 30, 1990.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 90-29093 Filed 12-7-90; 11:19 am]

BILLING CODE 4410-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 9:30 a.m., Monday, December 17, 1990.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, N.W., Washington, D.C. 20456.

STATUS: Open.

BOARD BRIEFINGS:

1. Economic Commentary.
2. Central Liquidity Facility Report and Report on CLF Lending Rate.
3. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Community Development Revolving Loan Program for Credit Union.
3. NCUSIF Insurance Premium for 1991.
4. Appeal by Bell Federal Credit Union, Omaha, NE, of Field of Membership Expansion Denial.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Monday, December 17, 1990.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, N.W., Washington, D.C. 20456

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Personnel Policies. Closed pursuant to exemptions (2) and (6).
3. Request under Part 745, NCUA's Rules and Regulations. Closed pursuant to exemptions (8) and (9)(B).
4. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (8), (9)(A)(ii), and (9)(B).
5. Request for Special Assistance under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B)
6. Request for Special Assistance under Sections 116 and 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
7. Administrative Action under Section 120 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 90-29116 Filed 12-7-90; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Monday, December 17, 1990.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Marine Accident Report: Grounding of the Greek Tankship WORLD PRODIGY, off the Coast of Rhode Island, June 23, 1989.

NEWS MEDIA CONTACT: Ted Lopatkiewicz, 382-6600.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: December 7, 1990.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 90-29113 Filed 12-7-90 12:58 p.m.]

BILLING CODE 7533-01-M

PAROLE COMMISSION

Record of Vote of Meeting Closure

(Public Law 94-409) (5 U.S.C. Sec. 552b)

I, Benjamin F. Baer, Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at nine o'clock a.m. on Wednesday, December 5, 1990 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The meeting ended at or about 11:00 a.m. The purpose of the meeting was to decide approximately 9 appeals from National Commissioners' decisions pursuant to 28 C.F.R. Sec. 2.27. Five Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcements further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following

Commissioners voted that the meeting be closed: Benjamin F. Baer, Jasper Clay, Jr., Vincent Fechtel, Jr., Carol Pavilack Getty, and Victor M.F. Reyes.

In Witness Whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: December 5, 1990.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 90-29091 Filed 12-7-90; 11:19 am]

BILLING CODE 4410-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of December 10, 1990.

A closed meeting will be held on Tuesday, December 11, 1990, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 11, 1990, at 2:30 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Formal orders of investigation.

Settlement of administrative proceedings of an enforcement nature.

Administrative proceeding of an enforcement nature.

Settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jonathan Gottlieb at (202) 272-2200.

Dated: December 5, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-29207 Filed 12-6-90; 4:37 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 55, No. 238
Tuesday, December 11, 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.

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

Correction

In notice document 90-28212 appearing on page 49703, in the issue of Friday, November 30, 1990, in the second column, under "OMB Number: 3060-0176", in the next line "Section 73.150," should read "Section 73.1510,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-01-4212-13; IDI-23538]

Issuance of Land Exchange Conveyance Document; Idaho

Correction

In notice document 90-27045 appearing on page 47930 in the issue of Friday, November 16, 1990, make the following correction:

In the third column, under **Boise Meridian**, in "Sec. 15", at the end of the first line just before "NW¼" insert "E½NW¼,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-01-4214-11; IDI-04319, IDI-014817, IDI-939]

Proposed Continuation of Withdrawals, Idaho

Correction

In notice document 90-27037 beginning on page 47935 in the issue of Friday, November 16, 1990, make the following corrections:

1. On page 47935, in the second column, under **Boise Meridian**, in "Sec. 8","and" should read "to".

2. On the same page and column, in "Sec. 32", "W½W¼" should read "W½W½".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-01-4214-11; IDI-2291, et al.]

Proposed Continuation of Withdrawals, Idaho

Correction

In notice document 90-27038 beginning on page 47936 in the issue of Friday, November 16, 1990, make the following corrections:

1. On page 47936, in the second column, under "Hero Lake and Gnat Lake", in the second line, at "Sec. 21", the first part of the description (preceding "and") should read "S½S½SW¼NW¼".

2. On the same page and column, under "Mudd Lake", in the second line of "Sec. 29" a comma should precede " N½" and in the next line after the first "NE¼", the next description should read "E½NE¼SE¼NW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-90-4214-11; IDI-07547, et al.]

Proposed Continuation of Withdrawals, Idaho

Correction

In notice document 90-27040 appearing on page 47938 in the issue of Friday, November 16, 1990, make the following correction:

In the second column in the fifth line from the bottom, the first half of the description (preceding "and")should read "NW¼SE¼NW¼"

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Migrant and Seasonal Farmworker Programs; Preapplications for Federal Assistance, and Solicitation for Grant Application

Correction

In notice document 90-28186 beginning on page 49846, in the issue of Friday, November 30, 1990, make the following corrections:

1. On page 49849, in the third column, the last signatory (preceding the Appendix), should read "Roberts T. Jones,".

2. On the same page, in the same column, in the **Appendix**, the first entry of the second column should read "890,819".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 27

[Docket No. 26352; Notice No. 90-24]

RIN 2120-AC68

Airworthiness Standards; Crash Resistant Fuel Systems in Normal and Transport Category Rotorcraft

Correction

In proposed rule document 90-23594 beginning on page 41000, in the issue of Friday, October 5, 1990, make the following correction:

§ 27.952 [Corrected]

On page 41010, in the third column, in § 27.952(e)(1)(v), in the third line, after "must" insert "not".

BILLING CODE 1505-01-D

federal register

Tuesday
December 11, 1990

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 1001, 1002, and 1004

Milk in the New England, New York-New Jersey and Middle Atlantic Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1002 and 1004

[Docket Nos. AO-14-A62 and AO-14-A62-RO1, AO-71-A77 and AO-71-A77-RO1, and AO-160-A65 and AO-160-A65-RO1; AMS-88-105 and DA-89-028]

Milk in the New England, New York-New Jersey and Middle Atlantic Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts changes in the New England, New York-New Jersey, and Middle Atlantic Federal milk orders. For all three orders, the decision adopts 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 are used in other orders. These changes will assure greater equity in intermarket sales of milk.

For the New England order (Order 1), changes allow producer-handlers to receive diverted producer milk from pooled handlers and eliminate the postmark date as a basis for determining whether late payment charges are due on handler payments to the producer-settlement fund.

Changes in the New York-New Jersey order (Order 2) 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 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 adopted.

A change to the Middle Atlantic milk order (Order 4) prices diverted milk at the location to which it is diverted.

The changes being made to the three orders are 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. The amendments are necessary to reflect current marketing conditions and to maintain orderly marketing in the New England, New York-New Jersey and Middle Atlantic marketing areas.

Approval of the New York-New Jersey orders will be determined by a referendum of dairy farmers who were producers under the order during May 1990. Cooperative associations representing producers pooled under the New England and Middle Atlantic orders during May 1990 will be polled to determine approval.

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 amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in the proceeding:

Notice of Hearing: Issued June 7, 1988; published June 10, 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, 1989; 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).

Recommended Decision: Issued May 18, 1990; published May 25, 1990 (55 FR 21556).

Extension of Time for Filing Exceptions to the Recommended Decision: Issued July 10, 1990; published July 16, 1990 (55 FR 28918).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the New England, New York-New Jersey and Middle Atlantic marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR part 900), 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).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, Agricultural Marketing Service, on May 18, 1990, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under the heading "1a. Adoption of 3-Class (uniform) classification.", seventeen paragraphs are added after paragraph 37, three paragraphs are added after paragraph 39, and two paragraphs are added after paragraph 41.

2. Under the heading "1b. Class I and the fluid milk product definition.", paragraphs 2, 7, 8 and 17 are revised, one paragraph is added after paragraph 8, two paragraphs are added after paragraph 17, and three paragraphs are added after paragraph 18.

3. Under the heading "1c. Fluid cream product definition.", two paragraphs are added after paragraph 4.

4. Under the heading "1d. Class II price.", the last paragraph is revised.

5. Under the heading "1e. Seasonal price adjustors.", 4 paragraphs are added at the end of the section.

6. Under the heading "2b. Minimum shipping requirements." one paragraph is added after paragraph 36, five paragraphs are added after paragraph 42, one paragraph is added after paragraph 62, and five paragraphs are added at the end of the section.

7. Under the heading "3. Seasonal payment plans.", six paragraphs are added after paragraph 43.

8. Under the heading "4a. Location pricing, zone pricing and transportation credits.", twenty-one paragraphs are added after paragraph 28, seven paragraphs are added after paragraph 42, nine paragraphs are added after paragraph 49, eight paragraphs are

added after paragraph 52, and three paragraphs are added after paragraph 60.

Modifications have also been made to the following order language:

1. In § 1001.7 Pool plant, a section reference is corrected in paragraph (b)(2)(ii).

2. In § 1001.30 Reports of receipts and utilization, a phrase is added to the beginning of paragraph (d).

3. In § 1001.40 Classes of utilization, a new paragraph (a)(2) is added, a phrase is added in (b)(1), and phrases are deleted in (b)(4)(i), (c)(2) and (c)(6).

4. In § 1001.41 Shrinkage, a phrase is added to paragraph (b)(6).

5. In § 1001.44 Classification of producer milk, a new paragraph (a)(2)(iii) is added. Corresponding references are changed.

6. In § 1001.45 Market administrator's reports and announcements concerning classification, introductory text is added.

7. In § 1001.50 Class prices, the words "Class III" are changed to "basic formula" in paragraph (b).

8. In § 1001.73 Payments to producers, two words are changed.

9. In § 1002.41 Classes of utilization, a new paragraph (a)(2) is added, a reference in (a)(3) is changed, a phrase is added in (c)(1), and phrases are deleted in (c)(4)(i), (d)(2) and (d)(5).

10. In § 1002.42 Shrinkage, the introductory text is modified.

11. In § 1002.45 Allocation of skim milk and butterfat classified, a new paragraph (a)(4) is added, (a)(4) through (a)(19) are re-numbered as (a)(5) through (a)(20), and re-numbered paragraph (a)(9) is modified. References to these paragraphs are changed throughout the order.

12. In § 1002.50 Class prices, the words "Class III" are changed to "basic formula" in paragraph (c).

13. In § 1002.52 Transportation differentials, 5 zones are added in paragraph (c) and the instruction at the end of the paragraph is deleted.

14. In § 1002.56 Announcement of class prices and butterfat differential, a phrase is added to paragraph (b).

15. In § 1002.60 Net pool obligation of handlers, (d)(5) is removed.

16. In § 1004.40 Classes of utilization, a new paragraph (a)(2) is added, a phrase is added in (b)(1), and phrases are deleted in (b)(4)(i) and (c)(2).

17. In § 1004.44 Classification of producer milk, a new paragraph (a)(4) is added, (a)(4) through (a)(14) are re-numbered as (a)(5) through (a)(15), and a phrase is added to re-numbered paragraph (8)(v). References to these paragraphs are changed throughout the order.

18. In § 1004.50 Class prices, the words "Class III" are changed to "basic formula" in paragraph (b).

19. In § 1004.60 Handler's value of milk for computing uniform prices, a section reference is corrected in paragraph (e) and paragraph (g) is deleted.

20. In all three orders, language has been changed where needed to eliminate gender-specific pronouns without changing the orders' substance.

21. In all three orders, the language of § .51, Basic formula prices, has been changed to reflect the changes adopted in the national butterfat differential decision, issued November 9, 1990 and published November 19, 1990 (55 FR 48112).

The material issues on the record of the 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 Nos. 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 Nos. 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 cheeses 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 the 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 of 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 more 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 on 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 uniformed 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 speciality 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 Northeast 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 equivalent 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 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 noticed 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" manufactured 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.

Comments on the recommended decision filed by the New York State Grange and on behalf of Kraft, Inc., Pollio Dairy Products Company and Friendship Dairies, Inc., opposed adoption of 3-class pricing. The Grange's comments stated that such a pricing plan would provide no benefits to producers in the long run. As explained above, the primary reason for adopting a uniform 3-class pricing plan is to assure handler equity between orders. In addition, producer prices should be enhanced slightly. The addition of an intermediate-priced class certainly would not cause producer returns to decline, either in the short run or the long run.

The exceptions filed on behalf of Kraft, Pollio and Friendship challenged the findings of the recommended decision on a number of points. The exceptions stated that the recommended decision, in adopting 3-class pricing, failed to consider adequately marketing conditions peculiar to the northeast which are not consistent with conditions described in the 1974 uniform classification decisions, and the effects on Order 2 handlers of competition with handlers regulated under the Western New York State order. Further, the exceptions stated that the Administrator failed to consider adequately the pricing standards of 7 U.S.C. 608c(18) and the requirements of 7 U.S.C. 608(c)(11)(c) which direct the Secretary to recognize differences in production and marketing conditions in prescribing differing terms to be applicable to different production areas or marketing areas.

The exceptors argued that the northeast markets cannot accurately be characterized as having been isolated from the uniform classification markets in 1974 because soft products from the northeast have been distributed in a southwesterly direction for some time. The exceptions further challenged the Administrator's findings that northeast soft product manufacturers enjoy a significant and disruptive competitive advantage over processors in other federally-regulated regions on the basis that the findings were based only on differences in minimum order class prices.

In additional exceptions to the adoption of 3-class pricing for the northeast markets, exceptors argued that milk used to produce soft products in the northeast is not of higher value than milk used to produce the market's surplus hard products because the hearing record shows that handlers in the northeast do not pay more for milk used to make soft products than for milk used to make hard products, as they were described as doing in the 1974 uniform classification decisions. The exceptions stated that a general finding of the uniform classification decisions that describes soft product manufacturing facilities as located with or near fluid milk plants in the urban market centers is supported only by testimony and not by evidence in this record, and is contradicted in the case of some major cottage cheese manufacturing plants.

Exceptors also included a reiteration of the regional difference in protein content between the northeast and the midwest. The comments stated that handlers in the midwest pay variable premiums based on protein or solids content, and therefore are not competitively disadvantaged in relation to each other by paying the same class prices, as northeast handlers would be in relation to handlers in the midwest.

The primary reasons given for the adoption of 3-class pricing in the 1974 uniform classification decisions (as determined by the relative prominence given the reasons in the decisions) included the observation that the local character of the marketing areas was changing. Some of the trends cited in those decisions as observable elsewhere in the nation in 1974, such as the declining effect of local health jurisdictions as barriers to widespread commerce in dairy products and the conversions from can handling to farm bulk tanks, have been apparent in the northeast only in recent years. Evidence in the record establishes that the State of New York maintained a restrictive licensing policy until 1987, and the Order 2 market administrator's statistics show declining numbers of producers whose milk is delivered in cans.

The 1974 decisions also cited growing distribution of products throughout multi-state regions from centralized processing facilities and resulting disruptive competitive relationships between handlers based on inter-order price differences as primary reasons for the adoption of a uniform 3-class pricing plan. Although it is not clear from the record of this proceeding how long the large centralized processing facilities operated by exceptors have been in operation, there is ample testimony in the record that soft products manufactured in the northeast are distributed along the entire length of the east coast and throughout the area east of the Mississippi. At the same time, the record is clear that intermarket competition for the sale of these products operates, with one or two minor exceptions, only in one direction—from the northeast to the south and southwest. If other order handlers market their soft manufactured products over areas comparable in extent with those over which northeast handlers market such products, northeast handlers must be competing with handlers regulated under most of the Federal milk orders in the United States. All of the other federally-regulated handlers are subject to a minimum class price for the milk they use in such products that exceeds by 10 cents per hundredweight the minimum class price paid by northeast handlers.

The success of northeast handlers in competing in distant marketing areas, coupled with the fact that handlers in other marketing areas do not (or have not been able to) compete for sales of soft manufactured products within the 3 northeast marketing areas, makes inescapable the conclusion that northeast handlers do have a competitive advantage in the basic cost of their raw milk supply which is unnecessary and should be eliminated. Record evidence about differences between actual prices paid for milk used to manufacture soft products in the northeast and midwest indicate that midwest handlers also pay significantly higher over-order prices for such milk.

Another principal reason for the adoption of 3-class pricing under the uniform classification decision, which was supported by testimony in this hearing record, is the need of handlers for adequate supplies of high-quality producer milk to be available at their plants at all times. "Although yogurt can be made from cream and nonfat dry milk, processors prefer milk. Since yogurt has a relatively limited shelf life, it is made on a continuing basis, thus requiring a regular supply of milk at all times. As in the case of cottage cheese, these conditions warrant that producer milk in yogurt be priced at a level above the price for milk disposed of through the traditional residual uses for surplus milk." (39 FR 9020, March 7, 1974).

This reason is clearly related to the requirement of the Agricultural Marketing Agreement Act of 1937 that milk and its products be priced according to their form and use. Clearly, in the northeast as elsewhere in the United States, products such as cottage cheese, yogurt, ice cream and cream products represent an intermediate use between fluid milk products and the market's truly surplus products in terms of handlers' ability to make the products when milk is available as opposed to when consumers wish to use them.

The uniform classification decisions recognized that "Although some cottage cheese is made in specialized country plants, as the economics of location would suggest, cottage cheese production is commonly an integral part of the processing operations of fluid milk distributing plants. Such plants are usually located in or near the populated centers of the market. This entails a greater hauling expense for producers than when the reserve milk is processed in the production area, as is generally the case with respect to butter, nonfat dry milk and hard cheese manufacture." (39 FR 9020, March 7, 1974).

Despite the fact that cottage cheese is manufactured at large processing plants in outlying locations of the Order 2 marketing area, testimony in the record of this proceeding indicates that much of the market's soft products manufacture takes place at city fluid processing plants. In addition, it is clear from market statistics that a large share of the milk produced in zones close to the market's principal consumption areas is used in products other than fluid milk. Given the scarcity of manufacturing plants inside the 201–210 mile zone, it is most likely that the milk is used to make soft Class II products at the fluid milk processing plants to which it is customarily delivered.

A study included in the hearing record shows producer milk in some production areas of the northeast has a lower protein content than in most areas of the midwest. However, protein content has not been, and should not be, a basis for justifying different basic class prices paid under Federal orders by competing handlers for their supplies of raw milk unless actual differences in prices paid are directly related to specific variations in the components of milk and are reflected in payments to producers that also have a direct relationship between the level of producer milk components and the value of the components to handlers. Exceptors' citation of varying protein premiums between midwest handlers as a means of minimizing the effects of uneven levels of protein content within the midwest also could operate to equalize differences in value of milk related to unpriced components between the northeast and midwest. The testimony in the record relating to premiums paid for protein in the midwest indicates that midwest handlers are already paying for any extra protein or nonfat solids that may be contained in the milk they buy from producers.

Exceptions based on the price advantage expected to be enjoyed by Western New York State-regulated handlers in competing with Federally-regulated northeast handlers for sales of soft products stated that such competition is intense, and that product price is a significant factor of market share even under current levels of raw milk prices. Exceptors complain that competition for sales of soft manufactured products between northeast Federally-regulated handlers and Western New York State-regulated handlers is much more significant than is competition between Federally-regulated handlers in the northeast and other areas of the eastern U.S. because the Western New York manufacturers have plant location similar to Order 2 manufacturers in relation to the major city markets of New York.

As stated above, the Western New York State order covers a very limited area and regulates only a small fraction of the amount of milk regulated by the northeast Federal orders. Testimony in the hearing record describes how easily the price paid to producers whose milk is pooled under the State order can be manipulated by shifting relatively small amounts of milk between the State order and Order 2. Aside from limitations of plant capacity, the ability of handlers regulated under the State order to increase their sales of soft manufactured products at the expense of Federally-regulated handlers will be severely restricted by the effect that the addition of significant amounts of Class II use to the State pool would have on blend prices to producers.

In addition, several witnesses testified to the relative ease and speed with which the State order could be amended to reflect the price structure of the Federal order. Although it is possible that the cooperative association participants in that market would prefer to maintain a slight price advantage in the manufacture of soft products, the major Order 2 cooperative association that has a presence in the State market may find it necessary to initiate a corresponding pricing structure in the State order.

With regard to the legal requirements of the Act cited by exceptors, the Secretary considers, for these orders, the benefits of assuring competitive equity between handlers regulated under different orders and reflecting the greater value of milk used to produce soft manufactured products, as described above, to outweigh any purported or actual differences in production and marketing conditions between these and other marketing areas.

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 U.S. 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.

Hershey Chocolate U.S.A. (Hershey) filed an exception to the classification of fluid milk used to make milk chocolate as Class II rather than Class III. Hershey's comments cited testimony in the record stating that whole milk powder can be obtained at prices competitive with the current price of fluid milk plus manufacturing costs, giving users of fluid milk a substantial incentive to switch to supplies of whole milk powder. Also cited was testimony that milk chocolate manufacturers currently using fluid milk would be placed at a competitive disadvantage with other chocolate manufacturers who use only whole milk powder. Finally, the comments reiterated that milk used to produce milk chocolate shares the characteristics of Class III products on the basis of its significant role in balancing the market, and because the demand for milk to produce milk chocolate does not reflect consumer demand.

Although testimony was received that indicated that whole milk powder is available at the same price as an equivalent volume of fluid milk at the lowest class price, it is not reasonable to expect that a handler is able, on a sustained basis, to buy fluid milk at the lowest class price, manufacture it into powder, maintain a profit margin, and still be able to sell the powder to a candy manufacturer at a price equivalent to the value of the raw milk ingredient used to produce the powder. If Hershey is able to buy whole milk powder at the same price as the equivalent volume of fluid Class III milk would cost and is indifferent as to the use of either product in its candy-making operation, the handler should probably buy the powder. Class III classification of milk used to produce milk chocolate would make producers indifferent as to whether their milk was used to make whole milk powder or candy.

The argument that milk used to make milk chocolate has many of the characteristics traditionally associated with Class III products is more compelling, but in this case the factor of uniformity between orders outweighs such a consideration. Other chocolate makers who use milk pooled under other orders (or milk powder made from milk pooled under other orders) are subject to the same classification provisions that are adopted in this decision. Since the market for milk chocolate encompasses an area larger than Order 2, it is necessary that the milk used to produce the products is priced uniformly between the respective orders.

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.

An exception filed on behalf of Kraft, Inc., Pollio Dairy Products Company, and Friendship Dairies, Inc., argued that "pot cheese" and "farmers cheese" should not be named as Class II products in the northeast orders because there is no indication that these products compete with identical products manufactured in other regions. In addition, the comments stated, milk used to manufacture such products would be classified as Class III in other orders where it is not specifically classified as Class II.

Some testimony in the hearing record argued that these products are very similar to cottage cheese and that milk used to produce them should be classified in the same class as cottage cheese. There was also evidence that the manufacture of these products is demand-driven, rather than made on the basis of when surplus milk is available. However, exceptors are correct in stating that milk used to manufacture these products under uniform classification orders would be classified as Class III. As stated in the exceptions, there is no indication that these products compete with similar products manufactured under other orders. Therefore, classification in Class II presumably would not result in any disruptive competition. In the interests of uniformity, however, the classification of milk used under the 3 northeast orders should not differ from classification under other orders.

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 6.5 percent nonfat milk solids and less than 10 percent butterfat. All flavored milk beverages, regardless of total solids content, should be considered fluid milk products under the language adopted for the three northeast orders in this decision.

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 shrinkage 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 hermetically-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.

Under the uniform classification plan as proposed to be adopted in the recommended decision, ending inventories of packaged fluid milk products would be 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.

An exception to the recommended change in classification of ending inventories of packaged fluid milk products was filed on behalf of Eastern Milk Producers Cooperative Association, Inc. (Eastern). Eastern argued that the current procedure for classifying ending inventories of packaged fluid milk products in Class I avoids the necessity for subsequent reclassification and is a more efficient, less confusing and more acceptable procedure.

Because it is not expected that maintaining the Class I classification of packaged fluid milk products in inventory will cause any disruptive competition with the handlers of other orders under which such inventories are classified as Class III, it is not necessary to change the Class I inventory classification to which northeast handlers are accustomed to Class III. Class I classification of inventories of packaged fluid milk products will not require adjustments from one month to the next as would Class III classification of such inventories. For these reasons, the amended orders should classify packaged fluid milk products in inventory as Class I.

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 product 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 its "ph" factor.

If a milk product containing less than 20 percent solids and 10 percent butterfat 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 milkshake 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.

An exception to the recommended decision filed by H. P. Hood, Inc., objected to the classification of lowfat eggnog as a Class I product. The comments stated that the lowfat eggnog processed by Hood differs from Class II manufactured eggnog only in its butterfat content. The handler differentiated between lowfat eggnog and eggnog drink by describing the lowfat eggnog as having a higher solids content (over 20 percent) and being consumed in smaller serving sizes than eggnog drink. Hood's comments argued further that a change in the classification of its lowfat eggnog (which currently is considered a Class II product) during the eggnog season of January through Easter would be disruptive, and that if such a change is made it should be delayed until after Easter.

While eggnog is excluded specifically from the fluid milk product definition, the lowfat eggnog produced by Hood does not meet the 6-percent minimum butterfat specification in the Food and Drug Administration's description of eggnog. Therefore, lowfat eggnog is classified under the uniform classification decisions as a fluid milk product, regardless of its solids content, and would be so classified in any of the marketing areas in which Hood might be competing with other handlers for sales of such a product. There is no basis on which to classify lowfat eggnog differently in the three orders affected by this decision than it would be classified in any other order. There is also no basis for waiting until mid-1991 to make the classification provisions of the amended order effective. Handlers affected by the provisions should be aware of the probable classification of their products well in advance of January 1991. Hood should have no need to change the pricing of its lowfat eggnog product part way through the coming eggnog season.

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.

Borden, Inc., excepted to the Class I classification of UHT milk on the basis that a change in its classification under Order 2 was not supported by any substantial evidence in the record. Borden's comments stated that if the classification of UHT milk is changed to Class I, the Department ought to "lock" the plant producing such products into regulation under the order for the marketing area in which the milk is obtained from producers, as has been done in two other orders. Such action would, according to Borden, avoid the plant's changing regulation each month depending on the area in which the bulk of its sales are distributed.

The testimony supporting uniformity of classification between milk orders is the basis for including UHT milk in the fluid milk product definition. Because sterilized and aseptically packaged milk products typically are sold over a wide geographical area (as indicated in Borden's comments), it is very likely that the UHT milk packaged by Borden under Order 2 will be sold in competition with similar products sold by plants regulated under other orders. Therefore, it should be priced in the same class as is milk used in UHT products in other marketing areas.

There is no testimony or evidence in the record of the hearing to support "locking in" the Borden plant under Order 2 regulation. In both of the other orders cited by Borden's comments in which such action has been taken, it resulted from hearings called to consider that specific issue. However, it is doubtful that a failure to "lock in" the Borden plant under Order 2 will result in its being regulated under any other order. In the first place, full regulation under nearly all Federal milk orders requires that a plant's route dispositions in the marketing area represent at least 10 percent of the plant's receipts, and a greater volume than the plant's dispositions in any other marketing area. Borden is most likely to distribute more of its UHT products in the Order 2 area than in any other order area, and would probably not distribute as great a volume as 10 percent of its receipts in any other order area. Secondly, as long as milk distributed within the marketing area has been priced under another order, all Federal orders except Orders 1 and 2 allow the handler to offset such sales with purchases of milk pooled under the other Federal order so as to incur no obligation as a partially regulated handler. Therefore, it is unlikely that a "lock-in" provision would be needed to keep an Order 2 UHT plant pooled under Order 2.

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."

An exception filed on behalf of Kraft, Inc., Pollio Dairy Products Company and Friendship Dairies, Inc., argued that milk used in products resembling fluid cream products but containing fat substitutes that are made from egg and milk proteins should be classified the same as the skim milk and butterfat contained in the dairy products they resemble and for which they are intended to substitute. Further, the exception stated, the products in question would be made with a fat substitute rather than a nonmilk fat, and could not be considered "products containing 6 percent or more nonmilk fat or oil."

The intent of the recommended decision clearly was to classify the milk used to produce such products in Class II. The order language of the recommended decision describing as Class II used-to-produce items that are semi-solid products resembling a Class II product and containing less than 10 percent butterfat, with the addition of a few words to the order language describing Class II dispositions, should remedy any perceived deficiency.

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 U.S.

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 average level of 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. Because the seasonal adjustors to the Class III price in the three northeast areas will cause that price to vary around the level of the basic formula price, adjustments to the Class II price should be based on its relationship to the basic formula price rather than the Class III price. Use of the basic formula price in adjusting the Class II price will also maintain Class II price equity with other 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.

Comments were filed in response to the recommended decision by Dietrich's Milk Products and on behalf of Kraft, Inc., Pollio Dairy Products Company and Friendship Dairies, Inc. Dietrich's comments observed that the application of seasonal adjustors to Class III prices only will result in differences between Class II and Class III prices being wider than 10 cents. Computing the Class II price on the basis of the basic formula price rather than on the (seasonally adjusted) Class III price should result in a Class II price that will average, over the course of the year, a level approximately 10 cents above the average level of the Class III price.

The exceptions filed on behalf of Kraft, Inc., Pollio Dairy Products Company and Friendship Dairies, Inc., stated that, contrary to the findings of the recommended decision, intermarket competition would not be significantly affected by maintaining seasonal price adjustments for soft products as well as for hard manufactured products. The comments argued that, as with seasonally adjusted Class III prices, seasonally adjusted Class II prices would not differ from those in other orders over the course of a year. Exceptors stated that seasonal price adjustments are intended to encourage seasonal purchases of milk from producers rather than the storage of manufactured products over a period of months, and that soft product manufacturers tailor their production and sales promotions to meet milk supplies.

As stated above, processors of soft manufactured products must use producer milk to make their products when consumer demand for those products is high. Although some of the peak production months for these products coincide with the months of negative seasonal price adjustments, the later summer months of July and August, which are also months in which many of these products are produced heavily, are months in which seasonal price adjustments are positive. These products cannot be stored for months, as the hard manufactured products customarily are. Therefore, although it may be reasonable to consider the average Class III price level over the course of a year when comparing prices between different marketing areas, it would not be appropriate to consider annual average Class II price levels when comparing relative Class II prices between markets. The short time frame within which Class II products must be sold to consumers after being produced would make such comparisons meaningless. The average price over the course of a year could not be considered to apply to them.

Exceptors' motives for wanting to maintain the current seasonal price adjustors on milk used to produce Class II products is completely understandable. During some of the months of peak production and consumption of soft manufactured products, the price paid by northeast handlers for milk used in such products is less than the price paid by handlers regulated under other Federal orders by amounts ranging from 9 to 12 cents per hundredweight. This price advantage is equivalent, and additional to, the price advantage currently enjoyed by northeast handlers in the class price difference that exists because of the current 2-class pricing system of the 3 northeast orders. The seasonal adjustments applicable to prices for milk used in soft manufactured products should therefore be eliminated for some of the same reasons that 3-class pricing should be adopted for these markets.

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 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 sale 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 pool 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 handlers 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 proposal 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 of 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 shipments 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 referred 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 handler's 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 milk 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 periods 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 standards 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 purpose 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 differences between blend prices under the various orders in the northeast region 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 in 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 in 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 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.

In comments filed in response to the recommended decision, National Farmers Organization (NFO) and Dietrich's Milk Products asked that the decision clarify the ability of individual handlers that operate multiple bulk tank units to have those units be considered on a combined basis for qualification purposes. No amendments made to order language would affect handlers' ability to have their multiple bulk tank units considered on a combined basis, and no changes in such a practice were intended.

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 additional 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 herein if he finds that an adjustment is warranted.

Two producer groups (Oneida-Lewis Milk Producers Cooperative and National Farmers Organization) and the New York State Grange filed exceptions to the adoption of minimum shipping standards as a qualification for pooling under Order 2. National Farmers Organization (NFO) referred to arguments in its post-hearing brief that were considered in the recommended decision, including an assertion that there is no evidence in the record that additional supplies of milk are needed for fluid use. Oneida-Lewis reiterated arguments that the shipping requirement will reduce fluid milk handlers' willingness to pay premiums for milk for Class I use, and therefore will reduce returns to producers. The comments argued further that the order's current provisions have more flexibility to meet fluid needs than those adopted, and that there is no reason to have both a required shipping percentage and a call provision. Exceptors again cited costly and inefficient movements of milk that would be required from distant zones to meet the shipping requirements. Oneida-Lewis suggested that if minimum shipping percentages are incorporated into the order bargaining cooperatives that do not own plants should be exempt from the requirements, stating that fluid processors who also own manufacturing plants should be required to meet their own fluid needs.

Farmland Dairies, Inc., excepted to the low level of shipping standards proposed in the recommended decision, stating that the market needs flexible and innovative shipping standards that require handlers having low Class I use that are located nearest to the fluid market to be the first to provide milk to fluid processing plants.

There is ample testimony and evidence in the record of this proceeding from which to conclude that some handlers are evading their responsibility to provide milk to supply the fluid milk market. The call meetings that were held in 1984 and 1985, a subsequent call for additional supplies of milk for fluid handlers, and the operations of an ad hoc group of Class II handlers that was formed to arrange for milk to be moved from suppliers to fluid handlers all reflect extra-ordinary steps that had to be taken to assure the market of adequate supplies of milk for fluid use.

The existence of fluid milk plant operators who control large supplies of producer milk for the purpose of supplying the needs of their fluid milk plants and auxiliary manufacturing operations does not relieve other handlers and producer groups of all responsibility for supplying the market's needs for fluid milk. Such handlers contribute their full share of milk for the market's Class I needs. Their use of milk for manufacturing uses should become a matter of concern only when the percentage of their milk supply used for Class I purposes falls below the marketwide average of Class I use.

All of the arguments included in the exceptions to the adoption of minimum shipping percentages were considered and responded to in the recommended decision. Because the existing call provisions of the order will be combined with very minimal required shipping percentages, Order 2 will have more flexibility in responding to the level of fluid processors' needs for milk supplies after the shipping requirements are incorporated than it had before. It will also have a measure of equity that has been lacking. A situation in which some handlers and producers are able to withhold their milk from the fluid market for their own, more profitable, uses and still expect to share fully in the benefits of the order's blend price, enhanced above the manufacturing milk price by the higher-valued fluid uses, is neither equitable nor orderly. The shipping requirements adopted in this decision are minimal, but will assure that all of the market's participants supply a small portion of the market's fluid needs in return for a share of the value of those sales.

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 percentages 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 include 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 marketwide 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 identical 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 New Jersey Milk Industry Association and Dairylea Cooperative, Inc. filed exceptions to the Department's failure to adopt the same shipping requirements for Order 2 that are provided in Order 1. Both exceptors argued that pooling standards should be uniform between the orders to equalize the orders' utilization and blend prices. The Association stated that adoption of the Order 1 shipping requirements for Order 2 would guarantee an adequate supply of milk for fluid use under Order 2, and Dairylea asserted that Order 2 handlers are disadvantaged in relation to Order 1 handlers in buying milk for Class I use because of the blend price differences between the orders. The reasons for not adopting uniform pooling provisions for the two orders were thoroughly discussed in the recommended decision, and are repeated above. No reasons for adopting the proposal are given in the exceptions that have not been discussed.

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.

Comments submitted by the National Farmers Organization (NFO) in response to the recommended decision excepted to the Administrator's failure to adopt NFO's proposed reduction in supply plant shipping percentages. NFO's comments stated that the recommended decision ignored data on the structural needs of the market in requiring supply plants to ship 25 percent of their receipts to pool distributing plants when only 12 percent of the milk so shipped is used in Class I.

The cooperative association reiterated its argument that many of the required shipments made by NFO are not needed, and must be repurchased by the cooperative and delivered elsewhere. NFO's exceptions asserted that the recommended decision was based solely on marketwide Class I use, and on a "hand count" of entrenched dominant Order 1 interests which wish to maintain barriers to pooling milk on Order 1 for the purpose of keeping the Order 1 blend price above the Order 2 blend. According to NFO's exceptions, consideration of marketwide Class I use is inappropriate for determining supply plant shipping percentages because those percentages should be determined only on the basis of the amount of milk needed from those plants rather than the amount of milk needed for Class I use for the whole market.

Supply plant shipments to distributing plants have been displaced in importance to some extent by direct shipments from producers' farms, as NFO states. However, the current provisions of the order allow such direct shipments by cooperative associations to be included with their qualifying shipments from supply plants for the purpose of determining pool plant qualification. This structural change in Order 1 marketing conditions should not affect any cooperative's ability to assure the pool status of its supply plants, although it certainly could cause the percentage of milk priced in Class I to be reduced in the zones in which supply plants are located.

Although the percentage of milk from supply plants allocated to Class I has clearly declined over the 10 years preceding the hearing, that percentage still exceeds the 10-percent level of qualification proposed by NFO. In addition, contrary to NFO's assertion that only milk needed for Class I use should be required to be shipped to distributing plants, some of the Class II use at distributing plants is unavoidable. Shrinkage, standardization of producer milk to a lower butterfat content, and the necessity of offering a full line of fluid products that includes fluid cream products, require that distributing plants receive at least 5 percentage points more of total producer milk than they use in Class I.

In a market such as the New England market, where the percentage of milk needed for Class I use clearly is increasing, however gradually, there is no justification for reducing the percentage of a cooperative association's milk supplies that must be delivered to fluid processing plants if the cooperative member producers are to share fully in the benefits of the blend price derived from the market's Class I

sales. The 25-percent qualifying standard is effective only for the months of September through November, and that percentage is reduced to 15 percent for the months of December through August. There are no pool supply plant shipping standards for other months of the year if these percentages are met during the fall months when demand for fluid milk is strongest in comparison with the supply of producer milk. It is difficult to see these percentage requirements as excessive in a market in which nearly sixty percent of the milk produced is needed for Class I use in some months.

(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.

Order 2 currently requires that when a bulk tank handler adds a new producer to his or her pooled unit 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 money 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 corollary 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 market's 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 plans. 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 deducted 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 include 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 dairy 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 hearing.

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 dairy 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 producer 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 variations 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 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 dairy 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.

Agri-Mark, Inc., Dairylea, Inc., and Eastern Milk Producers Association filed exceptions to the Department's failure to adopt the proposed base-excess payment plan, and Pennmarva Dairymen's Federation expressed regret that the plan was not adopted. The comments argued that a majority of Order 1 producers favored the plan, while less than 25 percent opposed it. In addition, exceptors stated, opponents of the plan ship their milk primarily to manufacturing plant operators, who experience less impact from seasonal variations in production than fluid handlers, and do not serve the fluid market to the same extent as do proponents. Proponent's comments argued that the base-excess plan should be adopted for Order 2 even if it is not adopted for Order 1, citing the different payment plans existing in Order 2 and Order 4 even though those orders have a significant overlap in production areas. The cooperative(s) indicated that they had submitted substantial evidence on the effectiveness of the plan in distributing supplies more evenly throughout the year.

There is no question that more Order 1 producers were represented at the hearing in support of the proposed base-excess plan than in opposition to it. However, the twenty-five percent who did oppose it represent a very significant minority of dairy farmers whose concerns should be considered in determining the appropriate method of distributing pool returns to producers. The issue of whether leveling out seasonal production variations is more advantageous to distributing plant operators or to manufacturing handlers is less clear. In any event, the orders provide a means of assuring that fluid milk plants will get a certain level of milk shipments to fill their needs, especially during the short production season, by incorporating minimum shipping percentages and "call" provisions.

Although it is true that Order 2 and Order 4 have different producer payment plans and overlapping procurement areas, the record gives no

indication that the degree of competition for supplies of producer milk that exists between Order 1 and Order 2 handlers is even approached between Order 2 and Order 4 handlers. On the other hand, there is abundant testimony about the difficulties experienced by Order 1 and Order 2 handlers who compete with each other in trying to maintain milk supplies in eastern New York State. Adoption of a base-excess payment plan for Order 2 under these competitive conditions would just add one more factor for producers to consider in determining where to ship their milk.

Finally, assertions as to the effectiveness of the proposed plan were by no means persuasive, nor was any significant problem of extreme seasonality of production shown to exist. A comparison of the three-year periods of 1968–1970 and 1985–1987 show that seasonality of production declined in Order 1 and Order 2 by 40 percent and 25 percent, respectively. During the same period, seasonal variability in Order 4 appears not to have changed at all.

In addition, it is unlikely that the proposed base plan would have the effect desired by proponents. Although producers initially might be impressed with the plan's $1.00 per hundredweight penalty ($1.00 less than the uniform price) for producing excess milk, they surely would realize quickly that the base "premium" would amount to no more than 22 cents over the market's uniform price.

According to calculations based on proponents' estimates and Order 2 market statistics, the average Order 2 producer would receive approximately 33 cents more per hundredweight under the proposed base-excess plan than under the current Louisville plan during the "take-out" months of March through June. In the fall "pay-back" months, however, such a producer would receive approximately 40 cents more per hundredweight under the Louisville payment plan than under the proposed base-excess plan. Given these differences, it is difficult to believe that producers would be more likely to shift their production from spring to fall under the proposed base-excess plan than they would under the current Louisville plan.

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 "outside" 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 classified 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 base 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 nsurance, that are incurred in moving milk into some parts of the 1–10 mile zone because of that 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 hundredweight 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 City 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 at the location of his pool unit is −13 cents, stated that if a higher negative rate were adopted the adjustment to his blend 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.

Exceptions to the recommended decision filed by Eastern Milk Producers Cooperative Association, Inc., and Dietrich's Milk Products, Inc., stated that the location adjustment table in the amended order should not include a continuation of minus location adjustments beyond the 401–410 mile zone. The comments argued that there was no evidence in the record to support such a change, and that extension of the schedule would permit milk from distant areas to be moved to Order 2 pool plants at the expense of the pool. The note at the bottom of the schedule should be removed as exceptors suggest. In fact, the note is redundant because a later paragraph of the current

"Transportation differentials" section of the order accomplishes the same end.

Strenuous exceptions to an increase in the zone adjustment rate outside the 201–210 mile zone were received from and on behalf of dairy farmer cooperatives with members in the affected area (Oneida-Lewis Milk Producers Cooperative and 16 other Order 2 cooperative associations), over 300 individual producers, the New York State Grange, and from Kraft, Inc., Pollio Dairy Products Company and Friendship Dairies, Inc. The comments all deplored a reduction in producer returns and predicted that dairy farming in the outer zones of the Order 2 marketing area would become economically unrewarding.

In addition, two of the exceptions, those filed on behalf of 16 Order 2 cooperative associations and on behalf of Kraft, Inc., Pollio Dairy Products Company, Friendship Dairies, Inc., and 301 of those handlers' producers challenged the factual, economic and legal bases of the recommended decision. The comments argued that the principal reason given in the decision for increasing the minus location adjustment rates was the difficulty of city distributing plants in obtaining adequate supplies of milk for fluid use testified to by witnesses who would not or could not be specific about shortages of milk or alleged excessive prices charged for the supplies of milk that were obtained. The comments further stated that in addition to being unsupported by data, much of the testimony about milk shortages and unreasonable prices was exaggerated. Exceptors pointed to testimony that no request for milk supplies for Class I use went unfilled during the 1987–88 season of short production, and that one load was even rejected, as evidence that city distributing plants have no difficulty in obtaining adequate supplies of milk. The comments argued that fluid milk distributors exacerbated their own supply situation by using some of their milk supply for Class II use and then expecting other handlers to ship milk for Class I use.

One of the exceptions complained that the recommended decision failed to discuss the weight given to relative levels of premiums paid by fluid milk processors and manufacturing plant operators in formulating the decision. Exceptors apparently find this issue relevant because fluid processors claimed that manufacturing handlers pay higher premiums than fluid processors, while data gathered by the market administrator showed fluid milk processors generally paying higher producer premiums than manufacturing handlers.

The issue of interorder alignment was addressed in exceptions. One exception described the recommended decision as claiming to improve price alignment between Orders 1 and 2, and stated that market misalignment is furthered by the proposed changes. The exception continued by describing changes caused by the proposed order amendments in differences in producer prices under the two orders at specific manufacturing plants located in distant zones. Changes in the differences in Class I prices at some of the locations were also described. Exceptions further addressed alleged inequity between Order 2 and Orders 4 and 36 because Orders 4 and 36 would retain their 1.5-cent location adjustment rate. The exceptions stated that the transportation differential rates in other orders also should be examined if alignment of rates were a goal of the decision, and observed a lack of competition between distant-zoned distributing plants in different orders.

Further comments on the issue of alignment noted that the record contains no documentation of any competitive disruption between Orders 2 and 4 that would be caused in New Jersey as a result of increased Order 2 Class I prices at the 1–10 mile zone, and noted that Order 2 handlers receive the benefit of a 15-cent credit on some milk receipts, which Order 4 handlers do not. If there were any possibility of competitive inequities arising from an increase in Order 2 Class I prices to handlers located in the 1–10 mile zone, the exception observed, there would not have been proposals from New Jersey handlers to increase such prices.

One of the exceptions argued that milk from distant zones does not have to be shipped to city locations for fluid use, but is instead delivered to reload plants and fluid plants in distant zones. The exception pointed to testimony by a fluid handler that city handlers find that it does not make economic sense for them to develop milk supplies in the distant areas of the milkshed, and testimony from a witness representing a manufacturing plant operator that handlers who provide milk for Class I use in the city try to ship it from locations as near-in as possible. The comments observed further that it is not necessary to reduce prices on all of the milk produced in distant zones to enable the small percentage of such milk that is needed in the city for fluid use to move there.

The exceptions complained that the recommended decision did not address the intent of some proponents of the proposal to increase rates of transportation differentials for the purpose of removing some of the Order 2 market's distant milk supply. Exceptors claimed that this purpose would be accomplished by reducing distant producers' returns for their milk production to a level which would cause them to associate their milk with another Federal order, and stated that the goals of removing milk from the market and establishing incentives for producers and handlers to ship milk to the city from distant zones are incompatible.

Several fluid milk handlers who operate fluid milk processing plants in the market's 1–10 mile zone complained that they had experienced difficulties in obtaining adequate supplies of milk at reasonable prices. The accuracy of these reports was supported by the fact that "call" meetings were held in September and December 1987 to consider the need for mandatory shipment percentages by country manufacturing plants. In addition, the need for market participants to form an ad hoc group and enlist the services of a middleman to assure fluid milk handlers of an adequate milk supply is beyond the ordinary. The record clearly shows that the actions of this specially-formed group and the people who worked with them, rather than the provisions of the order, assured that no request for milk supplies went unfilled during the period of short production and relatively high Class I use that preceded the hearing.

Class II use by fluid milk handlers of some of their own milk supplies should not make them unentitled to supplementary supplies of milk from manufacturing plant operators and their suppliers. Manufacturing plant operators should not forget that it is the Class I price paid into the pool by fluid processors that generates the uniform price they depend upon to enhance payments to their producers. The "right" such handlers and producers have to share in the market's Class I sales derives from their at-least-occasional participation in supplying milk for fluid use. Assurance that the costs of transporting milk from production areas to consuming centers are reflected in the order's transportation differentials is necessary to make such movements possible.

Exceptors' arguments that fluid handlers testified that they cannot economically procure milk from the market's distant zones, and that handlers try to ship milk to the city from locations as near-in as possible, ignore the fact that inadequate transportation differential rates are a major factor in

making long-distance movements of milk uneconomical. When the combination of milk prices at country locations and hauling costs to city processing plants significantly exceed the value of the milk at city locations under order prices, there can be no question that the procurement of distant supplies of milk is made uneconomical by the terms of the order. The higher premiums to which fluid handlers are subject in order to obtain adequate supplies of milk in the absence of adequate transportation differentials can only serve to create or exacerbate competitive problems. In applying unequally to fluid handlers similarly located, the high premium levels result in unequal costs to handlers who are close competitors.

The alignment of blend prices among orders is not intended to be a function of transportation differentials, and the recommended decision did not claim to have such a goal. However, in view of the active competition for supplies of producer milk between handlers regulated under Orders 1 and 2, it is important that neither of these orders convey inaccurate economic signals to producers regarding the relative value of their milk in the two markets on the basis of location. Therefore, the relative distance from New York City and Boston of the location at which a producer's milk is received by a handler should be reflected in equivalent transportation differentials for these two markets. Those wishing to compare prices paid to producers under Order 1 and Order 2 should bear in mind that the published Order 2 uniform price understates returns to producers by the amount of the 15-cent transportation credit.

The interorder alignment of Class I prices is an appropriate concern in formulating transportation differentials. Under the provisions adopted in this decision, the Class I price difference under Orders 1 and 2 at Pierrepont Manor, the only location used by exceptors as an example of interorder price misalignment at which milk is reloaded and transferred for Class I use, will be reduced by 8 cents. In the discussion of interorder alignment of Class I prices in New Jersey, the example of differing Class I prices under Orders 2 and 4 in the near-in zones referred to the 21–30 mile zone in New Jersey rather than the 1–10 mile zone. Although it is impossible to cite documentation of marketing disruption that has not yet occurred, the heavily populated nature of this primary consuming center and the fact that it is supplied by handlers regulated under both orders strongly suggests that a 13-cent Class I price difference would result in a loss of sales by Order 2 handlers to Order 4 handlers. The proposals by New Jersey handlers that would have resulted in Class I price increases in the 1–10 mile zone would have affected only those handlers processing fluid milk products in New York City, not their competitors located in New Jersey.

The "benefit" of the 15-cent credit to Order 2 handlers on some milk receipts cited by exceptors shows a basic lack of understanding of the workings of Order 2. Although New York-New Jersey handlers do receive a 15-cent credit in the computation of their net pool obligation, that credit is passed through to producers when they are paid. Therefore, the credit to handlers results in absolutely no reduction in their total obligations to the pool and their producers. The exceptions also indicate that exceptors apparently fail to understand the combined effect of the order provisions for determining handlers' pool obligations and payments to producers. Handlers pay for the total amount of Class I milk they use at the Class I price adjusted for the handlers' locations.

The 1.5-cent location adjustment rate effective under Orders 4 and 36 is irrelevant in determining the appropriate rate of transportation differentials for Order 2. There was no testimony in the record upon which this decision is based to indicate that handlers in Philadelphia (or in Pittsburgh or Cleveland, to whom this proceeding did not apply) have experienced any difficulty in obtaining adequate supplies of milk for fluid use under their orders' current location adjustment provisions.

The recommended decision did not address motives of proponents in proposing increased rates of transportation differentials because they were not considered appropriate bases for the adoption or rejection of the proposals. The increase in transportation differential rates is necessary to reflect the cost of moving milk from the distant zones of the market to the primary consumption center. The uniform prices paid to producers are a result of the Class I prices effective at the locations at which Class I milk is used and the percentage of Class I use in the market. Reductions in uniform prices paid to producers in those distant zones may occur as a result of the increased transportation differential rates, but that effect is not the purpose of the increase.

An exception filed on behalf of the 16 cooperative associations stated that the recommended decision was faulty in not adopting the Friendship proposal to apply different rates to prices paid by handlers and to producers for the purpose of adjusting the value of milk in accordance with the location at which delivery of the milk is made. The cooperatives' comments stated that the proposal would facilitate movements of milk for Class I use while avoiding drastic impact upon producers, and should have received more careful consideration. The comments also argue that there is no economic imperative in the statute (presumably the Agricultural Marketing Agreement Act of 1937) or in the Federal order system that demands that producer blend prices and handler Class I prices must be priced in equivalent zones. Other comments included the observation that the Administrator had adopted a sweeping remedy instead of a more refined one (i.e., the Friendship proposal).

As stated in the recommended decision, the record contains no economic justification for adopting different location adjustment rates for prices paid by handlers and to producers. The value of milk delivered to city consumption centers for fluid use is enhanced in proportion to the distance over which the milk must be moved. Therefore, the rate of adjustment, for both handlers and producers, should be directly related to the cost of moving the milk. At the same time, the value of milk delivered by producers should be adjusted according to the location to which it is delivered in proportion to the cost of moving the milk to that specific location.

Failure to adjust prices to producers at the same rate at which handler prices are adjusted will result in an inequitable transfer of the pool proceeds generated by high-valued fluid uses at city locations from the producers whose milk is delivered to city locations to producers whose milk is delivered to nearby country manufacturing plants at a lower hauling cost. The location adjustments in the order serve the purpose of compensating or rewarding producers and handlers for providing an economic service of benefit to handlers (delivery of milk to city locations). In the interests of equity, the producers who actually provide the service to handlers and to the market are the producers who should receive the compensation or reward for doing so.

The exception filed on behalf of Kraft, et al., cited several of the Department's decisions regarding location pricing in other marketing areas, and concluded that the recommended decision failed to follow principles of location pricing

expressed in those decisions. Official notice was taken of none of the decisions cited by exceptors. The only one of the cited decisions referred to in exceptors' brief in this proceeding was used to support arguments other than those made in exceptions. In any case, the marketing conditions existing in other marketing areas at other times cannot be used as the basis for a decision in this proceeding.

Finally, exceptors attacked the adoption of increased rates of minus transportation differentials because the analysis and findings required under 7 U.S.C. 608c(18) for the purpose of establishing prices were not performed on the basis of the record of this proceeding. Amendments to the transportation differential rates of Federal milk orders customarily are done, and were formulated under this proceeding, under the authority of section 608c(5) of the Agricultural Marketing Agreement Act of 1937, which clearly authorizes adjustments to prices paid to producers and charged to handlers on the basis of the locations at which delivery of milk is made to handlers, and not under section 608c(18).

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 price 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 plants 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.

Comments on the recommended decision filed by the New Jersey Milk Industry Association and Dairylea Cooperative, Inc., included exceptions to the Department's failure to change the effective area of the fixed transportation differential from 70 miles to 150 or 180 miles from the basing points. The Association based its argument on the need to attract milk supplies to the New York City metropolitan area. The Association's comments also stated that the plants in Amsterdam and Saratoga that are just outside the 150-mile zone are either of little competitive consequence or part of a vertically integrated operation, and therefore would suffer little "disadvantage."

There is no guarantee that the extra 22 cents paid to producers located within the 1–150 mile zones would cause them to deliver their milk to a city distributing plant instead of to a nearby manufacturing plant. The farm-point pricing aspect of the New York-New Jersey order tends to make producers indifferent to the destination of their milk, but not to the amount of hauling costs that may be deducted for transportation.

Adoption of the proposal would, however, cause a significant transfer of income from producers located outside the 141–150 mile zone to producers located inside its outer limit. The cost to producers located more than 150 miles from the basing points of providing an additional 22 cents per hundredweight to producers located in the 71–150 mile zones would be approximately 5 cents per hundredweight. If the fixed transportation differential were established at the 171–180 mile zone, the cost to producers in the outer zones of providing an additional 22 cents to producers in the 71–180 mile zones of the basing points would be 11–12 cents. While the increase in the zone differential rate in the more distant location adjustment zones is an equitable reflection of the relative location value of milk produced in those zones, the extra reduction in price to distant producers for the purpose of distributing more money from the pool to closer-in producers would be unwarranted.

In addition, fluid milk processors located just outside the 150-mile zone would enjoy a significant competitive advantage in comparison with nearby plants subject to a 22-cent fixed transportation differential in addition to 2.5 cents per zone. While handlers located in New Jersey may not view such a price difference between close competitors located 150 miles from New Jersey as any cause for alarm, it is likely that the handlers affected would be more concerned.

Dairylea's exceptions argued that the hearing record furnished an adequate basis for expanding the application of the fixed transportation differential for the purpose of improving the alignment of producer pay prices under Orders 1 and 2. The comments urged that instead of setting the fixed transportation differential at a specific mileage zone, the differential be associated with particular southeastern New York counties in a zone pricing structure similar to that in the New England marketing area. Dairylea stated that the very limited movement of packaged fluid milk products between central and

eastern New York State would eliminate the problem of competition between nearby handlers on opposite sides of the fixed transportation differential demarkation line. The comments explained that bringing the Albany/Capital District area into the fixed transportation differential area would affect all of the Order 2 producers supplying the substantial fluid market that exists in eastern New York State outside of the 70-mile zone, and thereby improve producer blend price alignment in the common supply area for Orders 1 and 2. Dairylea's exceptions also argued that use of the Order 1 zone 14 as a demarkation line ignores the existence of cooperative manufacturing plants in West Springfield, Massachusetts, and Newington, Connecticut, as well as nonpool fluid plants beyond Zone 14.

While there may be some merit in Dairylea's suggestion, a proposal for such a major restructuring of Order 2 transportation differentials should not be considered without other market participants having an opportunity to provide input. Also, a proposal for the type of zone pricing that exists in the New England market may be more appropriate for an order in which the determination of prices to producers is based on the locations of the plants to which their milk is delivered rather than the locations of the farms on which the milk is produced. The farm-point pricing provisions of Order 2 provide no incentive for a producer or cooperative association to deliver milk to fluid processing plants rather than to manufacturing plants. The order's provisions that require a handler to apply a credit to the producer's hauling deduction based on the difference in zones between the farm and the plant of first receipt only serve to assure that there is no disincentive to deliver milk to city locations for fluid use.

Although there is one pool manufacturing plant inside Zone 14 in Order 1, the structure of location adjustments in that order reflect the service provided by producers located at some distance from the market center in delivering milk inside Zone 14 better than a similar structure in Order 2 would do. The existence of nonpool fluid plants beyond Zone 14 should have no effect on the location adjustment structure of the order. There is no need to assure supplies of pool milk to such handlers. Also, since these handlers currently must have less than 10 percent of their receipts of milk delivered on routes within the marketing area, it is unlikely that they would represent a significant source of competition to pool distributing plants.

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.

An exception to the elimination of minus Class II transportation differentials was filed on behalf of Kraft, Inc., Pollio Dairy Products Company and Friendship Dairies, Inc. The comments argued that plants manufacturing cottage cheese and other soft products in Order 2 are located in the milkshed, and must pay for the transportation of their products over the distance between the plants and the market's consumption center. In other markets, the comments stated, cottage cheese and other soft products are located in or near the market centers, and do not have to be moved there after being processed. The exceptions claimed that the market-wide transportation savings obtained from processing milk at country plants benefits producers and the industry in general, and that the elimination of the minus differentials on Class II milk compounds the economic burden incurred by the adoption of 3-class pricing and the elimination of seasonal Class II price adjustments.

There is no justification for maintaining minus transportation differentials for milk used to produce manufactured products in the distant zones of the market. The location of cottage cheese and other soft product manufacturing plants in the milkshed benefits the operators of such plants at least as much as producers are saved in transportation costs. The manufacture of products such as cottage cheese has the effect of condensing the volume of producer milk that must be transported to the city. The supplies of milk for manufacturing such products in the market's distant zones are cheaper for handlers to obtain than in the near-in zones because the milk does not have to be moved as great a distance before it's volume has been reduced in the manufacturing process. Because the cost of hauling products such as cottage cheese to the market's primary consumption center after the milk's volume has been reduced is less than the cost of hauling the raw milk there to manufacture such products, manufacturing handlers in the distant zones should have an economic advantage over city handlers even without the minus adjustments.

In addition to their advantage in raw product costs, the plants manufacturing soft products in zones distant from the market's center are better-situated than their city counterparts for selling products across a broad geographical area. Contrary to exceptors' claim that producers are benefitted by the minus Class II transportation differentials, elimination of the minus adjustment will result in an increase of approximately 1 cent per hundredweight in the uniform price.

Exceptions filed on behalf of Kraft, Inc., and Pollio Dairy Products Company, and by the New Jersey Milk Industry Association and Dietrich's Milk Products stated that the plus Class II transportation differentials inside the 201–210 mile zone should not be retained if the minus Class II differentials are eliminated. One exception asserted that there is no need to assure inter-market competitive equity between plants regulated under Orders 2 and 4 in zones close to the centers of the marketing areas because there is no evidence of any such competition, and the record shows that there is little soft product manufacture near the city. The exception stated that because the Order 4 6-cent direct delivery differential is effective only within 55 miles of Philadelphia, the Order 2 plus adjustment should not apply outside the 70-mile zone without equivalent charges on milk received by manufacturers located at comparable distances from Philadelphia, Pittsburgh and Boston.

The Association commented that the recommended decision would leave Order 2 with provisions different from those elsewhere in the country, and that the principal Class II and Class III products produced in the affected area between Order 2 and Order 4 would be Class III products, with no effect on any significant amount of Class II products. Dietrich's stated that the plus Class II transportation differential had been removed from Order 1 long ago, and should also be removed from Order 2.

The record of this proceeding does not support the elimination of the plus transportation differentials on Class II and III milk used in the market's close-in zones. The market's statistics indicate that a significant percentage of the milk used in the near-in zones is used in fluid cream products and soft manufactured products in city plants. Testimony in the record places the volume of such use at approximately 20 million pounds of milk per month. In addition, the record shows that there is a nonpool manufacturing plant located in the 41–50 mile zone of the market that uses an equivalent volume of milk for nonfluid products.

The very minor transportation differential rate of 1 cent per hundredweight per 25 miles, which has not been updated for some years, should encourage handlers to move milk to the New York City metropolitan area only for Class I use and maintain manufacturing operations in the market's distant zones. At the same time, the small difference in Class II and Class III prices between the 1–10 and 201–210 mile zones will cover a token percentage of the variable cost of moving milk for unavoidable Class II uses at city plants.

There is no reason to change the location pricing structures of the Order 1, Order 4 or Order 36 marketing areas to match the structure of Order 2. The relative locations of milk supplies and consumption centers in those markets are not at all the same as the juxtaposition of and distances between production and consumption in the New York-New Jersey area. The gradual increase in the Class II and Class III price adjustment from the 201–210 mile zone will assure that there are no significant price differences between handlers located near each other who may be competing for producer milk supplies or for sales ofmanufactured products. It is not possible on the basis of the record of this proceeding to eliminate all Order 2 provisions that differ from other orders.

The Order 2 manufacturing plants located in the 71–200 mile zones are located nowhere near Boston or Pittsburgh. Consequently, there is no reason to consider Class II and Class III price alignment at the 71–200 mile zones with those markets. Order 2 manufacturing plants are, however, located near (and in) the Middle Atlantic market, and price alignment between handlers producing fluid cream products and soft manufactured products under Orders 2 and 4 should be maintained. The record shows only two Order 2 pool manufacturing plants located inside the 201–210 mile zone that are subject to the plus Class II and III transportation differentials. One is located in the 191–200 mile zone, and would be subject to only a 1-cent adjustment. The other is located either just inside or just outside the Order 4 6-cent differential zone and is subject to a 3-cent adjustment under Order 2. Elimination of the plus differential in this case clearly would not improve inter-order alignment.

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 affect 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 number of exceptions to the proposed 13-cent adjustment to the Class I price at the 201–210 mile zone were received. Agri-Mark, Inc., Eastern Milk Producers Cooperative Association, Inc., Dietrich's Milk Products and the 16 Order 2 cooperative associations protested that resulting reductions in producer blend prices in the distant zones of the market would worsen blend price misalignment between Orders 1 and 2. Agri-Mark's comments suggested that instead of adjusting Order 2 Class I price levels downward from the 1–10 mile zone, Class I prices at Boston and Philadelphia be increased by 13 cents, and Dietrich's proposed that the 201–210 mile zone Class I differential be reduced by only 6 cents so that consumers and producers would bear equal burdens of the increased rate of transportation differentials. Comments filed by Dairylea Cooperative, Inc., stated that the recommended decision's changes in transportation differential rates do nothing to enhance producer blend prices while reducing returns to producers located outside the 201–210 mile zone by a combination of the 13-cent reduction in the 201–210 mile zone Class I differential and the increased minus rate of adjustment in transportation differential.

Exceptions filed on behalf of the 16 Order 2 cooperative associations and on behalf of Kraft, Inc., Pollio Dairy Products Company, Friendship Dairies, Inc., and 302 individual dairy farmers who ship milk to those handlers challenged the recommended decision on the basis of other Federal order decisions, lack of notice, and legal requirements of the Agricultural Marketing Agreement Act of 1937 (the A".). The exceptions noted that location adjustments must reflect and be based on economic service of benefit to handlers, and cited a decision in the Texas market in which increases in the difference between the relative values of milk in production and consumption areas resulted in a price increase in the consumption area, rather than a price reduction in the production area.

The comments stated that the notice of hearing contained no proposals to reduce the Order 2 Class I price, and that the Department refused to hear proposals to increase the Class I price differential. The exceptions further took issue with the failure of the recommended decision to conduct an analysis of the factors required to be considered under section 608c(18) of the Act in any change in the level of prices determined by the order. The comments observed that the legal requirement of the Act to explain the changed marketing conditions that required a reduction in the level of the market's Class I price would be difficult in view of the tight supply-demand situation demonstrated in the hearing record.

The appropriate zone to be considered as the basis of the Class I price is the 1–10 mile zone. According to testimony in the record, the 1–10 mile zone is the location at which 80 percent of the Class I milk in the New York-New Jersey market is priced. The U.S. Congress, in revising Class I differentials in a number of different marketing areas in the Food Security Act of 1985, revised the Order 2 Class I differential at the 1–10 mile zone, not at the 201–210 mile zone. Therefore, the 13-cent adjustment of the 201–210 mile Class I price represents only a change in order language necessary to implement the increased rates of transportation differentials adopted in this decision. A similar change was included in a decision updating the Order 2 transportation differential rates in a 1981 decision (46 JR 33008).

The record of this proceeding does not establish any basis for increasing the market's Class I price level. The "tight" milk supply referred to by exceptors resulted in less than 45 percent of the milk pooled under the order during the peak shipping season of September, October and November 1987 being used in Class I. The record shows instead that ample supplies of milk are produced in the marketing area, generated by a blend price that is based on the $3.14 Class I price differential effective at the 1–10 mile zone. The solution to the tight supply of milk for Class I use is not to increase returns to producers, but instead to assure that producers and handlers of milk produced in the more distant zones of the market will find it economically possible to ship milk to the city, either directly from farms or from plants transferring bulk loads of milk.

A Class I price increase in the highest priced locations of all three northeast orders, as suggested by Agri-Mark, would result in a 6-cent per hundredweight increase in returns to producers pooled under the three orders. Such an increase is completely unnecessary. During October, the 1987 month of highest Class I use as a percentage of producer milk for all three orders combined, the percentage of producer milk used in Class I under the three orders was 51.4 percent.

Exceptors' estimates of the impact of the changes in zone transportation differentials are, for the most part, exaggerated. Several of the comments reflect the belief that the entire 13-cent change in the Class I price at the 201–210 mile zone would be passed through as a 13-cent reduction in the blend price to producers in that zone. Other comments refer to a 5-cent change resulting from the Class I price adjustment. The change in uniform prices to producers located in the 201–210 mile zone attributable solely to the 13-cent adjustment in the Class I price differential for that zone will be approximately 5 cents.

However, approximately 3 cents of the impact on uniform prices at the 201–210 mile zone will be offset by the increase in plus zone adjustments on Class I milk and the elimination of minus adjustments on Class II milk outside the 201–210 mile zone, resulting in a net difference in blend prices to producers of approximately 2 cents. This amount represents less than .2 percent of the average uniform price to producers in 1987. During 1987, the basic formula price, upon which both the Class I and Class II prices are based, varied by 70 cents, or 6 percent of its average. Considering the much greater movements in the basic formula price, which reflects national supply and demand conditions for milk, any attempt to determine the effect of a 2-cent difference in blend prices on supply/demand conditions in the New York-New Jersey market would be an exercise in minutiae.

The attempt by exceptors to relate the findings and conclusions of this decision to the market structure and facts of the hearing record of another Federal order market is pointless. The Texas market is composed of several large and widely-dispersed consumption centers located at various distances from the market's primary production areas. The Texas market has limited manufacturing outlets, and a relatively high percentage of Class I use. The situation addressed in the decision referred to in exceptions is very different from the New York-New Jersey market, where one principal consumption center is located at a significant distance from the bulk of the milk supply, and numerous manufacturing plants are distributed throughout the production area. It is not reasonable to expect the Department to reach the same conclusions on two different records setting forth very different marketing conditions

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 within 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 producers 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 cooperative 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 allowances between the market's production areas and those destinations with which the higher costs are associated.

Proponents' assertion that they are competitively disadvantaged by having to 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 proponents' 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.

Exceptions to the recommended decision's proposed disposition of the Dairy Industry Institute's proposal were filed on behalf of the Institute and on behalf of Farmland Dairies, Inc. (Farmland). The Institute's comments asserted that in rejecting the Institute's proposal the recommended decision fails to relate the location value of milk to the costs incurred in transporting it to city locations, and that the minimum pool credit proposed was more than justified by the record evidence. Also, the comments stated, the record clearly shows that for the period prior to the hearing northern New Jersey handlers did not have access to the metropolitan New York segment of the market, and that New York City handlers had not been subject to competition with lower-cost milk from New Jersey. The exceptions urged the Secretary to adopt the pool credit rates originally proposed, and failed to mention the higher rates proposed at the hearing.

Farmland's exceptions stated that the recommended decision supports the adoption of plus adjustments to the Class I price at the city locations for which the Institute proposed pool credits. Farmland argued that the increased rate of transportation differentials adopted for the rest of the marketing area should also result in increased Class I prices at the proposed locations within the 1–10 mile zone.

As noted in the recommended decision, additional transportation costs would more logically (and equitably) be accommodated by increasing the order's transportation allowances effective within the metropolitan area. Adoption of a pool credit for metropolitan handlers would, in effect, give them a cost advantage over other handlers located within the 1–10 mile zone at the expense of all of the producers whose milk is pooled. Also, the extra costs of delivering milk to the New York City metropolitan area apparently are not unique to that area. According to testimony by a Farmland witness, road and bridge tolls, detours caused by bridge construction, and traffic congestion add significantly to the cost of procuring milk supplies for the northern New Jersey portion of the 1–10 mile zone. In addition, extra costs in these portions of the 1–10 mile zone currently incurred by handlers apparently result in those handlers paying prices equivalent to those of a higher-priced zone, with the benefits accruing to the producers who actually deliver the milk. There appears to be no reason for the cost of milk in the New York City metropolitan area to be any less, or any more, than in northern New Jersey. As a result, no change should be made in the relative pricing between these two portions of the 1–10 mile zone.

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 customers' 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 pumped 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 charges 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 area, 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, marketing agreements upon which hearings have been held.

Ruling on Motions

A motion submitted by counsel on behalf of Kraft, Inc., Pollio Dairy Products Company and Friendship Dairies, Inc., requested that the transcripts and exhibits of three "call" meetings held by the market administrator of Order 2 after the hearing in this proceeding and before issuance of the recommended decision, and any related communications pertaining to the meetings and the desirability of mandated performance requirements, be placed in the public record as *ex parte* communications.

The motion is denied on the basis that the "call" meetings were held for the purpose of deciding whether to activate the "call" provisions of the New York-New Jersey order for a particular time period, and only for that purpose. The meetings, and whatever other communications occurred in the administration of the provisions of the order, were not intended to serve the purpose of amplifying the record and were not considered at all in developing the decision.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

In addition to the exceptions addressed in this decision, Farmland Dairies, Inc., requested that the Secretary reconsider his decision not to hear proposals concerning a merger of Orders 1, 2 and 4; and the comments filed on behalf of Kraft, Inc., Pollio Dairy Products Company and Friendship Dairies, Inc., included a suggestion that the hearing be re-opened or that a revised recommended decision be issued.

Proposals to merge the three northeastern orders were not included in the notice of hearing for this proceeding and cannot be considered on the basis of this record. The exceptions and comments filed in response to the recommended decision provide no basis for re-opening the hearing or issuing a revised recommended decision. The record of the proceeding supports the actions taken in this decision in denying or adopting the proposals considered at the hearing.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the aforesaid marketing areas, which have been decided upon as the detailed and

appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register.**

Determination of Producer Approval and Representative Period

May 1990 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the New England and Middle Atlantic marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the attached order as amended and as hereby proposed to be amended, regulating the handling of milk in the New York-New Jersey marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be May 1990.

The agent of the Secretary to conduct such referendum is hereby designated to be Ronald C. Pearce.

List of Subjects in 7 CFR Parts 1001, 1002 and 1004

Milk marketing orders.

Signed at Washington, DC, on: November 30, 1990.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

Order Amending the Orders Regulating the Handling of Milk in the New England, New York-New Jersey and Middle Atlantic Marketing Areas

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the 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) Findings. Public hearings were held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the New England, New York-New Jersey and Middle Atlantic marketing areas. The hearings were held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearings and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the New England, New York-New Jersey and Middle Atlantic marketing areas shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on May 18, 1990, and published in the **Federal Register** on May 25, 1990, (55 FR 21556), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

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 farmers' 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)(1) 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 plant 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' farms 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 farmers' 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 plant 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 other 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, 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 § 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 is 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 § 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 of 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 § 1001.40(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 § 1001.9(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) Each handler shall report 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 paragraphs (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 to 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;

(2) In packaged inventory of fluid milk products at the end of the month; and

(3) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, and any product containing artificial fat, fat substitutes, or 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, 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 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 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(d) 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 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 and in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in 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 § 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 case, 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 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 § 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 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 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 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.

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;

(iii) Packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(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 (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 § 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 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;

(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) 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 (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)(2)(iii), (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 11 and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to 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 the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from 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.

The market administrator shall make the following 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 an other 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 an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

§§ 1001.46, 1001.47 and 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 basic formula 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 pursuant to § 1001.76(b) shall be used.

(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 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.

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 handlers' 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)(2)(iii), (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) * * *

(1) After the allocation step of § 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 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 § 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 the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 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:

(1) 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 bulk fluid milk products or products 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; and

(2) Add 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 packaged fluid milk products that were included in the handler's inventory at the end of the preceding month and classified and priced as Class II 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 administrator 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 payments 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 value is computed pursuant to § 1001.60(f); and

(3) The total hundredweight for which a value 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 § 1001.73, paragraph (a) is amended by changing the words "Class II" to "Class III", and paragraph (b) is amended by changing the reference to "§ 1001.61" to "§ 1001.62."

§ 1006.74 [Amended]

34. In § 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."

35. Section 1001.78 is revised to read as follows:

§ 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.

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

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 paragraph (a) and adding paragraph (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)(9) 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 therefore, 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)(15) 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.

§ 1002.25 [Amended]

43. Section 1002.25 is amended by changing the reference "§ 1002.51" in the introductory text 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 (l) to "paragraph (c)(2)", and revising paragraphs (c), (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 "§ 1002.89" 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 (l) 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 (l) 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 paragraphs (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 packaged inventory of fluid milk products at the end of the month;

(3) In shrinkage assigned to Class I–A pursuant to paragraph (d) of this section; and

(4) 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 order 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 artificial fat, fat substitutes, or 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, 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 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 that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition 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 following shall be determined:

(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 paragraphs (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 paragraphs (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 shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1002.45(a)(17) 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)(8) 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) (13) or (15) 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 transferee 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 the 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 1–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 to 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 remaining pounds of skim milk in Class I–A the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph (a)(4) or comparable provisions of another Federal milk order in the immediately preceding month;

(5) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 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;

(6) 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)(6) or comparable provisions of another Federal milk order in the immediately preceding month;

(7) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in 1002.41(c), but not in excess of the pounds of skim milk remaining in Class II;

(8) Subtract in the order specified below from the pounds of skim milk remaining in 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)(6) 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)(5), (6) and (7) 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).

(9) Subtract in series beginning with Class III from the pounds of skim milk remaining in Class II and 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 II or Class III classification, but not in any case to exceed the pounds of skim milk remaining in such class;

(10) 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;

(11) 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) (4), (6) and (8)(i) of this section;

(12) Add to the remaining pounds of skim milk in Class III the pounds subtracted pursuant to paragraph (a)(1) of this section;

(13)(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)(13)(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;

(14) 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);

(15) 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 (10) 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 paragraph (a)(15)(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-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 paragraph (a)(15)(ii) of this section, should the computations pursuant to paragraph (a)(15) (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-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 paragraph (a)(15)(ii) of this section, should the computations pursuant to paragraph (a)(15) (i) or (ii) of this section 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;

(16) 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);

(17) 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 (a) (13) and (16) of this section;

(18) 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)(18) (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)(7) 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)(13) 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;

(19) 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;

(20) 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";

(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.

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 basic formula 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
January	+.03
February	+.02
March	−.05
April	−.09
May	−.12
June	−.11
July	+.03
August	+.10
September	+.06
October	+.06
November	+.06
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 pursuant to § 1002.81 shall be used.

(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 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.

54. Newly redesignated Section 1002.52 is amended by changing the reference "§ 1002.50a" in the introductory text to "§ 1002.50", changing the word "0.1" in paragraph (d) to "0.5", changing the words "Class I" in paragraph (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:

Freight zone	Cents per cwt.	
Miles	Classes I-A and I-B	Classes II and III
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
221-225	− 5.0	0
226-230	− 5.0	0
231-240	− 7.5	0
241-250	− 10.0	0
251-260	− 12.5	0
261-270	− 15.0	0
271-275	− 17.5	0
276-280	− 17.5	0
281-290	− 20.0	0
291-300	− 22.5	0
301-310	− 25.0	0
311-320	− 27.5	0
321-325	− 30.0	0
326-330	− 30.0	0
331-340	− 32.5	0
341-350	− 35.0	0
351-360	− 37.5	0
361-370	− 40.0	0
371-375	− 42.5	0
376-380	− 42.5	0
381-390	− 45.0	0
391-400	− 47.5	0
401 and over	− 50.0	0

* * * * *

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)(8)(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 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 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 applicable at the 201-210 mile zone and at the 1-10 mile zone.

§ 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)(20)", 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 (4) of this section:

(1) Multiply the pounds of overage deducted from each class pursuant to § 1002.45(a)(20) 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)(8)(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)(8)(iii) 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)(11) and the corresponding step of § 1002.45(b).

* * * *

§ 1002.71 [Redesignated as § 1002.61]

59. Section 1002.71 is redesignated as § 1002.61 and amended by changing the reference "§ 1002.84" in the introductory text 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 paragraphs (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 1002.77]

61. Sections 1002.83 through 1002.89 are redesignated as §§ 1002.70 through 1002.77. The centered heading preceding § 1002.83 will now precede § 1002.70.

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".

§ 1002.77 [Amended]

67. Section 1002.77 is amended by removing paragraph (l).

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)". The centered heading preceding § 1002.90 will now precede § 1002.85.

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 dairy 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 plant to which the milk is diverted.

* * * * *

(f) * * *

(5) Dairy farmer with respect to milk physically 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 assigned 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 of 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 § 1004.21 is added to read as follows:

§ 1004.21 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 § 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 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.

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 paragraphs (b) and (c) of this section;

(2) In packaged inventory of fluid milk products at the end of the month; and

(3) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, and any product containing artificial fat, fat substitutes, or 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, 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 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 classifying 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 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 § 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 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)(13) and the corresponding step of § 1004.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1004.44(a)(8) 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) (12) or (13) 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 another 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 paragraphs (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 another 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 another 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)(8)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining, or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(5) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 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;

(6) 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)(6) or comparable provisions of another Federal milk order in the immediately preceding month;

(7) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1004.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(8) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(6) of this section applies, packaged inventory at the beginning of the month of products specified in § 1004.40(b)(1) that was not subtracted pursuant to paragraph (a) (5), (6), and (7) 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 that were not subtracted pursuant to paragraph (a)(2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(9) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2)(i) and (8)(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), (8)(v) and (9)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(9)(ii) (A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(A) Multiply by 1.25 the 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)(8)(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)(8)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(10) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1004.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a) (4), (6) and (8)(i) of this section;

(11) Add to the remaining pounds of skim milk in Class III, the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(12) Subject to the provisions of paragraphs (a)(12) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity 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 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), (8)(v) and (9) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to paragraph (a)(12) 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)(12) 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;

(13) 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 order 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) (8)(vi) and (9)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(13) (ii), (iii) and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(A) The estimated utilization of skim milk of all handlers in each class, as announced for the month pursuant to § 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 the proration pursuant to paragraph (a)(13)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(13)(ii) of this section, should the computations pursuant to paragraph (a)(13) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that 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)(13)(ii) of this section, should the computations pursuant to paragraph (a)(13) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(14) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant 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

(15) 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)(15) 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)(10)" to "§ 1004.44(a)(13)", 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 basic formula 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 § 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 pursuant to § 1004.74 shall be used.

(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 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 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.

§ 1004.52 [Amended]

87. Section 1004.52 is amended by removing 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)(14) 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)(15) 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)(10) 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)(8)(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 § 1004.44(a)(8)(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)(12) 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.

90. Section 1004.61 is amended by changing the reference to "§ 1004.60(e)" in paragraph (a) (4)(ii) to "§ 1004.60(f)" revising paragraphs (a)(5) and (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 distance 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 an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class 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 transferred 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 plant owned and operated by a cooperative association) and other source milk allocated to Class I pursuant to § 1004.44(a) (8) and (12) 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 removing and reserving paragraph (e).

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ [1] to , all inclusive, of the order regulating the handling of milk in the (name of order) marketing area (7 CFR part [2]) which is annexed hereto; and

II. The following provisions

§ [3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of _____, _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ [3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, the contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

_____
(Signature)

_____
(Seal)

_____
(Name)

_____
By (Title)

_____
(Address)
Attest:
Date:

[FR Doc. 90-28698 Filed 12-10-90; 8:45 am]
BILLING CODE 3410-02-M

[1] First and last sections of order.

[2] Appropriate part number.

[3] Next consecutive section number

federal register

Tuesday,
December 11, 1990

Part III

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Polypropylene, Polyethylene, Polystyrene, and Poly(ethylene terephthalate) Manufacturing Industry; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-3752-2]

RIN 2060-AA37

Standards of Performance For New Stationary Sources; Polypropylene, Polyethylene, Polystyrene, and Poly-(ethylene terephthalate) Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA or the Agency).
ACTION: Final rule.

SUMMARY: Standards of performance to limit volatile organic compound (VOC) emissions from new, modified, and reconstructed process sections at certain polymer manufacturing plants were proposed in the **Federal Register** on September 30, 1987 (52 FR 36678). A new approach for determining which process emissions from polypropylene and polyethylene production would be subject to the proposed standards was presented for public comment in the **Federal Register** on January 10, 1989 (54 FR 890). This action promulgates these standards of performance for polypropylene, polyethylene, polystyrene, and poly(ethylene terephthalate) (PET) plants. These standards implement section 111 of the Clean Air Act and are based on the Administrator's determination that emissions from these polymer manufacturing facilities cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed process sections at these polymer manufacturing plants to achieve emission levels that reflect the best demonstrated system of continuous emission reduction considering costs, non-air quality health, and environmental and energy impacts.

EFFECTIVE DATES: December 11, 1990. These standards of performance become effective upon promulgation but apply to affected facilities for which construction, modification, or reconstruction commenced after either September 30, 1987, or January 10, 1989, as identified in the final rule.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today s notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements. *Incorporation by Reference:* The incorporation by reference of certain publications in these standards is approved by the Director of the Office of the **Federal Register** as of December 7 1990.

ADDRESSES: *Background information document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777 Please refer to "Polymer Manufacturing Industry—Background Information for Promulgated Standards of Performance" (EPA-450/3-89-019b). The BID contains (1) A summary of all the public comments made on the proposed standards and the Administrator's responses to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement, which summarizes the impacts of the standards

Docket A docket number A-82-19, containing information considered by EPA in the development of the promulgated standards is available for public inspection between 8:30 a.m. and 3:30 p m Monday through Friday at EPA s Air Docket (LE-131) room M-1500 1st Floor Waterside Mall 401 M Street SW Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information and official interpretations of applicability compliance requirements, and reporting aspects of the promulgated standards, contact the appropriate Regional, State, or local office contact as listed in 40 CFR 60.4 For further information on the background of the regulatory decisions in the promulgated standards, contact Mr Sims Roy Standards Development Branch, Emission Standards Division (MD-13 U S Environmental Protection Agency Research Triangle Park North Carolina 27711 telephone 919) 541-5263. For further information on the technical aspects of the promulgated standards, contact Mr Les Evans, Chemicals and Petroleum Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5410. For further information on the testing and monitoring requirements of the promulgated standards, contact Mr. Bill Grimley, Emission Measurement Branch, Technical Support Division (MD-14), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-1065.

SUPPLEMENTARY INFORMATION:

I. The Standards

Standards of performance for new sources established under section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated (Section 111(a)(1)).

For convenience, this will be referred to as "best demonstrated technology," or "BDT."

As prescribed by Section 111, promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49220, dated August 21, 1979) that segments of the polymer manufacturing industry contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare and for which standards are to be promulgated. Segments of the polymer manufacturing industry identified include polypropylene, polyethylene, polystyrene, and polyester resins.

The promulgated standards limit VOC emissions from certain process sources in new, modified, and reconstructed affected facilities within polymer manufacturing plants that produce the following basic polymers: polypropylene, polyethylene, polystyrene, and PET. In addition, the promulgated standards apply to certain sources in polymer manufacturing plants that produce copolymers consisting of at least 50 percent weight of ethylene, propylene, or bis-(2-hydroxylethyl)-terephthalate, or at least 80 percent by weight of styrene. The promulgated standards also cover VOC emissions from equipment leaks in all of these plants except those producing PET or PET copolymers. The promulgated standards do not cover manufacturers of elastomers or synthetic rubber.

As in the proposed standards, the limits in the final rule are expressed in terms of total organic compounds (TOC) minus methane and ethane rather than in terms of VOC. As explained in the September 30, 1987, **Federal Register** notice (52 FR 36698), the best systems of continuous emission reduction applicable to polymer manufacturing operations do not selectively control VOC, but rather these control

technologies control all organic compounds. Moreover, the numerical values of the emission limitss were based on total organic data (excluding methane and ethane). Therefore, to reflect accurately the performance of technologies selected as the best systems of continuous emission reduction and to make the emission limits consistent with the data and test methods from which the limits were derived, the standards are expressed in terms of TOC (minus methane and ethane). For the same reason, the test procedures prescribe measurement of TOC (minus methane and ethane). In short, the standards rely on controlling TOC (minus methane and ethane) as the best demonstrated surrogate for controlling VOCs, which react to form ozone in the atmosphere.

The affected facility for process sources of VOC emissions is the "process section" and for equipment leaks of VOC emissions, the "process unit." These are the same affected facility designations as were proposed, although the definitions of the various process sections have been revised for purposes of clarification.

Process Emissions

Background. On September 30, 1987, standards to control VOC emissions from certain polymer manufacturing facilities were proposed (52 FR 36678). The standards proposed were based on an analysis of the environmental, energy, and economic impacts of various levels of emission reduction achieved through the application of various control technologies to reduce emissions. The technologies analyzed for controlling process emissions were selected based on the particular characteristics of the emission streams being controlled. For example, waste gas streams from polypropylene and polyethylene production processes are characterized by the presence of low boiling components, polymerizable materials, and a mixture of VOC's. These characteristics tend to make recovery techniques, such as condensers, impractical. Controlling these streams is more likely to involve combustion techniques. Therefore, combustion technologies, such as flares and incinerators, were analyzed for reducing VOC emissions from these polymer production processes.

To analyze the impacts of applying the various levels of emission reductions, process sections and model plants were developed as representative of production steps and processes found in the polymer industry. A total of five generic process sections and twelve model plants were developed for the four major polymers. In general, increasing levels of control of process emissions were obtained by controlling additional emission streams from process sections or, in the case of condensers, increasing the efficiency of the control device. For each level of control, the Agency calculated VOC emission reduction impacts, annual and capital costs, secondary air quality, energy, and economic impacts, and cost-effectiveness values. Based on these factors, the Agency identified which process emissions from process section in each model plant would be required to be controlled and the level of control reflecting BDT. Such process emissions and process section were then proposed for control in the September 30, 1987, **Federal Register** notice.

The public comment period on the September 30, 1987, **Federal Register** notice closed February 8, 1988. Fourteen comment letters were received, all from industry sources. A wide range of comments were received. Numerous comments focused on the use of model plants as the basis for determining which process emissions from the polypropylene and polyethylene segments of the industry would be subject to the proposed standards. Most of these comments expressed concern over the inflexibility of standards, determined thorugh the analysis of model plants, for dealing with process changes in these two segments of the industry. According to the commenters, such process changes significantly affect the emission stream characteristics. As a result, controls that were identified as BDT for model plants would, in some cases, be unreasonable for processes that did not correspond to the models. Similarly, other processes or streams for which control is reasonable may not be affected by the standards. As a result of information received in these comments, the Agency examined alternative approaches that would ensure that emission streams, for which reasonable controls are available, are required to be controlled. This need existed primarily for polypropylene and polyethylene production processes. The Agency did not propose to extend this new approach to polystyrene or PET production processes. Polystyrene and PET processes are more mature and significant changes are not expected. As such, the model plant approach is a less complex, more direct regulatory approach. A generic approach would be more complicated and potentially less effective for these processes due to the use of recovery-type controls and the difficulty in applying these to combined streams.

On January 10, 1989, the Agency reopened the public comment period for the limited purpose of allowing public comment on a new approach for determining which process emissions from polypropylene and polyethylene production processes would be subject to the proposed standards (54 FR 890). The new approach was developed considering the same types of control techniques as for the model plant approach. Under the new approach, generic emission stream characteristics would be used to make the control determination rather than rely on a fixed set of emission stream characteristics based on model plants. For continuous process emissions, the control determination would be based on either the VOC concentration or annual emissions or both. For intermittent emissions, it would be based on the type of release alone.

Comments received on the January 10, 1989, **Federal Register** notice were generally favorable, although several significant concerns were raised. These concerns were on identifying which intermittent releases would be exempt from control; the VOC weight percent exemption suggested for individual emission streams from modified and reconstructed affected facilities, but not for emission streams from new affected facilities; and the definition of "concurrent" by which emission streams from affected facilities constructed, modified, or reconstructed would be combined in making the control determination. These and other comments resulted in changes to the proposed standards and are discussed below.

Polypropylene and polyethylene. The promulgated process emission standards for polypropylene and polyethylene plants apply to all new, modified, and reconstructed process sections involved in the manufacture of polypropylene, polyethylene, or a polypropylene or polyethylene copolymer. Because of the new approach for determining which process emissions are to be controlled, some polypropylene and polyethylene affected facilities have a September 30, 1987, applicability date and others have a January 10, 1989, applicability date.

The promulgated standards implement the new approach presented in the January 10, 1989, **Federal Register** notice, with several important changes. The basic procedure for determining which continuous process emissions are to be controlled requires combining emission streams within one of three VOC weight percent ranges, calculating the combined stream's weight percent VOC and total annual emissions, calculating a

threshold emission level based on the combined stream's VOC concentration, and comparing the combined stream's total annual emissions with the calculated threshold emission (CTE) level. If the combined stream's total annual emissions are equal to or greater than the CTE level, then all of the individual emission streams that made up the combined stream are to be controlled by 98 percent reduction or to 20 ppm by volume (ppmv), whichever is less stringent. If the combined stream's total annual emissions are less than the CTE level, then only those individual streams with individual flows of 8 scfm or less and with annual emissions of at least 1.6 Mg/yr are required to be controlled at that time. Control of these streams, however, does not need to be by 98 percent reduction or to 20 ppmv. These streams may be controlled in any existing control device. Individual streams with annual emissions less than 1.6 Mg/yr or with VOC concentrations of less than 0.1 weight percent VOC are exempt from control and are not used in any of the above procedures.

The above procedures are essentially the same as that presented in the January 10, 1989, **Federal Register** notice with the following exceptions:

1. The individual weight percent VOC cutoff has been extended to new affected facilities. It was proposed that only emission streams from existing sources that are modified or reconstructed could use this exemption.

2. The specific term "concurrent" has been eliminated in the final rule. However, the final rule requires all emission streams to be subject to potential control if sufficient emissions become available to require control under the new approach regardless of when one affected facility is constructed, modified, or reconstructed relative to another.

3. Emission streams that become subject to BDT under this standard and that are already controlled by a control device that is required as a result of a Federally enforceable rule do not need to be controlled by 98 percent or to 20 ppmv until the existing control device is modified or reconstructed or replaced.

For intermittent emissions from polypropylene and polyethylene sources, the promulgated rule requires control of all intermittent emissions except emergency releases. For purposes of this rule, emergency releases involve, in part, those intermittent releases that are necessary to prevent catastrophic equipment damage or personnel safety hazards, including those necessary to minimize the adverse effects of a runaway reaction such as may occur in a low pressure process, and those releases that occur as a result of decompositions and of attempts to prevent decompositions, such as occur in high pressure processes. Intermittent releases that occur as part of specific system features designed to maintain normal operating conditions in the process vessel are to be controlled. The promulgated rule for intermittent emissions follows more closely the proposed rule in the September 30, 1987, **Federal Register** notice than that rule presented in the January 10, 1989, **Federal Register** notice.

The promulgated standards for polypropylene and polyethylene sources allow affected facilities that are constructed, modified, or reconstructed between September 30, 1987, and January 10, 1989, to be exempt from control if their uncontrolled emission rates are below those uncontrolled threshold emission rates presented in the September 30, 1987, **Federal Register** notice. Emissions from such affected facilities, however, become subject to the standards if the process section's uncontrolled emission rate becomes greater than the uncontrolled threshold emission rate at a later date or if the process section is modified or reconstructed after January 10, 1989.

If the uncontrolled emission rate of an existing facility with a control device is greater than the uncontrolled threshold emission rate and control by 98 percent or to 20 ppmv has been determined to be required under the new approach, the promulgated rule allows such stream to continue to be controlled in its present control device. At such time that the existing control device is modified, reconstructed, or replaced, the vent stream is then required to be controlled by 98 percent or to 20 ppmv.

The promulgated standards for polypropylene and polyethylene contain fairly complex procedures for determining which process emissions are subject to the standards. This is the result of adopting a generic approach. Commenters requested that the Agency clarify this procedure and the standards that are to be met. To meet this request, the Agency developed a series of five flow diagrams, which are presented as Figures 1 through 3. The purpose of these figures is to provide only an overview of the determination procedure for polypropylene and polyethylene process emissions, and do not contain specific details found in the final rule. The following paragraphs summarize the purpose of each figure.

Figure 1 initiates the determination procedure for each process section. Through this figure, affected facilities are identified and separated according to their applicability date (between September 30, 1987, and on or before January 10, 1989, and after January 10, 1989). This figure also includes the exemption step provided to affected facilities with an applicability date between September 30, 1987, and January 10, 1989, and identifies how these emissions can become subject to the rule at a later date (see Block 1.6). For process sections that are identified as affected facilities subject to the standard, Figure 1 directs the user to Figure 2A for continuous emissions and to Figure 3 for intermittent emissions.

Figure 2A is the first of three flow diagrams applicable to continuous emissions. The first step in Figure 2A separates those continuous emissions that are uncontrolled from those that are controlled in an existing control device. This is necessary as the determination procedure is different depending on whether the emissions are already being controlled. If they are, the flow diagram directs the user to Figure 2C. For uncontrolled continuous emissions, Figure 2A continues by showing the exemptions provided for individual emission streams (see Block 2A.5). (Note that an individual stream that is exempted based on its annual emissions or its VOC weight percent becomes subject to the standards at a later date if its annual emissions become 1.6 Mg/yr or greater (if it had been exempted on the basis of the annual emissions exemption) or its VOC concentration becomes 0.10 weight percent or greater (if it had been exempted on the basis of the VOC concentration exemption) (see Block 2A.6).) Once qualifying individual emission streams are exempted, the user is directed to Figure 2B.

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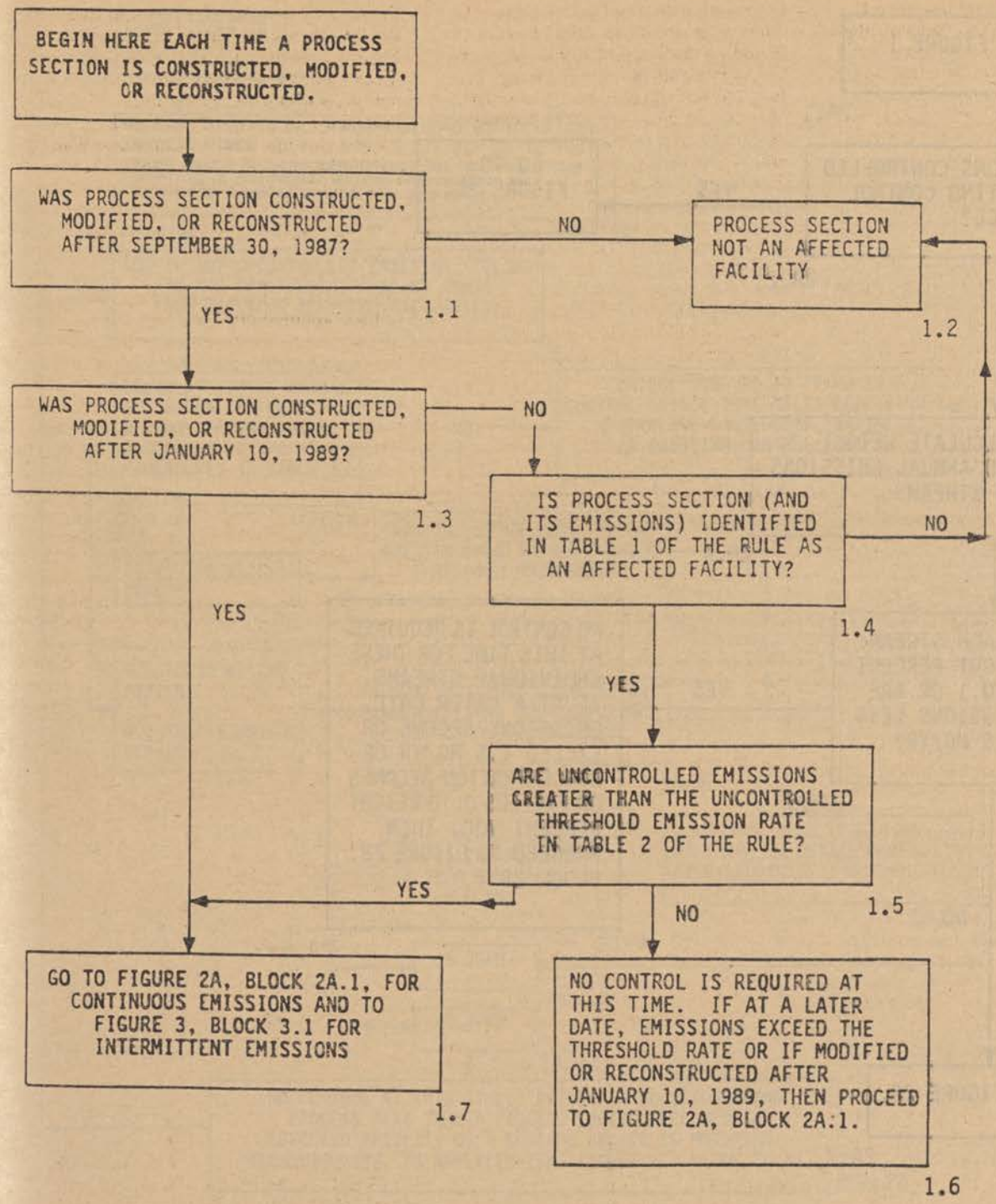


Figure 1. Initial Decisionmaking for Determining Which Polypropylene and Polyethylene Process Sections Are Affected Facilities Subject to the Standards

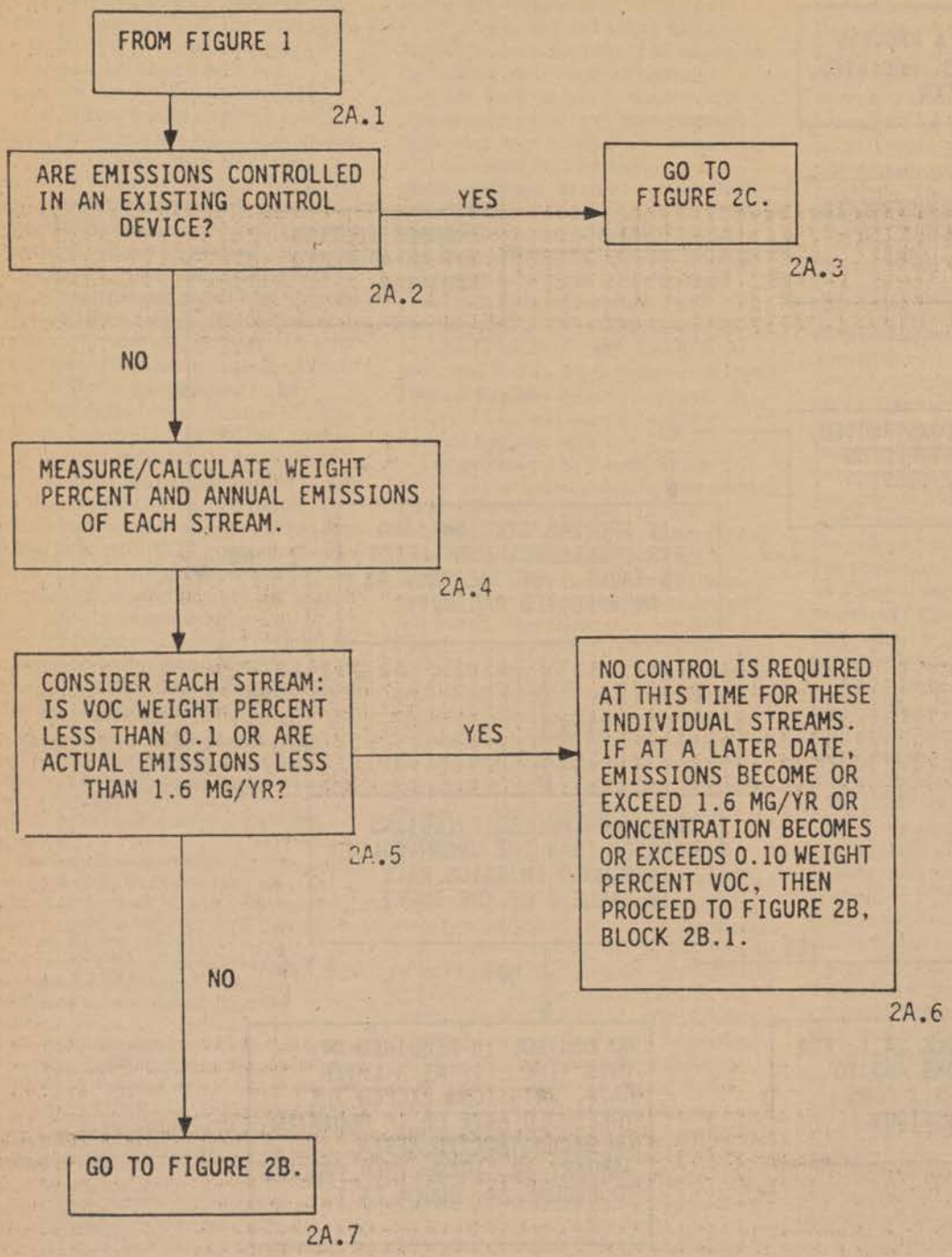


Figure 2A. Continuous Emissions - Separation of Controlled from Uncontrolled Emissions and Individual Stream Exemptions

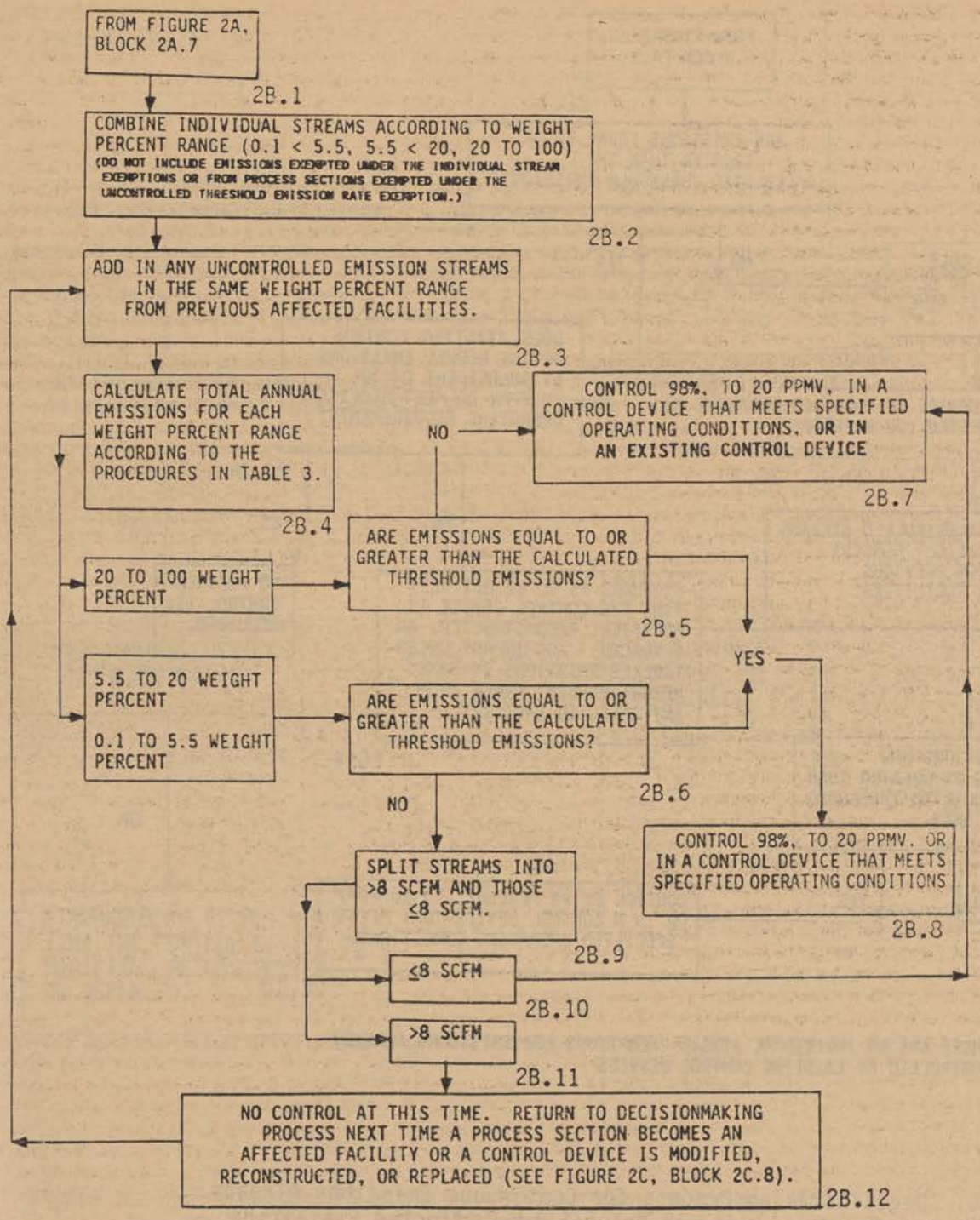
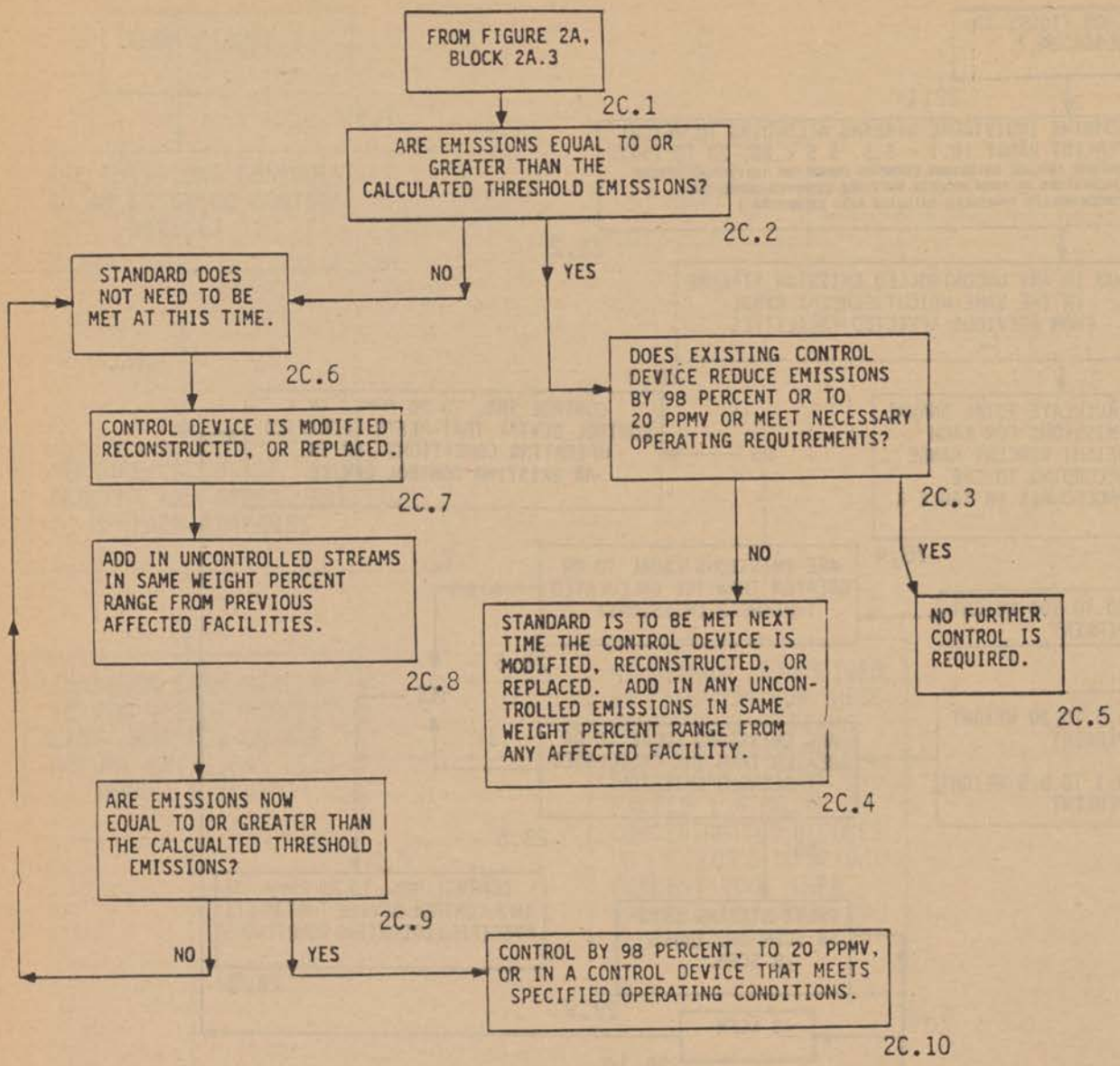


Figure 2B. Decisionmaking Process for Uncontrolled Continuous Emissions from Polypropylene and Polyethylene Affected Facilities



NOTE: THERE ARE NO INDIVIDUAL STREAM EXEMPTIONS FOR EMISSIONS ALREADY CONTROLLED BY EXISTING CONTROL DEVICES

Figure 2C. Decisionmaking Process for Continuous Emissions Already Controlled at Polypropylene and Polyethylene Affected Facilities

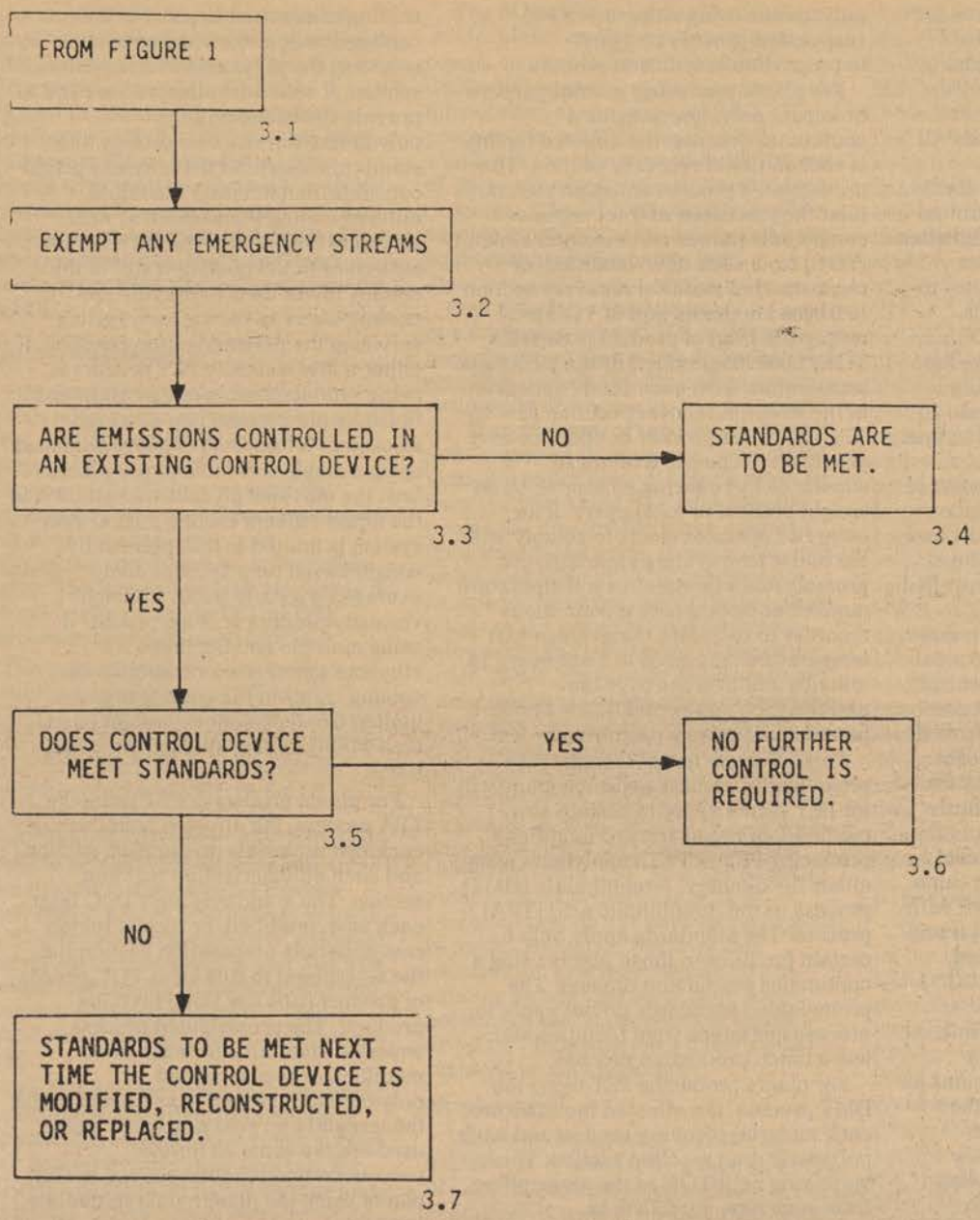


Figure 3. Decisionmaking Process for Intermittent Emissions in Polypropylene and Polyethylene Affected Facilities

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Figure 2B outlines the procedures for combining nonexempt uncontrolled continuous emissions and determining which emissions are to be controlled. This figure corresponds to the steps detailed in Table 3 in the final rule. An important feature of the rule is the "loop" provided between Blocks 2B.12 and 2B.3. In the final rule, uncontrolled emissions that remain uncontrolled after passing through this determination procedure are still subject to control in the future as new process sections become affected facilities.

Figure 2C outlines the procedure for handling emissions that are already being controlled. Note that for these emissions there are no individual stream exemptions as for uncontrolled emissions. The stream characteristics of the inlet stream to the control device are used first to calculate the CTE level and second to compare with the CTE level (Block 2C.2). Also note that uncontrolled emissions are combined with the controlled emissions in one of two ways. First, if the controlled stream is to meet the standards the next time the control device is modified, reconstructed, or replaced (Block 2C.4), any uncontrolled emissions in the same weight percent range as the controlled stream are also to be controlled to meet the standards. Second, if the controlled stream's emissions are less than the CTE level, any uncontrolled emissions in the same weight percent range are combined with the controlled stream (Block 2C.8) if and when the control device is modified, reconstructed, or replaced (Block 2C.7).

Lastly, Figure 3 outlines the determination procedure for intermittent emissions. This procedure is much simpler than for continuous emissions as it is based on stream type rather than stream characteristics. This figure shows the exemption for emergency vent streams and the timing for when the standards are to be met, which depends on whether the intermittent streams are uncontrolled or controlled in an existing control device.

Polystyrene. The promulgated process emission standards for polystyrene plants apply to certain new, modified, and reconstructed facilities producing general purpose (crystal) or impact polystyrene or polystyrene copolymers. The standards apply only to certain facilities in those plants producing general purpose or impact polystyrene using a continuous process. These standards do not affect process emissions from facilities that produce general purpose (crystal) or impact polystyrene or polystyrene copolymers using a batch production process or for facilities that produce expandable polystyrene using either an in-situ suspension process or a post-impregnation suspension process.

For plants producing general purpose or impact polystyrene using a continuous process, the affected facility is each material recovery section. The promulgated process emission standards limit the emissions of total organic compounds (minus methane and ethane) (TOC) from each new modified, or reconstructed material recovery section to 0.0036 kilograms (kg) of TOC per megagram (Mg) of product (0.0036 lbs TOC/1,000 lbs product) or the outlet gas temperature from each final condenser in the material recovery section to −25 °C (−13 °F). An owner or operator may also elect to comply with these standards by reducing emissions by 98 weight percent or to 20 ppmv If an owner or operator elects to comply with the outlet temperature standard, the promulgated rule requires a temperature monitor equipped with a continuous recorder to calculate the average exit temperature measured at least every 15 minutes and average over the performance test period. Each 3-hour period constitutes a performance test.

Poly(ethylene terephthalate) The promulgated process emission standards for PET plants apply to certain new, modified, or reconstructed facilities producing PET or PET copolymers using either the dimethyl terephthalate (DMT) process or the terephthalic acid (TPA) process. The standards apply only to certain facilities in those plants using a continuous production process. The promulgated standards do not apply to process emissions from facilities that use a batch production process.

For plants producing PET using the DMT process, the affected facilities are each material recovery section and each polymerization reaction section. These standards limit TOC to the atmosphere from each new modified, or reconstructed material recovery section (i.e., methanol recovery) to 0.018 kg of TOC per Mg of product (0.018 lbs TOC/1,000 lbs product) or the outlet gas temperature from each final condenser in the material recovery section (i.e., methanol recovery) to +3 °C (+37 °F). The promulgated process emission standards limit TOC to the atmosphere from each new modified, or reconstructed polymerization reaction section to 0.02 kg TOC per Mg of product (0.02 lbs TOC/1,000 lbs product) This limit includes emissions from any equipment used to recover further the ethylene glycol for reuse in the process or sale offsite, but does not include organic compound emissions released to the atmosphere from the cooling tower used to provide the cooling water to the vacuum system servicing the polymerization reaction section. If steam-jet ejectors are used to provide the vacuum in the polymerization reaction section, the standards also limit the ethylene glycol concentration in either the liquid effluent exiting the vacuum system servicing the polymerization reaction section or in the cooling water in the cooling tower used to provide the cooling water to the vacuum system servicing the polymerization reaction. If either a low viscosity PET product is being produced using one or more end finishers per process line or a high viscosity PET product is being produced using a single end finisher per process line, the ethylene glycol concentration in the liquid effluent exiting the vacuum system is limited to 0.35 percent by weight based on a 14-day rolling average on a daily basis. If a high viscosity product is being produced using multiple end finishers, the ethylene glycol concentration in the cooling water in the cooling tower is limited to 6.0 percent by weight based on a 14-day rolling average on a daily basis.

For plants producing PET using the TPA process, the affected facilities are each raw materials preparation section and each polymerization reaction section. The standards limit TOC from each new, modified, or reconstructed raw materials preparation section (i.e., the esterifiers) to 0.04 kg of TOC per Mg of product (0.04 lbs TOC/1,000 lbs product). The promulgated process emission standards for each new, modified, or reconstructed polymerization reaction section in which the terephthalic acid process is being used are the same as for the polymerization reaction section in PET plants using the dimethyl terephthalate process.

For determining compliance with the ethylene glycol concentration standards, ASTM–D2908–74, "Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Chromatography," is used. At lease one sample per operating day is to be collected with an average ethylene glycol concentration by weight calculated on a daily basis over a rolling 14-day period of operating days. Each daily average ethylene glycol concentration so calculated constitutes a performance test. The promulgated standards allow an owner or operator to institute a reduced testing program if the concentration of the ethylene glycol meets certain criteria.

As an alternative to demonstrating compliance with the 98 percent emission reduction requirements contained in any of the standards outlined above, affected facilities may demonstrate compliance with a TOC emission limit of 20 ppmv. Flares may be used to comply with the promulgated standards, provided the flares are operated under conditions, as specified in § 60.18 of the General Provisions, that have been shown to result in a 98 percent reduction in TOC.

Fugitive Emissions

The promulgated standards of performance cover certain equipment leaks of VOC emissions within polypropylene, polyethylene, polystyrene (including expandable polystyrene), polypropylene copolymer, polyethylene copolymer, and polystyrene copolymer manufacturing plants. The equipment leak standards do not cover equipment in PET or PET copolymer manufacturing plants.

The promulgated standards require owners and operators of affected facilities in the plants identified above to comply with 40 CFR part 60—subpart VV—"Standards of Performance for Equipment leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry" (SOCMI) and apply to pumps, valves, sampling connections, pressure relief devices, open-ended valves, and compressors in VOC service within each new, modified, and reconstructed process unit. "In VOC service" means that a fugitive emission source contains or contacts a fluid containing 10 or more percent by weight VOC.

The SOCMI standards that are made applicable to the affected facilities in the plants specified above require: (1) A leak detection and repair program for valves in gas or light liquid service and for pumps in light liquid service; (2) certain equipment for compressors, sampling connection systems, and open-ended valves; and (3) no detectable emissions from pressure relief devices in gas service during normal operation. "In gas service" means that a fugitive emission source contains VOC fluids in the gaseous or vapor state. "In light liquid service" means that a fugitive emission source contains a liquid in which the vapor pressure of one or more of the components is greater than 0.3 kPa at 20 degrees Centigrade, as obtained from standard reference texts or as determined by ASTM Method D-2879, and the total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20 degrees Centigrade is equal to or greater than 20 percent by weight.

The SOCMI standards allow the use of "leakless" equipment for valves, pumps, compressors and sampling connection systems as an alternative to the required equipment and work practices. In addition, the SOCMI standards for valves provide for the use of alternative leak detection and repair programs. The SOCMI standards also contain a procedure for determining the equivalency of alternative leak detection and repair programs.

One change to the proposed application of subpart VV to polymer manufacturing plants has occurred since proposal. In § 60.482-2(b), there are two definitions of when a leak is detected: (1) "If an instrument reading of 10,000 ppm or greater is measured" and (2) "If there are indications of liquids dripping from the pump seal." Certain polymer pumps are designed to purge polymer fluid from bleed ports, thereby allowing small quantities of VOC emissions to escape to the atmosphere. These pumps must use the polymer fluid to provide lubrication and/or cooling of the pump shaft. While the Agency believes that "indications of liquids dripping from the pump seal" should not be applied to such pumps, the 10,000 ppm or greater definition should be retained to ensure these pumps are not emitting significant quantities of VOC. Further, the Agency does not believe that this exemption should be applied to "new" or replaced pumps, because there are pumps available that do not have this designed-in purge. Therefore, the final rule exempts purging from bleed ports in existing pumps that must have such ports from the "indications of liquid dripping" definition until the pump is replaced or reconstructed.

Monitoring

Where an incinerator, a boiler or heater with a heat input design capacity of less than 150 million Btu/hr, or a condenser is used to comply with these standards, a temperature monitor is required. Where a flare is used to comply with these standards, a thermocouple, an ultraviolet sensor, an infrared beam sensor, or similar monitoring device is required to indicate the continuous presence of either the flare flame or each pilot light flame, depending on the types of emission streams being controlled. Where an adsorber is used, a scrubbing liquid temperature monitor and a specific gravity monitor are required. For absorbers, condensers, and adsorbers, an organic monitoring device that indicates the concentration level of organic compounds may be used instead.

The promulgated standards also require owners or operators using a vent system that contains valves that could divert a vent stream from a control device either to: (1) Install a flow indicator, equipped with a recorder, immediately downstream of each valve that if opened would divert the vent stream to the atmosphere or (2) implement monitoring, recordkeeping, and reporting requirements concerning the position of such valves and their car seals.

Exemption and Threshold Levels

These standards contain various types of cutoffs. Some of these cutoffs exempt individual process emission streams and groups of process emission streams from control. Other cutoffs identify threshold emission levels, which are used for determining when process emissions from certain affected facilities are to be controlled. The factors considered in selecting these various cutoff levels are specific to the Polymer Manufacturing NSPS, and would not necessarily be appropriate for other source categories. Likewise, the various cutoff levels selected should not be viewed as benchmarks for other standards. Cutoffs found to be necessary for other source categories will be based on factors relevant to those categories, and may or may not resemble those for the polymer manufacturing processes covered under these standards.

II. Environmental Impacts

The promulgated standards are based on the application of BDT to control VOC emissions from certain polymer manufacturing facilities. To estimate the impacts of the promulgated standards, EPA projected that 85 newly constructed, modified, and reconstructed polymer manufacturing process lines, which is approximately equal to 27 plants, would be affected by the standards during the first 5 years after the effective date of the standards. The EPA estimates that VOC emissions would be reduced in the fifth year following implementation of the promulgated standards by 2.9 to 3.2 gigagrams (G_g) (3,200 to 3,500 tons), an emission reduction of approximately 42 percent from projected emission levels under the regulatory baseline. This range results from assumptions as to how new growth in the industry will occur. These estimates are essentially the same as estimated at proposal.

Solid waste impacts are projected to be minimal. The promulgated standards are projected to result in the first five years in less than 0.1 cubic meter (m^3) (1.2 cubic feet) per year of solid waste, which would be generated through the use of catalytic incinerators at high density polyethylene (HDPE), slurry

process plants. As process sections are modified and reconstructed over time, more catalytic incinerators are likely to be installed accompanied by an increase in solid waste. Solid waste generated by VOC equipment leak detection and repair programs include mechanical seals, seal packing, rupture disks, and valves. The solid waste impact of these programs are not anticipated to be significant because of the ability to recycle metal solid wastes and the small quantity of wastes generated.

Noise impacts attibutable to the promulgated standards is also expected to be minimal. Flares can be a source of noise pollution. Noise generated during flaring results from unsteadiness in the combustion process and steam injection. Almost all polymer production processes already have flares located on site. Many of these flares may be used to meet the promulgated standards. For new flares, by employing proper flare design and site selection, potential noise impacts on community areas surrounding each affected plant should be minimal.

No adverse water impact and radiation impacts are expected to occur as a result of the promulgated standards.

III. Energy Impacts

The promulgated standards would increase energy consumption slightly in most polymer plants through the application of BDT for process emissions. Nationwide, total energy consumption due to process VOC controls is estimated to increase between 11 and 30 terajoules (TJ) per year. The 11 TJ estimate is based upon assumptions concerning how new growth in the industry will occur and the sharing of control devices by individual affected facilities. The 30 TJ estimate is a worst-case estimate in which all growth is assumed to occur as individual process sections and each process section has its own control device. These estimates of increased energy consumption represent small amounts of energy compared to that required to produce a polymer. For example, a HDPE solution process model plant comprised of three process lines would use approximately 24,000 TJ per year. Thus, total nationwide energy consumption is estimated to be between 0.05 and 0.13 percent of the energy consumed in this one model plant.

Application of BOT for equipment leaks of VOC emissions is estimated to reduce VOC emissions that have a total energy value of approximately 66 TJ per year. By taking into account this energy value, the promulgated standards are estimated to result in a net decrease in energy consumption of between 36 and 55 TJ per year in the fifth year after these standards are in place.

IV. Cost Impacts

The costs for these standards have changed slightly since proposal. Capital costs have increased for polystyrene plants and PET plants reflecting revised condenser costs, which, in part, took into account potential freezing problems that required a different condenser system. The annual costs were also revised to reflect revised unit price costs for natural gas and electricity. The net effect of these changes was marginal. Total nationwide capital costs in the fifth year following the promulgation of these standards is estimated to be approximately $4.3 to $4.5 million (compared to $4.5 million at proposal) and annual costs to be approximately $1.3 million (down from $1.4 million at proposal) (reported in June 1980 dollars).

Under the promulgated standards, increased capital expenditures over the baseline range from approximately $4,600 per process line-equivalent in a PET plant using a DMT process to approximately $273,000 per process line-equivalent in a polypropylene plant using a liquid phase process. Annualized cost increases range from about $1,400 per process line-equivalent in a PET plant using a DMT process to approximately $92,000 per process line-equivalent in a polypropylene plant using a liquid phase process.

V. Economic Impacts

Adverse impacts would be minor. If all costs are passed through to the customer, maximum price increases range from less than 0.2 percent, for plants producing PET using a DMT process, to approximately 0.44 percent, for polypropylene plants using a liquid phase process. The Agency has determined that the costs of these promulgated standards will not have any significant impacts on the industry.

The environmental, energy, and economic impacts are discussed in greater detail in the background information document for the proposed standards, "Polymer Manufacturing Industry—Background Information for Proposed Standards," EPA–450/3–83–019a, and in Docket Items IV–B–13 and IV–B–22.

In addition, the incremental cost effectiveness of alternative levels of control were also evaluated in order to determine the reasonableness of control in light of the costs to reduce emissions and to ensure that the controls required by this rule are reasonable relative to other regulations. Additional details on costs can be found in the BID for the proposed standards.

VI. Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (48 FR 12825), March 28, 1983, of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the standards for polymer manufacturing plants recommended for proposal. This meeting was held on April 26, 27, and 28, 1983. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal.

The standards were proposed and published in the **Federal Register** on September 30, 1987 (52 FR 36678) and January 10, 1989 (54 FR 890). The preamble to the proposed standards discussed the availability of the BID, "Polymer Manufacturing Industry—Background Information for Proposed Standards," EPA–450/3–019a, which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the BID were distributed to interested parties.

To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was held on November 16, 1987, at Research Triangle Park, North Carolina. The hearing was open to the public; however, no one presented any comments.

The public comment period was from September 30, 1987, to February 8, 1988 for the September 30, 1987, **Federal Register** notice and from January 10, 1989, to February 21, 1989, for the January 10, 1989, **Federal Register** notice. Some 14 comment letters were received on the first **Federal Register** notice and 11 comment letters on the second notice. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards.

VII. Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from industry and trade associations. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the ADDRESSES section of this preamble. The summary of comments and responses in the BID serve as the basis for the revisions that

have been made to the standards between proposal and promulgation. The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The comments have been divided into the following areas: Basis for the Standards, Control Technology-Process Emissions, Control Technology-Equipment Leaks of VOC, Modification/Reconstruction, Monitoring Requirements, Test Methods and Procedures, Reporting and Recordkeeping Requirements, and Miscellaneous.

Basis for the Standards

Coverage of Processes

Comment: Two commenters (IV-D-2, IV-D-14) were concerned that processes that produce certain elastomers and rubber products would be covered by the proposed standards, and that this would be inappropriate. Commenter IV-D-2 felt that the assumption made by EPA that as long as the proportion of propylene used in the production of polypropylene copolymers is at least 50 percent by weight in the copolymer product, the production processes used to manufacture both the polymer and the copolymer are essentially the same, and the resulting definition of polypropylene would include inappropriately their copolymer production facilities that produced ethylene-propylene terpolymers rubber products, which are considered "elastomers" under industry definitions. This commenter stated that the intent of these regulations is to cover thermoplastics and their manufacturers, and that there appears to be a lack of documentation evidencing studies of the processes of rubber manufacturers in the Agency's published documentation. Thus, this commenter concluded, any regulation of their facilities without a more comprehensive study that includes the specific nature of design and manufacture of synthetic rubber producers in premature and could harm any further expansion projects now under consideration.

Commenter IV-D-14 stated that several of their member companies produce synthetic rubbers using processes entirely unlike those used for production of plastics composed of polyethylene, polypropylene, polystyrene or polybis(2-hydroxyethyl)terephthalate. The commenter noted that the composition and physical arrangement of compounds in the polymer molecule result in physical characteristics that are clearly those of a rubber rather than a "thermoplastic." The commenter pointed out that none of their member companies' ethylene/propylene/diene monomers (EDPM) production facilities were included in the surveys conducted by EPA prior to proposal of these rules. In view of the major differences between the polymerization and finishing operations of the EPDM rubber plants and those of the thermoplastic resin plants, this commenter requested that the proposed standards for polyethylene and polypropylene apply to certain sources in polymer manufacturing plants that produce copolymers consisting of at least 80 percent (rather than 50 percent) by weight of ethylene or propylene, respectively.

Response: The intent of these standards is to cover certain producers of thermoplastic or thermoset resins and copolymers of these resins that are in turn themselves thermoplastic or thermoset resins. The Agency does not intend for these standards to cover synthetic rubber producers, including manufacturers of thermoplastic or thermoset elastomers, such as ethylene-propylene copolymers and terpolymers that are elastomers or rubbers. Resins are thermoplastic or thermoset polymers that are essentially synonymous with the term plastic. Elastomers are also thermoplastic or thermoset polymers, but are capable of returning the their initial form following deformation. Synthetic rubber and elastomer producers, however may still be regulated in the future under this standard or a new standard should the Agency decide such regulation is warranted.

The Agency agrees that the definition of polypropylene in the September 30, 1987, **Federal Register** notice would have subjected certain elastomer and synthetic rubber producers to these standards, because the definition did not contain the clarifying term "thermoplastic". Therefore, the Agency has revised the definition of polypropylene to include the term "thermoplastic." The Agency believes that the revision to the definition of polypropylene limits the scope of these standards appropriately.

Comment. One commenter (IV-D-1) stated that there are more alternative polypropylene technologies than the two listed in BID Vol. I and in the proposed regulations. This commenter assumed that the new source performance standards (NSPS) should be applicable to all polypropylene processes. The commenter then concluded that the NSPS should be amended to include, at least, the "bulk (liquid-phase) polymerization technology." The commenter stated that bulk plant technology, although in principle a liquid-phase polymerization process, is unlike the "traditional" slurry process and hence, conclusions drawn on the basis of the "slurry process" do not apply directly to the bulk process.

Commenter IV-D-45 also noted that in order to determine applicability dates for affected facilities (using Tables 1 and 2 of the proposed regulation), one must still have a clear understanding of which "production process" applies (the applicable model plant) and the definition of "process section" (which equipment falls into which process section), especially where plants have commenced construction, modifications, or reconstruction between the two proposed regulation dates.

Response: The commenter is correct in assuming that the standards proposed in the September 30, 1987, **Federal Register** notice were to be applicable to all polypropylene processes. At that time, the Agency understood that all such processes could be described as either liquid phase or gas phase processes and that the model plants described in BID Vol. I were reasonable representations of those processes upon which to base standards. Comments received on the September 30, 1987, **Federal Register** notice, however, indicated that the polypropylene model plants may not be adequate representations of all processes. As a result of this and other comments, the Agency undertook an analysis to examine alternative ways to determine which process emissions from polypropylene (and polyethylene) plants should be controlled. The results of this analysis were presented in a January 10, 1989, **Federal Register** notice for public comment. The approach selected by the Agency and incorporated into the final rule is independent of the particular process technology used to produce polypropylene or polyethylene. Thus, the non-representatives of the polypropylene, liquid phase model plant presented in BID Vol. I as it applies to the bulk process is no longer a concern.

For polypropylene facilities that are constructed, modified, or reconstructed after September 30, 1987, and on or before January 10, 1989, the owner or operator of such facilities must still determine which process—liquid phase or gas phase—his or her facility falls under for purposes of determining the affected facilities. The final rule requires an owner or operator to select one of the production processes listed in Table 1 of the final rule to apply to his or her facility. The determination of which emissions from these affected facilities

would be controlled are made using the new approach, which is independent of process type, rather than the control/no control decisions that were based on the model plant. However, an owner or operator can still use the uncontrolled threshold emission rates proposed in the September 30, 1987, **Federal Register** notice to exempt these affected facilities from control, if he or she so elects.

Definition of Affected Facility

Comment: One commenter (IV-D-13) stated that the selection of process sections as affected facilities results in unreasonable cost and gives unfair trade advantage to patent holders of these processes which the Agency selected as model plants. The commenter stated that the proposed standards will require companies with existing polymer plants to divide up their plants into process sections and process lines, creating a need to develop expensive new accounting and recordkeeping methods and procedures to determine if modifications occur. The commenter stated that plants are not designed, estimated, justified and built, and cost centers are not usually set up by process sections. A large polypropylene or polyethylene polymer plant may have as many as 10 to 15 affected facilities, according to the commenter, and over the course of a year many small changes may be made to these plants. To evaluate whether a modification that has been made falls under the proposed rules, the commenter stated that completely new accounting systems must be developed and implemented. For existing polypropylene and polyethylene plants, the commenter believes a more reasonable choice would be to designate each process line as the affected facility. The commenter stated that a problem recognized by EPA concerning the choice of process units, i.e., "a process line cannot be determined clearly" (52 FR 36683), is even more of a problem with the selection of process section as the affected facility. Specifically, the commenter pointed out, material recovery is being utilized more and more by the industry as a means of reducing overall emissions. According to the commenter, in the model plants studied by the Agency, material recovery occurred primarily after the reaction section, while modern plants continue the recovery of raw materials throughout the process line, wherever it can be done economically. The commenter concluded that the standards need to be revised to a process line concept.

Response: The main considerations in selecting the definition of affected facility are the application of best demonstrated technology and the degree to which replacement equipment is brought under the standards. As a result, narrower definitions are preferred. This preference can be overcome if analysis concludes that a broader designation would result in greater emission reductions or avoid unreasonable impacts (i.e., costs, energy, or other environmental impacts). The commenter's main point for changing the definition of affected facility is the need by industry to develop and implement completely new accounting systems to track costs for as many as 10 to 15 affected facilities in a large polypropylene or polyethylene plant. The commenter also believes that defining process sections is even more difficult than defining a process line and refers to changing practices of material recovery in the industry.

The Agency disagrees with the commenter on both points. The imposition of new regulations on the industry would likely require some plants to develop new accounting systems to track modifications and reconstructions whether the definition of affected facility is "process section" or "process line." Furthermore, under either definition, the owner or operator would still need to track all changes. The only difference is the number of affected facilities that would be tracked. On this issue, the commenter claims that 10 to 15 affected facilities is too many. The Agency simply disagrees with this statement. The Agency rejected designating each individual emission point as an affected facility because a typical plant may have as many as 40 individual process emission points; a large plant may have substantially more. In terms of process sections, the commenter notes that a large plant may have 10 to 15 process sections; a typical plant would likely have fewer. The number of process lines at any plant will always be less than the number of process sections; but, the Agency is not convinced that at large plants 10 to 15 affected facilities is unreasonable.

With regard to the second point, the commenter claims that the definition of "process section" is even more of a problem than that of a "process line." The Agency again disagrees. The example provided by the commenter may not match the material recovery section of the model plant, but that is irrelevant to the definition. The concept of material recovery is the key aspect of identifying the material recovery process section or material recovery process sections at a plant. (The Agency has revised the definitions of the process sections to help clarify the placement of equipment in the appropriate process section (see § 60.561, Definitions, of the final rule and § 2.2, Definition of Affected Facility in the BID for the promulgated standards).) Further, the Agency identified a major conceptual problem with trying to define a "process line," where equipment was shared between two otherwise distinct process lines. The commenter offered no suggestions as to how to deal with that problem.

In summary, the Agency finds no reason to change the definition of affected facility for process emissions.

Model Plant vs. Generic Approach

The majority of comments received dealt with the appropriateness of using model plants as the basis for determining which process emissions from polypropylene and polyethylene plants would be subject to the standards. Based on these comments, the Agency has adopted a "generic" approach in the final rule, which is basically the same as that approach presented in the January 10, 1989, **Federal Register** notice reopening the public comment period.

Comment: Several commenters (IV-D-6, IV-D-7, and IV-D-8) stated that, in many cases, the model plants used to develop this standard do not adequately reflect current operation of manufacturing plants. For example, Commenter IV-D-7 referred to the model plant for low density polyethylene (LDPE) based on the UNIPOL process. This commenter noted that the model plant did not consider the modified UNIPOL process that has a pelletizer section added and the linear low density polyethylene (LLDPE) solution process. The commenter stated that emission characteristics differ significantly from the model plant, but are controlled the same. The commenter then stated that the gas phase process for polypropylene failed to consider emergency atmospheric vents that are used on newer plants. Therefore, Commenter IV-D-8 suggested that these model plants be reviewed to ensure that they are representative of operating plants throughout the industry. Similarly, Commenters IV-D-6 and IV-D-8 stated that there are several aspects of the fluid bed gas phase polyethylene process model plant (used to describe the LDPE low pressure and HDPE gas phase processes) that do not reflect actual current operations. A number of specific discrepancies (and the changes suggested by Commenter IV-D-8) were identified by the commenters.

Commenter IV-D-8 also stated that by using reaction mechanisms as the models for developing the NSPS control requirements EPA has tailored the rule to these particular patented processes and that this provides an unfair advantage for both the licensors and licensees of those technologies because the sale of licenses is due, in part, to the ability of a process to comply with applicable environmental standards. The commenter pointed to the low pressure, LDPE process as the best example. The commenter stated that when the model plant for this process was developed, the only process in use was a fluid bed gas phase facility licensed by a major U.S. chemical company. Since that time, the commenter continues, both a slurry and a solution process have been revised to produce the linear low density product, and a new gas phase facility licensed by a major British petrochemical company is currently under construction. According to the commenter, these newer processes differ greatly from the low pressure process that the Agency considers state-of-the-art. The commenter notes that if the NSPS is promulgated as written, it will require that similar new installations, as well as existing units that are modified or reconstructed, be equipped with emission controls designed specifically for the fluid bed gas phase facility. The commenter suggests that the economic penalty resulting from this action be considered before the regulation is finalized.

This commenter then suggested that it might be more appropriate for EPA to establish control requirements based on the system pressure and process type rather than the specific technology used because system pressure (not reaction mechanism) is the primary factor influencing emissions from polyolefin manufacturing facilities and will determine the relative ease at which unreacted raw materials are removed from reacted mixtures. The commenter also stated that system pressure will also be a factor in defining the process step from which the unreacted raw material will be emitted, noting that the higher pressure processes tend to hold on to the unreacted materials longer, thereby yielding greater emissions in later process steps (i.e., product storage).

The commenter illustrated this suggestion by breaking the polyethylene processes into two broad classes—high and low pressure. Under the low pressure classification, the commenter indicated that there are presently three commercial processes—(1) Gas phase, (2) liquid slurry and (3) liquid solution. According to the commenter, each of these processes in the newer and more recently modified plants has the capability of manufacturing both HDPE and LDPE. Under the high pressure classification, the commenter indicated that there are presently two commercial processes—(1) tubular and (2) autoclave—both of which manufacture conventional LDPE.

The commenter pointed out that under the proposed regulation, if these low pressure solution or slurry process plants manufacture LLDPE, then they are grouped with the gas phase model plant, while if they manufacture HDPE, they are grouped with either the HDPE solution model or the HDPE slurry model. The problem or inconsistency with this result, according to the commenter, is that from a product, process, and emissions point of view, when a solution plant manufactures LLDPE it actually more closely resembles the HDPE solution model and when a slurry plant manufactures LLDPE, it more closely resembles the HDPE slurry model than the gas phase model plant. Finally, the commenter pointed out that the product finishing areas of modern solution and slurry LDPE plants resemble the HDPE solution and HDPE slurry model plants much more than they do the gas phase model plant.

Commenter IV-D-6 stated that there are no intermittent (non-emergency) vents from the product finishing and product storage process sections in high pressure, LDPE plants. This commenter pointed out that continuous emissions from these two process sections were not proposed for control and felt, therefore, that these sections should not be considered as affected facilities.

Response: These comments were made in response to the September 30, 1987, **Federal Register** notice. The Agency took these comments under consideration and as a result of extensive analysis presented in the January 10, 1989, **Federal Register** notice, a new approach for determining which process emissions from all polypropylene and polyethylene plants would be subject to control. The new approach encompasses all emission streams and process sections in these types of polymer plants as an integral part of the new approach. The new approach does away with the need to define model plants and the Agency determined it was unnecessary to revise the model plants. Under the new approach, it may be possible that certain processes do not have one type of emissions from certain process sections or lack one of the basic process sections. It is not the intent of the new approach to identify such specific situations, thereby potentially limiting its applicability, if not now, then in the future as processes change. Therefore, the Agency has retained as designated affected facilities under the new approach all process sections and emissions from polypropylene and polyethylene plants, as was presented in the January 10, 1989, **Federal Register** notice.

Low VOC Concentration Streams

Comment: Three commenters (IV-D-6, IV-D-8, IV-D-13) expressed concern over requiring control of dilute streams. Commenters IV-D-6 and IV-D-8 stated that the Agency has not demonstrated that using a device that is 98 percent efficient or reducing the TOC concentration to 20 ppmv on a dry basis (corrected to three percent oxygen content) is either possible or economically reasonable for dilute gas streams. The commenters noted that control of dilute streams has become much more significant since the industry now relies more heavily on material recovery for control and, as a result, the extent to which low concentration (TOC) streams now exist in these processes was not anticipated and the difficulty and expense involved in controlling these streams was not considered by EPA. Commenters IV-D-8 and IV-D-13 concluded, that, unless EPA can establish the availability and cost effectiveness of controls for dilute gas streams, controls should not be required.

Commenter IV-D-8 also stated that if BID Vol. I did in fact establish that 20 ppmv is the lowest VOC concentration achievable by combustion of gas streams containing less than 2,000 ppmv VOC, then the lowest achievable VOC concentration is controlled far greater than the best technology system called for by Section 111 of the Clean Air Act.

Finally, the commenters suggested that EPA should also establish a procedure in the regulation that would exempt any dilute concentration stream in any affected facility from control if it can be shown that control of that stream is not cost effective. Commenter IV-D-8 suggested as one possible way to do this is to consider the application of a Total Resource Effective (TRE) Index to the subject vent streams. This was also suggested by the other two commenters. If a suitable alternative test cannot be provided, the commenter (IV-D-8) continued, EPA should exempt all low concentration streams from control in this standard using the same rationale it

used to exempt the continuous vent streams from the product storage bins.

Response: The BID for the proposed standards summarized information contained in Docket Items II-B-4 and II-B-5. These docket items contain the conclusions reached by EPA concerning thermal incinerator performance over a number of tests. The Agency believes that the conclusions reached in those docket items are still valid and support the proposed standard. Furthermore, the new approach presented in the January 10, 1989, **Federal Register** notice and adopted in the final rule considers a wide range of low VOC concentration streams and the cost of their control for determining the level of emissions necessary for control to be cost effective. The final rule incorporates a low VOC concentration exemption for new and existing affected facilities.

With regard to specific points raised by the commenters, one commenter (IV-D-8) suggested that 20 ppmv is more stringent than the best technology system called for by Section 111 of the Clean Air Act [presumably calculating 99 percent reduction (2000-20/2000=0.99)], which is more stringent than the 98 percent destruction. The commenter is incorrect, but the Agency understands the confusion. In evaluating the performance capabilities of incinerators, the Agency examined a large number of streams that had combustion air added to them prior to being combusted. For these streams, the tests showed a leveling off at 20 ppmv at the outlet when the concentration of streams with combustion air fell below 1,000 ppmv. In other words, 98 percent destruction was still being achieved by emission streams with combustion air that had VOC concentrations down to 1,000 ppmv. Many of the streams examined, however, required combustion air to be added to them. The amount of combustion air required typically reduced the VOC concentration by one-half. Thus, 2,000 ppmv of VOC before combustion air is required could be incinerated by 98 percent (on a weight basis). In summary, the 20 ppmv standard does not require a greater degree of control than the best technology system, which is 98 percent destruction by weight.

Comment: Four commenters (IV-D-39, IV-D-43/IV-D-50, IV-D-44, IV-D-45) expressed concern over the lack of an exemption for streams with less than 0.1 weight percent VOC from new affected facilities. The commenters noted that the Agency's reason for excluding new affected facilities from the low VOC concentration exclusion was to preclude operators from purposefully diluting streams to benefit from the exemption. Commenter IV-D-39 pointed out that "intentional dilution is circumvention of control, which is already forbidden." The commenters all believed that the lack of this exemption would result in the imposition of controls that were not cost effective. Commenter IV-D-43/50 identified several reasons as to why very low VOC concentrations (0 to 5 percent of the lower explosive level (LEL)) are found in the industry and stated that EPA should not require companies to compromise safety by requiring higher VOC concentrations when history has led industry to use more dilute levels to ensure employee safety.

As a group, the commenters recommended that EPA use the same procedures for determining control of dilute VOC streams (<5.5 weight percent VOC) for new affected facilities as it did for modified and reconstructed facilities, and the EPA promulgate the same provisions for determining control required for new facilities as it has proposed for modified and reconstructed facilities. Commenter IV-D-45 stated that not to do so would subject the proposal to allegations that it is not representative of all affected facilities in the categories being regulated, hence defective.

Response: The Agency has carefully considered this issue. The Agency is still concerned that new facilities could be designed so as to "take advantage" of a low VOC concentration cutoff, and at less expense than the cost of controlling the streams. One commenter (IV-D-43/50) indicated that the Agency could compare the purge air rates of a new facility with existing rates. The Agency agrees that this could be a useful mechanism to evaluate whether a company is trying to intentionally dilute the stream to circumvent the rule. The Agency is concerned that this is not necessarily applicable in all cases, either because it is a first time facility for an owner or operator or because its technology is sufficiently different from the technology at existing facilities that a comparison is inappropriate. Another commmenter (IV-D-45) pointed out that the nature of storage bin purges are such that the VOC concentration is initially high and drops over time, and that such equipment and air purges are designed so that the maximum concentration would be between 20 and 25 of the LEL. The Agency believes that recognition of this design feature is a useful tool for evaluating whether "to much" dilution is taking place. This again is somewhat limited in that not all dilute streams will have VOC concentrations that vary as dramatically as might occur in storage bins. On the other hand, designing storage bin air purge rates so as to have maximum VOC concentrations at 20 and 25 percent of the LEL makes it more difficult to justify streams that are diluted so that the maximum VOC concentration is significant below this level. By examining these and other items (e.g., design criteria for pneumatic conveyors), the Agency now believes that there are a sufficient number of indicators that can be used to judge whether intentional circumvention is being practiced at new facilities. Therefore, the Agency has extended both the VOC concentration exemption and the calculated threshold emission equations used for existing affected facilities to new affected facilities.

Applicability of Generic Approach

Comment: One commenter (IV-D-44) stated that the model plant approach, contained in the September 30, 1987, proposal, excluded certain process sections from being affected facilities for both continuous and intermittent emissions, and that the January 10, 1989, proposal appears to provide an exemption for only facilities exempted by Table 1. According to the commenter, it would be unfair to penalize projects which commenced construction, modification, or reconstruction under this September 30, 1987, guidance and on or before the January 10, 1989, proposal, which were not designated as affected facilities in the September 30, 1987, proposal. The commenter then stated that the Agency recognized (54 FR 905) that certain emissions and process sections not required to be controlled under the standards proposed on September 30, 1987, may be required to be controlled under the new approach and therefore, the Agency proposed to resolve this potential compliance problem by proposing a new applicability date (i.e., January 10, 1989) for those facilities that would have been excluded under the original proposal, but subject under the new approach. The commenter recommended that the model plant approach (September 30, 1987, proposal) should be the governing standard for polypropylene and polyethylene construction, modification, and reconstruction projects which can be shown to have commenced after September 30, 1987, but on or before January 10, 1989.

Response: The January 10, 1989, **Federal Register** notice does what the commenter recommends in Table 2 of the regulation portion of that notice. Table 2 lists all the emission and process sections that were excluded as

affected facilities in the September 30, 1987, notice and applies a January 10, 1989, applicability date to these emissions and process sections. Thus, as indicated in the January 10, 1989, **Federal Register** notice and as provided for in the final rule, only those process sections identified in the September 30, 1987, **Federal Register** notice are affected facilities when constructed, modified, or reconstructed after September 30, 1987, and on or before January 10, 1989, for the appropriate continuous or intermittent emissions. It should be noted that the procedure for determining control or no control of the emissions from these process sections is the "generic" or new approach. The uncontrolled threshold emission rates proposed in the September 30, 1987, **Federal Register** notice, however, can still be used for these affected facilities, if an owner or operator so elects, to exempt individual process sections from control. (Note: Process sections that are exempted on the basis of an uncontrolled threshold emission rate become subject to the standards if the uncontrolled emissions exceed the uncontrolled threshold emission rate at a later date or if the process section is modified or reconstructed after January 10, 1989.)

Comment: One commenter (IV–D–5) stated that it is possible for equipment to be designed to produce more than one of the polymers covered by the proposed standards. The commenter pointed out that the preamble indicates that merely switching production from one type of polymer to another would not be classified as a "modification" as long as the original equipment was designed to accommodate both products. The commenter requested clarification as to which category of polymer process (and thus standards) would be applicable to new facilities that are designed to produce more than one polymer using the same process equipment

Response: The situation described by the commenter had not been envisioned by the Agency when the standards were proposed on September 30, 1987. Where a new facility is constructed, modified, or reconstructed after January 10, 1989, the situation described by the commenter does not exist because the same procedure is applied for determining control regardless of whether a LDPE, HDPE, or polypropylene product is being produced. However if a facility is built after September 30, 1987, and on or before January 10, 1989, the standards to be met could be different where that facility is designed to produce more than one polymer (e.g., HDPE and LDPE) as different process sections (and their emissions) were designated as affected facilities depending upon whether HDPE or LDPE was being produced. As presented in the January 10, 1989, **Federal Register** notice, the new approach did not guide an operator or owner in determining which process sections are to be considered affected facilities for those process sections constructed, modified, or reconstructed on or before January 10, 1989, where two types of polymers (e.g., LDPE and HDPE) are produced in the same equipment.

In addition, the uncontrolled threshold emission rate to be applied in exempting emissions from control differ depending on whether HDPE or LDPE is being produced. The January 10, 1989, **Federal Register** notice allowed owners or operators the option to exempt from control emissions that under the new approach would require control, but could be shown under the model plant approach to be exempt from control through the use of the uncontrolled threshold emission rate exemption. (Note: Process sections that are exempted on the basis of an uncontrolled threshold emission rate become subject to the standards if the uncontrolled emissions exceed the uncontrolled threshold emission rate at a later date or if the process section is modified or reconstructed after January 10, 1989.)

The Agency considered several options to clarify which process sections and uncontrolled threshold emission rates are to be used where a facility is designed to produce more than one polymer using the same process equipment. Of the options considered, the Agency selected the option that would allow the owner/operator to select one model plant (presumably the one that most closely matches the hybrid facility) for the purpose of determining the affected facilities with a September 30, 1987, applicability date and use the uncontrolled threshold emission rates for those process sections as identified in the September 30, 1987, **Federal Register** notice.

Comment: Three commenters (IV–D–7, IV–D–8, IV–D–13) recommended that any existing facility which becomes modified should not have to meet the requirements of section 60.562–1 if the facility's existing emissions (controlled or uncontrolled) are already equal to or less than the rates in Table 1 of the proposed standards. The commenters stated that proposed exemption rates failed to consider that there are some existing facilities, which will become modified, that are already achieving significant emission reductions through existing State and prevention of significant deterioration permits, and that additional controls are likely to be installed on existing facilities as a result of State Implementation Plan revisions for ozone nonattainment areas.

Another commenter (IV–D–47) stated that the criteria for determining applicability should not be termed "uncontrolled emissions," but "Federally enforceable emissions limits" in order to allow credit for the emissions controls that have already been required by State Air Pollution Control Agencies.

Response: The Agency agrees that the regulation needs to take into account emission streams that are already controlled as a result of State regulations, especially those that are Federally enforceable. The promulgated regulation requires an owner or operator to examine the uncontrolled emissions (i.e., those that would be emitted to the atmosphere in the absence of an add-on control device). Where an emission stream in an affected facility is controlled by an existing control device (i.e., one that was operating before September 30, 1987, or one that was operating between September 30, 1987, and January 10, 1989, on emissions from a process section that was not identified as an affected facility in the September 30, 1987, **Federal Register** notice), the inlet conditions to the control device would be examined to determine whether that emission stream is required to be controlled by BDT. Individual streams that are vented to the same control device constitute a single stream. The following describes how control determinations are to be made for controlled streams.

For polypropylene and polyethylene affected facilities with an applicability date of September 30, 1987, but before January 10, 1989, the inlet emission rate is compared to the uncontrolled threshold emission rate for the appropriate process section and type of emission (i.e., continuous or intermittent). If the inlet emission rate is equal to or less than the corresponding uncontrolled threshold emission rate, no further control is required. However, if the inlet emission rate were to exceed the uncontrolled threshold emission rate at some time in the future, then the new approach for determining which process emissions are required to meet the standards, as discussed in the following paragraphs, would be used to redetermine whether these emissions need to be controlled to meet the standards in the final rule. The new approach would also be used in those instances where the inlet emission rate

is greater than the corresponding uncontrolled threshold emission rate.

For polypropylene and polyethylene affected facilities with a January 10, 1989, applicability date and for those facilities identified above, the new approach would be used. Under the new approach, the annual emissions of the inlet emission stream would be compared to the CTE level, which would be calculated based on the TOC weight percent of the inlet stream.

If the emissions (Mg/yr) of the stream entering the control device are greater than or equal to the CTE level, then that stream is subject to BDT (98 percent reduction, 20 ppmv, control in flare meeting the specified operating conditions). If the existing control device is meeting BDT, then no further control of the stream (or combined streams) is required. If the existing control device is not meeting BDT (e.g., only achieves 90 percent reduction), then the emission stream is required to be controlled to BDT at the next available opportunity. The Agency considers this to be a reasonable approach because the cost of immediately retrofitting the control device would be high compared to the incremental emission reduction obtained during the interim period. The next available opportunity constitutes the next time the existing control device is reconstructed or replaced or its operation is changed as the result of changes in State or local requirements. At such time, any uncontrolled emissions in the same weight percent range from any affected facility are also required to be controlled.

If the emissions (Mg/yr) of the stream entering the control device are less than the CTE level, BDT is not required at that time. Whenever the existing control device is reconstructed, replaced, or changed (as discussed above), the controlled stream is reevaluated to see if BDT is required by combining its annual inlet emissions with the annual emissions of any uncontrolled vent stream within the same weight percent range and comparing the combined emissions to the CTE level, which is calculated based on the TOC weight percent of the combined emissions. If these combined emissions are now equal to or greater than the CTE level, BDT is required for the controlled and uncontrolled vent streams.

It is important to note that the "delay" in applying BDT to a controlled stream does not affect the timing for applying BDT to uncontrolled emission streams. Application of BDT is required for all uncontrolled emissions as soon as the total annual emissions for a combined stream (or single stream) are equal to or greater than the CTE level for the weight percent.

For all polystyrene and PET affected facilities, if the inlet emission rate is less than or equal to the uncontrolled threshold emission rate, then the existing control does not need to be BDT. If the inlet emission rate is greater than the uncontrolled threshold emission rate, then the stream is required to meet BDT at the next available opportunity (as discussed above).

Control Technology—Process Emissions

Intermittent Emissions

Comment: Commenters identified several concerns related to the January 10, 1989, **Federal Register** notice regarding the proposed generic approach for determining which intermittent emissions from polyethylene and polypropylene plants would be required to be controlled. Commenter IV-D-43 pointed out that the regulation presented in the January 10, 1989, **Federal Register** notice, which now requires that intermittent vents in an affected facility be combusted by a flare, allows an exemption for decompositions, but no longer exempts emergency intermittent streams [§ 60.562-1(a)(2)] as was provided for in the September 30, 1987, **Federal Register** notice. The commenter stated that the exemption for emergency vents should be retained for reasons of personal safety, lack of available technology, and cost. Primarily for these reasons, the commenters also expressed concern over the definition of decomposition.

The following paragraphs summarize these comments into one of three categories: (1) The availability and adequacy of technology for controlling all intermittent releases other than decompositions; (2) the cost of controlling emergency releases other than decompositions; and (3) the definition of "decomposition". For additional detail, please refer to section 2.6.6, Emergency Stream Exemption, in Chapter 2, and section 3.3, Intermittent Emissions, in Chapter 3 of BID Vol. II.

Control technology. Several commenters questioned the availability of controls for non-decomposition emergency releases and the safety of requiring controls for such releases. Commenters made this comment primarily in reference to high pressure releases from the LDPE, high pressure process.

Commenter IV-D-46 stated that facilities required to capture non-decomposition emergency releases in a high pressure plant would likely have to design to criteria for facilities designed to capture decomposition emissions, because decomposition emissions are going to exit through the same emergency release system (i.e., open dump valves or blown rupture discs). According to the commenter, a containment system to capture a high pressure emergency release would create an undesirable safety risk because of the enormous size of the system and the possibility of overpressurization or internal ignition that could cause a catastrophic explosion. To minimize these problems, the commenter stated that an enormous vent collection system would be required to collect the emergency release and feed it to a flare, and each emergency vent collection system would require a sophisticated polymer filtering system that would not create backpressure in the system. The commenter stated that they were not aware of any such system in this service. Commenter IV-D-47 stated that, until technology to control such releases is developed, safety concerns should mandate venting such releases to the air.

More generally, Commenter IV-D-44 stated that the requirement that each intermittent vent stream other than decompositions be controlled does not take into account that some intermittent streams for safety reasons cannot be controlled in a flare system. This commenter pointed out that relief valves are extensively used in the chemical industry for protecting pressure vessels from the over-pressurization which may occur for a number of reasons (i.e., fire, exothermic reaction, inadequate cooling). The commenter noted that, based on the definition of "Intermittent Emissions" (52 FR 36707), the emissions from relief valves would be included as an intermittent emission source, thus requiring control. This commenter stated that relief valves in the polyethylene industry are primarily vented to flare systems and secondary relief devices that vent emissions to the atmosphere are only used when normal venting to flare is too slow to protect plant personnel from injury or prevent mechanical damage to the plant. As an example, the commenter noted that should for any reason the flare header become plugged (which has happened) and a plant experiences an emergency situation, the secondary relief valve would be the only avenue of process relief to protect personnel and equipment. In the commenter's opinion, requiring these to be controlled would compromise the safety and integrity of the process unit.

Costs. Most commenters (IV-D-39, IV-D-42, IV-D-43, IV-D-44, 45, 46, 47, 48) expressed concern over the costs of controlling certain intermittent streams that would be incurred because of the way the types of intermittent streams were defined in the January 10, 1989, **Federal Register** notice. Commenter IV-D-39 pointed out that their HDPE and polypropylene plants do not contain decomposition streams, but they do have runaway reactions. The commenter pointed out that they have in the past installed rupture discs under pressure safety valves to vent to the atmosphere emissions from these runaway reactions. According to the commenter, these emissions would not be allowed to be vented to the atmosphere under the proposed rule presented in the January 10, 1989, **Federal Register** notice, and significantly higher equipment costs (e.g., flare header size) would be incurred.

Commenter IV-D-44 stated that routing of other emergency vent streams, which currently utilizes an automatic control mechanism for atmospheric venting, to a control device may be significantly different in cost for retrofit of an existing unit versus cost for a new unit, that the cost for retrofitting the control and associated hardware would be excessive, and therefore the regulation should allow for a cost effective-justification review for retrofit requirements.

Commenter IV-D-46 stated the cost of controlling high pressure emergency releases, as would be required by the proposed procedure outlined in the January 10, 1989, **Federal Register** notice, would be prohibitive, if achievable. This commenter stated that the control facilities required to capture a high pressure, non-decomposition emergency release or a high pressure decomposition emergency release would be similar in design and cost, the control of either would be not cost effective; and, therefore, all emergency releases should be excluded from the need to be controlled.

Two commenters (IV-D-42 and IV-D-48) expressed concern that the proposed standards as presented in the January 10, 1989, **Federal Register** notice would require control of the UNIPOL emergency reactor blowdown. These commenters indicated that these emergency blowdowns are very infrequent and occur as a result of a runaway reaction. The commenters stated that the consequences of not having an emergency blowdown are quite costly (because of a resin meltdown in the reaction). Commenter IV-D-42 stated that the alternative of using a very large flare to handle these very short duration emergency blowdowns is extremely expensive and has been documented in their comments to the September 30, 1987, proposed rule.

Definition. Several commenters expressed concern that the definition of decomposition, which was proposed in the January 10, 1989, **Federal Register** notice, would exclude certain intermittent streams that should also be exempted from control requirements under these standards. Commenter IV-D-47 stated that the distinction between decomposition releases and planned releases to prevent decomposition is a matter of semantics more than a technical difference as the technological difficulties for controlling each release are similar. The commenter pointed out that the time interval between detection of a need to release and the time that decomposition actually occurs is on the order of one second. According to Commenter IV-D-44, there is no system that can distinguish between an out-of-control condition and a false indication, therefore the same preventative measures must be taken quickly in either case to protect equipment and personnel.

Another type of comment concerning the definition of decomposition was that certain facilities did not experience decompositions, but had other types of runaway reactions or upset conditions that should also be excluded from control because of the high costs of controlling such releases. As noted earlier, two commenters (IV-D-42 and IV-D-48) were concerned that the definition of decomposition did not appear to include the UNIPOL emergency reactor blowdowns. Due to the cost of control, these commenters recommended that UNIPOL emergency reactor blowdowns be excluded from control in the same manner as "decompositions."

Commenter IV-D-47 stated that the Agency's proposed rules should provide an exemption for upset operations emissions in the polypropylene process. Commenters IV-D-47 noted that current polypropylene technology is such that runaway reactions do not occur. In the event of a power failure affecting the recirculation compressors, the commenter stated that the reactor beds would no longer be fluidized and unless the reactor is vented the reaction will continue to the point of making one large polymer "chunk" in the reactor. According to the commenter, the clean up procedure following such an occurrence would require personnel to enter the reactor vessel where potential pockets of decomposition gas remain. The polymer "chunk" would have to be cut into small blocks using air-driven saws. The downtime required for this situation may take two weeks and be very labor intensive and costly. The commenter pointed out that while such an occurrence is very infrequent, upset operations emissions do occur and requested that they be addressed in the proposed regulations.

Response: The Agency partially agrees with the commenters. The Agency agrees that the definition of "decomposition" was (unintentionally) too narrow and would have resulted in costly applications of the technology. On the other hand, the Agency has found control systems available and demonstrated for all types of intermittent emissions, although such systems are not used uniformly throughout the industry. The Agency has found that process design is an important factor in the particular control system used at a plant. Thus, some intermittent emissions are released to the atmosphere because they are a part of the process design for maintaining normal operations, for preventing more serious process upsets, or for relieving process equipment when process conditions exceed the design capacity of the system. Regardless of the particular set of intermittent emissions a particular system was found to control, in every case, each system can be designed and operated in a safe manner. However, the Agency agrees with the commenters that some types of intermittent releases may not be reasonable to control on the basis of the costs and emission reduction involved. The following paragraphs focus the Agency's response to this set of comments in the same three general areas as used above: Control technology, costs, and definition.

Control technology. The commenters were primarily concerned with the availability of technology for controlling non-decomposition emissions from LDPE, high pressure plants. These emissions can be very similar to decompositions emissions in terms of the length of release (very short) and the magnitude of the volume of the release (very large). The commenters also mentioned the control of relief valves that protect process vessels during times of fire, exothermic reactions, and inadequate cooling. The commenters felt that the definition of decomposition in the January 10, 1989, **Federal Register** notice would require control of these streams, and that such control technology was unavailable for the safe control of such streams. The Agency understands and concurs with the need to provide safe operations and does not

expect that operators would do anything unsafe in response to these standards. There is always the possibility of safety concerns with any manufacturing process, including its air pollution control equipment. The Agency expects operators to act prudently when complying with the standards by designing and operating air pollution control equipment properly. In selecting BDT and drafting standards, EPA considers only demonstrated technologies, as required by the Clean Air Act, and, therefore, only requires technologies that can be properly designed and operated.

Intermittent releases from polymer manufacturing plants can be among the largest sources of VOC emissions at a plant. Some of these releases have high volumes released in very short periods of times. During the development of these standards, the Agency has collected much information on a variety of polypropylene and polyethylene processes and their emission control systems. The control of decomposition emissions was found to have occurred at a single LDPE, high pressure facility (see Docket Item II-D-7). None of the other LDPE, high pressure facilities controlled decomposition emissions. The control of non-decomposition emergency releases varies from among facilities and types of processes. At least two LDPE, high pressure plants control some of the non-decomposition releases, which include safety valve discharges, and releases from various process upsets and certain types of equipment malfunctions (e.g., seal and gasket "blow outs"). Other types of plants (polypropylene; LDPE, low pressure or gas phase; and HDPE) control similar types of emissions, although one type of emissions controlled at one plant may not be controlled at another. Those emissions that generally are uncontrolled throughout the industry include releases that occur as a result of fire, power failure, and other unexpected events that could lead to severe equipment or personnel injury if not vented to the atmosphere. However, even some of these emissions are controlled at certain plants. For example, most of the polypropylene, liquid phase plants for which information has been gathered control all emergency-type releases. The following two paragraphs describe, in detail, the intermittent control systems employed at two different facilities.

One company (see Docket Item II-B-75) sends pressure relief emissions from the compressors at a LDPE, high pressure plant to the plant's flare. These safety relief valves regulate the pressure in the system around the compressors. When pressures go "too high," these valves open and relieve the pressure. This pressure relief system protects the equipment from internal problems. At this plant, seals, gaskets, or some other equipment will occasionally "blow out," creating a hazardous situation unless brought under immediate control. A "block and dump" valve system is employed to handle this situation. Combustible gas alarms signal an operator that an explosive situation has arisen. The operator will activate the block and dump system. Valves are opened to evacuate the ethylene in the system at the point where the leak has occurred and dump it to the flare. At the same time, the main ethylene feed to the area is blocked off, the reaction is stopped, and the catalyst feed is shut off. This block and dump system is designed to protect the equipment from external problems. Decompositions are accidents, unplanned runaway reactions that occur due to bearing failure, too much catalyst, or some unknown cause. This company does not attempt to recognize and prevent decompositions. When one does occur, they review the incident to try to determine the cause. Once the cause is found, the company tries to implement whatever may be necessary to reduce the likelihood of the triggering cause from recurring. The only emissions at this plant that are not vented to the flare are the decompositions. This company stressed that to require the venting of decompositions to a flare would be outside their safety practices.

Another company (see Docket Item IV-D-55) uses a multi-stage relief system to protect plant equipment against overpressure in two stages. This company uses a system of automatically controlled vents, operator activated vents, and relief devices to discharge vents that result from normal plant upsets and equipment malfunctions to a closed system, such as a flare or incinerator. Relief vents that result from emergency conditions, such as fires, total loss of power, and runaway reactions, are discharged to the atmosphere through relieving devices, which are set slightly above the set pressure of the first stage relieving device. More specifically, for this company's polypropylene and polyethylene flash chambers, the relief valves discharging to the flare provides overpressure protection for the flash chamber for typical process upsets, whereas the additional relief valves discharge to the atmosphere in the event of an emergency condition resulting from a plant power failure or fire, and in the case of the polypropylene flash chambers, from a runaway reaction in the polypropylene reactor. In the case of the polyethylene reactor, the relief valve discharging to the atmosphere provides overpressure protection for the reactor in the event of fire in the polyethylene reactor. Both reactor systems are designed to withstand all other possible causes of overpressure.

In summary, the Agency believes that the control technology exists for the safe control of any intermittent release that may occur at a facility subject to these standards. However, the cost of achieving such control may be sufficiently high as not to warrant control under these standards. The following section of this response addresses the costs of control.

Costs. The Agency has costed flame systems for controlling the various types of emergency releases identified by the commenters (see Docket Items II-D-105, IV-B-11, and IV-B-12). Generally, the cost of controlling decomposition emissions exceeded $7,000/Mg of VOC reduction and was as high as $200,000/Mg of VOC reduction. The cost of controlling runaway reaction releases from UNIPOL polypropylene and polyethylene process were generally around $9,000/Mg of VOC reduction. Based on these findings, the Agency believes that the cost of controlling high volumes of flow that are released over short periods of time under the circumstances described by the commenters are unreasonable given the resulting emission reduction. Based on the information provided by the commenters and previously by the industry as a whole, these releases are related to operating conditions that are abnormal and abnormal to the point that the design of the process cannot return conditions to normal operations. In at least one instance, in the case of emissions during attempts to prevent decompositions, these releases are triggered to prevent a decomposition from occurring although there is no guarantee that a decomposition would actually have occurred if the release was not made. However, the explosive nature of a decomposition and the rapidity with which it occurs makes it virtually impossible to distinguish between situations. Thus, the Agency decided to "broaden" the definition of decomposition emissions to include those emissions that occur as a result of attempts to prevent decompositions.

In contrast, some polymer producers use pressure relief valves or other mechanisms to vent emissions from process vessels as part of the process design for operating the vessels under

normal operating conditions and certain upset conditions, and for maintaining normal process conditions. Examination of the information available indicates that these emissions have been controlled and can be controlled cost effectively. The costs of controlling intermittent emissions from polypropylene and polyethylene plants were estimated based on the model plants presented in BID Vol. I (see Docket Item IV-B-12). The cost of control for routine and non-decomposition, emergency-type releases in a flare ranged from $70 to $1,890 per Mg of VOC reduction for single process lines and between $45 and $885 per Mg for whole plants. These intermittent releases are designed to keep the process vessel in normal operating conditions; they are not releases that occur because of abnormal operating conditions (e.g., fire or loss of power) or because releases are necessary to prevent equipment damage or personnel safety hazardous because the operating conditions can no longer be returned to normal operating conditions.

Definition. While the Agency would like to relate the decision on whether to require control for all intermittent releases in the same manner as has been done for continuous emissions, that approach is not feasible (54 FR 903). Therefore, the promulgated standard continues to require control of appropriate intermittent releases by defining the types of intermittent releases that are exempt from the standards. As noted earlier in this response, the January 10, 1989, **Federal Register** notice defined too narrowly those intermittent releases that could be exempted from control by using the term "decomposition." In the promulgated standard, the definition of "emergency vent stream" has been revised and is used for exempting individual intermittent releases from control requirements. The definition exempts intermittent streams in a very similar way as the September 30, 1987, **Federal Register** notice. The final definition of emergency vent stream covers those intermittent vents that occur from process equipment where normal operating parameters are exceeded such that the process equipment cannot be returned to normal operating conditions using the design features of the system and venting must occur to avoid equipment failure or adverse safety personnel consequence. Releases of this nature include emissions that occur during a decomposition event, during attempts to prevent decompositions, and during reactor dumps to minimize the adverse consequences of a runaway reaction (other than a decomposition). In addition, the definition of "decomposition emissions" has been revised to include those emissions that occur as a result of attempts to prevent decompositions.

Condensers

Comment: One commenter (IV-D-8) stated that the use of refrigeration condensers are not technically feasible for polystyrene processes and do not meet the criteria for standards of performance as stated in the BID: "standards of performance must (1) Realistically reflect best demonstrated control practices; (2) adequately consider the cost, the nonair quality, health and environmental impacts, and the energy requirement of such control; (3) be applicable to existing sources that are modified or reconstructed as well as new installations; and (4) meet the conditions of all variations of operating conditions being considered anywhere in the country."

The commenter wrote that the Agency is correct in stating in the BID that condensers are cost effective for recovery of compounds with relatively high boiling points like styrene and that a refrigerated condenser is not feasible when moisture is present in the stream which might cause freezing in the condenser. The commenter then pointed out that the latter holds true for continuous polystyrene processes.

The commenter then gave a number of reasons why freezing will occur. First and most important, according to the commenter, is the water in the vent. The commenter noted that the Agency assumed that when plants switched from steam ejectors to vacuum pumps, the freezing problem associated with water disappeared with the steam. However, the commenter stated, there is water entering with the raw materials and with the air leakage into the system (especially true in hot, humid climates). The commenter pointed out that most of the water comes from the water content of the styrene and the rubber used in the manufacture of high impact polystyrene (HIPS). Another potential problem with using a refrigerated condenser, according to the commenter, is the presence of additives in the process, some of which have high freezing points. One company reports freezing of the primary condensers coming off the devolatilizer when they ran the condenser's glycol system at −2 to −4°C. Thus, if certain additives are present, the freezing is more likely to take place.

Response: After further investigation, the Agency agrees that freezing may be a problem at sub-zero temperatures. Therefore, the Agency has reanalyzed the regulatory alternatives for polystyrene plants using spared heat exchangers with defrost capabilities and a refrigeration system for sub-zero applications. This reanalysis is presented in Docket Item IV-B-18.

Comment: Two commenters (IV-D-6, IV-D-8) expressed concern over the costs basis used to select refrigerated condensers as the basis of the proposed standards for polystyrene plants.

Commenter IV-D-8 stated that the Agency did not adequately determine the costs and cost-effectiveness associated with using refrigerated condensers in the polystyrene continuous process. Commenter IV-D-6 stated the cost of the refrigeration condenser system for the model plant in the BID appears to be totally unrealistic and grossly underestimated and the cost of the specified technology to achieve the indicated reductions does not appear to justify the additional control above 0.12 kg/Mg of product. The commenter pointed out the following cost factors they felt might have been overlooked:

1. Moisture content of the stream would require drying systems;
2. Poor heat transfer coefficients due to the high nitrogen and noncondensible content of the stream;
3. Explosion-proof requirements must be Class I division 2;
4. Refrigeration system would be non-standard (probably propylene) due to the temperature requirements;
5. Higher metallurgy (stainless steel) required due to the low temperature requirement; and
6. Cost for new process condenser and associated piping appears not to have been considered in development of the proposal. Existing chilled water condensers are not rated for this low temperature application and refrigeration service. Therefore, new process condensers would be required.

On the basis of these comments regarding the cost and cost-effectiveness of refrigerated condensers, as well as the questionable viability of the technology due to the presence of water, Commenter IV-D-8 stated that EPA must redetermine the best technology system for polystyrene continuous processes.

Response: The commenters have brought up a number of points concerning the use of and cost estimates for refrigerated condensers on emission streams from polystyrene plants using continuous processes. For the response to these comments, the reader is referred to Docket Item IV-B-18. The following summarizes the Agency's response to the commenters concerns.

The Agency agrees that consideration of subzero condenser applications requires dealing with moisture level. Based on conversations with a number of vendors, the Agency has reevaluated control below 32 °F using a system composed of two heat exchangers each equipped with a defrost unit and a refrigeration unit to service both heat exchangers. This system now incorporates stainless steel construction. The system previously considered noncondensibles and, thus, the Agency feels proper heat transfer coefficients have been used. Vendor contacts indicated that ethylene glycol-water solutions and Freon 502 coolants would suffice; non-standard refrigerants would not be needed. In addition, the explosion proof requirements, which refer to electrical wiring requirements, have been directly considered. Based on these assumptions, the Agency has recalculated the costs of the control alternatives.

Commenter IV-D-8 suggested that the Agency establish a new baseline to determine cost effectiveness before determining the final rule. The Agency provides for an uncontrolled emission rate threshold level that protects against non-cost effective control of facilities referred to by the commenter. Therefore, the Agency has retained the baseline as presented in BID Vol. I.

Comment: One commenter (IV-D-6) stated that the uncontrolled emission rate of 0.016 kg VOC/Mg of product for continuous polystyrene plants needs to be reconsidered to take into account the presence of water in the material recovery condenser vent stream. The commenter stated further that it appears inappropriate that the newest facilities built with the latest devolatilizing vacuum and refrigeration technologies cannot meet this uncontrolled emission level. The commenter suggested that this value, if appropriate at all, needs to be in the 0.050 kg VOC/Mg product range.

Response: The uncontrolled emission rate for the material recovery section from polystyrene plants has been recalculated based on the new data concerning water in the material recovery condenser vent stream. The new uncontrolled threshold emission rate has increased to 0.05 kg TOC/Mg product. This increase reflects the use of a spared condenser system to bypass the potential freezing problem of using subfreezing temperatures in the condenser.

The commenter refers to the inappropriateness of the proposed uncontrolled emission rate by referring to the newest facilities with the latest devolatizing vacuum and refrigeration technologies not being able to meet that level. The commenter appears to presume a relationship between the level of uncontrolled emissions from a facility that installs the latest process equipment and the level of emissions that can be achieved when air pollution control is sought. The Agency disagrees with this apparent assumption. The uncontrolled emissions from an industrial facility in the absence of environmental regulation is typically determined by a different set of economic and cost criteria than the criteria used in setting environmental standards. The lower level of emissions required by the standards does not say anything about the technical capabilities of the latest equipment installed by industry, but reflects the use of emission control equipment that allows further reduction in emissions. As noted above, the Agency reevaluated the appropriateness of the control technique used and as a result of this reevaluation has increased the uncontrolled emission rate.

Poly(ethylene terephthalate) Standards

Comment: One commenter (IV-D-12) stated that the vapor streams from the material recovery (methanol recovery) section of PET processes both high and low viscosity DMT are laden with water vapor. The commenter pointed out that the concentration of TOC emissions and condenser temperature are regulated in sections 60.562-1(c)(1) (i) and (ii) and 60.562-1(c)(4)(iv) of the September 30, 1987, **Federal Register** notice. According to the commenter, if a refrigerated condenser were used as the final condenser in the material recovery section, the vapor stream would have to be dried before entering the condenser or the condenser would freeze and plug. The commenter stated that such a drier for that large a flow and concentration would be prohibitively expensive in terms of capital and operating cost and should be excluded.

Response: The Agency has reevaluated the regulator alternatives for the material recovery section from PET/DMT processes to taken into account potential freezing problems. However, rather than using a drier on the stream, the Agency used a lower cost approach of analyzing the potential emission reduction and cost using a spared condenser system. This has resulted in a revision to the standard for this process section. Based on the revised analysis, the final rule sets an emission limit of 0.018 kg TOC/Mg product for material recovery sections. Alternatively, an owner or operator of an affected facility may limit the outlet temperature of the final condenser to +3 °C (+37 °F). At proposal, these limits were 0.0027 kg TOC/Mg product and −24 °C (−11 °F), respectively. In addition, the uncontrolled threshold emission rate increased to 0.12 kg TOC/Mg product.

Comment: One commenter (IV-D-11) stated that the limit of 0.04 kg TOC/Mg product from esterification vessels for high viscosity PET using multiple end finishers (Section 60.562-1(c)(4)(iii) of the September 30, 1987, **Federal Register** notice) appears to be in error and is not supported by BID Vol. I. The commenter stated that the appropriate limit should be 0.15 kg TOC/Mg product.

Response: The Agency reviewed the information in BID Vol. I and the docket concerning this comment. The sources show inconsistent treatment of esterifiers from high viscosity PET plants using multiple end finishers. For example, Chapter 8 states that baseline control costs for these facilities were estimated assuming reflux condensers on the esterifiers, which are associated with an emission rate of 0.04 kg TOC/Mg of product. The commenter, who uses a different type of condenser on their esterfiers, has stated that they would expect their condenser to be as efficient as reflux condensers. While a previous estimate based on sampling conducted in 1978 at the commenter's facility showed an estimated emission rate of 0.15 kg TOC/Mg product, a more recent test conducted by the commenter shows that the controlled emissions from the esterifiers are below 0.04 kg TOC/Mg product. In developing the baseline control costs, the Agency incorporated reflux condensers as baseline control. Unfortunately, this was not shown in Chapter 6, where the contradictory, and erroneous, statement that distillation columns with an emission rate of 0.15 kg TOC/Mg product are shown. For new plants, it was the Agency's judgment that reflux condensers represented best available technology and should serve as baseline for new, grass roots plants. As noted above, the more recent test by the commenter shows that their condensers are achieving equivalent levels of control. The Agency also conducted a new analysis specifically estimating the cost of controlling the commenter's 0.15 kg TOC/Mg product stream to 0.04 kg TOC/Mg product (see Docket Item IV-B-20). This analysis showed the cost of control to be reasonable. Thus, while the commenter is correct in pointing out discrepancies in the BID for the proposed standards, the final rule retains the proposed standard of 0.04 kg TOC/Mg product.

Comment: Two commenters (IV-D-8, IV-D-13) stated that while the control

technology exists to achieve final condenser outlet temperatures of −24 °C during steady state operation of a poly(ethylene terephthalate) plant, there are routine stages of the operation of a plant which make this temperature unachievable. The commenters pointed out that the composition of the vent stream during startup, shutdown, and process upsets varies to the point that maintaining an outlet temperature of −24 °C would lead to freeze ups and further process upsets. The water content, polymer carryover and other contaminants in the stream during startup or shutdown, the commenter continued, will affect the temperature at which the condenser outlet can be operated without freezing during this portion of the processing. Therefore, the commenters stated, if a gas temperature is specified in the standard and is included as a permit parameter, there will be times when the process must perforce violate the permit and adequate recognition that the standards do not apply during startup, shutdown, or malfunction conditions must be given.

The commenters then suggested that the regulatory language be changed to reflect that if refrigerated condensers are used for control, then when the process runs at steady state the outlet gas temperature should be −24 °C.

Response: Periods of startup, shutdown, and malfunction are not considered to be in violation if they exceed the expressed emission limits, as provided for in the General Provisions, section 60.8(c):

"* * * nor shall emissions in excess of the level of the applicable emission limit during periods of startup, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard."

Since the proposed standards do not specify otherwise, the General Provision section was assumed to be prevailing. However, the alternative temperature standard does not necessarily fall within the definition of "emission limit" as used in § 60.8(c). The Agency intends the same treatment to be accorded the alternative temperature standard as for a true emission limit. Owners and operators are still required to maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions, to the extent practicable, at all times including periods of startup, shutdown, and malfunction (General Provisions, § 60.11(d)). Therefore, the promulgated standard includes the commenter's suggestion.

Modification/Reconstruction

Comment: One commenter (IV–D–47) referred to 54 FR 893 in which is stated: "Under the new approach, any existing process section that is modified or reconstructed becomes an affected facility subject to the proposed standards. Similarly, any newly constructed process section at an existing plant or a new plant would be an affected facility * * *." The commenter then stated that the impact of these statements is unclear where an existing process section that is modified or reconstructed becomes an affected facility subject to the proposed standards, yet that modification or reconstruction results in increased emissions only in another section. The commenter asked how the standards are to be applied in this situation.

Response: Modification or reconstruction to a process section only affects that process section regardless of the effect on emissions in other process sections. A process section is "modified" if a physical change occurs to the facility or there is an operational change to the facility either of which results in an in increase in the emission rate. In the example provided by the commenter, the modified process section would not become an affected facility because there is no increase in emissions from that process section. Assuming the other process section is not modified, as defined, then it is not considered to be an affected facility because there is no increase in emissions from that process section. Assuming the other process section is not modified, as defined, then it is not considered to be an affected facility even though there is an increase in emissions.

A process section is "reconstructed" if the replacement of components in the existing facility occurs so that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new process section and it is technologically and economically feasible to meet the applicable standards. The definition of reconstruction does not depend on an increase in emissions. Thus, in the example provided by the commenter, if the first process section is reconstructed, then it becomes an affected facility subject to the standards regardless of the fact there has been no increase in emissions. (Note: This is also true even if a decrease in emissions occurs.) As before, if the process section in which emissions do increase does not undergo replacement of components so as to constitute a reconstruction, then that process section is not an affected facility and is not subject to the standards.

Miscellaneous

Comment: Several commenters (IV–D–39, IV–D–44, IV–D–50) expressed concern over the definition of "concurrent" in the January 10, 1989, **Federal Register** notice and the concept of concurrently constructed, modified, and reconstructed affected facilities. Commenter IV–D–39 suggested that the word "concurrent" be deleted. This commenter stated that its purpose is unclear and that it appears to require that modifications to existing facilities occurring within two years of each other would be treated as new facilities with the stricter low VOC concentration requirements being applied.

Commenter IV–D–44 suggested that the two-year time frame in the definition of "concurrent" be replaced with a six-month period. This commenter stated that the definition of concurrent as proposed could impose retroactive additional control measures and costs to projects already completed or near completion. Commenter IV–D–44 believes that no additional requirements should ever be imposed on projects already completed or which have initiated construction. This commenter illustrated their concern by stating that major projects could be vulnerable for additional control requirements and incurred costs up to five years (three years from commencement to completion plus two-year concurrent period) from date of commencement. Commenter IV–D–44 stated that this was "totally unreasonable and not cost effective." The commenter believes that all control decisions for concurrent projects should be made during their common planning/design phase and that projects should not be considered concurrent unless they have a common planning time frame. According to this commenter, two years is too long a time frame for the definition of concurrent and is longer than most planning cycles.

Commenter IV–D–44 also stated that the proposed use of concurrent does not appear to exempt projects under construction, modification, or reconstruction prior to January 10, 1989, from additional control requirements. The commenter recommended that projects started prior to January 10, 1989, be excluded from being considered concurrent with other projects begun after January 10, 1989.

Commenter IV–D–50 stated that the wording of the definition of concurrent is confusing (54 FR 895). According to this commenter, the definition as stated

now would lead to the following scenario: when a plant commences a project "B" within two years of the commencement of a previous project "A" at the same plant, and it commences a project "C" within two years of the commencement of project "B," then "B" can be concurrent with "A" and "C" can be concurrent with "B" while "C" may not be concurrent with "A". Commenter IV-D-50 then stated that this situation could foreseeably go on for years and makes the completion date of each successive project irrelevant. Commenter IV-D-50 recommended that the EPA eliminate the concept of concurrent control, but that if the EPA feels this definition is absolutely necessary, suggested as an alternative to the statement in the revised proposal (54 FR 895) the following language:

" * * * construction, modification, or reconstruction within a process unit (replacing, "of affected facilities") which has commenced in the two year period prior to the commencement date of the construction, modification, or reconstruction of an affected facility."

Response: Under the generic approach for determining which process emission streams are to be controlled from polypropylene and polyethylene facilities, the Agency proposed in the January 10, 1989, **Federal Register** notice that emissions from all concurrently constructed, modified, and reconstructed affected facilities be combined (according to the procedures outlined in that notice) for purposes of determining which emission streams would be controlled. When a new plant is built, all of the process sections are (obviously) concurrent, and the generic approach requires combining emission streams in the same weight percent range across all process sections. This procedure formed the basis for the development of the calculated threshold emission levels proposed in the January 10,1989, **Federal Register** notice.

The Agency extended this concept of concurrent construction to modified and reconstructed affected facilities. If two process sections are modified at the same time, the Agency knows of no reason not to combine streams across the two process sections for control determinations. In fact, the generic approach is specifically designed to reach more reasonable control/no control determinations when this is done than when each process section is considered individually. Further, the Agency believes that reasonable control decisions can be made even for affected facilities that are not "concurrent," as defined in the January 10, 1989, **Federal Register** notice.

The Agency has decided that the term "concurrent" is unnecessary to implement the generic approach and has eliminated it from the final rule. However, the Agency has replaced it with a different and more expansive procedure. This new procedure requires uncontrolled emission streams from an affected facility to be examined for pollutant control whenever a process section at the plant site is constructed, modified, or reconstructed regardless of the time interval between the commencement or completion dates of the affected facilities. Once an emission stream is controlled as a result of these standards, it is never again considered for determining the control of other emission streams.

In implementing this new procedure, the Agency disagrees with the commenters that it is unreasonable to require control of emissions from an affected facility that has begun operation (i.e., after it has been completed). The generic approach was designed to identify that level of annual emissions for a given weight percent of VOC in a single or combined emission stream above which control is deemed to be reasonable, regardless of the number of emission streams, the period of time when they became subject to the standards, or the planning phases or periods at a plant site. In addition, the Agency disagrees that there is a need to distinguish between those process sections that became affected facilities on or before January 10, 1989, and those that became affected facilities after January 10, 1989. Reasonable control determinations can be made regardless of an affected facility's applicability date.

To illustrate how this new procedure works, the following example is provided.

Example: At a polypropylene plant, Process Section A is reconstructed. There are three continuous emission streams (1, 2, and 3), one in each of the three weight percent ranges. Stream 3, which is in the 20 to 100 weight percent VOC range, has emissions greater than the CTE level and, thus, control is required. Emissions from Streams 1 and 2 are below their respective CTE's and, thus, no control is required. Process Section B is modified, and has two emission streams, 4 and 5. Emission Stream 4 is in the same weight percent range as Emission Stream 1, and Emission Stream 5 is in the same weight percent range as Emission Stream 2. These emission streams would now be combined (4 with 1 and 5 with 2) to determine whether emissions in each weight percent range are greater than their respective CTE's. Suppose the total emissions from Emission Streams 5 and 2 are greater than the CTE level for their weight percent. These two streams would now be controlled. Suppose the other two streams (4 and 1) remain uncontrolled (i.e., their total annual emissions are less than the CTE level for their weight percent.

Finally, Process Section C is constructed at the plant site. Process Section C has two emission streams, 6 and 7. Emission Stream 6 is in the same weight percent range as Emission Streams 4 and 1. Since the latter two steams are still uncontrolled, they would be combined with Emission Stream 6 from Process Section C to determine whether control is required of all three streams. Suppose the total emissions now exceed the CTE level for the combined weight percent, then all three streams would be controlled. Emission Stream 7, which is in the 20 to 100 weight percent range, would be evaluated on its own, since there are no uncontrolled streams from an affected facility in this weight percent range. If the annual emissions of Emission Stream 7 are less than the CTE level, no control is required. (Note: In all cases where control is not required, streams with flow less than or equal to 8 scfm are still required to be controlled.)

Monitoring Requirements

Comment: Four commenters (IV-D-5, IV-D-6, IV-D-7, IV-D-8) questioned the need and desirability of requiring flow measuring devices on vents to control equipment. According to the commenters, this will add significant cost, provide no useful data, and add to the burden of recordkeeping. One commenter (IV-D-6) specifically wondered how the flow monitoring data would affect the control of emissions. This commenter also stated that the flare requirement portion of the fugitive emission standard (40 CFR part 60—subpart VV) does not require flow monitoring devices.

Two commenters (IV-D-7, IV-D-8) maintained that flow measurement on intermittent vents will be especially valueless since it will be difficult to differentiate between true no-flow situations and instrument problems. Two of the commenters (IV-D-7, IV-D-8) stated that installation of flow devices in a process flare system that also serves as a safety flare is not a good practice from a maintenance or safety standpoint. One commenter (IV-D-8) stated further than the temperature, density, pressure, and fouling or corrosive characteristics of flared gases tend to cause maintenance and reliability problems on flow measuring elements that are placed into the flare gas line. Commenter IV-D-8 noted that while external measurement devices are available, they are expensive and certainly should not be required on each individual vent stream into the flare gas header. This commenter also claimed that measuring every flare gas vent stream flow is not possible, with even

single stream flare gas flow measurements being notoriously difficult to measure.

One commenter (IV-D-6) stated that technical problems exist for retrofit of modified facilities where emergency vent systems are integrated with normal process vent streams, because the range of flow rates makes accurate measurement of lower flows impossible without causing excessive restrictions to emergency ventings.

Commenter (IV-D-8) suggested that paragraphs 60.563(a)(2), (b)(2), and (c)(2) of the September 30, 1987, **Federal Register** notice, which require the installation of a flow indicator to provide a record of the vent stream flow to the incinerator or flare, be deleted. All four commenters felt that engineering estimates and design calculations of the vent flows should be adequate to ascertain compliance with flare flow allowable ranges.

One commenter (IV-D-5) recommended that a requirement for an engineering piping report be substituted for the flow instrument requirements for flares. This commenter believes that an engineering report describing the piping arrangement for the vent streams would provide assurance that these streams will be continuously flared. Such a report, the commenter said, would achieve the same objective as the flow instrument requirement by showing that the vent streams are "hard wired" (no physical possibility of an atmospheric release prior to the flare) without the burden of installing, operating, and maintaining a large number of flow recorders.

Response: The EPA considers it very important to ensure that vent streams are continuously vented to the flare (or other control device). The primary intent of the flow monitoring requirement was to provide a means for indicating when vent streams were bypassing the flare or other control device. In the September 30, 1987, **Federal Register** notice, flow indicators were proposed. Flow indicators envisioned by the Agency would simply provide an indication of flow/no flow, and need not provide quantitative estimates of flow rates. The Agency has reevaluated the use of flow indicators as proposed and in light of the comments received. This reevaluation has led the Agency to the following conclusions.

1. Flow meters, which provide quantitative estimates for flow rates, could be one way to ensure emissions are vented to a control device. However, as pointed out by the commenters, there may be technical problems and less expensive ways to achieve the same goal.

2. Flow indicators located on the vent pipe between the emission source and the control device by themselves may be insufficient to meet the intent (even though this was what was proposed).

3. Engineering reports that show an emission stream is "hard piped" to a control device is a less expensive method than flow meters to ensure the entire flow will be vented to the control device. Other piping arrangements can be used, but car seals on valves or flow indicators located immediately downstream of each valve that could divert a portion of the flow to the atmosphere, either directly or indirectly, become necessary.

Considering the above conclusions, the Agency is now requiring an engineering report that describes the piping arrangement for venting the affected emission streams to the control device. If any valves are present in the line between the source and the control device, the rule requires them to be car-sealed opened. In addition, all valves that allow emissions to bypass the control device are required to be car-sealed closed. The monitoring requirements have been revised now that this engineering report is required. An owner or operator may elect to follow one of two methods for monitoring the vent system. One method would require monthly inspection of the valves to inspect the car seals, the reporting and recording of any time the car seals are broken, and the recording and reporting of any time the valve position has changed. The other method would require the installation of a flow indicator, which gives an indication of flow/no flow, at the closest downstream point of each valve that is required to be car-sealed closed. The owner or operator is to record all periods of flow (which indicates a portion of the emission stream is bypassing the control device) and report such periods of flow.

Comment: The commenters (IV-D-6, IV-D-8) pointed out that the preamble clearly states that thermocouples is the only acceptable monitor, while the standard allows for a thermocouple or similar device. The commenters requested that this confusion be eliminated from the rule.

Four commenters (IV-D-6, IV-D-7, IV-D-8, IV-D-49) requested that a provision for any other equivalent devices capable of detecting a flame be allowed with the regulations (§§ 60.563 (b)(1) and (c)(1) of the September 30, 1987, **Federal Register** notice). One commenter (IV-D-8) suggested that visual inspection combined with an assessment of the reliability of the fuel supply to the pilot be allowed as an equivalent pilot flame detection system. The commenters stated that the final rule should allow individual plants to select alternate flame sensors as the point of the regulation should be to require a pilot detection system (i.e., thermocouples, flame ionization detectors and remote infrared scanners) capable of detecting a flame.

Response: The preamble for the proposed rule should not have stated so distinctly that thermocouples were the only acceptable monitor. Other similar devices are acceptable provided they provide the necessary recordkeeping requirements.

The presence of a flame is obviously critical to the operation of a flare as a control device. The intent of the flare monitoring regulation is to require a reliable monitoring device on the flare that will indicate there is no flame present and, thus, when the flare is not operating; or in the case of intermittent emissions, not in a ready state to control emissions. For flares controlling continuous emissions, monitoring of the flare flame or pilot light flames is appropriate to ensure the vent stream is being destroyed. For flares controlling intermittent emissions, a flare flame will not always be present. Thus, for these flares, it is important to monitor the pilot light flames.

Thermocouples are generally accepted as the most reliable means to monitor the presence of a pilot flame. For flares controlling intermittent emissions alone, it is important to ensure that the pilot lights are lit (i.e., have a flame present). Thus, the standards require such flares to monitor the pilot light flames using a thermocouple or equivalent monitoring device. For flares controlling both intermittent and continuous emissions or continuous emissions alone, EPA has decided that the use of certain optical devices is also acceptable to indicate the presence of a flame (either the flare flame or pilot light flames). Ultra-violet or infrared beam sensors may be used in lieu of thermocouples for these flares. These devices offer an advantage over thermocouples because they may be installed remote from the flare tip thereby allowing maintenance to be done without shutting down the flare. It is important that these optical devices be installed properly to minimize the effects of solar radiance. Although these devices may have difficultly in distinguishing the pilot flame from the main flame, the detection of a flame fulfills the intent of the regulation for flares used to control both continuou and intermittent emissions or continuous emissions alone.

The detection of flame presence by visual means or by remote video camera is not a suitable method of monitoring. ' a flame is operating smokelessly, it car

be difficult to determine if a flame is present.

Flame ionization detectors are not considered as reliable as other monitoring technologies. The experience of one flare manufacturer (see Docket Item IV-D-54) showed major problems with the accumulation of moisture on the flame rod, which tended to ground the flame rod and then lock up the system. Further, this manufacturer found that the formation of small amounts of carbon in the pilot flame and its accumulation around the base of the flame rod also tended to "ground out" the flame rod and lock up the system.

The EPA is willing to take into consideration any operating records or test data for alternative monitoring devices.

Comment: Four commenters (IV-D-6, IV-D-7, IV-D-8, IV-D-49) stated that thermocouples are known to be unreliable when placed in the severe operating environment at the top of a flare and that the flare tip maintenance period can typically be much longer than the service period for a thermocouple. The commenters then asked what needs to be done when a pilot flame thermocouple burns out. Is the flare to be shut down prior to the regular maintenance to replace the pilot thermocouple? The commenters pointed out that since flares are emergency relief devices, taking a flare out of service can not usually be done without taking the entire process which the flare services out of services and that more emissions would undoubtedly result from premature flare maintenance related to thermocouple burnout. Commenter IV-D-49 also stated that thermocouples can be difficult to replace.

Response: Recent improvements in thermocouple installation technology have extended the operating life of thermocouples in flare monitoring service. If a thermocouple is sheathed within a thermowell, the thermocouple is protected from the severe flame environment, and the thermocouple operating life can be extended to approximately the same length of time as the flare tip maintenance period. Installing a thermocouple with thermowell will reduce significantly the number of times an operator must decide whether to shut down upon thermocouple failure.

Any breakdown or malfunction of the thermocouple should be repaired as soon as practicable as stated in § 61.14(b) of the General Provisions. The operator is expected to determine the best time to shut the flare down after considering how to minimize emissions both for safety and environmental reasons.

Comment: Two commenters (IV-D-44, IV-D-50) stated that language in the January 10, 1989, **Federal Register** notice appears to require monitoring of existing continuous emission streams prior to any modifications or reconstructions. The commenters believe that a monitoring requirement would raise the following concerns or questions:

- Determination of emissions prior to modification by sampling is not appropriate because emissions may vary with product runs, and the worse case product may not be available for monitoring within a reasonable time. These emissions can be calculated with reasonable accuracy. (IV-D-44)
- What is the economic justification/basis for requiring testing of existing streams as opposed to calculating? (IV-D-44, IV-D-50)
- What test method, duration, frequency and monitoring are contemplated? (IV-D-50)
- For processes that make a wide variety of products, what product line emissions (different hydrocarbon constituents, product densities, etc.) should be measured? (IV-D-50)
- What is the environmental benefit of reuquiring testing of existing streams? (IV-D-50)

The commenters pointed out that Table 4 "Procedure for Determining Control and Applicable Standard for Continuous Emission Streams from Modified or Reconstructed Polypropylene and Polyethylene Affected Facilities" (Ref: 54 FR 908) specifies in Step 3 that calculations of VOC concentration in the applicable weight percent range should be made before and after any modification or reconstruction. The commenters requested clarification of this issue (monitoring vs. calculation) and recommended engineering calculations as specified in Table 4 be used in the procedural step in determining control requirements of emissions before and after any modification or reconstruction. The word "measure" on page 54 FR 895 should be changed to "calculate," according to Commenter IV-D-44.

Response: The language in the preamble to the January 10, 1989, **Federal Register** notice did not intend to imply that monitoring of existing continuous emissions was being required, although the language was not as precise as it should have been. In that notice, the Agency intended that measurements rather than calculations be used to obtain the VOC concentrations of each applicable VOC stream. Measurement of the applicable stream would occur after a modification or reconstruction determination has been made by the appropriate enforcement agency, but before any actual changes have been undertaken. This clarification narrows the language in the preamble from "any changes to an existing process section that could conceivably be a modification or reconstruction" to only those that are determined to be modification or reconstruction.

In the final rule, the requirement to measure the VOC concentration or the annual emission rate rather than calculate these values is applied to only those individual streams that an owner or operator seek to exempt from control through either the VOC weight percent exemption or the low annual emissions exemption. As provided in the General Provisions, if an owner or operator believes that an alternative procedure is an accurate as a measurement, then the owner or operator may still petition the Administrator for approval.

While the Agency would prefer actual test data, the final rule allows an owner or operator to submit calculations calculating the weight percent and annual emissions of each nonexempt vent stream in lieu of actual test data, provided such calculations can be demonstrated to be sufficiently accurate as to preclude the necessity of a test.

In testing or calculating the weight percent and annual emissions of a vent stream, an owner or operator is required to evaluate the stream under conditions representative of normal operation. This may require an owner or operator to make assumptions or estimates of how the affected facility will be operated or how emission streams will vary during production of various products. The period during which testing of a stream occurs, thus, need not be a "worst case" product, but preferably a representative product. Where affected facilities are used to produce a wide variety of products, then an owner or operator would calculate (or measure) the emission streams that would occur during the course of a year for each of the products. The resulting data would be combined to identify composite streams and their weighted average VOC concentrations and total annual emissions. Each composite stream's VOC concentration would then be used to calculate the threshold emission rate and a control/no control determination would be made by comparing the calculated (or measured) annual emissions with the threshold emission rate.

Where an owner or operator tests an emission stream, the final rule requires the use of Test Method 18 to determine the VOC concentation and Test Method 2, 2A, 2C or 2D, as appropriate, to determine the volumetric flow rate. Each test shall consist of three 1-hour runs in which either an integrated sample or four grab samples shall be taken.

In determining whether a test or calculation is to be required, the Agency considers a number of factors such as the use of the information, the relative cost of conducting the tests, and the availability of alternative procedures. Because the individual stream exemptions allow an individual stream to be exempt from control under this NSPS, the Agency believes this decision needs to be made based on test data. (Note: If the annual emissions become 1.6 Mg/yr or greater (if using the annual emissions exemption) or the VOC concentration becomes 0.10 weight percent or higher (if using the VOC concentration exemption) at a later date, then the individual stream is no longer exempt from the standards.) For nonexempt streams, a no control decision may change to a control decision as more facilities at a plant are constructed, modified, or reconstructed. Thus, while test data are preferable for determining the VOC weight percent concentrations, the Agency has decided that calculations showing the VOC concentrations can be an acceptable alternative to testing, and at greatly reduced costs.

VIII. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

The effective date of this regulation is December 11, 1991. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to certain affected facilities of which the construction or modification was commenced after the date of proposal, September 30, 1987, and for other affected facilities, after January 10, 1989.

As prescribed in section 111, the promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that polypropylene, polyethylene, polystyrene, and polyester resin plants contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining the best demonstrated technology. The economic impact assessment is included in the BID for the proposed standards.

Information collection requirements associated with this regulation (those included in 40 CFR part 60, subpart A and subpart DDD) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number (2060-0145).

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, a Regulatory Flexibility has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Plastic materials, synthetic resins, and nonvulcanizable elastomers (SIC 2821), and Reporting and recordkeeping requirements.

Dated: November 7, 1990.

William K. Reilly,

Administrator.

PART 60—[AMENDED]

40 CFR part 60 is amended as follows:

1. The authority citation for part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601.)

2. By adding a new subpart DDD to read as follows:

Subpart DDD—Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry

Sec.
60.560 Applicability and designation of affected facilities.
60.561 Definitions.
60.562-1 Standards: Process emissions.
60.562-2 Standards: Equipment leaks of VOC.
60.563 Monitoring requirements.
60.564 Test methods and procedures.
60.565 Reporting and recordkeeping requirements.
60.566 Delegation of authority.

Subpart DDD—Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry

§ 60.560 Applicability and designation of affected facilities.

(a) *Affected facilities.* The provisions of this subpart apply to affected facilities involved in the manufacture of polypropylene, polyethylene, polystyrene, or poly (ethylene terephthalate) as defined in § 60.561 of this subpart. The affected facilities designated below for polypropylene and polyethylene are inclusive of all equipment used in the manufacture of these polymers, beginning with raw materials preparation and ending with product storage, and cover all emissions emanating from such equipment.

(1) For process emissions from any polypropylene and polyethylene manufacturing process that uses a continuous process, the affected

facilities are each of the following process sections: each raw materials preparation section, each polymerization reaction section, each material recovery section, each product finishing section, and each product storage section. These process sections are affected facilities for process emissions that are emitted continuously and for process emissions that are emitted intermittently.

(2) For process emissions from polystyrene manufacturing processes that use a continuous process, the affected facilities are each material recovery section. These process sections are affected facilities for only those process emissions that are emitted continuously.

(3) For process emissions from poly(ethylene terephthalate) manufacturing processes that use a continuous process, the affected facilities are each polymerization reaction section. If the process uses dimethyl terephthalate, then each material recovery section is also an affected facility. If the process uses terephthalic acid, then each raw materials preparation section is also an affected facility. These process sections are affected facilities for only those process emissions that are emitted continuously.

(4) For VOC emissions from equipment leaks from polypropylene, polyethylene, and polystyrene (including expandable polystyrene) manufacturing processes, the affected facilities are each group of fugitive emissions equipment (as defined in § 60.561) within any process unit (as defined in § 60.561). This subpart does not apply to VOC emissions from equipment leaks from poly(ethylene terephthalate) manufacturing processes.

(i) Affected facilities with a design capacity to produce less than 1,000 Mg/yr shall be exempt from § 60.562–2.

(ii) Addition or replacement of equipment for the purposes of improvement which is accomplished without a capital expenditure shall not by itself be considered a modification under § 60.562–2.

(b) *Applicability dates.* The applicability date identifies when an affected facility becomes subject to a standard. Usually, a standard has a single applicability date. However, some polypropylene and polyethylene affected facilities have a September 30, 1987, applicability date and others have a January 10, 1989, applicability date. The following paragraphs identify the applicability dates for all affected facilities subject to this subpart.

(1) *Polypropylene and polyethylene.* Each process section in a polypropylene or polyethylene production process is a potential affected facility for both continuous and intermittent emissions. The applicability date depends on when the process section was constructed, modified, or reconstructed and, in some instances, on the type of production process.

(i) The applicability date for any polypropylene or polyethylene affected facility that is constructed, modified, or reconstructed after January 10, 1989, regardless of the type of production process being used, is January 10, 1989.

(ii) Only some polypropylene or polyethylene process sections that are constructed, modified, or reconstructed on or before January 10, 1989, but after September 30, 1987, are affected facilities. These process sections (and the type of emissions to be controlled) are identified by an "x" in Table 1. The applicability date for the process sections (and the emissions to be controlled) that are identified by an "x" in Table 1 is September 30, 1987. Since the affected facilities that have a September 30, 1987, applicability date are determined by the type of production process (e.g., liquid phase, gas phase), each owner or operator shall identify the particular production process that applies to his or her particular process.

TABLE 1.—POLYPROPYLENE AND POLYETHYLENE AFFECTED FACILITIES WITH SEPTEMBER 30, 1987, APPLICABILITY DATE

Polymer	Production process	Process section	Emissions	
			Continuous	Intermittent
Polypropylene	Liquid phase	Raw Materials Preparation	X	—
		Material Recovery	X	—
		Polymerization Reaction	X	X
		Product Finishing	X	—
		Product Storage	—	—
Polypropylene	Gas Phase	Raw Materials Preparation	—	—
		Polymerization Reaction	—	X
		Material Recovery	X	—
		Product Finishing	—	—
		Product Storage	—	—
Low Density Polyethylene	High Pressure	Raw Materials Preparation	—	X
		Polymerization Reaction	—	X
		Material Recovery	—	X
		Product Finishing	—	X
		Product Storage	—	X
Low Density Polyethylene	Low Pressure	Raw Materials Preparation	X	X
		Polymerization Reaction	—	X
		Material Recovery	—	—
High Density Polyethylene	Gas Phase	Product Finishing	X	—
		Product Storage	—	—
High Density Polyethylene	Liquid Phase Slurry	Raw Materials Preparation	—	X
		Polymerization Reaction	—	—
		Material Recovery	X	—
		Product Finishing	X	—
		Product Storage	—	—
High Density Polyethylene	Liquid Phase Solution	Raw Materials Preparation	X	X
		Polymerization Reaction	—	X
		Material Recovery	X	X
		Product Finishing	—	—
		Product Storage	—	—

NOTE: "X" denotes that that process section is an affected facility for continuous or intermittent emissions or both, as shown, which has a September 30, 1987, applicability date.

"—" denotes that that process section is not considered an affected facility for continous or intermittent emissions or both, as shown, if the process section is constructed, modified, or reconstructed after September 30, 1987, and on or before January 10, 1989. These process sections are affected facilities if they are constructed, modified, or reconstructed after January 10, 1989.

(2) *Polystyrene.* The applicability date for each polystyrene affected facility is September 30, 1987.

(3) *Poly(ethylene terephthalate).* The applicability date for each poly(ethylene terephthalate) affected facility is September 30, 1987.

(c) Any facility under paragraph (a) of this section that commences construction, modification, or reconstruction after its applicability date as identified under paragraph (b) of this section is subject to the requirements of this subpart, except as provided in paragraphs (d) through (f) of this section.

(d) Any polypropylene or polyethylene affected facility with a September 30, 1987, applicability date that commenced construction, modification, or reconstruction after September 30, 1987, and on or before January 10, 1989, with an uncontrolled emission rate (as defined in footnote a to Table 2) at or below those identified in Table 2 is not subject to the requirements of § 60.562–1 unless and until its uncontrolled emission rate exceeds that rate listed for it in Table 2 or it is modified or reconstructed after January 10, 1989. At such time, such facility becomes subject to § 60.562–1 and the procedures identified in § 60.562–1(a) shall be used to determine the control of emissions from the facility.

TABLE 2.—MAXIMUM UNCONTROLLED THRESHOLD EMISSION RATES [a]

Production process	Process section	Uncontrolled emission rate, kg TOC/mg product
Polypropylene, liquid phase process.	Raw Materials Preparation.	0.15 [b]
	Polymerization Reaction.	0.14 [b], 0.24 [c]
	Material Recovery.	0.19 [b]
	Product Finishing	1.57 [b]
Polypropylene, gas phase process.	Polymerization Reaction.	0.12 [c]
	Material Recovery.	0.02 [b]
Low Density Polyethylene, high pressure process.	Raw Materials Preparation.	0.41 [d]
	Polymerization Reaction.	(e)
	Material Recovery.	(e)
	Product Finishing	(e)
	Product Storage	(e)
Low Density Polyethylene, high pressure process.	Raw Materials Preparation.	0.05 [f]
	Polymerization Reaction.	0.03 [g]
	Production Finishing.	0.01 [b]
High Density Polyethylene, liquid phase slurry process.	Raw Materials Preparation.	0.25 [c]
	Material Recovery.	0.11 [b]
	Product Finishing	0.41 [b]
High Density Polyethylene, liquid phase solution process.	Raw Materials Preparation.	0.24 [f]
	Polymerization Reaction.	0.16 [c]
	Material Recovery.	1.68 [f]
High Density Polyethylene, gas phase process.	Raw Materials Preparation.	0.05 [f]
	Polymerization Reaction.	0.03 [g]
	Product Finishing	0.01 [b]
Polystyrene, continuous process.	Material Recovery.	0.05 [b, h]
Poly(ethylene terephthalate), dimethyl terephthalate process.	Material Recovery.	0.12 [b, h]
	Polymerization Reaction.	1.80 [h, i, j]
Poly(ethylene terephthalate), terephthalic acid process.	Raw Materials Preparation.	(l)
	Polymerization Reaction.	1.80 [h, j, m] 3.92 [h, k, m]

[a] "Uncontrolled emission rate" refers to the emission rate of a vent stream that vents directly to the atmosphere and to the emission rate of a vent stream to the atmosphere that would occur in the absence of any add-on control devices but after any material recovery devices that constitute part of the normal material recovery operations in a process line where potential emissions are recovered for recycle or resale.

[b] Emission rate applies to continuous emissions only.

[c] Emission rate applies to intermittent emissions only.

[d] Total emission rate for non-emergency intermittent emissions from raw materials preparation, polymerization reaction material recovery, product finishing, and product storage process sections.

[e] See footnote d.

[f] Emission rate applies to both continuous and intermittent emissions.

[g] Emission rate applies to non-emergency intermittent emissions only.

[h] Applies to modified or reconstructed affected facilities only.

[i] Includes emissions from the cooling water tower.

[j] Applies to a process line producing low viscosity poly(ethylene terephthalate).

[k] Applies to a process line producing high viscosity poly(ethylene terephathlate).

[l] See footnote m.

[m] Applies to the sum of emissions to the atmosphere from the polymerization reaction section (including emissions from the cooling water tower) and the raw materials preparation section (i.e., the esterifiers).

(e)(1) Modified or reconstructed affected facilities at polystyrene and poly(ethylene terephthalate) plants with uncontrolled emission rates at or below those identified in Table 2 are exempt from the requirements of § 60.562–1 unless and until its uncontrolled emission rate exceeds that rate listed for it in Table 2. This exemption does not apply to new polystyrene or poly(ethylene terephthalate) affected facilities.

(2) Emissions from modified or reconstructed affected facilities that are controlled by an existing control device and that have uncontrolled emission rates greater than the uncontrolled threshold emission rates identified in Table 2 are exempt from the requirements of § 60.561 unless and until the existing control device is modified, reconstructed, or replaced.

(f) No process section of an experimental process line is considered an affected facility for continuous or intermittent process emissions.

(g) Individual vent streams that emit continuous emissions with uncontrolled annual emissions of less than 1.6 Mg/yr or with a weight percent TOC of less than 0.10 percent from a new, modified, or reconstructed polypropylene or polyethylene affected facility are exempt from the requirements of § 60.562–1(a)(1). If at a later date, an individual stream's uncontrolled annual emissions become 1.6 Mg/yr or greater (if the stream was exempted on the basis of the uncontrolled annual emissions exemption) or VOC concentration becomes 0.10 weight percent or higher (if the stream was exempted on the basis of the VOC concentration exemption), then the stream is subject to the requirements of § 60.562–1.

(h) Emergency vent streams, as defined in § 60.561, from a new, modified, or reconstructed polypropylene or polyethylene affected facility are exempt from the requirements of § 60.562–1(a)(2).

(i) An owner or operator of a polypropylene or polyethylene affected

facility that commenced construction, modification, or reconstruction after September 30, 1987, and on or before January 10, 1989, and that is in a process line in which more than one type of polyolefin (i.e., polypropylene, low density polyethylene, high density polyethylene, or their polymers) is produced shall select one of the polymer/production process combinations in Table 1 for purposes of determining applicable affected facilities and uncontrolled threshold emissions rates.

(Note: The numerical emissions limits in these standards are expressed in terms of total organic compounds, measured as total organic compounds less methane and ethane.)

§ 60.561 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in subpart A of part 60, or in subpart VV of part 60, and the following terms shall have the specific meanings given them.

Boiler means any enclosed combustion device that extracts useful energy in the form of steam.

Capital expenditure means, in addition to the definition in 40 CFR 60.2, an expenditure for a physical or operational change to an existing facility that exceeds P, the product of the facility's replacement cost, R, and an adjusted annual asset guideline repair allowance, A, as reflected by the following equation: $P = R \times A$, where

(a) The adjusted annual asset guideline repair allowance, A, is the product of the percent of the replacement cost, Y, and the applicable basic annual asset guideline repair allowance, B, as reflected by the following equation: $A = Y \times (B \div 100)$;

(b) The percent Y is determined from the following equation: $Y = 1.0 - 0.57 \log X$, where X is 1986 minus the year of construction; and

(c) The applicable basic annual asset guideline repair allowance, B, is equal to 12.5.

Car-sealed means, for purposes of these standards, a seal that is placed on the device used to change the position of a valve (e.g., from opened to closed) such that the position of the valve cannot be changed without breaking the seal and requiring the replacement of the old seal once broken with a new seal.

Closed vent system means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

Continuous emissions means any gas stream containing VOC that is generated essentially continuously when the process line or any piece of equipment in the process line is operating.

Continuous process means polymerization process in which reactants are introduced in a continuous manner and products are removed either continuously or intermittently at regular intervals so that the process can be operated and polymers produced essentially continuously.

Control device means an enclosed combustion device, vapor recovery system, or flare.

Copolymer means a polymer that has two different repeat units in its chain.

Decomposition means, for the purposes of these standards, an event in a polymerization reactor that advances to the point where the polymerization reaction becomes uncontrollable, the polymer begins to break down (decompose), and it becomes necessary to relieve the reactor instantaneously in order to avoid catastrophic equipment damage or serious adverse personnel safety consequences.

Decomposition emissions refers to those emissions released from a polymer production process as the result of a decomposition or during attempts to prevent a decomposition.

Emergency vent stream means, for the purposes of these standards, an intermittent emission that results from a decomposition, attempts to prevent decompositions, power failure, equipment failure, or other unexpected cause that requires immediate venting of gases from process equipment in order to avoid safety hazards or equipment damage. This includes intermittent vents that occur from process equipment where normal operating parameters (e.g., pressure to temperature) are exceeded such that the process equipment can not be returned to normal operating conditions using the design features of the system and venting must occur to avoid equipment failure or adverse safety personnel consequences and to minimize adverse effects of the runaway reaction. This does not include intermittent vents that are designed into the process to maintain normal operating conditions of process vessels including those vents that regulate normal process vessel pressure.

End finisher means a polymerization reaction vessel operated under very low pressures, typically at pressures of 2 torr or less, in order to produce high viscosity poly(ethylene terephthalate). An end finisher is preceded in a high viscosity poly(ethylene terephthalate) process line by one or more polymerization vessels operated under less severe vacuums, typically between 5 and 10 torr. A high viscosity poly(ethylene terephthalate) process line may have one or more end finishers.

Existing control device means, for the purposes of these standards, an air pollution control device that has been in operation on or before September 30, 1987, or that has been in operation between September 30, 1987, and January 10, 1989, on those continuous or intermittent emissions from a process section that is marked by an "—" in Table 1 of this subpart.

Existing control device is reconstructed means, for the purposes of these standards, the capital expenditure of at least 50 percent of the replacement cost of the existing control device.

Existing control device is replaced means, for the purposes of these standards, the replacement of an existing control device with another control device.

Expandable polystyrene means a polystyrene bead to which a blowing agent has been added using either an in-situ suspension process or a post-impregnation suspension process.

Experimental process line means a polymer or copolymer manufacturing process line with the sole purpose of operating to evaluate polymer manufacturing processes, technologies, or products. An experimental process line does not produce a polymer or resin that is sold or that is used as a raw material for nonexperimental process lines.

Flame zone means that portion of the combustion chamber in a boiler occupied by the flame envelope.

Fugitive emissions equipment means each pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, valve, and flange or other connector in VOC service and any devices or systems required by subpart VV of this part.

Gas phase process means a polymerization process in which the polymerization process is carried out in the gas phase; i.e., the monomer(s) are gases in a fluidized bed of catalyst particles and granular polymer.

High density polyethylene (HDPE) means a thermoplastic polymer or copolymer comprised of at least 50 percent ethylene by weight and having a density of greater than 0.940 g/cm^3.

High pressure process means the conventional production process for the manufacture of low density polyethylene in which a reaction pressure of about 15,000 psig or greater is used.

High viscosity poly(ethylene terephthalate) means poly(ethylene terephthalate) that has an intrinsic viscosity of 0.9 or higher and is used in such applications as tire cord and seat belts.

Incinerator means an enclosed combustion device that is used for destroying VOC.

In-situ suspension process means a manufacturing process in which styrene, blowing agent, and other raw materials are added together within a reactor for the production of expandable polystyrene.

Intermittent emissions means those gas streams containing VOC that are generated at intervals during process line operation and includes both planned and emergency releases.

Liquid phase process means a polymerization process in which the polymerization reaction is carried out in the liquid phase; i.e., the monomer(s) and any catalyst are dissolved, or suspended in a liquid solvent.

Liquid phase slurry process means a liquid phase polymerization process in which the monomer(s) are in solution (completely dissolved) in a liquid solvent, but the polymer is in the form of solid particles suspended in the liquid reaction mixture during the polymerization reaction; sometimes called a particle form process.

Liquid phase solution process means a liquid phase polymerization process in which both the monomer(s) and polymer are in solution (completely dissolved) in the liquid reaction mixture.

Low density polyethylene (LDPE) means a thermoplastic polymer or copolymer comprised of at least 50 percent ethylene by weight and having a density of 0.940 g/cm^3 or less.

Low pressure process means a production process for the manufacture of low density polyethylene in which a reaction pressure markedly below that used in a high pressure process is used. Reaction pressure of current low pressure processes typically go up to about 300 psig.

Low viscosity poly(ethylene terephthalate) means a poly(ethylene terephthalate) that has an intrinsic viscosity of less than 0.75 and is used in such applications as clothing, bottle, and film production.

Material recovery section means the equipment that recovers unreacted or by-product materials from any process section for return to the process line, off-site purification or treatment, or sale. Equipment designed to separate unreacted or by-product material from the polymer product are to be included in this process section, provided at least some of the material is recovered for reuse in the process, off-site purification or treatment, or sale, at the time the process section becomes an affected facility. Otherwise such equipment are to be assigned to one of the other process sections, as appropriate. Equipment that treats recovered materials are to be included in this process section, but equipment that also treats raw materials are not to be included in this process section. The latter equipment are to be included in the raw materials preparation section. If equipment is used to return unreacted or by-product material directly to the same piece of process equipment from which it was emitted, then that equipment is considered part of the process section that contains the process equipment. If equipment is used to recover unreacted or by-product material from a process section and return it to nother process section or a different piece of process equipment in the same process section or sends it off-site for purification, treatment, or sale, then such equipment are considered part of a material recovery section. Equipment used for the on-site recovery of ethylene glycol from poly(ethylene terephthalate) plants, however, are not included in the material recovery section, but are covered under the standards applicable to the polymerization reaction section (§ 60.562–1(c)(1)(ii)(A) or (2)(ii)(A)).

Operating day means, for the purposes of these standards, any calendar day during which equipment used in the manufacture of polymer was operating for at least 8 hours or one labor shift, whichever is shorter. Only operating days shall be used in determining compliance with the standards specified in § 60.562–1(c)(1)(ii)(B), (1)(ii)(C), (2)(ii)(B), and (2)(ii)(C). Any calendar day in which equipment is used for less than 8 hours or one labor shift, whichever is less, is not an "operating day" and shall not be used as part of the rolling 14-day period for determining compliance with the standards specified in § 60.562–1(c)(1)(ii)(B), (1)(ii)(C), (2)(ii)(B), and (2)(ii)(C).

Polyethylene means a thermoplastic polymer or copolymer comprised of at least 50 percent ethylene by weight; see low density polyethylene and high density polyethylene.

Poly(ethylene terephthalate) (PET) means a polymer or copolymer comprised of at least 50 percent bis-(2-hydroxyethyl)-terephthalate (BHET) by weight.

Poly(ethylene terephthalate) (PET) manufacture using dimethyl terephthalic means the manufacturing of poly(ethylene terephthalate) based on the esterification of dimethyl terephthalate (DMT) with ethylene glycol to form the intermediate monomer bis-(2-hydroxyethyl)-terephthalate (BHET) that is subsequently polymerized to PET.

Poly(ethylene terephthalate) (PET) manufacture using terephthalic acid means the manufacturing of poly(ethylene terephthalate) based on the esterification reaction of terephthalic acid (TPA) with ethylene glycol to form the intermediate monomer bis-(2-hydroxyethyl)-terephthalate (BHET) that is subsequently polymerized to form PET.

Polymerization reaction section means the equipment designed to cause monomer(s) to react to form polymers, including equipment designed primarily to cause the formation of short polymer chains (oligomers or low polymers), but not including equipment designed to prepare raw materials for polymerization, e.g., esterification vessels. For the purposes of these standards, the polymerization reaction section begins with the equipment used to transfer the materials from the raw materials preparation section and ends with the last vessel in which polymerization occurs. Equipment used for the on-site recovery of ethylene glycol from poly(ethylene terephthalate) plants, however, are included in this process section, rather than in the material recovery process section.

Polypropylene (PP) means a thermoplastic polymer or copolymer comprised of at least 50 percent propylene by weight.

Polystyrene (PS) means a thermoplastic polymer or copolymer comprised of at least 80 percent styrene or para-methylstyrene by weight.

Post-impregnation suspension process means a manufacturing process in which polystyrene beads are first formed in a suspension process, washed, dried, or otherwise finished and then added with a blowing agent to another reactor in which the beads and blowing agent are reacted to produce expandable polystyrene.

Process heater means a device that transfers heat liberated by burning fuel to fluids contained in tubular coils, including all fluids except water that is heated to produce steam.

Process line means a group of equipment assembled that can operate independently if supplied with sufficient raw materials to produce polypropylene, polyethylene, polystyrene, (general purpose, crystal, or expandable) or poly(ethylene terephthalate) or one of their copolymers. A process line consists of the equipment in the following process sections (to the extent

that these process sections are present at a plant): raw materials preparation, polymerization reaction, product finishing, product storage, and material recovery.

Process section means the equipment designed to accomplish a general but well-defined task in polymer production. Process sections include raw materials preparation, polymerization reaction, material recovery, product finishing, and product storage and may be dedicated to a single process line or common to more than one process line.

Process unit means equipment assembled to perform any of the physical and chemical operations in the production of polypropylene, polyethylene, polystyrene, (general purpose, crystal, or expandable), or poly(ethylene terephthalate) or one of their copolymers. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product. Examples of process units are raw materials handling and monomer recovery.

Product finishing section means the equipment that treats, shapes, or modifies the polymer or resin to produce the finished end product of the particular facility, including equipment that prepares the product for product finishing. For the purposes of these standards, the product finishing section begins with the equipment used to transfer the polymerized product from the polymerization reaction section and ends with the last piece of equipment that modifies the characteristics of the polymer. Product finishing equipment may accomplish product separation, extruding and pelletizing, cooling and drying, blending, additives introduction, curing, or annealing. Equipment used to separate unreacted or by-product material from the product are to be included in this process section, provided the material separated from the polymer product is not recovered at the time the process section becomes an affected facility. If the material is being recovered, then the separation equipment are to be included in the material recovery section. Product finishing does not include polymerization, the physical mixing of the pellets to obtain a homogenous mixture of the polymer (except as noted below), or the shaping (such as fiber spinning, molding, or fabricating) or modification (such as fiber stretching and crimping) of the finished end product. If physical mixing occurs in equipment located between product finishing equipment (i.e., before all the chemical and physical characteristics have been "set" by virtue of having passed through the last piece of equipment in the product finishing section), then such equipment are to be included in this process section. Equipment used to physically mix the finished product that are located after last piece of equipment in the product finishing section are part of the product storage section.

Product storage section means the equipment that is designed to store the finished polymer or resin end product of the particular facility. For the purposes of these standards, the product storage section begins with the equipment used to transfer the finished product out of the product finishing section and ends with the containers used to store the final product. Any equipment used after the product finishing section to recover unreacted or by-product material are to be considered part of a material recovery section. Product storage does not include any intentional modification of the characteristics of any polymer or resin product, but does include equipment that provide a uniform mixture of product, provided such equipment are used after the last product finishing piece of equipment. This process section also does not include the shipment of a finished polymer or resin product to another facility for further finishing or fabrication.

Raw materials preparation section means the equipment located at a polymer manufacturing plant designed to prepare raw materials, such as monomers and solvents, for polymerization. For the purposes of these standards, this process section begins with the equipment used to transfer raw materials from storage and recovered material from material recovery process sections, and ends with the last piece of equipment that prepares the material for polymerization. The raw materials preparation section may include equipment that accomplishes purification, drying, or other treatment of raw materials or of raw and recovered materials together, activation of catalysts, and esterification including the formation of some short polymer chains (oligomers), but does not include equipment that is designed primarily to accomplish the formation of oligomers, the treatment of recovered materials alone, or the storage of raw materials.

Recovery system means an individual unit or series of material recovery units, such as absorbers, condensers, and carbon adsorbers, used for recovering volatile organic compounds.

Total organic compounds (TOC) means those compounds measured according to the procedures specified in § 60.564.

Vent stream means any gas stream released to the atmosphere directly from an emission source or indirectly either through another piece of process equipment or a material recovery device that constitutes part of the normal recovery operations in a polymer process line where potential emissions are recovered for recycle or resale, and any gas stream directed to an air pollution control device. The emissions released from an air pollution control device are not considered a vent stream unless, as noted above, the control device is part of the normal material recovery operations in a polymer process line where potential emissions are recovered for recycle or resale.

Volatile organic compounds (VOC) means, for the purposes of these standards, any reactive organic compounds as defined in § 60.2 Definitions.

§ 60.562-1 Standards: Process emissions.

(a) Polypropylene, low density polyethylene, and high density polyethylene. Each owner or operator of a polypropylene, low density polyethylene, or high density polyethylene process line containing a process section subject to the provisions of this subpart shall comply with the provisions in this section on and after the date on which the initial performance test required by § 60.8 is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after initial startup whichever comes first.

(1) *Continuous emissions.* For each vent stream that emits continuous emissions from an affected facility as defined in § 60.560(a)(1), the owner or operator shall use the procedures identified in paragraphs (a)(1) (ii) and (iii) of this section for determining which continuous emissions are to be controlled and which level of control listed in paragraph (a)(1)(i) of this section is to be met. The owner or operator shall use the procedures identified in paragraphs (a)(1) (ii) and (iii) of this section each time a process section is constructed, modified, or reconstructed at the plant site.

(i) *Level of control.* Continuous emission streams determined to be subject to control pursuant to the procedures identified in paragraphs (a)(1) (ii) and (iii) of this section, as applicable, shall meet one of the control levels identified in paragraphs (a)(1)(i)

(A) through (D) of this section. The procedures in paragraphs (a)(1) (ii) and (iii) of this section identify which level of control may be met. The level of control identified in paragraph (a)(1)(i)(D) of this section is limited to certain continuous emission streams, which are identified through the procedures in paragraphs (a)(1) (ii) and (iii) of this section.

(A) Reduce emissions of total organic compounds (minus methane and ethane) (TOC) by 98 weight percent, or to a concentration of 20 parts per millions by volume (ppmv) on a dry basis, whichever is less stringent. The TOC is expressed as the sum of the actual compounds, not carbon equivalents. If an owner or operator elects to comply with the 20 ppmv standard, the concentration shall include a correction to 3 percent oxygen only when supplemental combustion air is used to combust the vent stream.

(B) Combust the emissions in a boiler or process heater with a design heat input capacity of 150 million Btu/hour or greater by introducing the vent stream into the flame zone of the boiler or process heater. (Note: A boiler or process heater of lesser design heat capacity may be used, but must demonstrate compliance with paragraph (a)(1)(i)(A) of this section.)

(C) Combust the emissions in a flare that meets the conditions specified in § 60.18. If the flare is used to control both continuous and intermittent emissions, the flare shall meet the conditions specified in § 60.18 at all times (i.e., which controlling continuous emissions alone or when controlling both continuous and intermittent emissions).

(D) Vent the emissions to a control device located on the plant site.

(ii) *Uncontrolled Continuous Emissions.* For each vent stream that emits continuous emissions from an affected facility as defined in § 60.560(a)(1) and that is not controlled in an existing control device, the owner or operator shall use the procedures identified in Table 3 to identify those continuous emissions from each constructed, modified, or reconstructed affected facility that are to be controlled. The owner shall include in the procedure all uncontrolled continuous vent streams from previously constructed, modified, or reconstructed affected facilities at the plant site each time a process section is constructed, modified, or reconstructed at the plant site. In applying the procedures shown in Table 3, the stream characteristics may be either measured or calculated as specified in § 60.564(d). For modified or reconstructed affected facilities, these stream characteristics are to be determined after a modification or reconstruction determination has been made by the Administrator, but before any actual changes have been undertaken, and then again after the actual changes have been made. Figure 1 provides a summary overview of the control determination procedure described in Table 3.

TABLE 3.—PROCEDURE FOR DETERMINING CONTROL AND APPLICABLE STANDARD FOR CONTINUOUS EMISSION STREAMS FROM NEW, MODIFIED, OR RECONSTRUCTED POLYPROPYLENE AND POLYETHYLENE AFFECTED FACILITIES

Procedure /a/	Applicable TOC weight percent range	Control/no control criteria	Applicable standard
1. Sum all uncontrolled streams with TOC weight percent within the applicable weight percent range from all affected facilities at a plant site.	0.10 < 5.5	1. If total combined uncontrolled emissions are equal to or greater than the calculated threshold emissions (CTE) /b/, control.	1. § 60.562-1(a)(1)(i) (A), (B), or (C).
2. Calculate total uncontrolled annual emissions for each weight percent range. For modified or affected facilities, use the total uncontrolled emissions after modification or reconstruction.		2. If total combined uncontrolled emission are less than the CTE /b/, control only individual streams with volume flow rates of 8 scfm or less.	2. § 60.562-1(a)(1)(i) (A) through (D).
3. Calculate composite TOC concentration (weight percent) for streams in the 0.10 to less than 5.5 weight percent range and for streams in the 5.5 to less than 20 weight percent range. For modified or reconstructed affected facilities, calculate the composite VOC concentration before and after modification and reconstruction.	5.5 < 20	1. If total combined uncontrolled emissions are equal to or greater than CTE, control.	1. § 60.562-1(a)(1)(i) (A), (B), or (C).
		2. If total combined uncontrolled emissions are less than the CTE /b/, control only individual streams with volume flow rates of 8 scfm or less.	2. § 60.562-1(a)(1)(i) (A) through (D).
4. Select the higher of the two TOC concentrations for each weight percent range for vent streams from a modified or reconstructed affected facility.	20 to 100	1. If total combined uncontrolled emissions are equal to or greater than 18.2 Mg/yr, control.	1. § 60.562-1(a)(1)(i) (A), (B), or (C).
5. Calculate the threshold emissions for the 0.10 to less than 5.5 weight percent range and for the 5.5 to less than 20 weight percent range using the respective composite TOC concentration selected above.		2. If total combined uncontrolled emissions are less than 18.2 Mg/yr, control.	2. § 60.562-1(a)(1)(i) (A) through (D).

a Individual streams excluded under paragraph § 60.560(g) from the requirements of § 60.562-1 are to be excluded from all calculations in this table. This paragraph exempts all individual emission streams with individual uncontrolled annual emission rates of less than 1.6 Mg/yr and all individual emission streams with individual TOC concentrations of less than 0.10 percent TOC by weight.

b For the 0.10 to less than 5.5 weight percent range, the following equations are used:

If the percent composite TOC concentration is	Use this equation to calculate threshold emissions
0.10<0.12	$(a \times 7.5 \times 10^6) + 226$
0.12<0.2	$(b \times 58.3) + 116.8$
0.2<0.3	$(c \times 3020) + 71.8$
0.3<0.4	$(d \times 547) + 54.5$

If the percent composite TOC concentration is	Use this equation to calculate threshold emissions
0.4<0.6	48.3+31 (0.6−weight percent TOC)
0.6<5.5	48.3

where: $a = (0.12 - \text{weight percent TOC})^{.25}$

$$\left[\frac{0.18}{\text{weight percent TOC}}\right]^{0.5} - 1$$

$$b = \frac{}{\text{weight percent TOC}}$$

$c = (0.3 - \text{weight percent TOC})^2$

$d = (0.4 - \text{weight percent TOC}).^{15}$

For the 5.5 to less than 20 weight percent range, the following equations are used.

If the percent composite TOC concentration is	Use this equation to calculate threshold emissions
5.5<7.0	(e×740)+31
7.0<9.0	(f×324)+25.0
9.0<20	(g×125)+18.2

where:

$$e = \frac{\left[\dfrac{7.0}{\text{weight percent TOC}}\right]^{0.5} - 1}{\text{weight percent TOC}}$$

$$f = \frac{\left[\dfrac{9.0}{\text{weight percent TOC}}\right]^{0.5} - 1}{\text{weight percent TOC}}$$

$$g = \frac{\left[\dfrac{20.0}{\text{weight percent TOC}}\right]^{0.5} - 1}{\text{weight percent TOC}}$$

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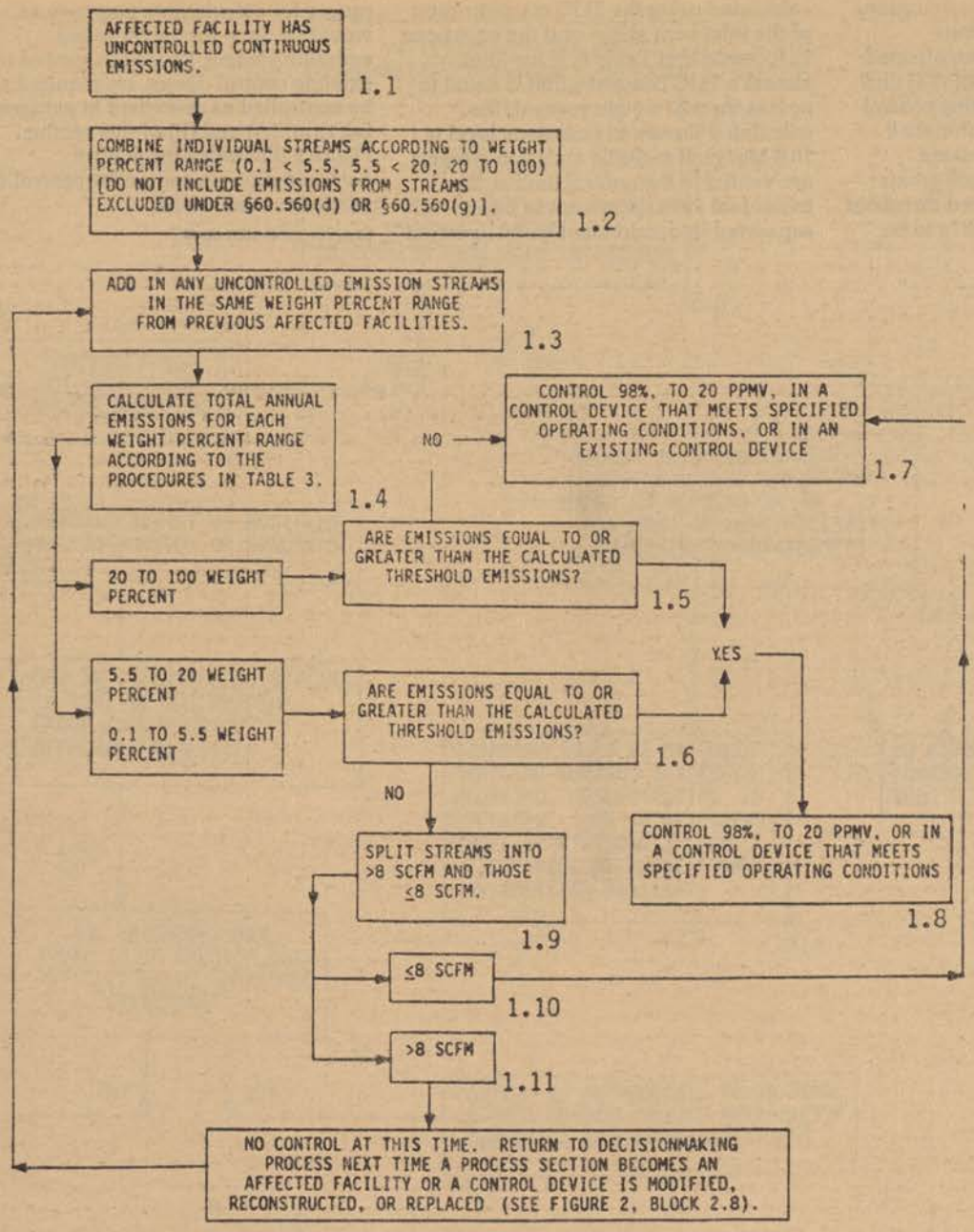

Figure 1. Decisionmaking Process for Uncontrolled Continuous Emissions from Polypropylene and Polyethylene Affected Facilities

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(iii) Controlled Continuous Emissions. For each vent stream that emits continuous emissions from an affected facility as defined in § 60.560(a)(1) and that is controlled in an existing control device, each owner or operator shall determine whether the emissions entering the control device are greater than or equal to the calculated threshold emissions (CTE) level, which is to be calculated using the TOC concentration of the inlet vent steam and the equations in footnote b of Table 3. If the inlet stream's TOC concentration is equal to or less than 20 weight percent, the calculated threshold emissions level is 18.2 Mg/yr. If multiple emission streams are vented to the control device, the individual streams are not to be separated into individual weight percent ranges for calculations purposes as would be done for uncontrolled emission steams. Emissions vented to an existing control device are required to be controlled as described in paragraphs (a)(1)(iii) (A) and (B) of this section. Figure 2 illustrates the control determination procedure for controlled continuous emissions.

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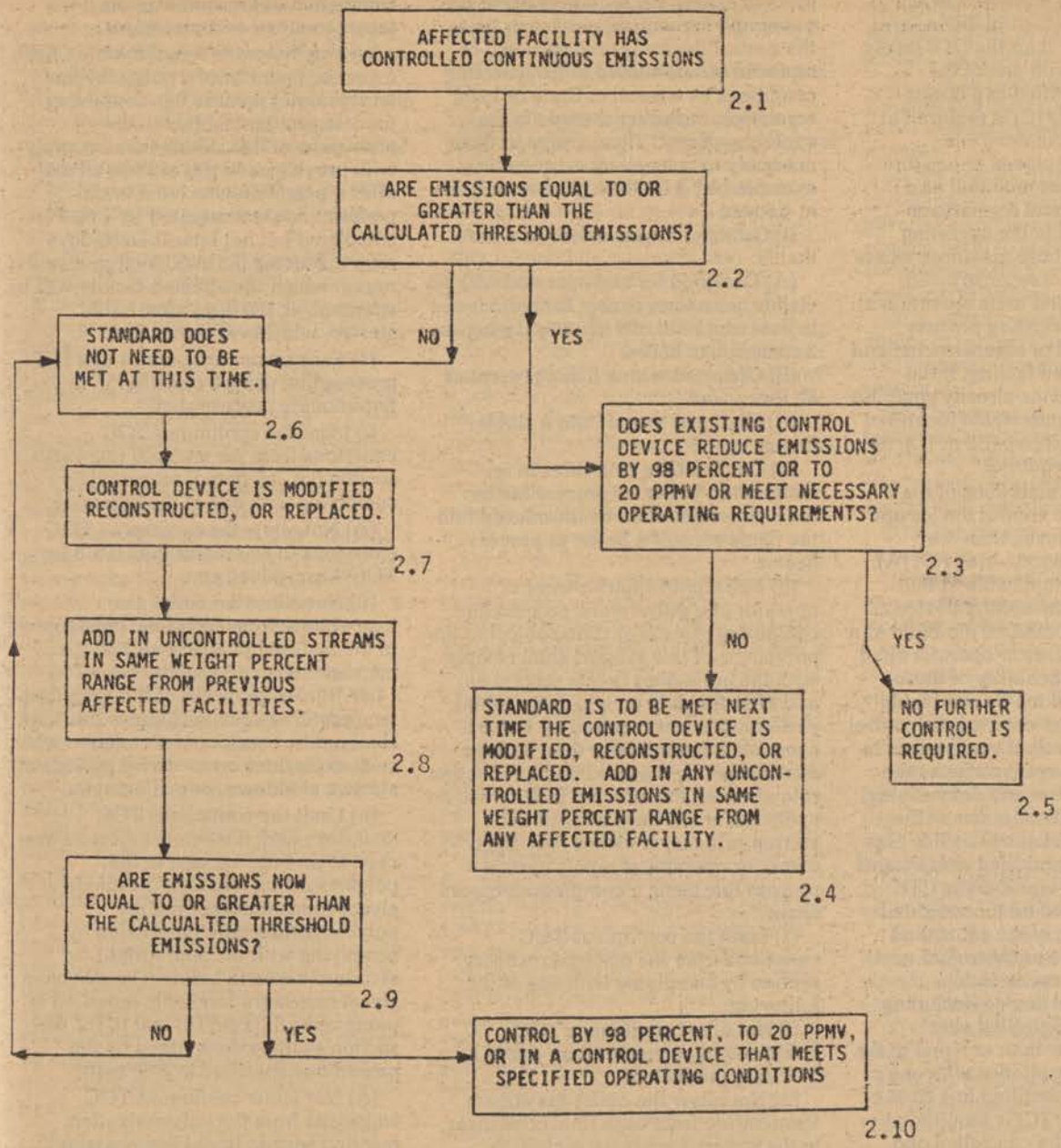

NOTE: There are no individual stream exemptions for emissions already controlled by existing control devices.

Figure 2. Decisionmaking Process for Continuous Emissions Already Controlled at Polypropylene and Polyethylene Affected Facilities

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(A) If the annual emissions of the steam entering the control device are equal to or greater than the CTE levels, then compliance with one of the requirements identified in § 60.562-1(a)(1)(i) (A), (B), or (C) is required at such time the control device is reconstructed or replaced or has its operating conditions modified as a result of State or local regulations (including changes in the operating permit) including those instances where the control device is reconstructed, replaced, or modified in its operation at the same time the existing process section is modified or reconstructed and becomes an affected facility. If the existing control device already complies with one of the requirements identified in § 60.562-1(a)(1)(i) (A), (B), or (C), no further control is required.

(B) If the annual emissions of the stream entering the control device are less than the CTE level, then the requirements of § 60.562-1(a)(1)(i) (A), (B), or (C) are not applicable at that time. However, if the control device is replaced, reconstructed, or modified at a later date, each owner or operator shall reevaluate the applicability of these standards. This is done by combining with the vent stream entering the control device any uncontrolled vent steams in the same weight percent range as the controlled vent steam and determining whether the annual emissions of the stream entering the control device plus the applicable uncontrolled vent steams are greater than or equal to the CTE level, which is based on the weighted TOC concentration of the controlled vent stream and the uncontrolled vent streams. If the annual emissions entering the control device (including the applicable uncontrolled vent streams) are greater than or equal to the CTE level, then compliance with one of the requirements identified in § 60.562-1(a)(1)(i) (A), (B), or (C) is required at that time for both the controlled and uncontrolled vent steams. If the annual emissions are less than the CTE level, compliance with these standards is again not required at such time. However, if the control device is again replaced, reconstructed, or modified, each owner or operator shall repeat this determination procedure.

(2) *Intermittent emissions.* The owner or operator shall control each vent steam that emits intermittent emissions from an affected facility as defined in § 60.560-1(a)(1) by meeting one of the control requirements specified in paragraphs (a)(2) (i) and (ii) of this section. If a vent stream that emits intermittent emissions is controlled in an existing flare, incinerator, boiler,or process heater, the requirements of this paragraph are waived until such time the control device is reconstructed or replaced or is modified in its operating conditions as a result of State or local regulation, including changes in the operating permit. This paragraph does not apply to emergency vent streams exempted by § 60.560(h) and as defend in § 60.561.

(i) Combust the emissions in a flare that is:

(A) Designed for and operated with no visible emissions, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours,

(B) Operated with a flame present at all times, and

(C) Designed to maintain a stable flame.

(ii) Combust the emissions in an incinerator, boiler, or process heater. Such emissions shall be introduced into the flame zone of a boiler or process heater.

(b) *Polystyrene.* Each owner or operator of a polystyrene process line containing process section subject to the provisions of this subpart shall comply with the provisions in this section on and after the date on which the initial performance test required by § 60.8 is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after initial startup, whichever comes first. East owner or operator of a polystyrene process line using a continuous process shall:

(1) Limit the continuous TOC emissions from the material recovery section by complying with one of the following:

(i) Not allow continuous TOC emissions to be greater than 0.0036 kg TOC/Mg product; or

(ii) Not allow the outlet gas stream temperature from each final condenser in the material recovery section to exceed −25 °C (−13 °F). For purposes of this standard, temperature excursions above this limit shall not be considered a violation when such excursions occur during periods of startup, shutdown, or malfunction; or

(iii) Comply with § 60.562-1(a)(1)(i) (A), (B), or (C).

(2) If continuous TOC emissions from the material recovery section are routed through an existing emergency vapor recovery system, then compliance with these standards is required when the emergency vapor recovery system undergoes modification, reconstruction, or replacement. In such instances, compliance with these standards shall be achieved no later than 180 days after completion of the modification, reconstruction, or replacement.

(c) *Poly(ethylene terephthalate).* Each owner or operator of a poly(ethylene terphthalate) process line containing process sections subject to the provisions of this subpart shall comply with provisions in this section on and after the date on which the initial performance test required by § 60.8 is completed but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after initial startup, whichever comes first.

(1) Each owner or operator of a PET process line using a dimethyl terphthalate process shall:

(i) Limit the continuous TOC emissions from the material recovery section (i.e., methanol recovery) by complying with one of the following:

(A) Not allow the continuous TOC emissions to be greater than 0.018 kg TOC/Mg product; or

(B) Not allow the outlet gas temperature from each final condenser in the material recovery section (i.e., methanol recovery) to exceed +3 °C (+37 °F). For purposes of this standard, temperature excursions above this limit shall not be considered a violation wher such excursions occur during periods of startup, shutdown, or malfunction.

(ii) Limit the continuous TOC emissions and, if steam-jet ejectors are used to provide vacuum to the polymerization reactors, the ethylene glycol concentration from the polymerization reaction section by complying with the appropriate standard set forth below. The ethylene glycol concentration limits specified in paragraphs (c)(1)(ii) (B) and (C) of this section shall be determined by the procedures specified in § 60.564(j).

(A) Not allow continuous TOC emissions from the polymerization reaction section (including emissions from any equipment used to further recover the ethylene glycol, but excluding those emissions from the cooling tower) to be greater than 0.02 kg TOC/Mg product; and

(B) If steam-jet ejectors are used as vacuum producers and a low viscosity product is being produced using single or multiple end finishers or a high viscosity product is being produced using a single end finisher, maintain the concentration of ethylene glycol in the liquid effluent exiting the vacuum system servicing the polymerization reaction section at or below 0.35 percent by weight, averaged on a daily basis over a rolling 14-day period of operating days; or

(C) If steam-jet ejectors are used as vacuum producers and a high viscosity product is being produced using multiple end finishers, maintain an ethylene glycol concentration in the cooling tower at or below 6.0 percent by weight averaged on a daily basis over a rolling 14-day period of operating days.

(2) Each owner or operator of a PET process line using a terephthalic acid process shall:

(i) Not allow the continuous TOC emissions from the esterification vessels in the raw materials preparation section to be greater than 0.04 kg TOC/Mg product.

(ii) Limit the continuous TOC emissions and, if steam-jet ejectors are used to provide vaccum to the polymerization reactors, the ethylene glycol concentration from the polymerization reaction section by complying with the appropriate standard set forth below. The ethylene glycol concentration limits specified in paragraphs (c)(2)(ii) (B) and (C) of this section shall be determined by the procedures specified in § 60.564(j).

(A) Not allow continuous TOC emissions from the polymerization reaction section (including emissions from any equipment used to further recover the ethylene glycol, but excluding those emissions from the cooling tower) to be greater than 0.02 kg TOC/Mg product; and

(B) If steam-jet ejectors are used as vacuum producers and a low viscosity product is being produced using single or multiple end finishers or a high viscosity product is being produced using a single end finisher, maintain the concentration of ethylene glycol in the liquid effluent exiting the vacuum system servicing the polymerization reaction section at or below 0.35 percent by weight, averaged on a daily basis over a rolling 14-day period of operating days; or

(C) If steam-jet ejectors are used as vacuum producers and a high viscosity product is being produced using multiple end finishers, maintain an ethylene glycol concentration in the cooling tower at or below 6.0 percent by weight averaged on a daily basis over a rolling 14-day period of operating days.

(d) Closed vent systems and control devices used to comply with this subpart shall be operated at all times when emissions may be vented to them.

(e) Vent systems that contain valves that could divert a vent stream from a control device shall have car-sealed opened all valves in the vent system from the emission source to the control device and car-sealed closed all valves in vent system that would lead the vent stream to the atmosphere, either directly or indirectly, bypassing the control device.

§ 60.562-2 Standards: Equipment leaks of VOC.

(a) Each owner or operator of an affected facility subject to the provisions of this subpart shall comply with the requirements specified in § 60.482-1 through § 60-482-10 as soon as practicable, but no later than 180 days after initial startup, except that indications of liquids dripping from bleed ports in existing pumps in light liquid service are not considered to be a leak as defined in § 60.482-2(b)(2). For purposes of this standard, a "bleed port" is a technologically-required feature of the pump whereby polymer fluid used to provide lubrication and/or cooling of the pump shaft exits the pump, thereby resulting in a visible leak of fluid. This exemption expires when the existing pump is replaced or reconstructed.

(b) An owner or operator may elect to comply with the requirements specified in § 60.483-1 and § 60.483-2.

(c) An owner or operator may apply to the Administrator for a determination of equivalency for any means of emission limitation that achieves a reduction in emissions of VOC at least equivalent to the reduction in emissions of VOC achieved by the controls required in this subpart. In doing so, the owner or operator shall comply with requirements specified in § 60.484.

(d) Each owner or operator subject to the provisions of this subpart shall comply with the provisions specified in § 60.485 except an owner or operator may use the following provision in addition to § 60.485(e): Equipment is in light liquid service if the percent evaporated is greater than 10 percent at 150 °C as determined by ASTM Method D86-78 (incorporated by reference as specified in § 60.17).

(e) Each owner or operator subject to the provisions of this subpart shall comply with § 60.486 and § 60.487.

§ 60.563 Monitoring requirements.

(a) Whenever a particular item of monitoring equipment is specified in this section to be installed, the owner or operator shall install, calibrate, maintain, and operate according to manufacturer's specifications that item as follows:

(1) A temperature monitoring device to measure and record continuously the operating temperature to within 1 percent (relative to degrees Celsius) or ± 0.5 °C (± 0.9 °F), whichever is greater.

(2) A flame monitoring device, such as a thermocouple, an ultraviolet sensor, an infrared beam sensor, or similar device to indicate and record continuously whether a flare or pilot light flame is present, as specified.

(3) A flow monitoring indicator to indicate and record whether or not flow exists at least once every fifteen minutes.

(4) An organic monitoring device (based on a detection principle such as infrared, photoionization, or thermal conductivity) to indicate and record continuously the concentration level of organic compounds.

(5) A specific gravity monitoring device to measure and record continuously to within 0.02 specific gravity unit.

(b) The owner or operator shall install, as applicable, the monitoring equipment for the control means used to comply with § 60.562-1, except § 60.562-1(a)(1)(i)(D), as follows:

(1) If the control equipment is an incinerator:

(i) For a noncatalytic incinerator, a temperature monitoring device shall be installed in the firebox.

(ii) For a catalytic incinerator, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalytic bed.

(2) If a flare is used:

(i) A flame monitoring device shall be installed to indicate the presence of a flare flame or a flame for each pilot light, if the flare is used to comply with § 60.562-1(a)(1), including those flares controlling both continuous and intermittent emissions.

(ii) A thermocouple or equivalent monitoring device to indicate the presence of a flame at each pilot light, if used to comply with § 60.562-1(a)(2).

(3) If a boiler or process heater is used:

(i) If the boiler or process heater has a heat input design capacity of less than 150 million Btu/hr, a temperature monitoring device shall be installed between the radiant section and the convection zone for watertube boilers and between the furnace (combustion zone) and the firetubes for firetube boilers.

(ii) If the boiler or process heater has a heat input design capacity of 150 million Btu/hr or greater, such records to indicate the periods of operation of the boiler or process heater shall be maintained. The records must be readily available for inspection.

(4) If an absorber is the final unit in a system:

(i) A temperature monitoring device and a specific gravity monitoring device for the scrubber liquid shall be installed, or

(ii) An organic monitoring device shall be installed at the outlet of the absorber.

(5) If a condenser is the final unit in a system:

(i) A temperature monitoring device shall be installed at the condenser exist (product side), or

(ii) An organic monitoring device shall be installed at the outlet of the condenser.

(6) If a carbon adsorber is the final unit in a system, an organic monitoring device shall be installed at the outlet of the carbon bed.

(c) Owners or operators of control devices used to comply with the provisions of this subpart, except § 60.562–1(a)(1)(i)(D), shall monitor these control devices to ensure that they are operated and maintained in conformance with their designs.

(d) Owners or operators using a vent system that contains valves that could divert a vent stream from a control device used to comply with the provisions of this subpart shall do one or a combination of the following:

(1) Install a flow indicator immediately downstream of each valve that if opened would allow a vent stream to bypass the control device and be emitted, either directly or indirectly, to the atmosphere. The flow indicator shall be capable of recording flow at least once every fifteen minutes.

(2) Monitor the valves once a month, checking the position of the valves and the condition of the car seal, and identify all times when the car seals have been broken and the valve position has been changed (i.e., from opened to closed for valves in the vent piping to the control device and from closed to open for valves that allow the stream to be vented directly or indirectly to the atmosphere).

(e) An owner or operator complying with the standards specified under § 60.562–1, except § 60.562–1(a)(1)(i)(D), with control devices other than an incinerator, boiler, process heater, flare, absorber, condenser, or carbon adsorber or by any other means shall provide to the Administrator information describing the operation of the control device and the process parameter(s) which would indicate proper operation and maintenance of the device. The Administrator may request further information and will specify appropriate monitoring procedures or requirements.

§ 60.564 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in appendix A of this part or other methods and procedures specified in this section, except as provided under § 60.8(b). Owners or operators complying with § 60.562–1(a)(1)(i)(D) need not perform a performance test on the control device, provided the control device is not used to comply with any other requirement of § 60.562–1(a).

(1) Whenever changes are made in production capacity, feedstock type or catalyst type, or whenever there is replacement, removal, or addition of a control device, each owner or operator shall conduct a performance test according to the procedures in this section as appropriate, in order to determine compliance with § 60.562–1.

(2) Where a boiler or process heater with a design heat input capacity of 150 million Btu/hour or greater is used, the requirement for an initial performance test is waived, in accordance with § 60.8(b). However, the Administrator reserves the option to require testing at such other times as may be required, as provided for in § 114 of the Act.

(3) The owner or operator shall determine the average organic concentration for each performance test run using the equipment described in § 60.563(a)(4). The average organic concentration shall be determined from measurements taken at least every 15 minutes during each performance test run. The average of the three runs shall be the base value for the monitoring program.

(4) When an absorber is the final unit in the system, the owner or operator shall determine the average specific gravity for each performance test run using specific gravity monitoring equipment described in § 60.563(a)(5). An average specific gravity shall be determined from measurements taken at least every 15 minutes during each performance test run. The average of the three runs shall be the base value for the monitoring program.

(5) When a condenser is the final unit in the system, the owner or operator shall determine the average outlet temperature for each performance test run using the temperature monitoring equipment described in § 60.563(a)(1). An average temperature shall be determined from measurements taken at least every 15 minutes during each performance test run while the vent stream is normally routed and constituted. The average of the three runs shall be the base value for the monitoring program.

(b) The owner or operator shall determine compliance with the emission concentration standard in § 60.562–1 (a)(1)(i)(A) or (b)(1)(iii) if applicable [if not, see paragraph (c) of this section] as follows:

(1) The TOC concentration is the sum of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \sum_{j=1}^{n} C_j$$

where:

C_{TOC} = Concentration of TOC (minus methane and ethane), dry basis, ppmv.

C_j = the concentration of sample component j, ppm.

n = Number of components in the sample.

(i) Method 18 shall be used to determine the concentration of each individual organic component (C_j) in the gas stream. Method 1 or 1A, as appropriate, shall be used to determine the sampling site at the outlet of the control device. Method 4 shall be used to determine the moisture content, if necessary.

(ii) The sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at 15 minute intervals.

(2) If supplemental combustion air is used, the TOC concentration shall be corrected to 3 percent oxygen and shall be computed using the following equation:

$$C_{CORR} = C_{MEAS} \times \left(\frac{17.9}{20.9 - \%O_{2d}} \right)$$

where:

C_{CORR} = Concentration of TOC corrected to 3 percent oxygen, dry basis, ppm by volume.

C_{MEAS} = Concentration of TOC (minus methane and ethane), dry basis, ppm by volume, as calculated in paragraph (b)(1) of this section.

$\%O_{2d}$ = Concentration of O_2, dry basis, percent by volume.

The emission rate correction factor, integrated sampling and analysis procedure of Method 3 shall be used to determine the oxygen concentration ($\%O_{2d}$). The sampling site shall be the same as that of the TOC sample and the samples shall be taken during the same time that the TOC samples are taken.

(c) If paragraph (b) of this section is not applicable, then the owner or operator shall determine compliance with the percent emission reduction standard in § 60.562–1 (a)(1)(i)(A) or (b)(1)(iii) as follows:

(1) The emission reduction of TOC (minus methane and ethane) shall be determined using the following equation:

$$P = \frac{E_{inlet} - E_{outlet}}{E_{inlet}} \times 100$$

where:

P = Percent emission reduction, by weight.
E_{inlet} = Mass rate of TOC entering the control device, kg TOC/hr.
E_{outlet} = Mass rate of TOC, discharged to the atmosphere, kg TOC/hr.

(2) The mass rates of TOC (E_i, E_o) shall be computed using the following equations:

$$E_i = K_1 \left(\sum_{j=1}^{n} C_{ij} M_{ij} \right) Q_i$$

$$E_o = K_1 \left(\sum_{j=1}^{n} C_{oj} M_{oj} \right) Q_o$$

where:

C_{ij},C_{oj} = Concentration of sample component "j" of the gas stream at the inlet and outlet of the control device, respectively, dry basis, ppmv.
M_{ij},M_{oj} = Molecular weight of sample component "j" of the gas stream at the inlet and outlet of the control device respectively, g/g-mole (lb/lb-mole).
Q_i,Q_o = Flow rate of the gas stream at the inlet and outlet of the control device, respectively, dscm/hr (dscf/hr).
$K_1 = 4.157 \times 10^{-8}$ [(kg)/g-mole)]/[(g)(ppm)(dscm)] {5.711×10^{-15} [(lb)/(lb-mole)]/(lb)(ppm)(dscf)]}

(i) Method 18 shall be used to determine the concentration of each individual organic component (C_{ij}, C_{oj}) in the gas stream. Method 1 or 1A, as appropriate, shall be used to determine the inlet and outlet sampling sites. The inlet site shall be before the inlet of the control device and after all product recovery units.

(ii) Method 2, 2A, 2C, or 2D, as appropriate, shall be used to determine the volumetric flow rates (Q_i, Q_o). If necessary, Method 4 shall be used to determine the moisture content. Both determinations shall be compatible with the Method 18 determinations.

(iii) Inlet and outlet samples shall be taken simultaneously. The sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at 15 minute intervals.

(d) An owner or operator shall determine compliance with the individual stream exemptions in § 60.560(g) and the procedures specified in Table 3 for compliance with § 60.562-1(a)(1) as identified in paragraphs (d)(1) and (2) of this section. An owner or operator using the procedures specified in § 60.562-1(a)(1) for determining which continuous process emissions are to be controlled may use calculations demonstrated to be sufficiently accurate as to preclude the necessity of actual testing for purposes of calculating the uncontrolled annual emissions and weight percent of TOC. Owners or operators seeking to exempt streams under § 60.560(g) must use the appropriate test procedures specified in this section.

(1) The uncontrolled annual emissions of the individual vent stream shall be determined using the following equation:

$$E_{unc} = K_1 \left(\sum_{j=1}^{n} C_j M_j \right) Q \times 8{,}600 \times \frac{1\ \text{Mg}}{1{,}000\ \text{kg}}$$

where:

E_{unc} = uncontrolled annual emissions, Mg/yr
C_j = concentration of sample component "j" of the gas stream, dry basis, ppmv.
M_j = Molecular weight of sample component "j" of the gas stream, g/g-mole (1b/1b-mole).
Q = Flow rate of the gas stream, dscm/hr (dscf/hr).
$K_1 = 4.157 \times 10^{-8}$ [(kg)/g-mole)]/[(g)(ppm)(dscm)] {5.711×10^{-15} [(1b)/(1b-mole)]/(1b)(ppm)(dscf)]}
8,600 = operating hours per year

(i) Method 18 shall be used to determine the concentration of each individual organic component (C_j;) in the gas stream. Method 1 or 1A, as appropriate, shall be used to determine the sampling site. If the gas stream is controlled in an existing control device, the sampling site shall be before the inlet of the control device and after all product recovery units.

(ii) Method 2, 2A, 2C, or 2D, as appropriate, shall be used to determine the volumetric flow rate (Q). If necessary, Method 4 shall be used to determine the moisture content. Both determinations shall be compatible with the Method 18 determinations.

(iii) The sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at 15 minute intervals.

(2) The weight percent VOC of the uncontrolled individual vent stream shall be determined using the following equation:

$$\text{weight \% TOC} = \frac{\sum_{j=1}^{n} C_j M_j}{MW_{gas} \times 10^6} \times 100$$

where:

C_j = concentration of sample TOC component "j" of the gas stream, dry basis, ppmv.
M_j = Molecular weight of sample TOC component "j" of the gas stream, g/g-mole (1b/1b-mole).
MW_{gas} = Average molecular weight of the entire gas stream, g/g-mole (1b/1b-mole).

(i) Method 18 shall be used to determine the concentration of each individual organic component (C_j;) in the gas stream. Method 1 or 1A, as appropriate, shall be used to determine the sampling site. If the gas stream is controlled in an existing control device, the sampling site shall be before the inlet of the control device and after all product recovery units. If necessary, Method 4 shall be used to determine the moisture content. This determination

shall be compatible with the Method 18 determinations.

(ii) The average molecular weight of the gas stream shall be determined using methods approved by the Administrator. If the carrier component of the gas stream is nitrogen, then an average molecular weight of 28 g/g-mole (lb/lb-mole) may be used in lieu of testing. If the carrier component of the gas stream is air, then an average molecular weight of 29 g/g-mole (lb/lb-mole) may be used in lieu of testing.

(iii) The sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at 15 minute intervals.

(e) The owner or operator shall determine compliance of flares with the visible emission and flare provisions in § 60.562–1 as follows:

(1) Method 22 shall be used to determine visible emission. The observation period for each run shall be 2 hours.

(2) The monitoring device of § 60.563(b)(2) shall be used to determine whether a flame is present.

(f) The owner or operator shall determine compliance with the net heating value provisions in § 60.18 as referenced by § 60.562–1(a)(1)(i)(C). The net heating value of the process vent stream being combusted in a flare shall be computed as follows:

$$H_T = K_2 \left(\sum_{j=1}^{n} C_j H_j \right)$$

where:

H_T = Net heating value of the sample based on the net enthalpy per mole of offgas combusted at 25 °C and 760 mmHg, but the standard temperature for determining the volume corresponding to one mole is 20 °C, MJ/scm.

K_2 = Conversion constant, 1.740×10^{-7}

$$\frac{(1)}{\text{ppm}} \; \frac{(\text{g mole})}{\text{scm}} \; \frac{(\text{MJ})}{\text{kcal}}$$

where standard temperature for

$\frac{(\text{g mole})}{\text{scm}}$ is 20 °C;

C_j = Concentration of sample component j in ppm on a wet basis.

H_j = Net heat of combustion of sample component j, at 25 °C and 760 mm Hg, kcal/g-mole.

(1) Method 18 shall be used to determine the concentration of each individual organic component (C_j) in the gas stream. Method 1 or 1A, as appropriate, shall be used to determine the sampling site to the inlet of the flare. Using this same sample, ASTM D1946–77 (incorporated by reference—see § 60.17) shall be used to determine the hydrogen and carbon monoxide content.

(2) The sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at 15 minute intervals.

(3) Published or calculated values shall be used for the net heats of combustion of the sample components. If values are not published or cannot be calculated, ASTM D2382–76 (incorporated by reference—see § 60.17) may be used to determine the net heat of combustion of component "j."

(g) The owner or operator shall determine compliance with the exit velocity provisions in § 60.18 as referenced by § 60.562–1(a)(1)(i)(C) as follows:

(1) If applicable, the net heating value (H_T) of the process vent shall be determined according to the procedures in paragraph (f) of this section to determine the applicable velocity requirements.

(2) If applicable, the maximum permitted velocity (V_{max}) for steam-assisted and nonassisted flares shall be computed using the following equation:

where:

$\text{Log}_{10}(V_{max}) = (H_T + 28.8)/31.7$

V_{max} = Maximum permitted velocity, m/sec.

28.8 = Constant.

31.7 = Constant.

H_T = The net heating value as determined in paragraph (f) of this section.

(3) The maximum permitted velocity, V_{max}, for air-assisted flares shall be determined by the following equation:

where:

$V_{max} = 8.706 + 0.7084(H_T)$

V_{max} = Maximum permitted velocity, m/sec.

8.706 = Constant.

0.7084 = Constant.

H_T = The net heating value as determined in paragraph (f) of this section.

(4) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Method 2, 2A, 2C, or 2D as appropriate, by the unobstructed (free) cross sectional area of the flare tip.

(h) The owner or operator shall determine compliance with the mass emission per mass product standards in §§ 60.560 (d) and (e) and in §§ 60.562–1 (b)(1)(i), (c)(1)(i)(A), (c)(1)(ii)(A), (c)(2)(i), and (c)(2)(ii)(A). The emission rate of TOC shall be computed using the following equation:

$$ER_{TOC} = \frac{E_{TOC}}{\dfrac{1\ \text{Mg}}{P_p \times 1{,}000\ \text{kg}}}$$

where:

ER_{TOC} = Emission rate of total organic compounds (minus methane and ethane), kg TOC/Mg product.

E_{TOC} = Emission rate of total organic compounds (minus methane and ethane) in the sample, kg/hr.

P_p = The rate of polymer produced, kg/hr.

(1) The mass rate of TOC, E_{TOC}, shall be determined according to the procedures, as appropriate, in paragraph (c)(2) of this section. The sampling site for determining compliance with §§ 60.560 (d) and (e) shall be before any add-on control devices and after all product recovery devices. Otherwise, the sampling site shall be at the outlet of the control device.

(2) The rate of polymer produced, P_p (kg/hr), shall be determined by dividing the weight of polymer pulled in kilograms (kg) from the process line during the performance test by the number of hours (hr) taken to perform the performance test. The polymer pulled, in kilograms, shall be determined by direct measurement or, subject to prior approval by the Administrator, computed from materials balance by good engineering practice.

(i) The owner or operator shall determine continuous compliance with the temperature requirements in §§ 60.562–1(b)(1)(ii) and 60.562–1(c)(1)(i)(B) by using the temperature monitoring equipment described in § 60.563(a)(1). An average temperature shall be determined from measurements taken at least every 15 minutes every three hours while the vent stream is normally routed and constituted. Each three-hour period constitutes a performance test.

(j) For purposes of determining compliance with § 60.562–1(c) (1)(ii)(B), (1)(ii)(C), (2)(ii)(B), or (2)(ii)(C), the ethylene glycol concentration in either the cooling tower or the liquid effluent from steam-jet ejectors used to produce a vacuum in the polymerization reactors, whichever is applicable, shall be determined:

(1) Using procedures that conform to the methods described in ASTM D2908–74, "Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Gas

Chromatography" (incorporated by reference—see § 60.17), except as provided in paragraph (j)(2) of this section:

(i) At least one sample per operating day shall be collected using the grab sampling procedures of ASTM D3370-76, "Standard Practices for Sampling Water" (incorporated by reference—see § 60.17). An average ethylene glycol concentration by weight shall be calculated on a daily basis over a rolling 14-day period of operating days, except as provided in paragraphs (j)(1) (ii) and (iii) of this section. Each daily average ethylene glycol concentration so calculated constitutes a performance test. Exceedance of the standard during the reduced testing program specified in paragraphs (j)(1) (ii) and (iii) of this section is a violation of these standards.

(ii) For those determining compliance with § 60.562-1(c) (1)(ii)(B) or (2)(ii)(B), the owner or operator may elect to reduce the sampling program to any 14 consecutive day period once every two calendar months, if at least seventeen consecutive 14-day rolling average concentrations immediately preceding the reduced sampling program are each less than 0.10 weight percent ethylene glycol. If the average concentration obtained over the 14 day sampling during the reduced testing period exceeds the upper 95 percent confidence interval calculated from the most recent test results in which no one 14-day average exceeded 0.10 weight percent ethylene glycol, then the owner or operator shall reinstitute a daily sampling program. A reduced sampling program can be reinstituted if the requirements specified in this paragraph are met.

(iii) For those determining compliance with § 60.552-1 (c)(1)(ii)(C) or (c)(2)(ii)(C), the owner or operator may elect to reduce the sampling program to any 14 consecutive day period once every two calendar months, if at least seventeen consecutive 14-day rolling average concentrations immediately preceding the reduced sampling program are each less than 1.8 weight percent ethylene glycol. If the average concentration obtained over the 14 day sampling during the reduced test period exceeds the upper 95 percent confidence interval calculated from the most recent test results 14-day in which no one 14-day average exceeded 1.8 weight percent ethylene glycol, then the owner or operator shall reinstitute a daily sampling program. A reduced program can be reinstituted if the requirements specified in this paragraph are met.

(iv) The upper 95 percent confidence interval shall be calculated using the equation:

$$CI_{95} = \frac{\sum_{i=1}^{n} X_i}{n} + 2\sqrt{\frac{n\Sigma X^2 - (\Sigma X)^2}{n(n-1)}}$$

where:

X_i = daily ethylene glycol concentration for each day used to calculate each 14-day rolling average used in test results to justify implementing the reduced testing program.

n = number of ethylene glycol concentrations.

(2) Measuring an alternative parameter, such as carbon oxygen demand or biological oxygen demand, that is demonstrated to be directly proportional to the ethylene glycol concentration. Such parameter shall be measured during the initial 14-day performance test during which the facility is shown to be in compliance with the ethylene glycol concentration standard whereby the ethylene glycol concentration is determined using the procedures described in paragraph (j)(1) of this section. The alternative parameter shall be measured on a daily basis and the average value of the alternative parameter shall be calculated on a daily basis over a rolling 14-day period of operating days. Each daily average value of the alternative parameter constitutes a performance test.

§ 60.565 Reporting and recordkeeping requirements.

(a) Each owner or operator subject to the provisions of this subpart shall keep an up-to-date, readily-accessible record of the following information measured during each performance test, and shall include the following information in the report of the initial performance test in addition to the written results of such performance tests as required under § 60.8. Where a control device is used to comply with § 60.562-1(a)(1)(i)(D) only, a report containing performance test data need not be submitted, but a report containing the information in § 60.565(a)(11) is required. Where a boiler or process heater with a design heat input capacity of 150 million Btu/hour or greater is used to comply with § 60.562-1(a), a report containing performance test data need not be submitted, but a report containing the information in § 60.565(a)(2)(i) is required. The same information specified in this section shall be submitted in the reports of all subsequently required performance tests where either the emission control efficiency of a combustion device or the outlet concentration of TOC (minus methane and ethane) is determined.

(1) When an incinerator is used to demonstrate compliance with § 60.562-1, except § 60.562-1(a)(2):

(i) The average firebox temperature of the incinerator (or the average temperature upstream and downstream of the catalyst bed), measured at least every 15 minutes and averaged over the performance test period, and

(ii) The percent reduction of TOC (minus methane and ethane) achieved by the incinerator, the concentration of TOC (minus methane and ethane) (ppmv, by compound) at the outlet of the control device on a dry basis, or the emission rate in terms of kilograms TOC (minus methane and ethane) per megagram of product at the outlet of the control device, whichever is appropriate. If supplemental combustion air is used, the TOC concentration corrected to 3 percent oxygen shall be recorded and reported.

(2) When a boiler or process heater is used to demonstrate compliance with § 60.562-1, except § 60.562-1(a)(2):

(i) A description of the location at which the vent stream is introduced into the boiler or process heater, and

(ii) For boiler or process heaters with a design heat input capacity of less than 150 million Btu/hr, all 3-hour periods of operation during which the average combustion temperature was more than 28°C (50°F) below the average combustion temperature during the most recent performance test at which compliance was determined.

(3) When a flare is used to demonstrate compliance with § 60.562-1, except § 60.562-1(a)(2):

(i) All visible emission readings, heat content determination, flow rate measurements, and exit velocity determinations made during the performance test,

(ii) Continuous records of the pilot flame heat-sensing monitoring, and

(iii) Records of all periods of operations during which the pilot flame is absent.

(4) When an incinerator, boiler, or process heater is used to demonstrate compliance with § 60.562–1(a)(2), a description of the location at which the vent stream is introduced into the incinerator, boiler, or process heater.

(5) When a flare is used to demonstrate compliance with § 60.564–1(a)(2):

(i) All visible emission readings made during the performance test;

(ii) Continuous records of the pilot flame heat-sensing monitoring, and

(iii) Records of all periods of operation during which the pilot flame is absent.

(6) When an absorber is the final unit in a system to demonstrate compliance with § 60.562–1, except § 60.562–1(a)(2), the specific gravity (or alternative parameter that is a measure of the degree of absorbing liquid saturation, if approved by the Administrator), and average temperature, measured at least every 15 minutes and averaged over the performance test period, of the absorbing liquid (both measured while the vent stream is normally routed and constituted).

(7) When a condenser is the final unit in a system to demonstrate compliance with § 60.562–1, except § 60.562–1(a)(2), the average exit (product side) temperature, measured at least every 15 minutes and averaged over the performance test period while the vent stream is normally routed and constituted.

(8) Daily measurement and daily average 14–day rolling average of the ethylene glycol concentration in the liquid effluent exiting the vaccum system servicing the polymerization reaction section, if an owner or operator is subject to § 60.562–1(c) (1)(ii)(B) or (2)(ii)(B), or of the ethylene glycol concentration in the cooling water in the cooling tower, if subject to § 60.562–1(c) (2)(ii)(C) or (2)(iii)(C).

(9) When a carbon adsorber is the final unit in a system to demonstrate compliance with § 60.562–1, except § 60.562–1(a)(2): the concentration level or reading indicated by the organics monitoring device at the outlet of the adsorber, measured at least every 15 minutes and averaged over the performance test period while the vent stream is normally routed and constituted.

(10) When an owner or operator seeks to comply with the requirements of this subpart by complying with the uncontrolled threshold emission rate cutoff provision in §§ 60.560 (d) and (e) or with the individual stream exemptions in § 60.560(g), each process operation variable (e.g., pressure, temperature, type of catalyst) that may result in an increase in the uncontrolled emission rate, if § 60.560(d) or (e) is applicable, or in an increase in the uncontrolled annual emissions or the VOC weight percent, as appropriate, if § 60.560(g) is applicable, should such operating variable be changed.

(11) When an owner or operator uses a control device to comply with § 60.564–1(a)(1)(i)(D) alone: all periods when the control device is not operating.

(b)(1) Each owner or operator subject to the provisions of this subpart shall submit with the initial performance test or, if complying with § 60.564–1(a)(1)(i)(D), as a separate report, an engineering report describing in detail the vent system used to vent each affected vent stream to a control device. This report shall include all valves and vent pipes that could vent the stream to the atmosphere, thereby bypassing the control device, and identify which valves are car-sealed opened and which values are car-sealed closed.

(2) If a vent system containing valves that could divert the emission stream away from the control device is used, each owner or operator subject to the provisions of this subpart shall keep for at least two years up-to-date, readily accessible continuous records of:

(i) All periods when flow is indicated if flow indicators are installed under § 69.563(d)(l).

(ii) All times when maintenance is performed on car-sealed valves, when the car seal is broken, and when the valve position is changed (i.e., from open to closed for valves in the vent piping to the control device and from closed to open for valves that vent the stream directly or indirectly to the atmosphere bypassing the control device).

(c) Where an incinerator is used to comply with § 69.562–1, except §§ 60.562(a)(l)(i)(D) and (a)(2), each owner or operator subject to the provisions of this subpart shall keep for at least 2 years up-to-date, readily accessible continuous records of:

(1) The temperature measurements specified under § 69.563(b)(l).

(2) Records of periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. Periods of operation during which the parameter boundaries established during the most recent performance test are exceeded are defined as follows:

(i) For noncatalytic incinerators, all 3–hour periods of operation during which the average combustion temperature was more than 28 °C (50 °F) below the average combustion temperature during the most recent performance test to which compliance was demonstrated.

(ii) For catalytic incinerators, all 3-hour periods of operation during which the average temperature of the vent stream immediately before the catalyst bed is more than 28 °C (50 °F) below the average temperature of the vent stream during the most recent performance test at which compliance was demonstrated. The owner or operator also shall record all 3-hour periods of operation during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference of the device during the most recent performance test at which compliance was demonstrated.

(d) Where a boiler or process heater is used to comply with § 60.562–1, except §§ 60.562–1 (a)(1)(i)(D) and (a)(2), each owner or operator subject to the provisions of this subpart shall keep for at least 2 years up-to-date, readily accessible continuous records of:

(1) Where a boiler or process heater with a heat input design capacity of 150 million Btu/hr or greater is used, all periods of operation of the boiler or process heater. (Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other State or Federal regulatory requirements), and

(2) Where a boiler or process heater with a heat input design capacity of less than 150 million Btu/hr is used, all periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. Periods of operation during which the parameter boundaries established during the most recent performance test are exceeded are defined as all 3-hour periods of operation during which the average combustion temperature was more than 28 °C (50 °F) below the average combustion temperature during the most recent performance test at which compliance was demonstrated.

(e) Where a flare is used to comply with § 60.562–1, except § 60.562–1(a)(1)(i)(D), each owner or operator subject to the provisions of this subpart shall keep for at least 2 years up-to-date, readily accessible continuous records of:

(1) The flare or pilot light flame heat sensing monitoring specified under § 60.563(b)(2), and

(2) All periods of operations in which the flare or pilot flame, as appropriate, is absent.

(f) Where an adsorber, condenser, absorber, or a control device other than a flare, incinerator, boiler, or process heater is used to comply with § 60.562–1, except § 60.562–1(a)(1)(i)(D), each owner or operator subject to the provisions of this subpart shall keep for at least 2

years up-to-date, readily-accessible continuous records of the periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. Where an owner or operator seeks to comply with § 60.562–1, periods of operation during which the parameter boundaries established during the most recent performance tests are exceeded are defined as follows:

(1) Where an absorber is the final unit in a system:

(i) All 3-hour periods of operation during which the average absorbing liquid temperature was more than 11 °C (20 °F) above the average absorbing liquid temperature during the most recent performance test, and

(ii) All 3-hour periods of operation during which the average absorbing liquid specific gravity was more than 0.1 unit above, or more than 0.1 unit below, the average absorbing liquid specific gravity during the most recent performance test (unless monitoring of an alternative parameter than is a measure of the degree of absorbing liquid saturation is approved by the Administrator, in which case he or she will define appropriate parameter boundaries and periods of operation during which they are exceeded).

(2) Where a condenser is the final unit in a system, all 3-hour periods of operation during which the average condenser operating temperature was more than 6 °C (10 °F) above the average operating temperature during the most recent performance test.

(3) Where a carbon adsorber is the final unit in a system, all 3-hour periods of operation during which the average organic concentration level in the carbon adsorber gases is more than 20 percent greater than the exhaust gas concentration level or reading measured by the organics monitoring system during the most recent performance test.

(g) Each owner or operator of an affected facility subject to the provisions of this subpart and seeking to demonstrate compliance with § 60.562–1 shall keep up-to-date, readily accessible records of:

(1) Any changes in production capacity, feedstock type, or catalyst type, or of any replacement, removal or addition of product recovery equipment; and

(2) The results of any performance test performed pursuant to the procedures specified by § 60.564.

(h) Each owner or operator of an affected facility that seeks to comply with the requirements of this subpart by complying with the uncontrolled threshold emission rate cutoff provision in §§ 60.560 (d) and (e) or with the individual stream exemptions in § 60.560(g) shall keep for at least 2 years up-to-date, readily accessible records of any change in process operation that increases the uncontrolled emission rate of the process line in which the affected facility is located, if § 60.560 (d) or (e) is applicable, or that increase the uncontrolled annual emissions or the VOC weight percent of the individual stream, if § 60.560(g) is applicable.

(i) Each owner and operator subject to the provisions of this subpart is exempt from § 60.7(c) of the General Provisions.

(j) The Administrator will specify appropriate reporting and recordkeeping requirements where the owner or operator of an affected facility complies with the standards specified under § 60.562–1 other than as provided under § 60.565 (a) through (e).

(k) Each owner or operator that seeks to comply with the requirements of this subpart by complying with the uncontrolled threshold emission rate cutoff provision of §§ 60.560 (d) and (e), the individual stream exemptions of § 60.560(g), or the requirements of § 60.562–1 shall submit to the Administrator semiannual reports of the following recorded information, as applicable. The initial report shall be submitted within 6 months after the initial start-up date.

(1) Exceedances of monitored parameters recorded under §§ 60.565 (c), (d)(2), and (f).

(2) All periods recorded under § 60.565(b) when the vent stream has been diverted from the control device.

(3) All periods recorded under § 60.565(d) when the boiler or process heater was not operating.

(4) All periods recorded under § 60.565(e) in which the flare or pilot flame was absent.

(5) All periods recorded under § 60.565(a)(8) when the 14-day rolling average exceeded the standard specified in § 60.562–1(c) (1)(ii)(B), (1)(ii)(C), (2)(ii)(B), or (2)(ii)(C), as applicable.

(6) Any change in process operations that increases the uncontrolled emission rate of the process line in which the affected facility is located, as recorded in § 60.565(h).

(7) Any change in process operations that increases the uncontrolled annual emissions or the VOC weight percent of the individual stream, as recorded in § 60.565(h).

(l) Each owner or operator subject to the provisions of this subpart shall notify the Administrator of the specific provisions of § 60.562, § 60.560(d), or § 60.560(e), as applicable, with which the owner or operator has elected to comply. Notification shall be submitted with the notification of initial startup required by § 60.7(a)(3). If an owner or operator elects at a later date to use an alternative provision of § 60.562 with which he or she will comply or becomes subject to § 60.562 for the first time (i.e., the owner or operator can no longer meet the requirements of this subpart by complying with the uncontrolled threshold emission rate cutoff provision in § 60.560 (d) or (e)), then the owner or operator shall notify the Administrator 90 days before implementing a change and, upon implementing a change, a performance test shall be performed as specified in § 60.564.

(m) The requirements of this subsection remain in force until and unless EPA, in delegating enforcement authority to a State under section 111(c) of the Act, approves alternative reporting requirements or means of compliance surveillance adopted by such State. In that event, affected sources within the State will be relieved of the obligation to comply with this subsection, provided that they comply with the requirements established by the State.

§ 60.566 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authority contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authority which will not be delegated to States: § 60.562–2(c).

3. Section 60.17(a) is amended by revising paragraphs (a)(6), (a)(38), and (a)(40) and by adding paragraphs (a)(60) and (a)(61) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(a) * * *

(6) ASTM D1946–77, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for §§ 60.45(f)(5)(i), 60.18(f), 60.614(d)(2)(ii), 60.614(d)(4), 60.664(d)(2)(ii), 60.664(d)(4) and 60.564(f).

(38) ASTM D2382–76, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter [High-Precision Method], IBR approved for §§ 60.18(f), 60.485(g), 60.614(d)(4), 60.664(d)(4), and 60.564(f).

(40) ASTM D86–78, Distillation of Petroleum Products, IBR approved for § 60.593(d), § 60.633(h), and § 60.562–2(d).

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(60) ASTM D2908–74, Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Gas Chromatography, IBR approved for § 60.564(j).

(61) ASTM D3370–76, Standard Practices for Sampling Water, IBR approved for § 60.564(j).

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Part IV

Office of Science and Technology Policy

National Security Council

47 CFR Part 201, et al.
National Communications System; Final Rule

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Security Council

47 CFR Parts 201, 202, 212, 214, 215 and 216

National Communications System

AGENCIES: Office of Science and Technology Policy and National Security Council.

ACTION: Notice of amendments to final rules.

SUMMARY: Executive Order 12472, April 3, 1984 (49 FR 13471; 3 CFR, 1984 Comp., p. 193) redefined the functions and organization of the National Communications System, and established the responsibilities of executive offices for both wartime and non-wartime national security and emergency preparedness (NS/EP) telecommunications services. These amendments to 47 CFR chapter II document the policy changes embodied in the Executive Order, and otherwise revise parts 201, 202, 212, 214, 215 and add part 216 consistent with current NS/EP telecommunications procedures.

EFFECTIVE DATE: December 11, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Anderson, Office of the Assistant Secretary of Defense (Command, Control, Communications & Intelligence), Pentagon, Washington, DC (202) 697-7626.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Parts 201 and 202

Civil defense, Communications common carriers, Defense communications, Emergency powers, National Communications System, Telecommunications.

47 CFR Part 212

Civil defense, Communications common carriers, Defense communications, Emergency powers, Science and technology, Telecommunications.

47 CFR Part 214

Civil defense, Defense communications, Emergency powers, Radio, Science and technology.

47 CFR Part 215

Civil defense, Defense communications, Research, National Communications System, Science and technology, Telecommunications.

47 CFR Part 216

Civil defense, Defense communications, National Communications System, Organization and functions (Government agencies), Radio, Telecommunications.

Parts 201, 202, 212, 214 and 215 of 47 CFR chapter II are revised and part 216 is added to read as set forth below.

Dated: June 14, 1990.

D. Allan Bromley,

Director, Office of Science and Technology Policy.

Dated: October 8, 1990.

Brent Scowcroft,

Assistant to the President for National Security Affairs.

PART 201—EXECUTIVE POLICY

Sec.
201.0 Background.
201.1 Authority.
201.2 Definitions.
201.3 Policy.

Authority: 61 Stat. 496 (50 U.S.C. 401); 64 Stat. 798 (50 U.S.C. app. 2061); 64 Stat. 1245 (50 U.S.C. app. 2251); 90 Stat. 463 (42 U.S.C. 6611); E.O. 12046, March 27, 1978 (43 FR 13349; 3 CFR, 1978 Comp., p. 158); E.O. 12472, April 3, 1984 (49 FR 13471; 3 CFR, 1984 Comp., p. 193); E.O. 12656, November 18, 1988 (53 FR 47491; 3 CFR, 1988 Comp., p. 585).

§ 201.0 Background.

National policy with respect to the conservation, allocation and use of the Nation's telecommunications resources during crises and emergencies is set forth in Executive Order 12472. The following parts of this chapter address specific responsibilities with respect to management of telecommunications resources and related procedures which bear upon provision, restoration and continuity of telecommunications services during crises and emergencies. In doing so, the chapter encompasses both national security and emergency preparedness activities, consistent with Executive Order 12472. This concept of national security and emergency preparedness telecommunications services (as defined in § 201.2(g)) includes crises that do not necessarily entail serious degradation of, or serious threats to, national security. It therefore is a broader concept than the term "national security emergency preparedness activities" in Executive Order 12656, which concerns only national security emergencies, and preparedness activities necessarily related to such emergencies.

§ 201.1 Authority.

(a) Authorities and responsibilities related to and bearing upon national security and emergency preparedness telecommunications matters are set forth in:

(1) Section 706 of the Communications Act of 1934 (48 Stat. 1104, 47 U.S.C. 606), as amended.

(2) The National Security Act of 1947, as amended (61 Stat. 496, 50 U.S.C. 402).

(3) The Federal Civil Defense Act of 1950, as amended (50 U.S.C. app. 2251 *et seq.*).

(4) The Disaster Relief Act of 1974 (42 U.S.C. 5121 *et seq.*).

(5) The National Science and Technology Policy, Organization, and Priorities Act of 1976 (90 State. 463, 42 U.S.C. 6611).

(6) Executive Order 12046, "Relating to the Transfer of Telecommunications Functions," March 27, 1978 (43 FR 13349; 3 CFR, 1978 Comp., p. 158).

(7) Executive Order 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984 (49 FR 13471; 3 CFR, 1984 Comp., p. 193).

(b) Authorities to be exercised in the execution and performance of emergency functions are subject to the provisions of the National Emergencies Act of 1976 (90 Stat. 1255, 50 U.S.C. 1601).

§ 201.2 Definitions.

The following definitions apply herein:

(a) *Communications common carrier, specialized carrier,* or *carrier* means any individual, partnership, association, joint stock company, trust, or corporation subject to Federal or State regulation engaged in providing telecommunications facilities or services, for use by the public, for hire.

(b) *Government* means Federal, State, county, municipal, and other local government authority. Specific qualification will be provided whenever reference to a particular level of government is intended.

(c) *Joint Telecommunications Resources Board (JTRB)* means that organization established by the Director, Office of Science and Technology Policy, pursuant to Executive Order 12472 to assist the Director, OSTP, in exercising the non-wartime emergency telecommunications functions assigned by Executive Order 12472.

(d) *The National Communications System (NCS)* means that organization established by Executive Order 12472 consisting of the telecommunications assets of the entities represented on the NCS Committee of Principals and an administrative structure consisting of the Executive Agent, the NCS Committee of Principals and the

Manager. The NCS Committee of Principals consists of representatives from those Federal departments, agencies or entities, designated by the President, which lease or own telecommunications facilities or services of significance to national security and emergency preparedness, and, to the extent permitted by law, other Executive entities which bear policy, regulatory or enforcement responsibilities of importance to national security and emergency preparedness telecommunications capabilities. The NCS is a confederative arrangement in which member Federal agencies participate with their owned and leased telecommunications assets to provide necessary communications services for the Federal Government, under all conditions, including nuclear war.

(e) *National Coordinating Center (NCC)* refers to the joint industry-government telecommunications entity established by the NCS pursuant to Executive Order 12472 to assist in the initiation, coordination, restoration and reconstitution of national security and emergency preparedness telecommunications services or facilities under all conditions of crisis or emergency.

(f) *National priorities* means those essential actions and activities in which the government and the private sector must become engaged in the interests of national survival and recovery.

(g) *National security and emergency preparedness* (NS/EP) *telecommunications services*, or *NS/EP services*, means those telecommunication services which are used to maintain a state of readiness or to respond to and manage any event or crisis (local, national, or international) which causes or could cause injury or harm to the population, damage to or loss of property, or degrades or threatens the NS/EP posture of the United States.

(h) *NS/EP treatment* refers to the provisioning of a telecommunications service before others based on the provisioning priority level assigned by the Executive Office of the President.

(i) *National Telecommunications Management Structure (NTMS)* means a survivable and enduring management structure which will support the exercise of the war power functions of the President under section 706 of the Communications Act of 1934 (47 U.S.C. 606), as amended.

(j) *Private sector* means those sectors of non-government entities that are users of telecommunications services.

(k) *Telecommunications* means any transmission, emission, or reception of signs, signals, writing, images, graphics, and sounds or intelligence of any nature by wire, radio, optical, or other electromagnetic systems.

(l) *Telecommunications resources* include telecommunications personnel, equipment, material, facilities, systems, and services, public and private, wheresoever located within the jurisdiction of the United States.

(m) *Wartime emergency* means a crisis or event which permits the exercise of the war power functions of the President under section 706 of the Communications Act of 1934 (47 U.S.C. 606), as amended.

§ 201.3 Policy.

(a) The Federal Government is responsible for resources mobilization, including determination of the need for and the extent of mobilization necessary in all crises and emergencies, wartime and non-wartime.

(b) The President has limited non-wartime NS/EP telecommunications functions, and wartime NS/EP functions under the Communications Act of 1934 (as amended), which have been delegated to Federal agencies under Executive Order 12472. Federal, State, and local governments share the responsibility for conservation of the Nation's telecommunications resources.

(1) The achievement of survival and recovery during a crisis or emergency would establish an unavoidable interdependence between and among Federal, State, and local authorities; therefore, there should be no barriers between Federal and State levels of authorities and between State and local levels of authorities which would impede, obstruct, or otherwise hinder effective conservation and equitable allocation of telecommunications resources and services to the needs of the Nation.

(2) The Federal Government will rely upon State governments and their telecommunications management organizations for management or control of intrastate carrier services and continuity of interconnectivity with interstate carriers to assure that national objectives and priorities are properly served. Applicable regulations of the Federal Communications Commission govern the extent of the allocation of responsibility between Federal and State authorities for the management of NS/EP intrastate carrier services and the interconnectivity of intrastate services for NS/EP telecommunications functions.

(c) A system of telecommunications service priorities will be established which facilitates the provisioning and early restoration of services considered vital to national interests during those events or crises which warrant NS/EP treatment.

(d) The President is authorized during, or in anticipation of, an emergency or major disaster (as defined in the Disaster Relief Act of 19/4) to establish temporary telecommunications systems and to make such telecommunications available to State and local government officials and such other persons as deemed appropriate (42 U.S.C. 5185).

(e) The President also is authorized, during war, when necessary in the interest of national defense and security, to direct or establish priorities for essential communications with any commercial or governmental carrier and to prevent obstruction of telecommunications. The President may also suspend or amend rules and regulations, close stations and facilities, and authorize U.S. government use and control of telecommunications resources with regard to:

(1) Radio communications (during war, or Presidentially declared threat of war, public peril, disaster or national emergency or a need to preserve the neutrality of the U.S.) and

(2) Wire communications (during war or threat of war).

(f) During an attack on the United States by an aggressor nation, and in an immediate postattack period, all decisions regarding the use of telecommunications resources will be directed to the objective of national survival and recovery. In order to achieve this objective, postattack resources will be assigned to activities concerned with the maintenance and saving of lives, immediate military defense and response, and economic activities essential to continued economic survival and recovery.

(g) The Director of the Office of Science and Technology Policy will serve as the central authority to control, coordinate, and direct the activities of the Nation's telecommunications facilities, systems, and services during periods of wartime emergency as determined under section 706 of the Communications Act of 1934 (47 U.S.C. 606), as amended.

(h) Telecommunications resources of the Federal Government will be employed, as required, to best serve the continuity of government and national interests.

(i) Federal agencies will, in the development of emergency operational plans, minimize, to the extent feasible, dependence upon telecommunications services for continuity of essential operations.

PART 202—NATIONAL SECURITY AND EMERGENCY PREPAREDNESS PLANNING AND EXECUTION

Sec.
202.0 Objectives.
202.1 Policies.
202.2 Criteria and guidance.
202.3 Plans preparation and execution.

Authority: 61 Stat. 496 (50 U.S.C. 401); 64 Stat. 798 (50 U.S.C. app. 2061); 64 Stat. 1245 (50 U.S.C. app. 2251); 90 Stat. 463 (42 U.S.C. 6611); E.O. 12046, March 27, 1978 (43 FR 13349; 3 CFR, 1978 Comp., p. 158); E.O. 11021, May 7, 1962 (27 FR 4409; 3 CFR, 1959–1963 Comp., p. 600); E.O. 12472, April 3, 1984 (49 FR 13471; 3 CFR, 1984 Comp., p. 193).

§ 202.0 Objectives.

(a) During, or in anticipation of, a non-wartime emergency or natural disaster, a telecommunications capacity must exist to provide temporary telecommunications service to State and local government officials and other persons deemed appropriate by the President.

(b) In the event of a general war and attack upon the Nation, a national telecommunications capability must exist that will support telecommunications requirements with respect to national security, survival and recovery. The development of survivable telecommunications to support essential functions (including an emergency broadcasting system), and technical compatibility of signaling methods, transmission modes, switching facilities, and terminal devices to permit exchange of communications over the surviving media of all systems, government or commercial, are crucial elements of such a national capability. In addition, a survivable national telecommunications management structure is necessary to manage initiation, coordination and restoration of telecommunications services. The management structure must include the following:

(1) Legal authority for telecommunications management.

(2) A control mechanism to manage the initiation, coordination and restoration of telecommunications services.

(3) Procedures to ensure timely damage assessment and allocation of residual resources and controlled restoration of services based on national policy/direction.

(4) The capability to execute a telecommunications recovery plan based on national policy/guidance.

(c) Notwithstanding any provision regarding NS/EP Planning and Execution, nothing in this Part shall be deemed to affect the authorities or responsibilities of the Director of the Office of Management and Budget, or any Office or official thereof; or reassign any function assigned any agency under the Federal Property and Administrative Services Act of 1949, as amended, or under any other law, or any function vested by law in the Federal Communications Commission.

§ 202.1 Policies.

(a) The telecommunications resources of the Nation will be available for government use during crises and emergencies, wartime and non-wartime, and to satisfy the needs of the public welfare and safety.

(b) The National Plan for Telecommunications Support in Non-Wartime Emergencies provides procedures for planning and using National telecommunications assets and resources in support of non-wartime emergencies, including those covered by the Disaster Relief Act of 1974, in Presidentially declared Emergencies and Major Disasters, Extraordinary Situations, and other emergencies.

(c) An NS/EP Telecommunications Service Priority (TSP) System will provide procedures to authorize priority treatment for the provisioning and restoration of NS/EP telecommunications services for wartime and non-wartime emergencies.

(d) In wartime emergencies, facilities management will remain decentralized to the extent feasible to assure continued flexibility of operational response to critical needs, subject to the management direction and overriding authority of those officials delegated to act for and with the consent of the central point of authority within the Federal Government.

(1) Federally owned, leased, and/or operated telecommunications facilities, systems, and networks will be managed during such an emergency by the agency normally controlling the facility, system, or network except that all operations will be subject to the management direction and authority of the officials delegated overall management responsibility for Federal Government systems.

(2) Facilities other than those of the Federal Government, with the exception of radio stations in the Aviation Services and certain classes of radio stations in the Maritime Services, will be managed by the authorized common carrier or other person owning and operating such facilities subject to Federal Communications Commission (FCC) guidance and direction or in accordance with State or local plans if not subject to FCC jurisdiction.

(3) Radio stations in the Aviation Services and those aboard vessels in the Maritime Service will be subject to the control of the Secretary of Defense during a national emergency.

(e) The Director of the Office of Science and Technology Policy is the single point of authority within the Federal Government for the wartime emergency functions under section 706 of the Communications Act (47 U.S.C. 606) with respect to the allocation and use of surviving resources in support of national objectives enunciated by the President. Authority may be redelegated as necessary and when it can be exercised within boundaries established by Presidential authority.

(f) Radio frequency utilization during a wartime emergency will be in accordance with authorizations, assignments, and mobilization plans in existence at the onset of the emergency. Subject to the overriding control of the Director, OSTP, under the President's War Emergency Powers, spectrum management regarding the authorization and assignment of radio frequencies will be made by the National Telecommunications and Information Administration (NTLA) for the Federal Government, and the Director, OSTP, through the FCC, for all other entities subject to the Commission's jurisdiction. Radio stations are subject to closure if considered a threat to national security.

(g) Section 706 of the Communications Act of 1934, as amended, confers authority to the President in the matter of suspension of all rules and regulations pertaining to the use and operation of telecommunications facilities, public or private during wartime emergencies.

§ 202.2 Criteria and guidance.

NS/EP planning in government and industry with respect to effective conservation and use of surviving telecommunications resources in a disaster, emergency or postattack period must provide for orderly and uninhibited restoration of services by the carriers and authoritative control of services allocation which will assure that priority will be afforded the most critical needs of government and the private sector with respect to these objectives.

(a) The preservation of the integrity of characteristics and capabilities of the Nation's telecommunications systems and networks during wartime or non-wartime emergencies is of the utmost importance. This can best be accomplished by centralized policy development, planning, and broad direction. Detailed operations management will remain decentralized in order to retain flexibility in the use of individual systems in responding to the

needs of national security, survival and recovery. Each Federal agency responsible for telecommunications systems operations, and the carriers, are responsible for planning with respect to emergency operations. Guidance in this matter has been issued from a number of sources and contained in:

(1) Annex C–XI (Telecommunications), Federal Emergency Plan D (Classified).

(2) National Plan for Telecommunications Support in Non-wartime Emergencies.

(3) The National Communications System Management Plan for Annex C–XI (Telecommunications) Federal Emergency Plan D (Classified).

(b) The continuity of essential communications services will be maintained through the use of controls and operational procedures to assure that priority is given to vital services. NS/EP telecommunications services entail policies, procedures and responsibilities as described in parts 211 and 213 of this chapter.

(c) The Nation's telecommunications systems facilities are vulnerable to physical and radiological damage. Planning factors with respect to the resumption of services in a disaster or postattack period must consider the probable loss of facilities which formerly provided direct and/or alternate intercity services among surviving population centers. Since surviving areas and population centers would serve as the sources of support to crippled areas of the Nation, the resumption of services between and among surviving metropolitan areas will be a high priority with the carriers.

§ 202.3 Plans preparation and execution.

Federal authority, substantive provisions, and functional responsibilities of the executive office are summarized in the following:

(a) Wartime Emergency Functions. (1) The Assistant to the President for National Security Affairs (the National Security Advisor) shall provide general policy direction for the exercise of the war power functions of the President under section 706 of the Communications Act (47 U.S.C. 606), as amended, should the President issue implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601).

(2) The Director of the Office of Science and Technology Policy shall direct the exercise of the war power functions of the President under section 706(a), (c)–(e) of the Communications Act (47 U.S.C. 606), as amended, should the President issue implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601).

(b) Non-wartime Emergency Functions. (1) The National Security Advisor shall:

(i) Advise and assist the President in coordinating the development of policy, plans, programs and standards within the Federal Government for the identification, allocation and use of the Nation's telecommunications resources by the Federal Government, and by State and local governments, private industry and volunteer organizations, upon request, to the extent practicable and otherwise consistent with the law, during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law.

(ii) Provide policy oversight and direction of the activities of the NCS.

(2) The Director of the Office of Science and Technology Policy shall:

(i) Provide information, advice, guidance and assistance, as appropriate, to the President and to those Federal departments and agencies with responsibilities for the provision, management or allocation of telecommunications resources during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law.

(ii) Establish a Joint Telecommunications Resources Board (JTRB) to assist the Director in providing information, advice, guidance and assistance, as appropriate, to the President and to those Federal Departments and agencies with responsibilities for the provision, management, or allocation of telecommunications resources, during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law.

(c) Planning and Oversight Responsibilities.

(1) The National Security Advisor shall advise and assist the President in:

(i) Coordination and development of policy, plans, programs and standards for the mobilization and use of the Nation's commercial, government, and privately owned telecommunications resources to meet national security and emergency preparedness telecommunications requirements.

(ii) Providing policy oversight and direction of the activities of the NCS; and

(iii) Providing policy oversight and guidance for the execution of the responsibilities assigned to the Federal departments and agencies by Executive Order 12472.

(2) The Director of the Office of Science and Technology Policy (or a designee) shall:

(i) Advise and assist the President in the administration of a system of radio spectrum priorities for those spectrum dependent telecommunications resources of the Federal government which support national security and emergency preparedness telecommunications functions.

(ii) Certify or approve priorities for radio spectrum use by the Federal government, including the resolution of any conflicts in or among priorities under all conditions or crisis or emergency.

(3) The National Security Advisor, the Director of the Office of Science and Technology Policy and the Director of the Office of Management and Budget shall, in consultation with the Executive Agent for the NCS and the NCS Committee of Principals, determine what constitutes national security and emergency preparedness telecommunications requirements.

(4) The Director of the Office of Management and Budget, in consultation with the National Security Advisor and the NCS, will prescribe general guidelines and procedures for reviewing the financing of the NCS within the budgetary process and for preparation of budget estimates by participating agencies.

(d) Performance of essential government and public services during a national emergency, as defined in section 706 of the Communications Act (47 U.S.C. 606), as amended, will require a means for communications between government and the private sector, communications essential to operations of elements of the national economy, and communications for national defense and civil defense purposes. The needs of the private sector and those of government should be properly coordinated to ensure that responses to each of these communities of interest, government and private sector, are appropriately balanced. For this reason, with regard to wartime emergency functions, the Director, Office of Science and Technology Policy (OSTP), has delegated the responsibility for the private sector to the Chairman, Federal Communications Commission (FCC), and responsibility for the needs of government to the Executive Agent, National Communications System (NCS). A parity of level of authority of these officials is established. They will coordinate and negotiate telecommunications conflicts with respect to the allocation and use of the Nation's telecommunications resources,

reporting to the Director on unresolved issues which are within the domain of their respective responsibilities and authorities.

(e) In order to support the NS/EP telecommunications needs of the Federal government, State and local governments, private industry and volunteer organizations, under all circumstances, including those of crisis or emergency, the following functions shall be performed:

(1) The Secretary of Commerce, for all conditions of crisis or emergency, shall:

(i) Develop plans and procedures concerning radio spectrum assignments, priorities and allocations for use by Federal departments, agencies and entities; and

(ii) Develop, maintain and publish policy, plans and procedures for the control and assignment of radio frequencies, including the authority to amend, modify or revoke such assignments, in those parts of the electromagnetic spectrum allocated to the Federal Government.

(2) The Director of the Federal Emergency Management Agency shall:

(i) Plan for and provide, operate and maintain telecommunications services and facilities, as part of its National Emergency Management System, adequate to support its assigned emergency management responsibilities.

(ii) Advise and assist State and local governments and volunteer organizations, upon request and to the extent consistent with law, in developing plans and procedures for identifying and satisfying their NS/EP telecommunications requirements.

(iii) Ensure, to the maximum extent practicable, that national security and emergency preparedness telecommunications planning by State and local governments and volunteer organizations is mutually supportive of and consistent with the planning of the Federal Government.

(iv) Develop, upon request and to the extent consistent with law and in consonance with regulations promulgated by and agreements with the Federal Communications Commission, plans and capabilities for, and provide policy and management oversight of, the Emergency Broadcast System, and advise and assist private radio licensees of the Commission in developing emergency communications plans, procedures and capabilities.

(v) Act as sponsor for State and local governments' requests for telecommunications service priority (TSP) in accordance with the Federal Communications Commissions regulations and with procedures in approved NCS issuances.

(3) The Secretary of State, in accordance with assigned responsibilities within the Diplomatic Telecommunications Service, shall plan for and provide, operate and maintain rapid, reliable and secure telecommunications services to those Federal entities represented at United States diplomatic missions and consular offices overseas. This responsibility shall include the provision and operation of domestic telecommunications in support of assigned national security and emergency preparedness responsibilities.

(4) The Secretary of Defense shall:

(i) Plan for and provide, operate and maintain telecommunications services and facilities adequate to support the National Command Authorities and to execute responsibilities assigned by Executive Order 12333, December 4, 1981 (46 FR 59941; 3 CFR, 1981 Comp., p. 200).

(ii) Ensure that the Director of the National Security Agency provides the technical support necessary to develop and maintain plans adequate to provide for the security and protection of national security and emergency preparedness telecommunications.

(iii) Provide protection for interstate or foreign communication as directed by the President when the public interest requires under section 706(b) of the Communications Act (47 U.S.C. 606(b)).

(iv) In consultation with the Secretary of Transportation, develop policy, plans and procedures adequate to enable a transfer of control over radio stations in the Aviation Service and aboard vessels in the Maritime Service to the Department of Defense during a national emergency pursuant to § 202.1(b)(3) of these regulations.

(5) The Attorney General shall, as necessary, review for legal sufficiency, including consistency with the antitrust laws, all policies, plans or procedures developed pursuant to these regulations.

(6) The Director, Central Intelligence Agency, shall plan for and provide, operate and maintain telecommunications services adequate to support the Agency's assigned responsibilities, including the dissemination of intelligence within the Federal government.

(7) Except as otherwise assigned pursuant to these regulations, the Administrator of General Services shall ensure that Federally owned or managed domestic communications facilities and services meet the NS/EP requirements of Federal civilian departments, agencies and entities. The Administrator shall perform these responsibilities consistent with policy guidance of the Director of the Office of Management and Budget.

(8) The Secretary of the Interior shall develop and execute emergency plans with respect to the administration of telecommunications activities in the territorial and trusteeship areas under the jurisdiction of the United States and within the responsibility previously assigned to him by appropriate laws and other authority.

(9) The Federal Communications Commission, consistent with its statutory authority, shall:

(i) Review the policies, plans and procedures of all entities licensed or regulated by the Commission that are developed to provide national security and emergency preparedness telecommunications services to ensure that such policies, plans and procedures are consistent with the public interest, convenience and necessity.

(ii) Perform such functions as required by law with respect to all entities licensed or regulated by the Commission, including (but not limited to) the extension, discontinuance or reduction of common carrier facilities or services; the control of common carrier rates, charges, practices and classifications; the construction, authorization, activation, deactivation or closing of radio stations, services and facilities; the assignment of radio frequencies to Commission licensees; the investigation of violations of pertinent law and regulation; and the initiation of appropriate enforcement actions.

(iii) Develop policy, plans and procedures adequate to execute the responsibilities assigned pursuant to these regulations under all conditions of crisis or emergency.

(iv) Consult as appropriate with authorized officials of the NCS to ensure continued coordination of their respective NCS activities.

(10) The National Communications System (comprised of the Executive Agent for the NCS, the NCS Committee of Principals, and the Manager, NCS) shall assist the President, the Director of the Office of Science and Technology Policy, National Security Advisor and the Director of the Office of Management and Budget in the exercise of national security and emergency preparedness telecommunications functions and responsibilities and in the coordination of the planning for and provision of national security and emergency preparedness communications for the Federal government under all circumstances, including crisis or emergency, attack recovery and reconstitution.

(11) The Executive Agent for the NCS shall:

(i) Ensure that the NCS conducts unified planning and operations, in order to coordinate the development and maintenance of an effective and responsive capability for meeting the domestic and international national security and emergency preparedness needs of the Federal government.

(ii) Ensure that the activities of the NCS are conducted in conjunction with the emergency management activities of the Federal Emergency Management Agency.

(12) The Manager, NCS shall:

(i) Develop for consideration by the NCS Committee of Principals and the Executive Agent:

(A) A recommended evolutionary telecommunications architecture designed to meet current and future Federal government national security and emergency preparedness telecommunications requirements.

(B) Plans and procedures for the management, allocation and use, including the establishment of priorities or preferences, of Federally owned or leased telecommunications assets under all conditions of crisis or emergency.

(C) Plans, procedures and standards for minimizing or removing technical impediments to the interoperability of government-owned and/or commercially provided telecommunications systems.

(D) Test and exercise programs and procedures for the evaluation of the capability of the Nation's telecommunications resources to meet national security and emergency preparedness telecommunications requirements.

(E) Alternative mechanisms for funding, through the budget review process, NS/EP telecommunications initiatives which benefit multiple Federal departments, agencies or entities. Those mechanisms recommended by the NCS Committee of Principals and the Executive Agent shall be submitted to the Executive Office of the President.

(ii) Implement and administer any approved plans or programs as assigned, including any system of priorities and preferences for the provision of telecommunications service, in consultation with the NCS Committee of Principals and the Federal Communications Commission, to the extent practicable or otherwise required by law or regulation.

(iii) Implement, with the assistance of appropriate Federal agencies, a decentralized National Telecommunications Management Structure (NTMS) capable of functioning independently in support of appropriate authority within the terms and guidelines delineated in the White House approved Implementation Concept.

(iv) Conduct technical studies or analyses, and examine research and development programs, for the purpose of identifying, for consideration by the NCS Committee of Principals and the Executive Agent, improved approaches which may assist Federal entities in fulfilling national security and emergency preparedness telecommunications objectives.

(v) Develop an NCS Issuance System of official documents to implement, establish, guide, describe or explain organizational responsibilities, authorities, policies and procedures.

(13) The NCS Committee of Principals shall:

(i) Serve as the forum in which each member of the Committee may review, evaluate and present views, information and recommendations concerning ongoing or prospective national security and emergency preparedness telecommunications programs of the NCS and the entities represented on the Committee.

(ii) Serve as the forum in which each member of the Committee shall report on and explain ongoing or prospective telecommunications plans and programs developed or designed to achieve national security and emergency preparedness telecommunications objectives.

(iii) Provide comments or recommendations, as appropriate, to the National Security Council, the Director of the Office of Science and Technology Policy, the Director of the Office of Management and Budget, the Executive Agent, or the Manager of the NCS, regarding ongoing or prospective activities of the NCS.

(14) All Federal departments and agencies shall:

(i) Prepare policies, plans and procedures concerning telecommunications facilities, services, or equipment under their management or operational control to maximize their capability to respond to the national security and emergency preparedness needs of the Federal Government. Such plans will be prepared, and the operations will be executed, in conjunction with the emergency management activities of the Federal Emergency Management Agency, and in regular consultation with the Executive Agent for the NCS and the NCS Committee of Principals.

(ii) Cooperate with and assist the Executive Agent for the NCS, the NCS Committee of Principals, the Manager of the NCS, and other departments and agencies in the execution of the functions set forth in this regulation, furnishing them such information, support and assistance as may be required.

PART 212—PROCEDURES FOR OBTAINING INTERNATIONAL TELECOMMUNICATION SERVICE FOR USE DURING A WARTIME EMERGENCY

Sec.
212.0 Authority.
212.1 Purpose.
212.2 Scope.
212.3 Responsibilities.
212.4 Other requirements.

Authority: E.O. 12046, 43 FR 13349, Mar. 29, 1978 (3 CFR, 1978 Comp., p. 158); E.O. 12472, April 3, 1984, (49 FR 13471; 3 CFR, 1984 Comp., p. 193).

§ 212.0 Authority.

(a) Authority to establish arrangements to ensure that the NS/EP telecommunications needs of all Federal government entities are met in a manner consistent, to the maximum extent practicable, with other telecommunications policies is contained in Executive Order 12472 and Executive Order 12046.

(b) These procedures are applicable to the communications common carriers and non-Federal Government users under the President's authority contained in subsection 706(a)–(d) of the Communications Act of 1934 (47 U.S.C. 606(a)–(d)), as amended. The authority under subsection 706(a) has been delegated by Executive Order 12472 to the Director of the Office of Science and Technology Policy, contingent upon issuance by the President of implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601). This authority may be exercised only during wartime emergencies.

§ 212.1 Purpose.

The purpose of this part is to provide specific guidance to Government and private entities who may have requirements for international telecommunication service during wartime emergencies.

§ 212.2 Scope.

The procedures in this part provide guidance for the submission of emergency requirements for telecommunication channels from the United States to overseas or foreign points. Guidance on this subject was previously contained in Annex 2 of DMO 3000.1 and Mobilization Plan IX–3.

Mobilization Plan IX-3 has been canceled.

§ 212.3 Responsibilities.

(a) Executive departments and agencies of the United States, whether or not components of the National Communications System, (NCS), shall, to the extent permissible by law and consistent with national security, submit their international emergency telecommunications requirements to the Executive Agent, NCS, for coordination and consolidation of mobilization requirements.

(b) The Department of Defense shall coordinate NATO requirements in consonance with approved NATO/U.S. procedures for subsequent processing by the Executive Agent, NCS.

(c) The Department of State shall coordinate and approve foreign government telecommunications requirements and forward them to the Executive Agent, NCS, for further processing.

§ 212.4 Other requirements.

(a) Government, other than Executive departments and agencies of the United States, having need for emergency international telecommunication service, shall present their requirements through the appropriate sponsor to NCS.

(b) The private sector, including carriers, having need for emergency international telecommunication service, shall present their requirements to the Federal Communications Commission (FCC).

PART 214—PROCEDURES FOR THE USE AND COORDINATION OF THE RADIO SPECTRUM DURING A WARTIME EMERGENCY

Sec.

214.0 Authority.
214.1 Purpose.
214.1 Scope.
214.3 Assumptions.
214.4 Planned actions.
214.5 Responsibilities.
214.6 Postattack procedures and actions.

Authority: 84 Stat. 2083 and E.O. 12472, April 3, 1984, (49 FR 13471; 3 CFR, 1984 Comp., p. 193).

§ 214.0 Authority.

The provisions of this part 214 are issued pursuant to Reorganization Plan No. 1 of 1977, 42 FR 56101, 91 Stat. 1633, as amended (5 U.S.C. appendix) and Executive Order 12472. This part 214 replaces Annex 1 of DMO 3000.1, dated November 8, 1963, 28 FR 12273.

§ 214.1 Purpose.

The purpose of this part is to provide guidance for the use of the radio spectrum in a period of war, or a threat of war, or a state of public peril or other wartime emergency.

§ 214.2 Scope.

This part covers procedures for the use of radio frequencies upon proclamation by the President that there exists war, or a threat of war or a state of public peril or other wartime emergency or in order to preserve the neutrality of the United States. These procedures will be applied in the coordination, application for, and assignment of radio frequencies upon order of the Director, OSTP. These procedures are intended to be consistent with the provisions and procedures contained in emergency plans for use of the radio spectrum.

§ 214.3 Assumptions.

When the provisions of this part become operative, Presidential emergency authority, including Executive Order 12656, 12472, 12046 (3 CFR, 1966–1970 Comp., p. 820), and other emergency plans regarding the allocation and use of national resources will be in effect. During an attack, and in a postattack period, the Director, OSTP, will have authority to make new or revised assignments of radio frequencies in accordance with authority delegated by the President.

§ 214.4 Planned actions.

(a) Whenever it is determined necessary to exercise, in whole or in part, the President's emergency authority over telecommunications, the Director, OSTP, will exercise that authority as specified in Executive Order 12472 (49 FR 13471; 3 CFR, 1984 Comp., p. 193).

(b) In this connection, and concurrently with the war or national emergency proclamation by the President, the Director will:

(1) Authorize the continuance of all frequency authorizations issued by the National Telecommunications and Information Administration (NTIA) and the Federal Communications Commission (FCC), except as they may otherwise be modified or revoked by the Director, OSTP, in the national interest;

(2) Redelegate to the Secretary of Defense the authority necessary to control the use of the radio spectrum in areas of active combat, where such control is necessary to the support of U.S. military operations;

(3) Close all non-government radio stations in the international broadcasting service as defined in the FCC rules and regulations, except those carrying or scheduled to carry U.S. Government-controlled radio broadcasts.

§ 214.5 Responsibilities.

(a) The Director, OSTP, will issue such policy guidance, rules, regulations procedures, and directives as may be necessary to assure effective frequency usage during wartime emergency conditions.

(b) The FCC, in coordination with NTIA, shall issue appropriate rules, regulations, orders, and instructions and take such other actions not inconsistent with the actions of the Director, OSTP, and the NTIA Emergency Readiness Plan for Use of the Radio Spectrum as may be necessary to ensure the effective use of those portions of the radio spectrum shared by Government and non-governments users.

(c) The FCC shall assist the Director in the preparation of emergency plans pursuant to section 3(h)(3) of Executive Order 12472.

(d) Each Federal Government agency concerned shall develop and be prepared to implement its own plans, and shall make necessary preemergency arrangements with non-government entities for the provision of desired facilities or services, all subject to the guidance and control of the Director.

§ 214.6 Postattack procedures and actions.

(a) The frequency management staff supporting the Director, OSTP, comprised of predesignated personnel from the frequency management staffs of the government user agencies, NTIA and the FCC, will have proceeded to the OSTP relocation site in accordance with alerting orders in force.

(b) Government agencies having need for new radio frequency assignments or for modification of existing assignments involving a change in the frequency usage pattern shall, unless otherwise provided, submit applications therefor to the Director, OSTP, by whatever means of communication are available and appropriate, together with a statement of any preapplication coordination accomplished. The Director, OSTP, will review such applications accomplish the necessary additional coordination insofar as practicable, consider all pertinent views and comments, and grant or deny, as he shall determine, the assignment of such frequencies. All concerned will be informed promptly of his decisions.

(c) Non-Government entities having need for new radio frequency assignments or for modifications of existing assignments will continue to submit applications therefor to the FCC, or in accordance with FCC instructions. Such applications shall be coordinated with the Director, OSTP, and granted

subject to the approval of the Director, OSTP, or his delegate.

(d) All changes of radio frequency usage within U.S. military theaters of operation will be coordinated with the Director, OSTP, where harmful interference is likely to be caused to stations authorized to operate within the United States and its possessions.

(e) Where submission to the Director, OSTP, is impracticable, the applicant shall:

(1) Consult the NTIA Emergency Readiness Plan for use of the Radio Spectrum and the Government Master File;

(2) Accomplish such coordination as appropriate and possible;

(3) Act in such manner as to have a minimum impact upon established services, accepting the responsibility entailed in taking the temporary action required;

(4) Advise the Director, OSTP, as soon as possible of the action taken, and submit an application for retroactive approval.

PART 215—FEDERAL GOVERNMENT FOCAL POINT FOR ELECTROMAGNETIC PULSE (EMP) INFORMATION

Sec.

215.0 Purpose and authority.
215.1 Background.
215.2 Assignment of responsibilities.

Authority: 84 Stat. 2083, and E.O. 12472, April 3, 1984 (49 FR 13471 *et seq.*).

§ 215.0 Purpose and authority.

The purpose of this part is to designate a focal point within the Federal Government for electromagnetic pulse (EMP) information concerning telecommunications. It is issued pursuant to the authority of Reorganization Plan No. 1 of 1977, 42 FR 56101, 91 Stat. 1633, as amended (5 U.S.C. appendix), Executive Order 12472, (49 FR 13471; 3 CFR, 1984 Comp., p. 193), "Assignment of National Security and Emergency Preparedness Telecommunications, April 3, 1984 and Executive Order 12046, 43 FR 13349, "Relating to the Transfer of Telecommunications Functions," May 27, 1978, as amended by Executive Order 12472.

§ 215.1 Background.

(a) The nuclear electromagnetic pulse (EMP) is part of the complex environment produced by nuclear explosions. It consists of transient voltages and currents which can cause malfunctioning and serious damage to electrical and electronic equipment.

(b) The Defense Nuclear Agency (DNA) is the overall technical coordinator for the Army, Navy, Air Force, and DOE laboratories on matters concerning nuclear weapons, nuclear weapons effects, and nuclear weapons testing. It acts as the focal point between the service laboratories and other agencies. The National Communications System (NCS), with the Defense Communications Agency (DCA), maintains a data base for telecommunications. DCA also provides the primary capability for the NCS to conduct telecommunications survivability studies for civil and military departments and agencies.

(c) In order to disseminate among affected Federal agencies information concerning the telecommunications effects of EMP and available protective measures, and in order to avoid duplication of research efforts, it is desirable to designate a focal point within the Federal Government for telecommunications EMP matters.

§ 215.2 Assignment of responsibilities.

The Executive Agent, NCS, shall be the focal point within the Federal Government for all EMP technical data and studies concerning telecommunications. It shall provide such data and the results of such studies to all appropriate agencies requesting them. It shall coordinate and approve EMP telecommunications tests and studies, and shall keep the National Security Advisor informed regarding such tests and studies being conducted and planned.

PART 216—NATIONAL COMMUNICATIONS SYSTEM ISSUANCE SYSTEM

Sec.

216.1 NCS Directives.
216.2 Publication of Directives.

Appendix to Part 216—NCS Directives.

Authority: E.O. 12472, April 3, 1984 (49 FR 13471; 3 CFR, 1984 Comp., p. 193).

§ 216.1 NCS Directives.

In accordance with § 202.3(c)(12)(v), the Manager, NCS, has developed a system of official documents of a referential nature. The documents include NCS Directives, which establish and implement organizational responsibilities, authorities, policies and procedures of a continuing nature. The Directives are issued by the Executive Office of the President after approval and/or consideration by the NCS Committee of Principals, the Executive Agent for the NCS and the Assistant to the President for National Security Affairs.

§ 216.2 Publication of Directives.

(a) We believe, for public awareness and internal administrative purposes, that publication of the current directives is worthwhile. The appendix to this part includes all current NCS Directives.

(b) The Directives are arranged numerically. The first of the hyphenated letters indicates the subject category: "1" for "Organization, Membership and Administration;" "2" for "Plans, Programs and Fiscal Management;" "3" for "Telecommunications Operations;" and "4" for "Technology and Standards." The second number indicates the sequence of issuance.

(c) In some instances, the appendixes to the directives consist of documents readily accessible elsewhere in the public domain. In the interests of brevity, these documents are referenced rather than reprinted in full.

Appendix to Part 216—NCS Directives

NCS Directive 1-1—Organization, Membership and Administration—National Communications System (NCS) Issuance System
NCS Directive 1-2—Organization, Membership and Administration—National Communications System (NCS) Membership
NCS Directive 2-1—Plans, Programs, and Fiscal Management—National Security Emergency Preparedness (NSEP) Telecommunications Planning Process
NCS Directive 2-2—Plans, Programs, and Fiscal Management—National Level NSEP Telecommunications Program (NLP) Funding
NCS Directive 3-1—Telecommunications Operations—Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP)
NCS Directive 3-3—Telecommunications Operations—Shared Resources (SHARES) High Frequency (HF) Radio Program

Note: NCS Directives and their appendices are available from National Communications System Joint Secretariat (NCS-NJ), Defense Communications Agency, Washington, DC 20305-2000

[NCS Directive 1-1]

Organization, Membership and Administration—National Communications System (NCS) Issuance System

November 30, 1987.

1. *Purpose.* This directive establishes the National Communications System (NCS) Issuance System, describes the documents comprising the NCS Issuance System, and assigns responsibilities and delegates authority for implementing and managing that System.

2. *Applicability.* This directive is binding upon the Executive Agent, NCS; Manager, NCS; NCS Committee of Principals and member organizations; and other affected Executive entities.

3. *Authority.* Pursuant to the Constitution of the United States and other laws cited in Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984; 49 FR 13471 (1984) (see appendix A to this directive), the President has established the NCS, which is subject to rules issued pursuant to the NCS Issuance System. This directive is issued under the authority of Executive Order No. 12472.

4. *Reference.* Executive Order No. 12472.

5. *Cancellation.* NCS Memorandum 1-63, "National Communications System Publications," December 10, 1963, is hereby cancelled.

6. *Definitions.*

a. *Binding.* Imposing one or more obligations, responsibilities, or duties upon affected parties, subject to any overriding Federal statutes, executive orders, or other Federal law.

b. *Issue.* To put into effect, publish, and distribute an NCS issuance after final approval by proper authority.

c. *NCS Issuances.* Documents (i.e., NCS directives, circulars, manuals, handbooks, and notices; and Office of the Manager, NCS (OMNCS) office orders), generally of referential value and broad distribution, that implement, establish, guide, describe, or explain organizational responsibilities, authorities, policies, and procedures. Appendix B [1] provides abbreviated descriptions of types of issuances.

d. *NCS Directive.* An issuance used to establish and implement organizational responsibilities, authorities, policies, and procedures of a continuing nature. Directives are issued by the Director, Office of Science and Technology Policy and/or Director, Office of Management and Budget, after consideration of the proposed text by the NCS Committee of Principals, Executive Agent, NCS, and Assistant to the President for National Security Affairs. Directives are binding upon the Executive Agent, NCS; Manager, NCS; NCS Committee of Principals and member organizations; and other affected Executive entities. Directives remain in effect until superseded or cancelled.

e. *NCS Circular.* An issuance used for dissemination of subject matter either pending incorporation into an NCS directive or requiring one-time action. Circulars are issued by the Director, Office of Science and Technology Policy and/or Director, Office of Management and Budget, after consideration of the proposed text by the NCS Committee of Principals, Executive Agent, NCS, and Assistant to the President for National Security Affairs. Circulars are binding upon the Executive Agent, NCS; Manager, NCS; NCS Committee of Principals and member organizations; and other affected Executive entities. Circulars will expire after (1) incorporation into a directive, (2) one year from the date of issuance, or (3) a specified time period, whichever occurs first.

f. *NCS Manual.* An issuance used to provide detailed description, explanation, or procedural or technical guidance concerning matters addressed in NCS directives or circulars. Manuals are issued by the Manager, NCS, subject to the provisions of paragraphs 9 d and e of this directive. Manuals are binding upon the Executive Agent, NCS; Manager, NCS; NCS Committee of Principals and member organizations; and other affected Executive entities. Manuals remain in effect until superseded or cancelled.

g. *NCS Handbook.* An issuance used to provide detailed description, explanation, or procedural or technical guidance concerning matters addressed in NCS directives, circulars, or manuals. Handbooks are issued by the Manager, NCS, normally without consideration by the NCS Committee of Principals or Executive Agent. Handbooks are not binding upon the Executive Agent, NCS; Manager, NCS; NCS Committee of Principals or member organizations; or other affected Executive entities. Handbooks remain in effect until superseded or cancelled.

h. *NCS Notice.* An issuance used for immediate dissemination of subject matter, usually informational, and either pending incorporation into an NCS handbook or of transitional interest. Notices are issued by the Manager, NCS, or authorized designees, normally without consideration by the NCS Committee of Principals or Executive Agent. Notices are not binding upon the Executive Agent, NCS; Manager, NCS; NCS Committee of Principals or member organizations; or other affected executive entities. Notices will expire after (1) incorporation into a handbook, (2) one year from the date of dissemination, or (3) a specified time period, whichever occurs first.

i. *OMNCS Office Order.* An issuance used to implement and provide procedural guidance supplementary to NCS and other directives, manuals, or authority and outline managerial requirements. Office orders are limited to and binding upon the internal operation, administration, and personnel of the OMNCS. They are issued by the Manager, NCS, who may delegate further this authority, and they remain in effect until superseded or cancelled.

7. *Policy.* The NCS Issuance System governs the issuance of rules and guidance concerning the internal organization, policies, procedures, practices, management, and/or personnel of NCS. Such rules and guidance will be issued in the form of NCS issuances or changes thereto. Proposed changes to an NCS issuance will be processed in the same manner as the issuance to which they pertain.

8. *Responsibilities.*

a. NCS member organizations:

(1) May propose subjects for and develop new issuances, and propose changes in existing issuances.

(2) May review and provide comments regarding proposed NCS directives, circulars, and manuals, as desired or authorized by paragraph 9e below.

(3) May consider and comment upon NCS handbooks and notices.

b. The NCS Committee of Principals and Executive Agent:

(1) May propose subjects for and develop new issuances, and propose changes in existing issuances.

(2) Will review and provide comments as needed to the Executive Office of the President regarding proposed NCS directives and circulars.

(3) Will consider and approve, and may comment upon, NCS manuals, as specified in paragraph 9 below.

(4) May consider and comment upon NCS handbooks and notices.

c. The Manager, NCS:

(1) Will maintain and administer the NCS Issuance System.

(2) May propose subjects for and develop new issuances, and propose changes in existing issuances.

(3) Will consider, issue, and comment upon, as needed, NCS manuals (as specified in paragraph 9 below), handbooks, notices, and OMNCS office orders.

(4) Will forward NCS issuances and any comments thereon to the NCS Committee of Principals; Executive Agent, NCS; and/or Executive Office of the President, as required.

9. *Delegations of Authority.*

a. The NCS Committee of Principals and Executive Agent are hereby delegated the authority to approve NCS manuals, subject to the conditions specified below in paragraphs 9 d and e.

b. The Manager, NCS, is hereby delegated the authority to issue NCS manuals, handbooks, and notices.

c. The Manager, NCS, is hereby delegated the authority to approve and issue OMNCS office orders. The Manager may further delegate this authority.

d. NCS manuals will be issued 30 calendar days following notification to the NCS Committee of Principals of approval by the Committee of Principals and Executive Agent, but only (1) if authorized by an NCS directive or circular, and (2) subject to the condition specified in paragraph 9e below.

e. Upon either approval or disapproval of an NCS manual by the Committee of Principals and/or Executive Agent, the NCS Executive Agent, Manager, Committee of Principals, and member organizations may, within 30 calendar days after notification to the Committee of Principals of such action, submit a written request for review of the manual to the Director, Office of Science and Technology Policy; Director, Office of Management and Budget; or Assistant to the President for National Security Affairs. Any such request will include reasons. Copies of the request shall be provided concurrently to the NCS Committee of Principals, Executive Agent, and Manager, as necessary. For a period of 30 calendar days thereafter, any NCS entity may submit comments to the Director, Office of Science and Technology Policy; Director, Office of Management and Budget; or Assistant to the President for National Security Affairs. Any manual under such review may not be issued until resolution of the matter in question by (1) direction from the Director, Office of Science and Technology Policy, and/or Director, Office of Management and Budget, after consideration by the Assistant to the President for National Security Affairs; or (2) withdrawal of each request for review.

10. *Authorizing Provisions.* NCS manuals implementing this directive are authorized.

[1] Editorial Note: See § 216.2(c) and the note following the table of contents for the appendix to part 216.

11. *Effective Date.* This directive is effective immediately.

12. *Expiration.* This directive will remain in effect until superseded or cancelled.

2 Appendices [2]

A. Executive Order No. 12472

Director, Office of Science and Technology Policy.

Dated: November 30, 1987.

Director, Office of Management and Budget.

Dated: November 17, 1987.

Assistant to the President for National Security Affairs.

Dated: September 18, 1987.

Note: Appendix A to NCS Directive 1–1, Executive Order No. 12472 of April 3, 1984, is not published in full in the appendix to part 216. The text of Executive Order 12472 appears in 49 FR 13471, April 5, 1984, and in 3 CFR, 1984 Comp., p. 193.

[NCS Directive 1–2]

Organization, Membership, and Administration—National Communications System (NCS) Membership

November 30, 1987.

1. *Purpose.* This directive identifies the membership of the National Communications System (NCS) as designated by the President and assigns associated responsibilities.

2. *Applicability.* This directive is binding upon the Executive Agent, NCS; Manager, NCS; NCS Committee of Principals and member organizations; and other affected Executive entities.

3. *Authority.* This directive is issued under the authority of Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984; 49 FR 13471 (1984), and NCS Directive 1–1, "National Communications System (NCS) Issuance System," November 30, 1987.

4. *References.*

a. Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984, 49 FR 13471 (1984). (The text of this Executive Order is included as appendix A to NCS Directive 1–1, "National Communications System (NCS) Issuance System," November 30, 1987.) [1]

b. NCS Directive 1–1, "National Communications System (NCS) Issuance System," November 30, 1987.

c. White House Memoranda, subject "The National Communications System," dated July 13, 1984 (appendices A and B).[2]

d. White House Memoranda, subject "Application of the Department of Health and Human Services (HHS) for Membership in the National Communications System (NCS)," dated May 7, 1987 (appendix C).[3]

e. NCS Manual 1–2–1, "Bylaws of the National Communications System (NCS) Committee of Principals," November 30, 1987.

5. *Cancellation.* NCS Memorandum 2–63, "Approval of Initial NCS Tasks 1 and 2," December 13, 1963; and NCS Memorandum 2–64, "Additional Networks Approval for Inclusion in the National Communications System," December 11, 1964, are hereby cancelled.

6. *Definitions.*

a. Full Member. A representative on the NCS Committee of Principals of an organization entitled to unqualified participation, subject to Committee bylaws (reference 4e) and prevailing legal authority. Organizations represented by full members will be bound by rules and other legal authority governing the NCS.

b. Liaison member. A representative on the NCS Committee of Principals of an organization invited by the President to participate, without the right to vote on matters before the Committee.

7. *Policy.* Active participation in NCS activities by organizations represented on the Committee of Principals is critical to effective national security emergency preparedness telecommunications. Accordingly, each organization represented by a full member should detail at least one full-time employee to serve either on the staff of the Manager, NCS, or as a resident representative to the NCS' National Coordinating Center. Exceptions to this policy may be authorized on a case-by-case basis by the Assistant to the President for National Security Affairs.

8. *Designated Full Members.* The President has designated the following Federal entities to participate in the NCS and be represented by full members on the Committee of Principals: Department of State; Department of the Treasury; Department of Defense; Department of Justice; Department of the Interior; Department of Agriculture; Department of Commerce; Department of Health and Human Services; Department of Transportation; Department of Energy; Central Intelligence Agency; Office of the Joint Chiefs of Staff; General Services Administration; United States Information Agency; National Aeronautics and Space Administration; Veterans Administration; Federal Emergency Management Agency; National Security Agency; and National Telecommunications and Information Administration.

9. *Invited Participants.* The President has invited the Federal Communications Commission, Nuclear Regulatory Commission, U.S. Postal Service, and Federal Reserve System to participate in the NCS and be represented on the Committee of Principals by either liaison or full members. Invited participants choosing to be represented by full members will be bound by NCS issuances promulgated pursuant to reference 4b.

10. *Responsibilities.*

a. Each organization represented by a full member on the NCS Committee of Principals:

(1) Will accredit the full member as the organization's authorized representative in matters before the Committee, including matters involving policy, budget, and resources.

(2) Will participate in all activities of the Committee.

(3) Should execute a Memorandum of Agreement with the Executive Agent or Manager, NCS, to provide personnel and staff support to the Office of the Manager, NCS, in accordance with section 3 (i) (3) of Executive Order No. 12472 and policy established in this directive.

b. Each organization represented by a liaison member on the Committee of Principals:

(1) May participate as desired in Committee activities.

(2) Should execute a Memorandum of Agreement with the Executive Agent or Manager, NCS, describing the nature and extent of participation in the NCS.

c. The Executive Agent or Manager, NCS, will prepare and execute Memoranda of Agreement as described in paragraphs 10 a and b above.

11. *Authorizing Provision.* NCS manuals implementing this directive are authorized.

12. *Effective Date.* This directive is effective immediately.

13. *Expiration.* This directive is in effect until superseded or cancelled.

Director, Office of Science and Technology Policy.

Dated: November 30, 1987.

Director, Office of Management and Budget.

Dated: November 17, 1987.

Assistant to the President for National Security Affairs.

Dated: September 18, 1987.

[NCS Directive 2–1]

Plans, Programs, and Fiscal Management—National Security Emergency Preparedness (NSEP) Telecommunications Planning Process

September 30, 1988.

1. *Purpose.* This directive establishes the interagency process by which unified planning is conducted within the National Communications System (NCS) to ensure the coordinated development of a responsive and survivable national telecommunications infrastructure to meet the NSEP telecommunications needs of the Federal Government.

2. *Applicability.* This directive is binding upon the Executive Agent, NCS; Manager, NCS; NCS Committee of Principals and Member Organizations; and other affected Executive entities.

3. *Authority.* This directive is issued under the provisions of Executive Order (E.O.) No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications," April 3, 1984, 49 FR 13471 (1984) and NCS Directive (NCSD) No. 1–1, "National Communications System (NCS) Issuance System," November 30, 1987.

4. *References.*

a. E.O. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984, 49 FR 13471 (1984).

b. NCS Directive 2–2, "National Level NSEP Telecommunications Program (NLP) Funding," November 30, 1987.

c. "National Security Emergency Preparedness (NSEP) Telecommunications

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[2] **Editorial Note:** See § 216.2(c) and the note following the table of contents for the appendix to part 216.

Editorial Notes:

[1] See the note at the end of Directive 1–1.

[2] See § 216.2(c) and the note following the table of contents for the appendix to part 216.

[3] See § 216.2(c) and the note following the table of contents for the appendix to part 216.

Planning Process," March 27, 1986, NCS 326/8.[1]

d. White House Memorandum, "National Communications System (NSEP) Telecommunications Planning Process," October 11, 1986, (appendix).[2]

5. *Cancellation.* NCS Memorandum No. 2-69, "Interim Procedures for Application of Planning—Programming—Budgeting System (PPBS) Features in the NCS Planning Process," October 31, 1969, is hereby cancelled.

6. *Definitions.*

a. The National Level NSEP Telecommunications Program (NLP). Those NSEP telecommunications programs benefiting multiple departments and agencies that are to be undertaken within the NCS structure, and the accompanying provisions for their shared funding and implementation.

b. Capability Objectives. That key Planning Process element which defines the set of capabilities needed to meet the NSEP telecommunication requirements of the Federal Government.

c. Deficiencies and Priorities. That key Planning Process element which identifies shortcomings or shortfalls in existing capabilities that inhibit or preclude the satisfaction of Federal NSEP telecommunications requirements.

d. Candidate Initiatives. That key Planning Process element which describes actions selected to mitigate identified deficiencies and achieve the overall enhancement of NSEP telecommunications capabilities.

e. Evolutionary NSEP Telecommunications Architecture. That Planning Process element which describes the overall structure of telecommunications capabilities and resources to support Federal government NSEP requirements and the framework for the design, evaluation, and integration of NSEP telecommunications initiatives.

7. *Policy.* The mission of the NCS is to assist the President, the National Security Council (NSC), the Director of the Office of Science and Technology Policy (OSTP), and the Director of the Office of Management and Budget (OMB) in the exercise of the telecommunications functions and responsibilities assigned to them by E.O. 12472, and to coordinate the planning for and provision of NSEP telecommunications for the Federal government under all circumstances, including crisis or emergency, attack, recovery, and reconstitution.

a. To support the performance of this mission, a unified planning process for NSEP telecommunications will be implemented to:

(1) Establish, on an evolutionary basis, a NSEP telecommunications planning mechanism that facilitates the integration of Federal government, commercial/private sector, and State/local government activities and capabilities;

(2) Define the capabilities required to support NSEP telecommunications needs;

(3) Identify a set of feasible near- and long-term national level NSEP telecommunications initiatives for the achievement of those capabilities; and

(4) Develop, and provide for the effective implementation of, approved national level NSEP telecommunications programs.

b. These planning functions will be carried out within the framework of an overall process involving the design and maintenance of an evolutionary NSEP telecommunications architecture, and the annual development, documentation, review, and approval of capability objectives, deficiencies and priorities, candidate initiatives, and a National Level Program.

8. *Responsibilities.*

a. Executive Office of the President (EOP).

(1) Within the EOP, the NSC, in conjunction with OSTP and OMB, will:

(a) Provide overall policy and program direction for NSEP telecommunications planning;

(b) Provide, after appropriate consultation with the Director of Central Intelligence and the Attorney General, a definition of the threat for planning purposes;

(c) Review and validate Capability Objectives;

(d) Review and provide program planning guidance to the NCS regarding Deficiencies and Priorities and Candidate Initiatives; and

(e) Provide direction for the implementation of the National Level Program.

(2) In addition, the OSTP will also:

(a) Provide recommendations regarding, and the results of tests, exercises, and evaluations;

(b) Provide recommendations relating to the enhancement of plans and procedures for the management of Federal telecommunications resources in crises or emergencies.

(3) As provided for in E.O. 12472, OMB, "* * * will, in conjunction with the National Security Council, provide general guidelines and procedures for reviewing the financing of the NCS within the budgetary process and for preparation of budget estimates by participating organizations. These guidelines and procedures may provide for mechanisms for funding, through the budget review process, NSEP telecommunications initiatives which benefit multiple departments and agencies.

(4) The NSC, OSTP, OMB and the Executive Agent, NCS, will:

(a) Review and approve or modify the proposed National Level Program developed by the NCS.

b. The Executive Agent, NCS, will:

(1) Provide direction for the conduct of NSEP telecommunications planning activities and serve as the principal interface between the NCS and the EOP;

(2) Review the Capability Objectives, Deficiencies and Priorities, Candidate Initiatives, and the proposed National Level Program and forward them, with NCS COP and Executive Agent recommendations, for the consideration of the EOP;

(3) Transmit NSEP Telecommunications planning guidance and direction received from the EOP to the Manager, NCS; and

(4) Oversee the overall planning activities of the NCS.

c. Individual NCS member organizations * will:

(1) Identify their essential emergency functions (EEFs) and NSEP telecommunications needs and requirements;

(2) Describe initiatives being implemented within their organizations to improve NSEP telecommunications capabilities;

(3) Provide any information ** regarding their telecommunications operating systems, networks, facilities, plans, and procedures that is required for effective NSEP telecommunications planning; and

(4) Recommend and provide budget estimates for candidate national level NSEP telecommunications initiatives.

d. The NCS Committee of Principals (COP) will:

(1) Review, consider, and provide recommendations regarding NSEP Telecommunications Requirements, Capability Objectives, Deficiencies and Priorities, Candidate Initiatives, and the proposed National Level Program to the Executive Agent and the EOP;

(2) Assist in the coordination of NSEP telecommunications planning activities with other related planning activities and processes; and

(3) Serve as forum for the evaluation of the National Level Program and assessment of the effectiveness of the NSEP Telecommunications Planning Process.

e. The Manager, NCS, will:

(1) Ensure the annual development and documentation for NSEP Telecommunications Planning Process elements based upon NSEP telecommunications requirements and threat and policy guidance provided by the EOP;

(2) Develop, for consideration by the NCS COP, the Capability Objectives, Deficiencies and Priorities, and Candidate Initiatives and forward them for the consideration of the Executive Agent and the EOP;

(3) Provide annually a proposed National Level Program for the consideration of the NCS COP and the Executive Agent;

(4) Design and maintain the evolutionary NSEP Telecommunications Architecture;

(5) Coordinate planning activities within the NCS structure and provide staff support and technical assistance for the overall planning effort; and

(6) Obtain the NSEP telecommunications recommendations of the U.S.

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[1] Editorial Note: See § 216.2(c) and the note following the table of contents for the appendix to part 216.

* Certain NCS member organizations are also assigned special telecommunications planning responsibilities within the Federal Government, e.g. spectrum planning, telecommunications security and protection, and diplomatic and intelligence communications planning. These organizations will work with the Manager, NCS, to assure that their special areas of responsibility are reflected in the National Level Program to the maximum extent practicable. For example, FEMA will ensure that State/local NSEP telecommunications concerns, activities, and capabilities are considered, to the maximum extent practicable, within the Planning Process.

** Such information from NCS members organizations will be provided to the extent permitted by law and regulation, and with due regard for the need to protect classified or otherwise sensitive national security or intelligence information.

telecommunications industry through the National Security Telecommunications Advisory Committee (NSTAC).

9. *Procedures.*

a. Key NSEP Telecommunications Planning Process elements will be developed and considered on an annual basis as follows:

(1) Capability Objectives will be presented for NCS COP consideration by the Manager, NCS; forwarded with NCS COP recommendations to the Executive Agent, NCS; and transmitted with NCS COP and Executive Agent recommendations to the NSC, OSTP, and OMB for validation.

(2) Deficiencies and Priorities will be presented to the NCS COP by the Manager, NCS; forwarded with NCS COP recommendations to the Executive Agent, NCS; and transmitted with NCS COP and Executive Agent recommendations to the NSC, OSTP, and OMB for information and reference.

(3) Candidate Initiatives will be presented to the NCS COP by the Manager, NCS; forwarded with NCS COP recommendations to the Executive Agent, NCS, OSTP, and OMB for information and reference.

(4) A proposed National Level Program will be presented for NCS COP consideration in March by the Manager, NCS; forwarded with NCS COP recommendations to the Executive Agent, NCS; and transmitted with NCS and Executive Agent recommendations to the NSC, OSTP, and OMB for review in May.

b. Preparation of the final National Level Program completes the annual planning cycle. However, it does not complete the budgetary cycle, which continues until budget requests are submitted to OMB for inclusion in the President's Budget. It is anticipated that, following consideration and approval of the National Level Program by the EOP, approved recommendations will be provided to OMB and the NCS member organizations for use in preparation of the President's Budget.

c. As necessary, the EOP will also provide specific program funding and budgetary guidance to the NCS member organizations for the development of NSEP telecommunications budget requests.

10. *Authorizing Provision.* NCS manuals implementing this directive are authorized.

11. *Effective Date.* This directive is effective immediately.

12. *Expiration.* This directive will remain in effect until superseded or cancelled.

Appendix:

White House Memorandum, October 11, 1986 [4]

Director, Office of Science and Technology Policy.

Dated: January 27, 1989.

Director, Office of Management and Budget.

Dated: January 19, 1989.

Assistant to the President for National Security Affairs.

Dated: January 19, 1989.

[4] **Editorial note:** See § 216.2(c), and the note following the table of contents for the appendix to part 216.

[NCS Directive 2-2]

Plans, Programs, and Fiscal Management—National Level NSEP Telecommunications Program (NLP) Funding

November 30, 1987.

1. *Purpose.* This directive establishes policies and procedures and assigns responsibilities for the shared funding of approved national level national security emergency preparedness (NSEP) telecommunications programs and for the preparation and execution of National Level NSEP Telecommunications Program (NLP) Funding Memoranda of Agreement and funding agreements between NCS member organizations and the Manager, NCS.

2. *Applicability.* This directive is binding upon the Executive Agent, NCS; NCS Committee of Principals; Manager, NCS; those NCS member organizations required to share costs of approved NLP programs; and other affected Executive entities.

3. *Authority.* This directive is issued under the authority of Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984, 49 FR 13471 (1984), Section 2(e), and NCS Directive 1-1, "National Communications System (NCS) Issuance System," November 30, 1987.

4. *Policy.* The President has directed that implementation and recurring costs for national level NSEP telecommunications programs shall be shared on a pro rata basis. Each NCS organization's share of such costs shall be determined by its share of NSEP telecommunications requirements. The Department of Defense shall fund all development costs associated with approved national level NSEP telecommunications programs. Agreements shall be executed to govern NLP funding. Compliance with this policy is subject to the authorization and appropriation of funds by the Congress.

5. *References.*

a. Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984, 49 FR 13471 (1984).

b. National Security Decision Directive (NSDD) 201, "National Security Emergency Preparedness Telecommunications (NSEP) Funding," December 17, 1985 (appendix A).[1]

c. NCS Directive 2-1, "National Security Emergency Preparedness (NSEP) Telecommunications Planning Process," (presently in process).

6. *Definitions.*

a. Shared Funding. The pro rata distribution among NCS member organizations of the implementation and recurring costs of approved national level NSEP telecommunications programs on the basis of each organization's NSEP telecommunications requirements.

b. NSEP Telecommunications Requirements. Initially, those telecommunications requirements identified by NCS member organizations as part of the NSEP Telecommunications Requirements Analysis directed by the Executive Office of the President. Alternative methods for determining requirements may be used, subject to approval as prescribed in Executive Order No. 12472, section 2(c) (4).

c. The National Level NSEP Telecommunications Program (NLP). That document developed as part of the NSEP Telecommunications Planning Process that identifies national level NSEP telecommunications programs and accompanying provisions for their shared funding and implementation.

d. National Level NSEP Telecommunications Programs. Those programs that benefit multiple Federal departments, agencies, or entities and:

(1) Directly enhance national telecommunications infrastructure and service capabilities within the framework outlined in Executive Order No. 12472, and

(2) Are undertaken within the administrative structure of the NCS, i.e., by the Manager, NCS, NCS Committee of Principals (COP), and Executive Agent, NCS, via the NSEP Telecommunications Planning Process, and

(3) Involved acquisition and operations/maintenance costs of sufficient magnitude to warrant shared funding.

e. Development Costs. Those costs (e.g., research, pre-production engineering, proof of concept studies and demonstrations, and specification development) incurred prior to contract award leading to an operational capability.

f. Implementation Costs. Those costs (e.g., acquisition/procurement, production engineering, installation, and nonrecurring lease) incurred after contract award leading to an operational capability and prior to operational capability being achieved.

g. Recurring Costs. Those costs (e.g., recurring lease, maintenance, operational testing, and termination liability) incurred in support of the continuing operations and maintenance associated with national level programs.

h. NLP Funding Memorandum of Agreement (MOA). A memorandum of agreement developed between an NCS member organization and the Manager, NCS, to implement the provisions of this directive.

i. Funding Agreements. Funding documents e.g., Interagency Funding Agreements and Vouchers, executed between the Manager, NCS, and NCS member organizations to provide for the payment of NLP funds to the Manager, NCS.

7. *Responsibilities.*

a. The Office of Management and Budget will provide guidance annually to NCS member organizations regarding the incorporation of funding for approved national level NSEP telecommunications programs in the President's Budget.

b. The Department of Defense will provide funding for the development costs associated with approved national level NSEP telecommunications programs.

c. The Manager, NCS, will:

(1) Negotiate and execute NLP Funding Memoranda of Agreement and Interagency Funding Agreements with those NCS member organizations required to share the costs of

[1] **Editorial note:** See § 216.2(c) and the note following the table of contents for the appendix to part 216.

approved national level NSEP telecommunications programs, and

(2) Oversee the program and financial management of approved national level NSEP telecommunications programs, reporting quarterly on program status and the expenditure of funds to the NCS Committee of Principals.

d. Each NCS member organization required to share the costs of the NLP will:

(1) Incorporate its respective funding share of approved national level NSEP telecommunications programs in its annual budget submission;

(2) Execute with the Manager, NCS, an NLP Funding Memorandum of Agreement after review by the organization's NCS Principal; and

(3) Execute with the Manager, NCS those funding agreements required for payment of funds for approved national level NSEP telecommunications programs to the Manager, NCS.

8. *Procedures.*

a. NLP Funding Guidance. The NLP funding guidance required by paragraph 7a(1) of this directive will be provided to the NCS entities annually by August 1.

b. NLP Funding Agreements. The shared funding of approved national level NSEP telecommunications programs will be accomplished through the execution, between NCS member organizations and the Manager, NCS of the following:

(1) An NLP Funding Memorandum of Agreement that, as outlined in the model MOA at Appendix B, provides for incorporation of the NLP funding share in an NCS member organization's budget submission; preparation and execution of an Interagency Funding Agreement; and reporting of the NLP status. Those NCS organizations required to share the costs of the NLP as of the effective date of this directive shall execute such Memoranda by September 30, 1987.

(2) An Interagency Funding Agreement that outlines the scope of work to be undertaken as part of the NLP, the associated period of performance, the estimated maximum costs, and procedures for submission of vouchers for transfers between appropriated funds. This agreement, which does not constitute an obligation of funds, shall be executed by August 31 each year to provide for the payment of NLP funds for the following fiscal year.

(3) Vouchers for Transfers Between Appropriations And/Or Funds (Standard Form 1080) forwarded by the Manager, NCS, to the NCS member organizations prior to the start of the fiscal year in which NLP funds are to be expended. Organizations will effect the payment of funds upon receipt of appropriated funds (or Continuing Resolution(s)), subject to OMB apportionment of those funds.

c. NLP Funding Shortfalls. If an NCS member organization is not authorized and appropriated the amount of funds necessary to pay its share of approved national level NSEP telecommunications programs, the Manager, NCS, should also be notified as soon as possible.

9. *Authorizing Provisions.* NCS manuals implementing this directive are authorized.

10. *Effective Date.* This directive is effective immediately.

11. *Expiration Date.* This directive will remain in effect until superseded or cancelled.

2 Appendices

A. NSDD 201, December 17, 1985 [2]

B. Model NLP MOA

Director, Office of Management and Budget.

Dated: November 17, 1987.

Appendix B—Model National Level NSEP Telecommunications Program (NLP) Funding Memorandum of Agreement (MOA)

1. *Purpose:* This Memorandum of Agreement (MOA) defines the relationship between and responsibilities of the (*name of NCS member organization*) and the Office of the Manager, NCS (OMNCS), with respect to the financial management of national level national security emergency preparedness (NSEP) telecommunications programs approved by the Executive Office of the President (EOP) in the National Level NSEP Telecommunications Program (NLP).

2. *Scope:* This MOA is limited to the implementation and recurring costs of approved national level NSEP telecommunications programs, including termination liability costs, if applicable. Development costs will be funded by the Department of Defense.

3. *Background:* In April 1984, Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," established a framework for the funding of NSEP telecommunications initiatives by the NCS, providing for:

a. The prescription, by the Office of Management and Budget (OMB) in consultation with the National Security Council (NSC) and the NCS, of general guidelines and procedures for reviewing the financing of the NCS within the budgetary process, and for the preparation of budget estimates by participating agencies.

b. The determination, by the NSC, the Office of Science and Technology Policy (OSTP), and OMB in consultation with the Executive Agent, NCS, and the NCS Committee of Principals (COP), of what constitutes NSEP telecommunications requirements, and

c. The determination, by Federal departments and agencies, of their NSEP telecommunications requirements and the provision, after consultation with the Office of Management and Budget (OMB), of resources to support their respective requirements for NSEP telecommunications.

To implement the provisions of Executive Order No. 12472, the President directed in National Security Decision Directive (NSDD) 201, that "implementation and recurring costs for national level NSEP telecommunications programs (i.e., those which benefit multiple Federal departments, agencies or entities) shall be shared on a pro rata basis determined by each organization's share of NSEP telecommunications requirements." The Director, OMB, subsequently instructed the NCS member organizations to work with the Manager, NCS, to develop the necessary agreements for the payment of member funds to the Office of the Manager, NCS (OMNCS).

4.0 *Responsibilities*

4.1 *The Office of the Manager, NCS, shall:*

a. Serve as the Office of Primary Responsibility for the financial and program management of approved national level NSEP telecommunications programs.

b. Upon approval of national level NSEP telecommunications programs and receipt of funding guidance from the EOP, prepare an Interagency Funding Agreement necessary to effect the payment of (*name of NCS member organization*) funds to the Manager, NCS. This agreement shall be executed by August 31 each year.

c. Prepare and provide vouchers for transfers between appropriations and/or funds (Standard Form 1080) for (*name of NCS member organization*)

d. Provide technical, programmatic, and financial management support for individual national level NSEP telecommunications programs, including the maintenance of financial records and accounting system and the update of program plans.

e. Report quarterly to the NCS COP on the programmatic and financial status of approved national level NSEP telecommunications programs.

f. Advise the (*name of NCS member organization*) of any significant programmatic or financial adjustments/modifications.

4.2 The (*name of NCS member organization*) will:

a. Incorporate its respective funding share of approved national level NSEP telecommunications programs in its annual budget submission.

b. Execute with the Manager, NCS, by August 31 each year the Interagency Funding Agreement required for the transfer, payment and/or reimbursement of funds for the NLP.

c. Upon receipt of appropriations (or Continuing Resolution(s)) for each applicable fiscal year and subject to OMB apportionment of those funds, effect the payment of funds to the Manager, NCS, in accordance with Standard Form 1080.

5.0 *Implementation:* This MOA is effective upon the date of the latest signature. This MOA is subject to periodic review and update as circumstances warrant and will terminate upon the mutual agreement of the parties. Compliance with this MOA is subject to the authorization and appropriation of funds by the Congress.

(*Signature*)
(Name of Manager, NCS)
(Title of Manager, NCS)
Date:

(*Signature*)
(Name of Authorized Official)
(Title of Authorized Official)
(Name of NCS Organization)
Date:

[2] **Editorial note:** See § 216.2(c) and the note following the table of contents for the appendix to part 216.

[NCS Directive 3-1]

Telecommunication Operations—Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP)

July 5, 1990.

1. *Purpose.* This directive implements policy, explains legal and regulatory basis, assigns responsibilities, and prescribes procedures for the Telecommunications Service Priority (TSP) System for National Security Emergency Preparedeness (NSEP).

2. *Applicability.*

a. This directive is binding upon the Executive Agency, NCS; Manager, NCS; NCS Committee of Principals and member organizations; and other affected Executive entities.

b. This directive applies to NSEP telecommunication services:

(1) For which initial or revised priority level assignments are requested pursuant to paragraph 12 of this directive.

(2) Which were assigned restoration priorities under the provisions of 47 CFR part 64, appendix A, "Priority System for the Restoration of Common Carrier Provided Intercity Private Line Services," 47 CFR part 211, "Emergency Restoration Priority Procedures for Telecommunications Services," and NCS Memorandum 1-68 and are being resubmitted for priority level assignments pursuant to paragraph 14 of this directive. (Such services will retain assigned restoration priorities until a resubmission for a TSP assignment is completed or until the existing RP rules are terminated.)

3. *Authority.* This directive is issued under the authority of section 706 of the Communications Act of 1934, *as amended* (47 U.S.C. 606); Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984, 49 FR 13471 (1984); NCS Directive 1-1, "National Communications System (NCS) Issuance System," November 30, 1987; and 47 CFR part 64, appendix A, "Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP)."

4. *References.*

a. Communications Act of 1934, *as amended* (47 U.S.C. 151, *et seq.*).

b. Defense Production Act of 1950, *as amended* (50 U.S.C. appendix, section 2061, *et seq.*).

c. Disaster Relief Act (42 U.S.C. 5121 *et seq.*).

d. Foreign Intelligence Surveillance Act (50 U.S.C. 1801, *et seq.* and 18 U.S.C. 2511, 2518, and 2519).

e. Title 47, Code of Federal Regulations, part 64, Appendix A, "Priority System for the Restoration of Common Carrier Provided Intercity Private Line Services;" 47 CFR part 64, appendix A (1980).

f. Title 47, Code of Federal Regulations, part 64, Appendix A, "Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP)."

g. Defense Priorities and Allocation System (15 CFR part 350).

h. Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984, 49 FR 13471 (1984).

i. NCS Memorandum 1-68, "National Communications System (NCS) Circuit Restoration Priority System," July 18, 1968.[1]

5. *Cancellation and/or Supersession.* NCS Memorandum 1-68, "National Communications System (NCS) circuit Restoration Priority System," July 18, 1968; NCS circular 55-1, "Processing Requests for Temporary Adjustments to NCS circuit Restoration Priority Assignments," July 8, 1970; and NCS Circular 55-2, "NCS Data Base," November 21, 1977, with Change 1, May 30, 1978; are hereby superseded by, and cancelled under the authority of this directive on its effective date.

6. *Definitions.* See Appendix.

7. *Scope of the NSEP TSP System.*

a. *Domestic NSEP Services.* The NSEP TSP System and procedures established in 47 CFR part 64 and in this directive authorize priority treatment to the following domestic telecommunication services (including portions of U.S. international telecommunication services provided by U.S. vendors) for which provisioning or restoration priority levels are requested, assigned, and approved in accordance with this directive and any implementing manuals:

(1) Common carrier services which are:

(a) Interstate or foreign telecommunication services.

(b) Intrastate telecommunication services inseparable from interstate or foreign telecommunications services, and intrastate telecommunication services to which priority levels are assigned pursuant to paragraph 13 of this directive.

(**Note:** Initially, the NSEP TSP System's applicability to public switched services is limited to (a) provisioning of such services (e.g., business, centrex, cellular, foreign exchange, Wide Area Telephone Service (WATS) and other services that the selected vendor is able to provision), and (b) restoration of services that the selected vendor is able to restore.)

(2) Services which are provided by government and/or non-common carriers and are interconnected to common carrier services assigned a priority level pursuant to paragraph 13 of this directive.

b. *Control Services and Orderwires.* The NSEP TSP System and procedures implemented in this directive are not applicable to authorize priority treatment to control services or orderwires owned by a service vendor and needed for provisioning, restoration, or maintenance of other services owned by that vendor. Such control services and orderwires shall have priority of provisioning and restoration over all other telecommunication services (including NSEP services) and shall be exempt from preemption. However, the NSEP TSP System and procedures implemented in this directive are applicable to control services or orderwires leased by a service vendor or user from another service vendor.

c. *Other Services.* The NSEP TSP System may apply, at the discretion of and upon special arrangements by the entities involved, to authorize priority treatment to the following telecommunication services:

(1) Government or non-common carrier services which are not connected to common carrier provided services assigned a priority level pursuant to paragraph 13 of this directive.

(2) Portions of U.S. international services which are provided by foreign correspondents. (Subject to pertinent law, including references 4a, 4c, and 4f, U.S. telecommunication service vendors are encouraged to ensure that relevant operating arrangements are consistent to the maximum extent practicable with the NSEP TSP System. If such agreements do not exist, U.S. telecommunication service vendors should handle service provisioning and/or restoration in accordance with any system acceptable to their foreign correspondents which allows provisioning and restoration in the manner most comparable to the procedures established in this directive.) In addition, the U.S. government, acting through the Department of State, may enter into the following types of agreements to ensure that priority provisioning and restoration procedures consistent with those governing domestic services within the NSEP TSP System are in place: (a) Bilateral agreements for reciprocal priority treatment for critical foreign government telecommunication services in the U.S., and (b) multilateral agreements within such international telecommunication organizations as the North Atlantic Treaty Organization's Allied Long Lines Agency or Civil Communications Planning Committee, which have or are conducive to having a provisioning and restoration priority system.

d. *Subpriority and Precedence Systems.* Service users may implement subpriority and/or precedence systems that are consistent, and do not conflict with, the NSEP TSP System.

8. *Policy.* The NSEP TSP System is the regulatory, administrative, and operational system authorizing and providing for priority treatment (i.e., provisioning, and restoration) of NSEP telecommunication services (see definition in Appendix). As such, it establishes the framework for NSEP telecommunication service vendors to provision, restore, or otherwise act on a priority basis to ensure effective NSEP telecommunication services. The NSEP TSP System allows the assignment of priority levels to any NSEP service across three time periods, or stress conditions: Peacetime/Crisis/Mobilization, Attack/War, and Post-Attack/Recovery. All requests for priority level assignments will be processed through the Manager, NCS. Although priority levels normally will be assigned by the Manager, NCS, and retained by service vendors, only for the current time period, they may also be preassigned for the other two time periods at the request of service users who are able to identify and justify, in advance, their wartime or post-attack NSEP telecommunication requirements. Absent such preassigned priority levels for the Attack/War and Post-Attack/Recovery periods, priority level assignments for the Peacetime/Crisis/Mobilization period will remain in effect. At

[1] **Editorial Note:** See Section 216.2(c).

all times, priority level assignments will be subject to revision by the Federal Communications Commission (FCC); or, on an interim basis, the Director, Office of Science and Technology Policy (OSTP); and the Manager, NCS, based upon changing NSEP needs. No other system of telecommunication service priorities which conflicts with the NSEP TSP System is authorized.

9. *Legal Basis for the NSEP TSP System.* The laws and regulations authorizing the NSEP TSP System are those cited above in paragraphs 3 and 4.

a. *Communications Act.* Sections 1, 4(i), and 201 thru 205 of the Communications Act of 1934 (47 U.S.C., 151, 154(i), and 201 thru 205) grant to the FCC the authority over assignment and approval of priorities for provisioning and restoration of common carrier-provided telecommunication services. Under section 706 of the Communications Act, this authority may be superseded, and expanded to include privately owned telecommunication services, by the war emergency powers of the President of the United States.

b. *Executive Order No. 12472.* In Executive Order No. 12472, the President tasked the NCS to assist the Director, OSTP, in the exercise of the President's war emergency powers. Executive Order No. 12472 also directs the Manager, NCS, to assist the Director, OSTP, in executing those functions by developing plans and procedures for the management, allocation and use (including the establishment of priorities and preferences) of federally owned or leased telecommunication assets.

c. *Federal Rules.* The FCC and Executive Office of the President (EOP) have used their respective authorizations to develop and establish the NSEP TSP System as the one uniform system of priorities for the provisioning and restoration of NSEP telecommunication services, both before and after invocation of the section 706 Presidential war emergency powers. The Federal rules governing the NSEP TSP System have been promulgated by the FCC and OSTP (on behalf of the EOP) in title 47 of the Code of Federal Regulations. In those rules, the FCC has requested the EOP to administer the NSEP TSP System before the invocation of section 706 of the Communications Act, Presidential war emergency powers. In this directive, the EOP assigns to the Manager, NCS, both this administrative authority to administer the NSEP TSP System before, and the President's statutory authority to administer the NSEP TSP System after, the invocation of the section 706 Presidential war emergency powers.

d. *Defense Production Act.* The Defense Production Act of 1950 authorizes the President to require the priority performance of contracts and orders necessary to promote national defense. It also authorizes the President to allocate materials and facilities as necessary to promote national defense. Pursuant to the Defense Production Act, regulations promulgated by the Department of Commerce in the Defense Priorities and Allocations System (DPAS) permit the assignment of "priority ratings" to equipment associated with NSEP telecommunication services warranting priority treatment, if they support authorized programs under Schedule I of the DPAS.

e. *Contracts.* NSEP telecommunication service users may also employ contractual mechanisms to obtain the priority provisioning or restoration of service, including customer premises equipment and wiring. However, any such contractual arrangements must be consistent with NSEP TSP System rules and regulations, including any priority order of provisioning and restoration assigned in accordance with the NSEP TSP System.

10. *Responsibilities.*

a. *Federal Communications Commission.* As authorized by the Communications Act the FCC will:

(1) Provide regulatory oversight of implementation of the NSEP TSP System.

(2) Enforce NSEP TSP System rules and regulations which are contained in 47, CFR, part 64.

(3) Act as final authority for approval, revision, or disapproval of priority actions by the Manager, NCS, and adjudicate disputes regarding either priority actions or denials of requests for priority actions by the Manager, NCS, until superseded by the President's war emergency powers under section 706 of the Communications Act.

(4) Function (on a discretionary basis) as a sponsoring Federal organization. (See paragraph 10d below.)

b. *Director, Office of Science and Technology Policy.* The Director, OSTP, EOP, will:

(1) During exercise of the President's war emergency powers under section 706 of the Communications Act, act as the final approval authority for priority actions or denials of requests for priority actions, adjudicating any disputes.

(2) Provide oversight of Executive branch activities associated with the NSEP TSP System, including assignment of priority levels for telecommunications service provisioning and restoration across all time periods.

(3) Function (on a discretionary basis) as a sponsoring Federal organization. (See paragraph 10d below.)

c. *Manager, NCS.* The Manager, NCS, will:

(1) Implement the NSEP TSP System under the oversight of the FCC and Director, OSTP, in consultation with the NCS Committee of Principals.

(2) Administer the NSEP TSP System, which includes:

(a) Receiving, processing, and evaluating requests for priority actions from service users, or sponsoring Federal government organizations on behalf of service users (e.g., Departments of State or Defense on behalf of foreign governments, Federal Emergency Management Agency on behalf of state and local governments, and any Federal organization on behalf of private industry entities). Action on such requests will be completed within 30 days of receipt.

(b) Assigning, revising, revalidating, or revoking priority levels as necessary or upon request of service users concerned, and denying requests for priority actions as necessary, using paragraph 16 of this directive. Under circumstances short of exercise of Presidential war emergency powers under section 706 of the Communications Act and time permitting, coordinate such changes in priority level assignments in advance with requesting and/or affected parties. Action on such requests will be completed within 30 days of receipt.

(c) Maintaining data on priority level assignments.

(d) Periodically forwarding to the FCC and Director, OSTP, lists of priority actions for review and approval.

(e) Periodically initiating reconciliation.

(f) Testing and evaluating the NSEP TSP System for effectiveness.

(g) Conducting audits as necessary. Any Telecommunications Service Priority (TSP) System user may request the Manager, NCS to conduct an audit. (See the definition of an "audit" in appendix A.)

(h) Issuing, subject to review by the FCC, procedures supplemental to and consistent with this directive regarding operation and use of the NSEP TSP System.

(i) Serving as a centralized point-of-contact for collecting and disseminating to all interested parties (consistent with requirements for treatment of classified and proprietary material) information concerning use and abuse of the NSEP TSP System.

(j) Establishing and assisting a TSP System Oversight Committee to identify and review any problems developing in the system and recommending actions to correct them or prevent recurrence. In addition to representatives of the EOP, representatives from private industry (including telecommunication service vendors), state and local governments, the FCC, and other organizations may be appointed to the committee.

(k) Reporting at least quarterly to the FCC; Director, OSTP; and TSP System Oversight Committee, together with any recommendations for action, the operational status of and trends in the NSEP TSP System, including:

(i) Numbers of requests processed for the various priority actions, and the priority levels assigned.

(ii) Relative percentages of services assigned to each priority level under each NSEP category and subcategory.

(iii) Any apparent serious misassignment or abuse of priority level assignments.

(iv) Any existing or developing problem.

(l) Submitting semi-annually to the FCC; Director, OSTP; and TSP System Oversight Committee a summary report identifying the time and event associated with each invocation of NSEP treatment under paragraph 13c of this directive and section 10c of 47 CFR part 64; whether the NSEP service requirement was adequately handled; and whether any additional charges were incurred. These reports will be due by April 30th for the preceding July through December and by October 31st for the preceding January through June time periods.

(3) Function (on a discretionary basis) as a sponsoring Federal organization. (See paragraph 10d below.)

d. *Sponsoring Federal Organizations.* Sponsoring Federal organizations will:

(1) Review and decide whether to sponsor private industry (including telecommunication service vendors) requests for priority actions. Federal organizations will forward sponsored requests with recommendations for disposition to the Manager, NCS. Recommendations will be based on paragraph 16 of this directive.

(2) Forward notification of priority actions or denials of requests for priority actions to the requesting private industry entities, for disposition.

(3) Cooperate with the Manager, NCS, during reconciliation, revalidation, and audits.

e. *Departments of State and Defense.* The Departments of State and Defense will, in addition to the responsibilities listed in paragraph 10h below:

(1) Review and decide whether to sponsor requests for priority level assignments from foreign governments and forward sponsored requests to the Manager, NCS, with recommendations for disposition. Recommendations will be based on paragraph 16 of this directive and whether or not priority treatment is afforded to U.S. NSEP telecommunication service requirements in the foreign country concerned.

(2) Forward notification of priority actions or denials of requests for priority actions to the requesting foreign government entities, for disposition.

f. *Department of Energy.* The Department of Energy will, in addition to the responsibilities listed in paragraph 10h below:

(1) Review and decide whether to sponsor public and private interstate power utility company requests for priority actions and forward sponsored requests with recommendations for disposition to the Manager, NCS. Recommendations will be based on paragraph 16 of this directive. This does not preclude public and private power utility companies from obtaining sponsorship elsewhere.

(2) Forward notification of priority actions or denials of requests for priority actions to the requesting public and private power utility companies for disposition.

g. *Federal Emergency Management Agency.* The Federal Emergency Management Agency will, in addition to the responsibilities listed in paragraph 10h below:

(1) Review and decide whether to sponsor state and local government requests for priority actions and forward sponsored requests with recommendations for disposition to the Manager, NCS. Recommendations will be based on paragraph 16 of this directive.

(2) Forward notification of priority actions or denials of requests for priority actions to the requesting state and local government entities, for disposition.

h. *Federal Organizations.* Federal organizations will:

(1) Ensure that NSEP TSP System users within each organization comply with their obligations under the NSEP TSP System.

(2) Provision and restore government-provided services (which are interconnected with commercially provided services assigned a priority level pursuant to paragraph 13 of this directive) in accordance with NSEP TSP System rules and regulations. (See paragraph 7a(2) of this directive.)

(3) Function (on a discretionary basis) as sponsoring Federal organizations for private sector service users (e.g., government contractors).

(4) Cooperate with the Manager, NCS, during reconciliation, revalidation, and audits.

i. *Service Users.* Service users, or entities acting on their behalf, will:

(1) Identify services requiring priority level assignments and request and justify priority level assignments in accordance with this directive and any supplemental NCS issuances.

(2) Justify and revalidate all priority level assignments at least every three years.

(3) For services assigned priority levels, ensure (through contractual means or otherwise) availability of customer premises equipment and wiring necessary for end-to-end service operation by the service due date, and continued operation; and, for such services in the Emergency NSEP category, by the time that vendors are prepared to provide the services. Additionally, designate the organization responsible for the service on an end-to-end basis.

(4) Be prepared to accept services assigned priority levels by the service due dates or, for services in the Emergency NSEP category, when they are available.

(5) Pay vendors any authorized costs associated with services that are assigned priority levels.

(6) Report to vendors any failed or unusable services that are assigned priority levels.

(7) Designate a 24-hour point-of-contact for matters concerning each request for priority action and apprise the Manager, NCS.

(8) Upon termination of services that are assigned priority levels, or circumstances warranting revisions in priority level assignment (e.g., expansion of service), request and justify revocation or revision.

(9) When NSEP treatment is invoked under paragraph 13c of this directive, within 90 days following provisioning of the service involved, forward to the Manager, NCS complete information identifying the time and event associated with the invocation and regarding whether the NSEP service requirement was adequately handled and whether any additional charges were incurred.

(10) Cooperate with the Manager, NCS, during reconciliation, revalidation, and audits.

j. *Service Vendors.* Service vendors will comply with the provisions of 47 CFR part 64. When those provisions are superseded by the President's war emergency powers under section 706 of the Communications Act, vendors will continue to comply with 47 CFR part 64, subject to further direction by Director, OSTP.

11. *Preemption of Existing Services.* When necessary to provision or restore NSEP services, service vendors may preempt services they provide as specified below. "User," as used in this section, means any user of a telecommunications service, to include both NSEP and non-NSEP services. Prior consent by a preempted user is not required.

a. The sequence in which existing services may be preempted to provision NSEP services assigned a provisioning priority level "E" or restore NSEP services assigned a restoration priority level from "1" through "5":

(1) Non-NSEP services: If suitable spare services are not available, then, based on the considerations in 47 CFR part 64 and the service vendor's best judgement, non-NSEP services will be preempted. After ensuring a sufficient number of public switched services will remain available for public use, based on the service vendor's best judgement, such services may be used to satisfy a requirement for provisioning or restoring NSEP services.

(2) NSEP Services: If no suitable spare or non-NSEP services are available, then existing NSEP services may be preempted to provision or restore NSEP services with higher priority level assignments. When this is necessary, NSEP services will be selected for preemption in the inverse order of priority level assignment.

(3) Service vendors who are preempting services will ensure their best effort to notify the service user of the preempted service and state the reason for and estimated duration of the preemption.

b. Service vendors may, based on their best judgement, determine the sequence in which existing services may be preempted to provision NSEP services assigned a provisioning priority of "1" through "5." Preemption is not subject to the consent of the user whose service will be preempted.

12. *Requests for Priority Actions.* All service users are required to submit requests for priority actions through the Manager, NCS, in the format and following the procedures prescribed by the Manager.

13. *Assignment, Approval, Use, and Invocation of Priority Levels.*

a. *Assignment and Approval of Priority Levels and Priority Actions.*

(1) Priority level assignments or other priority actions will be based upon section 16, NSEP TSP System Categories, Criteria, and Priority Levels, of this directive. A priority level assignment or other priority action made by the Manager, NCS, will serve as the recommendation of the Director, OSTP (on behalf of the EOP) to the FCC. If the Director, OSTP does not approve the priority level assignment or other priority action made by the Manager, NCS, then the Director can direct the Manager, NCS, to revise or revoke the priority level assignment or other priority action.

(2) Until the President's war emergency powers under Section 706 of the Communications Act are invoked, priority level assignments or other priority actions must be approved by the FCC. (If the FCC does not approve the priority level assignment or other priority action, then it can direct the Manager, NCS, to revise or revoke the priority level assignment or other priority action.) However, the FCC has instructed service vendors to implement any priority level assignments or other priority actions that are pending FCC approval.

(3) After invocation of the President's war emergency powers, the requirement for FCC approval of priority level assignments or other priority actions may be superseded by other procedures issued by the Director, OSTP.

b. *Use of Priority Level Assignments.*

(1) All provisioning and restoration priority level assignments for services in the Emergency NSEP category will be included in initial service orders to vendors. Provision priority level assignments for Essential NSEP services, however, will not usually be included in initial service orders to vendors. NSEP treatment for Essential NSEP services will be invoked and provisioning priority level assignments will be conveyed to service vendors only if the vendors cannot meet needed service dates through the normal provisioning process.

(2) Any revision or revocation of either provisioning or restoration priority level assignments will also be transmitted to vendors.

(3) Service vendors shall accept priority levels and/or revisions only after assignment by the Manager, NCS. (Note: Service vendors acting as prime contractors for NSEP services will accept assigned NSEP priority levels only when they are accompanied by the Manager, NCS designated service identification (i.e., TSP Authorization Code). However, service vendors are authorized to accept priority levels and/or revisions from users and contracting activities before assignment by the Manager, NCS when service vendors, users, and contracting activities are unable to communicate with either the FCC, Director, OSTP, or the Manager, NCS. Processing of Emergency NSEP service requests will not be delayed for verification purposes.

c. *Invocation of NSEP Treatment.* To invoke NSEP treatment for the priority provisioning of an NSEP telecommunications service, an authorized Federal official either within, or acting on behalf of, the service user's organization must make a written or oral declaration to concerned service vendor(s) and the Manager, NCS, that NSEP treatment is being invoked. Authorized Federal officials include the head or director of a Federal agency, commander of a unified/specified military command, chief of a military service, or commander of a major military command; the delegates of any of the foregoing; or any other officials as specified in supplemental procedures issued by the Manager, NCS. The authority to invoke NSEP treatment may be delegated only to a general or flag officer of a military service, civilian employee of equivalent grade (e.g., Senior Executive Service member), Federal Coordinating Officer or Federal Emergency Communications Coordinator/Manager, or any other such officials specified in supplemental procedures issued by the EOP. Delegates must be designated as such in writing, and written or oral invocations must be accomplished, in accordance with supplemental procedures issued by the Manager, NCS.

14. *Resubmission of Circuits Presently Assigned Restoration Priorities.* All circuits assigned restoration priorities must be reviewed for eligibility for initial restoration priority level assignment under the provisions of this directive. Circuits assigned restoration priorities, and for which restoration priority level assignments are requested under paragraph 12 of this directive, will be resubmitted to the Manager, NCS. To resubmit such circuits, service users will comply with applicable provisions of paragraphs 10i and 13 of this directive.

15. *Appeal.* Service users or sponsoring Federal organizations may appeal any priority level assignment, denial, revision, revocation, approval, or disapproval to the Manager, NCS within 30 days of notification to the service user. The appellant must use the form or format required by the Manager, NCS and must serve the FCC with a copy of its appeal. The Manager, NCS will act on the appeal within 90 days of receipt. Service users and sponsoring Federal organizations may only then appeal directly to the FCC. Such FCC appeal must be filed within 30 days of notification of the Manager, NCS' decision on appeal. Additionally, the Manager, NCS may appeal any FCC revisions, approvals or disapprovals to the FCC. All appeals to the FCC must be submitted using the form or format required. The party filing its appeal with the FCC must include factual details supporting its claim and must serve a copy on the Manager, NCS and any other party directly involved. Such party may file a response within 20 days, and replies may be filed within 10 days thereafter. The Commission will not issue public notices of such submissions. The Commission will provide notice of its decision to the parties of record. Any appeals to the Manager, NCS that include a claim of new information that has not been presented before for consideration may be submitted at any time.

16. *NSEP TSP System Categories, Criteria, and Priority Levels.*

a. *General.* NSEP TSP System categories and criteria, and permissible priority level assignments, are defined and explained below.

(1) The Essential NSEP category has four subcategories (i.e., National Security Leadership; National Security Posture and U.S. Population Attack Warning; Public Health, Safety, and Maintenance of Law and Order; and Public Welfare and Maintenance of National Economic Posture). Each subcategory has its own criteria. Criteria are also shown for the Emergency NSEP category, which has no subcategories.

(2) Priority levels of "1," "2," "3," "4," and "5" may be assigned for provisioning and/or restoration of Essential NSEP telecommunication services. However, for Emergency NSEP telecommunication services, a priority level "E" is assigned for provisioning. A restoration priority level from "1" through "5" may be assigned if an Emergency NSEP service also qualifies for such a restoration priority level under the Essential NSEP category.

(3) The NSEP TSP System allows the assignment of priority levels to any NSEP telecommunications service across three time periods, or stress conditions: Peacetime/Crisis/Mobilization, Attack/War, and Post-Attack/Recovery. Priority levels will normally be assigned only for the first time period. These assigned priority levels will apply through the onset of any attack, but it is expected that they would later be revised by surviving authorized telecommunication resource managers within the Executive Office of the President based upon specific facts and circumstances arising during the Attack/War and Post-Attack/Recovery time periods.

(4) Service users may, for their own internal use, assign subpriorities to their services assigned priority levels. Receipt of and response to any such subpriorities is optional for service vendors.

(5) The following paragraphs provide a detailed explanation of the categories, subcategories, criteria, and priority level assignments, beginning with the Emergency NSEP category.

b. *Emergency NSEP.* Telecommunication services in the Emergency NSEP category are those new services so critical as to be required to be provisioned at the earliest possible time, without regard to the costs of obtaining them.

(1) Criteria. To qualify under the Emergency NSEP category, the service must meet the criteria of directly supporting or resulting from at least one of the following NSEP functions:

(a) Federal government activity responding to a Presidentially declared disaster or emergency as defined in the Disaster Relief Act (42 U.S.C. 5122).

(b) State or local government activity responding to a Presidentially, state, or locally declared disaster or emergency.

(c) Response to a state of crisis declared by the National Command Authorities (e.g., exercise of presidential war emergency powers under Section 706 of the Communications Act, supra).

(d) Efforts to protect endangered U.S. personnel or property.

(e) Response to an enemy or terrorist action, civil disturbance, natural disaster, or any other unpredictable occurrence that has damaged facilities whose uninterrupted operation is critical to NSEP or the management of other ongoing crises.

(f) Certification by the head or director of a Federal agency, commander of a unified/specified command, chief of a military service, or commander of a major military command, that the telecommunications service is so critical to protection of life and property or to NSEP that it must be provided immediately.

(g) A request from an official authorized pursuant to the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 *et seq.* and 18 U.S.C. 2511, 2518, 2519).

(2) Priority Level Assignment.

(a) Services qualifying under the Emergency NSEP category are assigned priority level "E" for provisioning.

(b) After 30 days, assignments of provisioning priority level "E" for Emergency NSEP services are automatically revoked unless extended for another 30-day period. A notice of any such revocation will be sent to service vendors.

(c) For restoration, Emergency NSEP services may be assigned priority levels under the provisions applicable to Essential NSEP services (see paragraph 16.c.).

Emergency NSEP services not otherwise qualifying for restoration priority level assignment as Essential NSEP may be assigned a restoration priority level "5" for a 30-day period. Such 30-day restoration priority level assignments will be revoked automatically unless extended for another 30-day period. A notice of any such revocation will be sent to service vendors.

c. *Essential NSEP.* Telecommunication services in the Essential NSEP category are those required to be provisioned by due dates specified by service users, or restored promptly, normally without regard to associated overtime or expediting costs. They may be assigned priority levels of "1," "2," "3," "4," or "5" for both provisioning and restoration, depending upon the nature and urgency of the supported function, the impact of a lack of service or service interruption upon the supported function, and, for priority access to public switched services, the user's level of responsibility. Priority level assignments will be valid for no more than three years unless revalidated. To be categorized as Essential NSEP, a telecommunications service must qualify under one of the four subcategories described below: National Security Leadership; National Security Posture and U.S. Population Attack Warning; Public Health, Safety, and Maintenance of Law and Order; or Public Welfare and Maintenance of the National Economic Posture. (Note: Under emergency circumstances, Essential NSEP telecommunication services may be recategorized as Emergency NSEP and assigned a priority level "E" for provisioning.)

(1) National Security Leadership. This subcategory will be strictly limited to only those telecommunication services essential to national survival if nuclear attack threatens or occurs, and critical orderwire and control services necessary to ensure the rapid and efficient provisioning or restoration of other NSEP telecommunication services. Services in this subcategory are those for which a service interruption of even a few minutes would have serious adverse impact upon the supported NSEP function.

(a) Criteria. To qualify under this subcategory, a service must be at least one of the following:

(i) Critical orderwire, or control service, supporting other NSEP functions.

(ii) Presidential communications service critical to continuity of government and national leadership during crisis situations.

(iii) National Command Authority communications service for military command and control critical to National survival.

(iv) Intelligence communications service critical to warning of potentially catastrophic attack.

(v) Communications service supporting the conduct of diplomatic negotiations critical to arresting or limiting hostilities.

(b) Priority Level Assignment. Services under this subcategory will normally be assigned, during Peacetime/Crisis/Mobilization, priority level "1" for provisioning and restoration.

(2) National Security Posture and U.S. Population Attack Warning. This subcategory covers those minimum additional telecommunication services essential to maintaining an optimum defense, diplomatic, or continuity-of-government posture before, during, and after crisis situations. Such situations are those ranging from national emergencies to international crises, including nuclear attack. Services in this subcategory are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP function.

(a) Criteria. To qualify under this subcategory, a service must support at least one of the following NSEP functions:

(i) Threat assessment and attack warning.

(ii) Conduct of diplomacy.

(iii) Collection, processing, and dissemination of intelligence.

(iv) Command and control of military forces.

(v) Military mobilization.

(vi) Continuity of Federal government before, during, and after crisis situations.

(vii) Continuity of state and local government functions supporting the Federal government during and after national emergencies.

(viii) Recovery of critical national functions after crisis situations.

(ix) National space operations.

(b) Priority Level Assignment. Services under this subcategory will normally be assigned, during Peacetime/Crisis/Mobilization, priority levels "2," "3," "4," or "5" for provisioning and restoration.

(3) Public Health, Safety, and Maintenance of Law and Order. This subcategory covers the minimum number of telecommunication services necessary for giving civil alert to the U.S. population and maintaining law and order and the health and safety of the U.S. population in times of any national, regional, or serious local emergency. These services are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP functions.

(a) Criteria. To qualify under this subcategory, a service must support at least one of the following NSEP functions:

(i) Population warning (other than attack warning).

(ii) Law enforcement.

(iii) Continuity of critical state and local government functions (other than support of the Federal government during and after national emergencies).

(iv) Hospitals and distribution of medical supplies.

(v) Critical logistic functions and public utility services.

(vi) Civil air traffic control.

(vii) Military assistance to civil authorities.

(viii) Defense and protection of critical industrial facilities.

(ix) Critical weather services.

(x) Transportation to accomplish the foregoing NSEP functions.

(b) Priority Level Assignment. Services under this subcategory will normally be assigned, during Peacetime/Crisis/Mobilization, priority levels "3," "4," or "5" for provisioning and restoration.

(4) Public Welfare and Maintenance of National Economic Posture. This subcategory covers the minimum number of telecommunication services necessary for maintaining the public welfare and national economic posture during any national or regional emergency. These services are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP function.

(a) Criteria. To qualify under this subcategory, a service must support at least one of the following NSEP functions:

(i) Distribution of food and other essential supplies.

(ii) Maintenance of national monetary, credit, and financial systems.

(iii) Maintenance of price, wage, rent, and salary stabilization, and consumer rationing programs.

(iv) Control of production and distribution of strategic materials and energy supplies.

(v) Prevention and control of environmental hazards or damage.

(vii) Transportation to accomplish the foregoing NSEP functions.

(b) Priority Level Assignment. Services under this subcategory will normally be assigned, during Peacetime/Crisis/Mobilization, priority levels "4" or "5" for provisioning and restoration.

d. *Limitations.* Priority levels will be assigned only to the minimum number of telecommunication services required to support an NSEP function. Priority levels will not normally be assigned to back-up services on a continuing basis, absent additional justification (e.g., a service user specifies a requirement for physically diverse routing or contracts for additional continuity-of-service features). The Executive Office of the President may also establish limitations upon the relative numbers of services which may be assigned any restoration priority level. These limitations will not take precedence over laws or executive orders. Such limitations shall not be exceeded absent waiver by the Executive Office of the President.

e. *Non-NSEP Services.* Telecommunication services in the non-NSEP category will be those which do not meet the criteria for either Emergency NSEP or Essential NSEP.

17. *Authorizing Provision.* NCS manuals implementing this directive are authorized.

18. *Effective Date.* This directive is effective immediately.

19. *Expiration.* This directive is in effect until superseded or cancelled.

Appendix:

A. Definitions

Director, Office of Science and Technology Policy.

Dated: July 5, 1990.

Director, Office of Management and Budget.

Dated: July 5, 1990.

Assistant to the President for National Security Affairs.

Dated: July 5, 1990.

Summary of Changes: Initial publication

Appendix A.—Definitions

For the purposes of this Directive:

Assignment

The designation of priority level(s) for a defined NSEP telecommunications service for a specified time period.

Audit

A quality assurance review in response to identified problems.

Committee of Principals (COP)

As specified by Executive Order 12472, a committee consisting of representatives from those Federal departments, agencies or entities, designated by the President, which lease or own telecommunications facilities or services of significance to national security or emergency preparedness, and, to the extent permitted by law, other Executive entities which bear policy, regulatory or enforcement responsibilities of importance to national security or emergency preparedness telecommunications capabilities.

Government

The Federal government or any foreign, state, county, municipal, or other local government agency or organization. Specific qualifications will be supplied whenever reference to a particular level of government is intended (e.g., "Federal government," "state government"). "Foreign government" means any non-U.S. sovereign empire, kingdom, state, or independent political community, including foreign diplomatic and consular establishments and coalitions or associations of governments (e.g., North Atlantic Treaty Organization (NATO), Organization of American States (OAS), and United Nations (UN); and associations of governments or government agencies or organizations (e.g., Pan American Union, International Postal Union, and International Monetary Fund).

National Communications System (NCS)

The National Communications System (NCS) is a confederation of Federal departments, agencies and entities established by Presidential Memorandum of August 21, 1963 and reaffirmed by Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984.

National Coordinating Center (NCC)

The joint telecommunications industry—Federal government operation established by the NCS to assist in the initiation, coordination, restoration and reconstitution of NSEP telecommunication services or facilities.

National Security Emergency Preparedness (NSEP) Telecommunication Services or NSEP Services

Telecommunication services that are used to maintain a state of readiness or to respond to and manage any event or crisis (local, national, or international) that causes or could cause injury or harm to the population, damage to or loss of property, or degrades or threatens the NSEP posture of the United States. These services fall into two specific categories. Emergency NSEP and Essential NSEP and are assigned priority levels.

National Security Emergency Preparedness (NSEP) Treatment

The provisioning of a telecommunications service before others based on the provisioning priority level assigned by the Manager, NCS, in accordance with this directive.

Priority Action

The assignment, revision, revocation, or revalidation by the Manager, NCS, in accordance with this directive, of a priority level associated with an NSEP telecommunications service.

Priority Level

The level that may be assigned to an NSEP telecommunications service specifying the order in which provisioning or restoration of the service is to occur relative to other NSEP and/or non-NSEP telecommunication services. Authorized priority levels are designated (highest to lowest) "E,. "1," "2," "3," "4," and "5" for provisioning and "1," "2," "3," "4," and "5" for restoration.

Priority Level Assignment

The priority level(s) designated for the provisioning and/or restoration of a particular NSEP telecommunications service.

Private NSEP Telecommunication Services

Those non-common carrier telecommunication services including private line, virtual private line, and private switched network services.

Provisioning

The act of supplying telecommunications service to a user, including all associated transmission, wiring, and equipment. As used herein, "provisioning" and "initiation" are synonymous and include altering the state of an existing priority service or capability.

Public Switched NSEP Telecommunication Services

Those NSEP telecommunication services utilizing public switched networks. Such services may include both interexchange and intraexchange network facilities (e.g., switching systems, interoffice trunks and subscriber loops).

Reconciliation

The comparison of NSEP service information and the resolution of identified discrepancies.

Restoration

The repair or returning to service of one or more telecommunication services that have experienced a service outage or are unusable for any reason, including a damaged or impaired telecommunications facility. Such repair or returning to service may be done by patching, rerouting, substitution of component parts or pathways, and other means, as determined necessary by a service vendor.

Revalidation

The rejustification by a service user of a priority level assignment. This may result in extension by the Manager, NCS, in accordance with this directive, of the expiration date associated with the priority level assignment.

Revision

A change in priority level assignment for an NSEP telecommunications service. This includes any extension of an existing priority level assignment to an expanded NSEP service.

Revocation

The elimination of a priority level assignment when it is no longer valid. All priority level assignments for an NSEP service are revoked upon service termination.

Service Identification

Information uniquely identifying an NSEP telecommunications service to the service vendor and/or service user.

Service User

Any individual or organization (including a service vendor) supported by a telecommunications service for which a priority level has been requested or assigned.

Service Vendor

Any person, association, partnership, corporation, organization, or other entity (including common carriers and government organizations) that offers to supply any telecommunication equipment, facilities, or services (including customer premises equipment and wiring) or combination thereof. The term includes resale carriers, prime contractors, subcontractors, and interconnecting carriers.

"Spare" Circuits or Services

Circuits or services not being used or contracted for by any customer.

Telecommunication Services

The transmission, emission, or reception of signals, signs, writing, images, sounds, or intelligence of any nature, by wire, cable, satellite, fiber optics, laser, radio, visual, or other electronic, electric, electromagnetic, or acoustically coupled means, or any combination thereof. The term can include necessary telecommunication facilities.

Telecommunications Service Priority (TSP) System User

Any individual, organization, or activity that interacts with the TSP System.

[NCS Directive 3-3]

Telecommunications Operations—Shared Resources (SHARES) High Frequency (HF) Radio Program

September 30, 1988.

1. *Purpose.* This directive establishes National Communications System (NCS) policies pertaining to operation and use of the Shared Resources (SHARES) High Frequency (HF) Radio Program.

2. *Applicability.* This directive is binding upon NCS and other Executive entities who voluntarily elect to participate in the SHARES HF Radio Program.

3. *Authority.* This directive is issued under the authority of Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness

Telecommunications Functions," April 3, 1984, 49 FR 13471 (1984); and NCS Directive 1-1, "National Communications System (NCS) Issuance System," November 30, 1987.

4. *References.*

a. Executive Order (E.O.) No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984, 49 FR 13471 (1984).

b. National Telecommunications & Information Administration (NTIA), "Manual of Regulations and Procedures for Federal Radio Frequency Management," May, 1986 Edition as revised May, 1987 or current edition/revision.

5. *General.*

a. E.O. No. 12472 established national policy guidance in support of National Security Emergency Preparedness (NSEP) objectives. Executive Order No. 12472 mandates that action be taken to ". . . ensure that a national telecommunications infrastructure is developed . . .". Consistent with the Executive Order, functionally similar government telecommunications networks should be designed to interchange traffic in support of national leadership requirements.

b. The SHARES HF Radio Program will provide a backup capability to exchange critical information among Federal entities to support NSEP. Federally controlled HF radio resources will be shared to establish a robust NSEP HF radio communications infrastructure. The program involves a collection of existing Federally controlled HF radio stations that inter-operate to transmit NSEP messages when normal means of communication are not available.

6. *Policy.*

a. Any participating Federal entity will accept, to the extent that acceptance does not interfere with the mission responsibilities of the entity, emergency messages of other Federal entities, or other components of the same entity, for transmission by HF radio to the addressee or to another participant for relay to the addressee.

b. A SHARES message is an emergency message to be sent via the SHARES network. It consists of information that must be communicated to a Federal entity and is of critical importance to the Federal Government, the entity's mission, and/or involves the preservation of life and the protection of property.

c. Transmission of SHARES messages will be guided by the policy of the agency accepting the message. Advice that a "SHARES Message" is to be transmitted will serve to notify operating personnel that a critical NSEP message requirement exists, and implicitly, that normal communication paths are not available.

7. *Responsibilities.*

a. NCS entities participating in the SHARES HF Radio Program will, to the maximum extent possible:

(1) Identify HF stations under their control for participation in the SHARES Program.

(2) Maintain the operational readiness of their SHARES HF stations.

(3) Provide updated information as necessary for inclusion in a SHARES HF Radio Program Directory. Use of Federal frequencies for SHARES traffic shall be in accordance with National Telecommunications and Information Administration (NTIA) "Manual of Regulations and Procedures for Federal Radio Frequency Management."

(4) Ensure participation of available stations in scheduled exercises.

(5) Provide representation, as required, at meetings, briefings, conferences, and other official SHARES HF Radio Program activities.

b. The Manager, NCS, will administer the SHARES HF Radio Program and perform the management functions defined below:

(1) Publish and periodically update, as NCS issuances, a User Manual, giving detailed procedures for using SHARES HF Radio Program capabilities, and HF Directory of participating Federally controlled HF radio stations.

(2) Develop, schedule, and administer periodic exercises of the SHARES HF Radio Program capabilities.

(3) Perform other functions, as necessary, to improve SHARES capabilities.

8. *Authorizing Provision.* NCS manuals implementing this directive are authorized.

9. *Effective Date.* This directive is effective immediately.

10. *Expiration.* This directive is in effect until superseded or cancelled.

Director, Office of Science and Technology Policy.

Dated: January 27, 1989.

Director, Office of Management and Budget.

Dated: January 19, 1989.

Assistant to the President for National Security Affairs.

Dated: January 6, 1989.

[FR Doc. 90-25058 Filed 12-10-90; 8:45 am]

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federal register

Tuesday
December 11, 1990

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Protective Breathing Equipment; Amendment of Effective Date and Request for Comment; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 24792; Amdt No. 121-220]

Protective Breathing Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; amendment of effective date and request for comment.

SUMMARY: This amendment revises the compliance date for training air carrier crewmembers in the use of protective breathing equipment (PBE). The compliance date is postponed from January 31, 1990, to July 31, 1992. This amendment is necessary due to a misunderstanding concerning the requirement to fight an actual fire during the firefighting drill required for PBE training. In addition, the amendment will give the FAA time to reconsider and clarify the PBE training requirements.

DATES: This rule is effective December 11, 1990. Comments must be received by February 11, 1991.

ADDRESSES: Comments on this amendment may be mailed in duplicate or delivered to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24792, 800 Independence Avenue, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Donell Pollard, Project Development Branch, AFS-240, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:

Background

The requirements for PBE training are contained in § 121.417(c), which was adopted by Amendment 121-193, issued May 26, 1987 (52 FR 20950; June 3, 1987). In the preamble to that amendment, the FAA responded to several commenters who objected to the proposed requirement that crewmembers fight an actual fire during their initial training. These commenters cited the hazards to flight attendants of fighting an actual fire and stated that the use of realistic training aids (simulated fires) would better train flight attendants to cope with actual airplane fires.

The FAA did not agree with these commenters and stated in the preamble to Amendment 121-193 that "Demonstrations and training aids, no matter how realistic, cannot provide the training benefits and confidence that actual firefighting experience will give to all crewmembers * * *." The FAA noted that this requirement is a one-time exercise for crewmembers and further stated that there is nothing in the rule to preclude carriers from developing recurrent training that uses training aids and instructors to supplement the initial training.

On March 14, 1989, after the rule was issued, the FAA issued Advisory Circular (AC) No. 121-31, Training on Protective Breathing Equipment. The AC described a method of compliance with § 121.417(c) that allowed the use of a simulated fire during the PBE portion of the emergency training. However, the FAA has determined that to comply with § 121.417(c) crewmember trainees must wear the PBE and use the appropriate firefighting equipment while fighting an actual fire. Thus, the AC's method that allows PBE training to be conducted using a simulated fire is inconsistent with the rule language. The FAA has rescinded AC 121-31.

Subsequent to the issuance of Amendment 121-193 and AC 121-31, the FAA has been informed by principal operations inspectors and air carriers that a wide variety of training drills and exercises are actually being utilized to fulfill the training requirements of § 121.417(c). The FAA has discovered, in a sampling of the air carrier industry, that most of these training drills consist of PBE and fire extinguisher equipment operation drills using a variety of simulated fire scenarios rather than a firefighting drill using an actual fire. Therefore, a large number of carriers have not properly complied with this regulation. The FAA believes that this lack of compliance is due to confusion created by the publication of AC 121-31 which provided a method of compliance using a simulated fire during the § 121.417(c) firefighting drill.

After reviewing the rule and advisory circular, the agency has determined that the fire fighting drill requirement in § 121.417(c) should be reconsidered. Although the agency continues to believe that a firefighting drill using an actual fire is essential during crewmember training, it may not be necessary to combine the crewmember's actual firefighting experience with the PBE training. Therefore, the agency intends to review the PBE training requirements to determine whether air carriers should be allowed to use simulated fires as an alternative to actual fires during PBE training.

Because of the lack of compliance with § 121.417(c) due to the confusion created by the publication of AC No. 121-31 and the agency's intent to review the regulation, the FAA finds that it is in the public interest to postpone the compliance date for 2½ years. Thus, the date by which air carriers must comply with the training requirements in § 121.417(c) is postponed until July 31, 1992.

Good Cause Justification for Immediate Adoption

This amendment is being adopted without notice and public comment procedure because delay could have a significant impact on air carrier service In this case, the compliance problem is a result of a misunderstanding of the requirement to put out an actual fire during the firefighting drill required by § 121.417(c)(1). Thus, air carrier non-compliance is an industry wide problem making the exemption process impractical and rulemaking necessary. However, issuance of a notice of proposed rulemaking would delay the establishment of a new compliance date and perpetuate non-compliance. Continued non-compliance would require air carriers to remove all crewmembers who have not been properly trained from service with the air carrier, which would result in grounding aircraft because of staffing shortages. Furthermore, the FAA has determined that § 121.417(c) should be reviewed and possibly amended. Therefore, to avoid widespread disruption of air carrier service and to allow the agency time to review the training requirements, the FAA finds that the compliance date should be postponed until July 31, 1992. Accordingly, I find that notice and public procedure are impracticable and contrary to the public interest. In addition, since this amendment relieves a restriction, I find it may be made effective in less than 30 days.

Interested persons are invited to submit such comments as they may desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

Trade Impact Statement

The FAA finds that this amendment will have no impact on international trade.

Economic Assessment

This spot amendment does not impose any costs to air carriers. The cost for this training was determined in the original PBE rule. Many air carriers are now complying with the current PBE training regulations by conducting fire fighting training drills that include putting out an actual fire while wearing PBE. Other air carriers are conducting their training using a split drill, i.e., putting out a real fire with the fire extinguishing equipment and using the PBE with a simulated fire. Although this split drill is not in compliance with the current rule, the benefits of the split drill are comparable to those that would be achieved by compliance with the rule. For the few carriers that are using simulation alone, the full potential benefits could not be achieved due to the current confusion surrounding interpretation of the rule.

Some air carriers that were not conducting an actual fire in the training drill have recently incorporated an actual fire into their training program. The FAA believes that neither the air carriers that are in compliance with the rule nor those few carriers that are using split drills would go to the expense of altering their training programs because of the postponement of the compliance date contained in this amendment. Therefore, delay will not result in a diminution of aviation safety from current levels. Thus, a full regulatory evaluation is unnecessary.

Federalism Implications

The regulation 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 amendment would not have federalism implications requiring the preparation of a Federalism Assessment.

Conclusion

This amendment will not have an economic effect on the public. The postponed compliance date will allow air carriers to remain fully operational so that air carrier service will not be disrupted. Therefore, the FAA has determined that this amendment involves a regulation which is not major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since no small entities would be affected by the rule, it is certified that under the criteria of the Regulatory Flexibility Act the rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. Because of the absence of any costs attendant with the amendment, the FAA has determined that the expected impact of the amendment is so minimal that it does not warrant a full regulatory evaluation.

List of Subjects in 14 CFR Part 121

Air safety, Air transportation, Aviation safety, Drug abuse, Narcotics, Safety, Transportation.

Adoption of the Amendment

Accordingly, part 121 of the Federal Aviation Regulations (14 CFR part 121) is amended as follows:

PART 121—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C 106(g) (revised, Pub. L. 97–449, January 12, 1983).

2. By revising § 121.417(d) to read as follows:

§ 121.417 Crewmember emergency training.

* * * * *

(d) After July 31, 1992, no crewmember may serve in operations under this part unless that crewmember has performed the firefighting drill prescribed by paragraph (c)(1)(i) of this section.

* * * * *

Issued in Washington, DC on December 4, 1990.

James B. Busey,

Administrator.

[FR Doc. 90–28872 12–10–90; 8:45 am]

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federal register

Tuesday
December 11, 1990

Part VI

Department of Health and Human Services

Family Support Administration

45 CFR Part 402

State Legalization Impact Assistance Grants (SLIAG); Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 402

RIN 0970-AA79

State Legalization Impact Assistance Grants (SLIAG)

AGENCY: Family Support Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule amends regulations implementing the State Legalization Impact Assistance Grant (SLIAG) program, 45 CFR part 402. This amendment implements changes made to section 204 of the Immigration Reform and Control Act of 1986 (IRCA) by Public Law 101-238. This law allows, but does not require, limited amounts of SLIAG funds to be used for two new purposes—Phase II outreach and employment discrimination education and outreach. The amendment also simplifies administrative requirements by reducing the amount of information that States must submit in their SLIAG applications. Finally, the proposed amendment makes technical and conforming changes.

DATES: Comments must be received on or before January 10, 1991.

ADDRESSES: Comments may be mailed to: Family Support Administration, Attention: Karen Guy, Mail Stop: ORR/SLIAG, 370 L'Enfant Promenade SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: David Smith, Director, Division of State Legalization Assistance, Office of Refugee Resettlement, U.S. Department of Health and Human Services, at 202-401-9355 (FTS 441-9355).

SUPPLEMENTARY INFORMATION: Section 204 of the Immigration Reform and Control Act of 1986 (IRCA) (Pub. L. 99-603), as amended, establishes State Legalization Impact Assistance Grants (SLIAG) for States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam for fiscal years 1988 through 1992. (The term "State" is used hereinafter to include all eligible SLIAG grantees.) States may use (obligate) SLIAG grant funds through September 30, 1994. The purpose of SLIAG is to lessen the financial impact on State and local governments that may result from the legalization of aliens under the Immigration Reform and Control Act of 1986 (IRCA).

On March 10, 1988, the Department published a final rule, 45 CFR part 402, implementing section 204 of IRCA. This regulation was amended at 54 FR 23983 (June 5, 1989), and 55 FR 26206 (June 27, 1990).

Phase II Outreach

Background

IRCA provided for the legalization of three categories of aliens. For these aliens, achieving lawful permanent resident status—the ability to remain indefinitely in this country on a legal basis—is a two-step process. The initial step—obtaining lawful temporary resident status—is commonly called Phase I of the legalization program. The subsequent adjustment to lawful permanent resident status is commonly called Phase II. The process is somewhat different for each of these three groups of aliens.

Aliens who had been in the U.S. illegally prior to January 1, 1982 were given the opportunity to apply for lawful temporary resident status under section 245A of the Immigration and Nationality Act (INA) between May 5, 1987 and May 4, 1988. After being in lawful temporary resident status for 18 months, aliens granted lawful temporary resident status under this section must apply a second time to INS in order to obtain permanent resident status. This process is commonly called Phase II of the legalization process. If aliens granted lawful temporary resident status under section 245A do not apply for permanent resident status within 30 months of the date they were granted temporary resident status, they will lose their lawful resident status.

In order to become lawful permanent residents, these aliens must meet certain requirements imposed by IRCA. These requirements include demonstration of minimal understanding of ordinary English and knowledge of the history and government of the U.S., or satisfactory progress toward that goal in courses recognized by the Attorney General.

Aliens who had performed seasonal agricultural services for certain minimum periods could apply for lawful temporary resident status between June 1, 1987 and November 30, 1988 under section 210 of the INA. These "special agricultural workers" or "SAWs" automatically become lawful permanent residents either one or two years after the effective date of lawful temporary resident status. (The length of time between temporary and permanent status depends upon which of two subsections of the INA an alien qualified under.) SAWs are not required to demonstrate a minimal understanding of English or knowledge of the history and government of the U.S. in order to obtain lawful permanent resident status.

Section 210A of the INA provides for admission of replenishment agricultural workers (RAWs), beginning in FY 1990, if the Secretaries of the U.S. Departments of Agriculture and Labor jointly determined that a shortage of agricultural labor exists. To date, no such certification has occurred, so there are no lawful temporary residents under section 210A of the INA.

If a shortage is declared and aliens are granted lawful temporary resident status under section 210A, these "replenishment agricultural workers" or "RAWS" will have to demonstrate that they worked in agriculture a specified number of days for each of three consecutive years to remain in lawful temporary resident status and to qualify for lawful permanent residence. Like SAWs, RAWs do not have to demonstrate proficiency in the English language or knowledge of the history and government of the U.S. in order to obtain lawful permanent resident status.

In order to ensure that RAWs could be made available soon after the determination of a shortage, INS allowed aliens to register for the RAW program in late 1989. Over 600,000 aliens have registered. These aliens have no legal status as a result of that registration. In particular, they are *not* lawful temporary residents for purposes of determining the allowability of SLIAG-related costs. If a shortage number is announced, an appropriate number of registrants randomly selected by priority category will be allowed to petition for admission as RAWs. Those aliens whose petitions are granted by INS will be lawful temporary residents.

Outreach Activities Authorized

New section 204(c)(1)(D) of IRCA authorizes States to use SLIAG funds for certain kinds of outreach to lawful temporary residents. Specifically, new section 204(c)(1)(D) of IRCA allows States to use SLIAG funds to make payments for public education and outreach (including the provision of information to individual applicants) to inform temporary resident aliens regarding:

(1) The requirements of sections 210, 210A, and 245A of the Immigration and Nationality Act regarding the adjustment of resident status;

(2) Sources of assistance for such aliens' obtaining the adjustment of status described in clause (1), including educational, informational, referral services, and the rights and responsibilities of such aliens and aliens

lawfully admitted for permanent residence;

(3) The identification of health, employment, and social services; and,

(4) The importance of identifying oneself as a temporary resident alien to service providers.

This proposed amendment defines "Phase II outreach" in § 402.2 using language that closely parallels the statute.

Certain Activities Not Allowable

The statute explicitly prohibits use of SLIAG funds for "client counseling or any other service which would assume responsibility for the alien's application for the adjustment of status * * *." New § 402.11(i) adds this limitation to the regulation. This paragraph reflects our interpretation that this prohibition also precludes the use of SLIAG funds to assist aliens in appealing INS decisions or to represent aliens before any administrative or judicial body.

Use Limited to Temporary Residents

New IRCA section 204(c)(1)(D) authorizes the use of SLIAG funds for public education and outreach only for lawful *temporary* residents. The statute also explicitly permits the provision of information to "individual applicants." We interpret this to mean that SLIAG funds may be used to provide information to aliens who have been granted lawful temporary resident status, as well as aliens who have applied for such status and whose applications are pending with INS at the time the information was provided.

The proposed regulation stipulates that the cost of public education and outreach activities directed to specific individuals may not be charged to SLIAG if the individuals are lawful permanent residents or aliens with any other status except that of lawful temporary resident granted under sections 245A, 210, or 210A of the INA, or applicants under those sections. SLIAG funds may not be used for outreach directed to lawful permanent residents, even if they still are "eligible legalized aliens (ELAs)."

States would have to document that services were provided to lawful temporary residents (or applicants) in order to charge costs associated with those services to their SLIAG grants. For public education or outreach activities that are *not* directed to specific individuals, e.g., posters or brochures, this statutory provision means that the material must be targeted to or intended primarily for lawful temporary residents.

Relationship to Other Activities

Public Law 101-238 allows the use of SLIAG funds to "identify" health, employment, and social service programs to lawful temporary residents. This authority does not allow States to use SLIAG funds to provide such services to aliens, merely to inform temporary residents of the availability of such services.

Public Law 101-238 does not affect the allowability under the current regulations of States' charging a portion of the costs of public assistance and public health assistance program general outreach activities (i.e., outreach activities not directed to ELAs) to SLIAG. Under current regulations, the cost of such outreach is allowable if it (1) is part of a program of public assistance or public health assistance that is included in a State's approved application, and (2) is "generally available," i.e., not intended solely or primarily for ELAs. Such costs generally are considered "program administrative costs" and may be apportioned to SLIAG in accordance with §402.22(b), which this rule proposes to revise and redesignate as § 402.21(c)(6)(A). Such costs would not be counted in computing the maximum amount of SLIAG funds that may be expended for Phase II outreach.

Outreach designed to inform ELAs (not just temporary residents) of the availability of SLIAG-funded educational services is an allowable activity under the current regulation and is not affected by Public Law 202-238. The costs of such educational services outreach activities, performed by educational service providers under their educational service contracts with States education agencies, do not have to be counted toward the statutory ceiling on Phase II outreach activities. However, such educational services outreach activities continue to be subject to the funding limitations that IRCA and the regulation at 45 CFR 402.11(e) impose on spending for educational services.

Activities beyond those intended to make ELAs aware of the availability of SLIAG-funded classes are not allowable under the current regulation, but may be allowable under the new authority of Public Law 101-238 if those activities are targeted to temporary residents. Such activities would be subject to the spending limitation in § 402.11(k).

Use of Other Organizations

Public Law 101-238 is silent on such issues as which State agency will be responsible for conducting Phase II outreach activities and what, if any, other organizations must or may be invovled, consulted with, or receive funding. We have not proposed regulations in these areas as such decisions, in the absence of statutory guidance, are appropriately left to the State, subject to section 204(d)(1)(B)(ii) of IRCA and 45 CFR 402.41(a)(2) which require that the State provide a fair method, as determined by the State, to allocate SLIAG funds among State and local agencies, and Federal grant management regulations at 45 CFR part 92.

Employment Discrimination Education and Outreach

Background

IRCA established sanctions against employers who knowingly hire aliens not authorized to work in this country. IRCA requires that employers verify the identify and work authorization of all new employees. During debate on IRCA, Congress foresaw the possibility that employers, fearful of sanctions, would refuse employment to individuals who looked or sounded foreign. Responding to that concern, Congress created section 102 of IRCA. Section 102 made it unlawful, with specified exceptions, for employers to discriminate in hiring, firing, or recruiting and referring labor for a fee because of a person's national origin and, in the case of a citizen or intending citizen, citizenship status.

Congress also created the Office of the Special Counsel for Immigration Related Unfair Employment Practices (hereafter "Office of the Special Counsel") to enforce IRCA's anti-discrimination provision. The Office of the Special Counsel is responsible for investigating discrimination charges and, when appropriate, filing complaints with a specifically designated administrative tribunal.

The Office of the Special Counsel, located in the U.S. Department of Justice, has established a record of vigorous enforcement. However, studies by the U.S. General Accounting Office and local authorities have raised serious concerns about the general lack of knowledge and misunderstanding of IRCA's requirements. Enforcement of the anti-discrimination provision will serve little purpose if workers are not aware of their rights. Moreover, discrimination will not be eradicated as long as employers are unaware of their duty not to discriminate.

Anti-Discrimination Efforts Authorized

Congress addressed these problems by enacting section 6 of Pub. L. 101-238. This statute adds new section

204(c)(1)(E)(i) to IRCA which allows, but does not require, States to use SLIAG funds.

> * * * to make payments for education and outreach efforts by State agencies regarding unfair discrimination in employment practices based on national origin or citizenship status.

The legislative history states that this provision is intended to fund education and outreach efforts to inform workers of their rights under the anti-discrimination provision of IRCA and to inform employers of how to comply with their anti-discrimination responsibilities under IRCA. (Congressional Record, S 16442, Nov. 20, 1989)

This regulation proposes to adopt the statutory language of new section 204(c)(1)(E)(i) of IRCA in defining "employment discrimination education and outreach" in § 402.2. The statute and regulation permit a broad range of activities, including, but not limited to: The development, production and distribution of informational literature; production and publication of advertisements in the electronic or print media; conducting meetings, seminars or other public functions; awarding grants, contracts or cooperative agreements, as appropriate, to local government agencies (including local education agencies), employee and employer groups, or other public or private organizations, including community-based organizations or for-profit concerns; and, providing referral services regarding employment discrimination prohibited by IRCA.

Use of Other Organizations

The statute states that SLIAG funds may be used for "education and outreach efforts by State agencies * * *" (new section 204(c)(1)(E)(i) of IRCA, emphasis added). We interpret this to mean that employment discrimination education and outreach activities in which SLIAG-related costs may be incurred must be under the direction of or coordinated by State agencies.

The statute does not specify which State agency or agencies may conduct employment discrimination education and outreach activities. We are not proposing to regulate in this area, as this decision is appropriately left to each State. However, we encourage States to confer with appropriate agencies and organizations and to create or enhance ongoing contacts with local public and private entities already conducting such activities. By using existing community networks, States will be able to develop "bottom up" outreach strategies, thereby extending the scope and range of the educational campaign. Also, the use of existing community networks will facilitate audience targeting and may enhance the access and credibility of the message.

The statute is silent regarding State agencies' conducting employment discrimination education and outreach activities through other organizations. (However, section 204(d)(1)(B)(ii) of IRCA and 45 CFR 402.41(a)(2) require that the State assure that it will provide a fair method, as determined by the State, of allocating SLIAG funds among State and local agencies.) We have not proposed regulations in this area. Within the confines of Federal and State procurement principles and the assurance noted above, States have discretion in deciding what, if any, other organizations to use in implementing SLIAG-funded employment discrimination education and outreach efforts. (Federal grants management regulations at 45 CFR part 92 apply to this use, as well as other uses, of SLIAG funds.) If otherwise permissible, States may implement their SLIAG-funded employment discrimination education and outreach through grants, contracts or cooperative agreements with other units of government, other public agencies, non-profit, or for-profit organizations.

Activities That Are Not Allowable

Although the statute permits a wide range of allowable uses of SLIAG funds for employment discrimination education and outreach, there are several limitations inherent in the statutory language and legislative history. For example, we believe that Public Law 101-238 does not allow the use of SLIAG funds to investigate or prosecute discrimination complaints beyond initial intake and referral. Nor does it allow for the payment of legal fees or other expenses incurred to provide legal counsel to a party alleging discrimination or to represent parties before any administrative or judicial body. This proposed regulation makes these exclusions explicit in new § 402.11(j).

Not Limited to "Eligible Legalized Aliens"

New section 204(c)(1)(E) does not limit the use of SLIAG funds for employment discrimination education and outreach to aliens legalized by IRAC. (Other uses of SLIAG funds generally are limited to services provided to "eligible legalized aliens," as that term is defined in the Act and 45 CFR 402.2.) SLIAG funds may be used for employment discrimination education and outreach efforts targeted to ELAs, permanent residents, asylees, refugees, U.S. citizens, and all others protected under IRCA's anti-discrimination provision. These efforts may also be directed to employers and to persons or other entities that recruit or refer labor for a fee.

Prior Consultation Required

New section 204(c)(1)(E)(ii) of IRCA stipulates that States

> * * * shall not initiate such efforts until after such consultation with the Office of the Special Counsel for Immigration Related (Unfair) Employment Practices as is appropriate to ensure, to the maximum extent feasible, a uniform program.

We believe the most straightforward reading of this language is that States may not use SLIAG funds to reimburse the costs of activities that occurred prior to consultation with the Office of the Special Counsel. Under the proposed rule, new activities to be funded with a State's SLIAG allotment may not be started until after consultation has occurred. For activities begun prior to consultation (i.e., those funded with State or local funds), SLIAG reimbursement would be available only for costs associated with activities that occur after consultation.

Consultation Process

This proposed regulation combines the statutorily required consultation with the Office of the Special Counsel and the process of States' submitting applications for SLIAG funds (or amendments to approved applications.) This combined process involves the following steps:

(1) A State submits to the Department an application, or amendment to an approved application, including as detailed a description as possible of the employment discrimination education and outreach efforts the State plans to undertake, including, if available, copies or drafts of the text of public information materials it intends to use in those efforts. (See "Content of required submission," below.)

(2) The Department transmit a copy of the State's submission to the Office of the Special Counsel for review.

(3) The Office of the Special Counsel reviews the State's submission to ascertain whether it meets certain criteria, discussed below. (The Office of the Special Counsel has indicated that it anticipates its review will take no longer than 15 working days, unless discussions or correspondence with a State extend this time.) Simultaneously, the Department reviews the submission to ascertain the allowability of costs and the reasonableness of cost

estimates. (See "Review criteria," below.)

(4) Upon completion of its review, the Office of the Special Counsel certifies to the Department whether the State's submission meets the specified criteria. The Department then notifies the State that the section(s) of the State's application or amendment related to employment discrimination education and outreach have been approved or notifies the State of the reasons for disapproval. This notification will include additional comments, if any, provided by the Office of the Special Counsel.

HHS' notification informs the State that the statutory requirement for prior consultation with the Office of the Special Counsel has been met. Upon receiving notification from the Department that its application is approved, a State may initiate the SLIAG-funded employment discrimination education and outreach activities described in its approved application. We have included in the proposed regulation new § 402.11(n) which prohibits the use of SLIAG funds to reimburse the costs of employment discrimination education and outreach activities that occur prior to this notification. We believe that we could not allow reimbursement of such costs without contravening the clear intent of the statute. (However, see "Prior consultation waived for dissemination of certified materials," below.)

Unlike other programs or activities where prior approval of applications or amendments by the Department is not required, this process requires States to submit and receive approval for planned employment discrimination education and outreach activities before initiating those activities, or before beginning to reimburse the costs of ongoing activities. However, we believe that this consolidated approach will be simpler to administer at both the State and Federal level than separate consultation and application processes.

We have separated the formal consultation process from ongoing information exchange an technical assistance activities with the Office of the Special Counsel, as well as other Federal agencies (e.g., the INS Office of Employer and Labor Relations, the Department of Labor, the Equal Employment Opportunity Commission, and the Small Business Administration). We expect that States will have ongoing contacts with these Federal agencies and other States to enhance and coordinate their employment discrimination education and outreach activities. We strongly encourage this informal exchange of information, ideas, and technical assistance, but have not included it in the formal consultation process in the interest of expediting States' implementation of employment discrimination education and outreach efforts.

Content of Required Submission

New § 402.41(d)(1)(B) of the proposed regulation specifies the information regarding planned employment discrimination education and outreach efforts that States must include in their applications or amendments to approved applications. States' applications must contain a description of the planned education and outreach activities, including:

—Descriptions of the kinds of State or local government agencies, or other entities, to be involved in each activity;
—Brief descriptions of the targeted audience(s) for each activity; and,
—Pre-production copies or text of any material to be dissemination to the public, if available at the time the application is submitted. (See "Certification of material for public distribution," below.)

These requirements reflect: (1) The level of information the Office of the Special Counsel has informed us it needs to carry out its statutory consultation requirement; and, (2) the information needed by the Department to determine the allowability of the activities and reasonableness of the estimated costs. Because of the statutory requirement for prior consultation and a strong Federal interest in ensuring that Federal funds are used efficiently to provide the public with accurate information, the application requirements concerning employment discrimination education and outreach activities are more detailed than those for other uses of SLIAG funds.

We urge States to be as specific as possible in describing their activities, including the kinds of organizations they intent to use, the audience to be targeted, the media mix to be used, and the nature and content of the information to be disseminated. This will asssist the Office of the Special Counsel in serving as a clearinghouse for information, by sharing with other States innovative education and outreach ideas. However, we do not envision States submitting highly detailed operational plans. Further, we recognized that States may not have complete plans developed for their SLIAG-funded education and outreach activities. We recommend the States submit their application in whatever level of detail is possible, and thereby satisfy the prior consultation requirement, as soon as they have at least a preliminary idea of the activities they want to undertake, the audience, and the types of organizations they will use. This will allow the State to begin to spend SLIAG funds for employment discrimination education and outreach. As States more fully develop their plans, applications can be amended. (If a State plans to undertake activities beyond those described in its approved application, the proposed rule would require the application to be amended *prior to* its initiating those new activities.)

As with other uses of SLIAG funds, the application must also contain an estimate of the SLIAG-related costs the State expects to incur in its employment discrimination education and outreach efforts and describe the methodology used to make the estimate.

Review Criteria

HHS will review States' applications and amendments to determine the allowability of costs and the reasonableness of cost estimates. This review will be conducted in the same manner and employ the same criteria as the Department's review of other activities included in States' applications. While States are required by statute to consult with the Office of the Special Counsel, accountability for SLIAG funds, including determination of the allowability of costs, rests with the Department.

By statute, the purpose of consultation with the Office of the Special Counsel is to "ensure, to the maximum extent feasible, a uniform program." Accordingly, under the proposed rule, the Office of the Special Counsel will review States' submission to determine that SLIAG-funded, State-administered efforts do not conflict with or unnecessarily duplicate other education and outreach efforts. (The Office of the Special Counsel will also review public information material submitted with a State's application or amendment. See "Certification of material for public distribution," below.)

When the Office of the Special Counsel determines that the activities described in a State's submission do not conflict with or unnecessarily duplicate other anti-discrimination efforts, it will certify to the Department that consultation has taken place. Any conflicts with other anti-discrimination efforts identified by the Office of the Special Counsel will have to be resolved prior to completion of consultation. Resolution of such conflicts would likely require that a State amend the

application or amendment submitted to the Department to remove the conflict.

The Office of the Special Counsel will also provide any additional comments and suggestions it has regarding a State's planned employment discrimination education and outreach activities. The Office of the Special Counsel will transmit those comnments to HHS. HHS in turn will forward those comments to the State for consideration.

Certification of Material for Public Distribution

The proposed regulaion at new § 402.11(o) provides that SLIAG funds may be used to reimburse costs associated with material intended for public dissemination only if that material is certified by the Office of the Special Counsel. Certification of public information material involves the Office of the Special Counsel's determining that:

—The information to be produced and disseminated to the public with Federal funds is legally accurate; and,

—Such information identifies the Office of the Special Counsel as a source of information and referral for complaints of discrimination based on citizenship status or national origin and includes that Office's address and telephone numbers, including toll-free and TDD numbers for the hearing impaired.

Material which a State wishes to have certified may be transmitted to the Office of the Special Counsel in either of two ways.

1. If such material (e.g., drafts or pre-production copy) is available when a State prepares its application or amendment, that material must be included in its submission. HHS will transmit that material to the Office of the Special Counsel.

2. Material developed after approval of a State's application or amendment should be submitted directly to the Office of the Special Counsel. (The Department does not require that such materials be submitted to it for review. However, if a State submits public information directly to the Office of the Special Counsel for review and use of that material is not described in its approved application, then the proposed rule would require the State to amend its application prior to producing and disseminating that material.)

We strongly encourage States to submit material for review by the Office of the Special Counsel before incurring significant production and distribution costs in order to avoid potential disallowances.

The following is a list of public information material already certified by the Office of the Special Counsel:

1. Office of the Special Counsel and Immigration and Naturalization Service (Form M-279) "Immigration Reform and Control Act of 1986 (IRCA): Your Job and Your Rights," in Spanish and English.

2. One-page notice titled "The Immigration Reform and Control Act (IRCA) Prohibits Employment Discrimination: What You Should Know."

3. Form M-322, "Important Notice Concerning Immigration—Related Unfair Employment Practices," in English, Spanish, Polish, Creole, Arabic, Chinese, Japanese, and Korean.

4. Equal Employment Opportunity Commission publication, "National Origin Discrimination in Employment is Unlawful: Employers' Obligations Under Title VII and IRCA."

5. Equal Employment Opportunity Commission publication, "National Origin Discrimination in Employment is Unlawful: The Rights of Employees and Job Applicants Under Title VII and IRCA."

6. Immigration and Naturalization Service poster, "Looking For a Job."

7. Thirty-second television public service announcements with Jimmy Smits, in Spanish and English.

8. Thirty-second television public service announcements with Edward James Olmos, in Spanish and English.

9. Sixty-second radio public service announcements, in Spanish and English, produced by the Department of Justice.

The Office of the Special Counsel will update this list periodically and provide updated versions of the list to States and the Department. The Office of the Special Counsel will also provide States with additional, pre-approved language upon request.

Prior Consultation Waived for Dissemination of Certified Materials.

The Federal government has a strong interest in expediting States' SLIAG-funded employment discrimination education and outreach efforts. States may want to get started by reproducing and distributing already available public information material that has been certified by the Office of the Special Counsel. (See list, above.)

States that elected to use SLIAG funds for this limited purpose would not need first to submit an application or amendment to HHS or the Office of the Special Counsel. We would deem consultation to have taken place for this limited use. However, States would be required to reproduce the text of certified material verbatim (but could add the name of the State agency or other appropriate entity, its address and telephone number). Only the costs of such activities undertaken after December 18, 1989, the date of enactment of Public Law 101-238, Public Law could be reimbursed with SLIAG funds.

Although States would not be required to submit an application or amendment to HHS before distributing certified public information material, States would have to include descriptions and cost estimates of such activities when they did submit their applications or amendments. (Amendments for FY 1990 are due to HHS no later than 90 days after the end of the fiscal year.) Prior consultation, and prior approval of a State's application or amendment, would be required for any other employment discrimination education and outreach activity.

Subsequent Amendments

The current regulation at § 402.45(a) requires that, if, during the course of a fiscal year, a State adds a program or activity for which it intends to claim SLIAG reimbursement or make payment with SLIAG funds, it must amend its application. For employment discrimination education and outreach activities, this means that States will have to amend their applications before they initiate or seek SLIAG reimbursement for activities beyond those described in their approved applications. The process for consulting with the Office of the Special Counsel described above would be followed for each amendment.

Amendments to Prior Years' Applications

Public Law 101-238 is effective with allotments made for FY 1989. Becuase of this effective date and the statutory requirement for prior consultation with the Office of the Special Counsel, there will be no costs incurred in either FY 1988 or FY 1989 for such activities which can be reimbursed with SLIAG grants. Thus, States will have no need to amend their FY 1988 or FY 1989 applications for this purpose.

However, as noted in "Limitations on Use of SLIAG Funds," below, subject to statutory limits, States may use funds from their FY 1989 SLIAG allotments for the costs of activities which occur after consultation (e.g., in FY 1990 or subsequent fiscal years). This is in accordance with the general provision in IRCA and the SLIAG regulation that funds allotted for a fiscal year remaining unobligated at the end of that fiscal year

continue to be available for use until September 30, 1994.

States which elect to use SLIAG funds for employment discrimination education and outreach activities that occur in FY 1990 must amend their FY 1990 applications. Except as noted above, under the proposed rule, our prior approval of such amendments is required before States may initiate SLIAG-funded employment discrimination education and outreach efforts or begin to reimburse the costs of ongoing activities.

Limitations on Use of SLIAG Funds

New sections 204(c)(2)(D) (i) and (ii) of IRCA, established by Public Law 101-238, limit the amount of their SLIAG allotments that States may use for Phase II outreach and employment discrimination education and outreach activities. New § 402.11 (k) and (l) of this proposed regulation include these restrictions. For each of these two new activities, a State may make payments, i.e., for contracts, interagency agreements, etc., totalling no more than an amount equal to the greater of 1 percent of its allotment for each fiscal year beginning with FY 1989, or $100,000. Costs associated with the administration of these payments by the State single point of contact are considered SLIAG administrative costs, as that term is defined in this Part.

For example, assume that a State's FY 1989 SLIAG allotment was $15 million and its FY 1990 allotment is $9 million. That State could use up to $150,000 of its FY 1989 allotment (1 percent of $15 million) and $100,000 of its FY 1990 allotment (because 1 percent of its allotment—$90,000—is less than $100,000) for Phase II outreach and up to the same amount for employment discrimination education and outreach.

Those funds, if unobligated by the State at the end of the fiscal year, would remain available for use through FY 1994, as is the case with SLIAG funds generally. For example, States will not have any FY 1989 costs for employment discrimination education and outreach that can be reimbursed with SLIAG funds. This is because the required prior consultation with the Office of the Special Counsel could not have been accomplished in FY 1989. However, 1 percent of the State's allotment for FY 1989 (or $100,000, if greater), if not otherwise obligated, remains available to reimburse costs incurred in subsequent fiscal years.

States' use of SLIAG funds for either Phase II outreach or employment discrimination education and outreach is optional. There is no minimum amount of SLIAG funds which States are required to use for these activities. This regulation proposes to amend § 402.11(d) to clarify application of the statutory requirement that States use at least 10% of their SLIAG allotments for public assistance, public health assistance, and educational services.

The statutory provisions authorizing use of SLIAG funds for these purposes are effective with States' FY 1989 allotments. Costs incurred prior to October 1, 1988 may not be reimbursed with SLIAG funds. (FY 1988 allotments may not be used for Phase II outreach or for employment discrimination education and outreach. FY 1988 allotments are the only funds available to reimburse costs incurred in FY 1988.) States' FY 1988 allotments are not included in computing the maximum amount of SLIAG funds that may be used for these purposes.

As noted above, States may use SLIAG funds to pay otherwise allowable costs incurred through FY 1994. However, States should bear in mind that there will be a minimal number of aliens adjusting status under sections 210 or 245A of the INA still in lawful temporary resident status after FY 1992. Therefore, we would not expect States to incur significant costs for Phase II outreach activities in FY 1993 or FY 1994 unless aliens are granted lawful temporary resident status under section 210A of the INA (pertaining to replenishment agricultural workers).

New §§ 402.11 (i) through (l), (n), and (o) of this proposed regulation include additional restrictions that apply to these new uses of SLIAG funds. These were described previously under "Phase II Outreach" and "Employment Discrimination Education and Outreach."

Sections 402.11(a), 402.11(c) and 402.21(b) describe which funds are permitted for costs associated with SLIAG-reimbursable activities.

Proposed Simplification of Application Requirements

This proposed regulation simplifies States' preparation of SLIAG applications by deleting the requirement that applications contain both cost estimates for the upcoming fiscal year and updated estimates for the prior fiscal year. A key element is our changing the due date for applications in § 402.43 from July 15 preceding the fiscal year for which application is made to October 1 of that fiscal year. (See 55 FR 26206, which changed the due date for FY 1991 applications from July 15, 1990 to October 1, 1990. This regulation also changed the date by which applications must be rendered approvable by the Secretary from October 1 to December 15.) This proposed regulation would adopt those dates for all applications.

This proposed change would allow us to simplify States' SLIAG applications. Under the current regulation, State applications must contain estimates of SLIAG-related costs for the year for which funds are sought, plus updated estimates for the prior fiscal year. For example, under the current regulation, States' applications for FY 1991 must include cost estimates for FY 1991 and updated estimates for FY 1990.

Under the new time schedule, we will complete our review and approval of States' applications, including the cost estimates they contain, by the end of the calendar year. This is the same time that States must submit end-of-year reports containing actual cost data for the prior fiscal year. (Subpart F of the regulation requires States to submit to the Department a report with actual cost data for FY 1990 no later than 90 days after the end of the fiscal year.) Thus, we will have actual cost data for the prior year available to us when we compute States' allocations. Therefore, there is no need for updated cost estimates for the prior year in States' applications. We therefore are proposing to eliminate the requirement that State applications contain updated cost estimates for the prior fiscal year.

The current regulation calls for the Department to hold 25% of the FY 1991 appropriation (the final year for which funds were appropriated at the time the regulation was published) for allocation in late FY 1991, after we receive States' end-of-year reports for FY 1990. (These reports are due by December 29, 1990 and, under the schedule in the current regulation, would not have been available in time to be included in computing States' FY 1991 allocations.)

We included provision for a final adjustment to States' allocations late in FY 1991 so that final allocations would be based as much as possible on actual, rather than estimated, costs. With the proposed October 1 application deadline, this final adjustment will not be necessary. Actual cost data for FY 1990 will be available when we compute States' FY 1991 allocations for the first time. Therefore, there is no need for a second allocation in FY 1991. We propose to allocate all FY 1991 funds as soon as cost data are received from States and reviewed by the Department.

Technical and Conforming Changes

In referring to activities for which SLIAG funds may be used, § 402.10(a) lists the three categories of programs/activities for which SLIAG funds could be used prior to enactment of Public

Law 101-238: Public assistance, public health assistance, and educational services. Two other allowable uses—SLIAG administrative costs and program administrative costs—were provided for in §§ 402.10(c) and 402.22. In addition, categories of activities for which SLIAG funds may be used are listed in numerous other places in the regulation, including § 402.11.

With the addition of two new categories of activities for which SLIAG funds may be used—employment discrimination education and outreach and Phase II outreach—listing all seven of the allowable uses of SLIAG funds at each reference is unwieldy. Therefore, the proposed amendment defines "SLIAG-reimbursable activity" to include all allowable uses of SLIAG funds:

—Public assistance;
—Public health assistance;
—Educational services;
—Employment discrimination education and outreach;
—Phase II outreach;
—SLIAG administrative costs; and,
—Program administrative costs.

The terms "SLIAG administrative costs" and "program administrative costs" are defined in §§ 402.22 (a) and (b), respectively, and § 402.10(c) of the current regulation. Because these are "SLIAG-reimbursable activities," defined by this proposed amendment, we have moved the definitions of "SLIAG administrative costs" and "program administrative costs" to § 402.2, "Definitions." We believe that it is clearer and more consistent to define all allowable uses of SLIAG funds in that section.

The definition of "SLIAG administrative costs" in § 402.2 does not differ substantively from that in the current regulation at § 402.22(a). This amendment proposes to substitute the term "conferring" for "consultation" (i.e., with local officials) to prevent confusion between this reference and the consultation with the Office of the Special Counsel required as a prerequisite for initiating employment discrimination education and outreach activities.

The definition of "program administrative costs" included in § 402.2 does not differ substantively from the current definition in §§ 402.10(c) and 402.22(b). It is modified only to clarify that program administrative costs are those costs associated with administering any of the five categories of programs or activities for which SLIAG funds may be used.

This proposed amendment moves the description of the methodologies States may employ to determine program administrative costs from §§ 402.22(b) to 402.21(c)(6)(A). This locates all cost documentation requirements and guidance in the same section of the regulation.

The current regulation limits SLIAG-related costs for educational services to the amount that can be paid with SLIAG funds. The amended definition of "SLIAG-related costs" in § 402.2 of this proposed rule applies the same restriction to SLIAG-related costs for Phase II outreach and employment discrimination education and outreach. The effect of this would be to prevent the inclusion of costs that could not be reimbursed with SLIAG funds in the computation of States' allocations.

The proposed rule adds a provision to § 402.45(a) that requires a State to submit amendments to its approved application for a fiscal year by the due date for that fiscal year's cost report under § 402.51. This change codifies current policy.

The proposed rule removes and reserves § 402.10(c) of the current regulation. That paragraph permits SLIAG funds to be used for program and SLIAG administrative costs. Because the regulation now defines these uses in § 402.2 and includes them in the list of SLIAG-reimbursable activities in §§ 402.2 and 402.10(a), 402.10(c) would be superfluous.

The current SLIAG regulation addresses State allocations and application requirements for each year from FY 1988 through FY 1991. The change in application requirements, due date, and allocation schedule for FY 1991 (discussed above) eliminates the need to list requirements and procedures separately for each year. Therefore, this proposed regulation eliminates unnecessary references to specific fiscal years.

INS regulations require that physical examinations for applicants for adjustment of status under sections 210, 210A, and 245A of the INA be at no expense to the government. The current SLIAG regulation prohibits use of SLIAG funds to pay the cost of physical examinations only for applicants under sections 245A and 210. Section 402.11(h) of the proposed regulation corrects this oversight and prohibits use of SLIAG funds to pay the cost of physical examinations required of petitioners for status under section 210A (replenishment agricultural workers), should any aliens become eligible to petition for adjustment of status under that section.

Required Consultations with State and Local Officials

Section 204(i) of IRCA requires the Secretary to consult with representatives of State and local governments in establishing regulations and guidelines for SLIAG. On January 16, 1990 we transmitted information regarding Public Law 101-238 to SLIAG contacts and other interested parties. In that transmittal, we requested comments and suggestions for regulations regarding temporary resident education and outreach and employment discrimination education and outreach activities. We received comments from four States and one national organization. Those comments were considered in developing this proposed rule.

Required Consultation with States and the Comptroller General

Section 204(e) of IRCA requires that the Secretary consult with States and the Comptroller General in developing reporting requirements for SLIAG. As this proposed rule does not establish new reporting requirements, but merely eliminates now unnecessary reporting, we determined that prior consultation was not necessary. However, copies of this proposed rule have been transmitted to State SLIAG single points of contact and the Comptroller General for comment.

Regulatory Procedures

In accordance with 5 U.S.C. 605(b), the Secretary certifies that this rule does not have a significant adverse economic impact on small business entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

Paperwork Reduction Act

This rule imposes no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalogue of Federal Domestic Assistance Program No. 13.786, State Legalization Impact Assistance Grants)

List of Subjects in 45 CFR Part 402

Administrative cost, Allocation formula, Aliens, Allotment, Education, Grant programs, Immigration, Immigration Reform and Control Act, Public assistance, Public health assistance, Reporting and recordkeeping requirements, State Legalization Impact Assistance Grants.

Dated: July 19, 1990.

Jo Anne B. Barnhart,

Assistant Secretary, Family Support Administration.

Approved: September 27, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, 45 CFR part 402 is amended as follows:

PART 402—STATE LEGALIZATION IMPACT ASSISTANCE GRANTS

1. The authority citation for part 402 continues to read as follows:

Authority: 8 U.S.C. 1255a note, as amended.

2. Section 402.1 is revised to read as follows:

§ 402.1 General.

(a) These regulations implement section 204 of Public Law 99-603, the Immigration Reform and Control Act of 1986 (IRCA), as amended. This act establishes a temporary program of State Legalization Impact Assistance Grants (SLIAG) for States. The purpose of SLIAG is to lessen the financial impact on State and local governments resulting from the adjustment of immigration status under the Act of certain groups of aliens residing in the States, the district of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(b) Funds appropriated by section 204 may be applied by States with approved applications to certain State and local government costs incurred: (a) In providing public assistance and public health assistance to eligible legalized aliens, (2) for making payments to State educational agencies for the purpose of assisting local educational agencies in providing certain educational services to eligible legalized aliens, (3) to provide public education and outreach to lawful temporary resident aliens concerning the adjustment to lawful permanent resident status and other matters, (4) to make payments for education and outreach efforts by State agencies regarding unfair discrimination in employment practices based on national origin or citizenship status, and (5) to administer the funds provided under this Part.

3. Section 402.2 is amended by revising the first two sentences of and adding a sentence to the definition of "SLIAG-related costs," and by adding definitions of "Employment discrimination education and outreach," "Phase II outreach," "Program administrative costs," "SLIAG administrative costs," and "SLIAG-reimbursable activity," to read as follows:

§ 402.2 Definitions.

* * * * *

Employment discrimination education and outreach means education and outreach efforts by State agencies regarding unfair discrimination in employment practices based on national origin or citizenship status.

* * * * *

Phase II outreach means public education and outreach (including the provision of information to individuals) to inform temporary resident aliens under section 210, 210A, 245A of the INA and aliens whose applications for such status are pending with the Immigration and Naturalization Service regarding: (1) The requirements of sections 210, 210A, and 245A of the INA regarding the adjustment of resident status; (2) sources of assistance for such aliens obtaining the adjustment of status described in paragraph (1) of this definition, including educational, informational, and referral services, and the rights and responsibilities of such aliens and aliens lawfully admitted for permanent residence; (3) the identification of health, employment, and social services; and, (4) the importance of identifying oneself as a temporary resident alien to service providers.

Program administrative costs means those costs associated with administering public assistance, public health assistance, educational services, Phase II outreach, and employment discrimination education and outreach activities.

* * * * *

SLIAG administrative costs means the direct and indirect costs related to administration of funds provided under this part, including: Planning and conferring with local officials, preparing the application, audits, allocation of funds, tracking and recordkeeping, monitoring use of funds, and reporting.

SLIAG-reimbursable activity means programs of public assistance, programs of public health assistance, educational services, employment discrimination education and outreach, Phase II outreach, program administrative costs, and SLIAG administrative costs, as those terms are defined in this part, that are included in a State's application approved pursuant to subpart E of this part.

SLIAG-related costs means expenditures made (1) to provide public assistance, public health assistance, or educational services, as defined in this part, to eligible legalized aliens; (2) to provide public health assistance to aliens applying on a timely basis to become lawful temporary residents under sections 210, 210A, or 245A of the INA during such time as that alien's application with INS is pending approval; (3) to provide employment discrimination education and outreach, as defined in this part; (4) to provide Phase II outreach, as defined in this part; and, (5) for SLIAG administrative costs, as defined in this part. SLIAG-related costs include all allowable expenditures, including program administrative costs determined in accordance with § 402.21(c), regardless of whether those expenditures actually are reimbursed or paid for with funds allotted to the State under this part. SLIAG-related costs for educational services, Phase II outreach, and employment discrimination education and outreach are limited to the amount of payment that can be made under the Act for those activities, as described in §§ 402.11(e), (k) and (l), respectively.

* * *

* * * * *

4. Section 402.10 is amended by revising paragraphs (a) and (d) and removing and reserving paragraph (c) to read as follows:

§ 402.10 Allowable use of funds.

(a) Funds provided under this part for a fiscal year may be used only with respect to SLIAG-related costs incurred in that fiscal year or succeeding fiscal years, subject to §§ 402.11 and 402.26(a), for the following activities, as defined in this part: (1) Public assistance; (2) Public health assistance; (3) Educational services; (4) Employment discrimination education and outreach; (5) Phase II outreach; (6) SLIAG administrative costs; and, (7) Program administrative costs;

* * * * *

(c) [Removed and Reserved]

(d) Except as provided for in § 402.11(n), funds awarded under this part may be used to reimburse or pay SLIAG-related costs incurred prior to the approval of a State's application or amendment to its application, pursuant to subpart E of this part, provided that such reimbursement or payment is consistent with the Act and this part.

5. Section 402.11 is amended by revising paragraphs (a) and (c), revising the last sentence of paragraph (d), revising paragraph (h), adding paragraphs (i), (j), (k), (l), adding and reserving paragraph (m), and adding paragraphs (n) and (o), to read as follows:

§ 402.11 Limitations on use of SLIAG funds.

(a) Funds provided under this part may be used only for SLIAG-

reimbursable activities that (1) meet the definitions of § 402.2, above, and (2) are otherwise consistent with the rules and procedures governing such activities.

* * * * *

(c) The amount of reimbursement or payment may not exceed 100% of SLIAG-related costs, as defined in this part, associated with SLIAG-reimbursable activities.

(d) * * * In the event that a State does not require use of a full 10% in one of the above categories, it must allocate the unused portion equally among the remaining categories listed in this paragraph.

* * * * *

(h) Funds provided under this part shall not be used to reimburse or pay costs incurred by any public or private entity or any individual, in the conduct of a medical examination as required for application for adjustment to lawful temporary resident status under 8 CFR 245a.2(i), 8 CFR 210.2(d), or 8 CFR 210a.6(f).

(i) Funds provided under this part shall not be used for client counselling or any other service which would assume responsibility for the adjustment of status of aliens to that of lawful temporary or permanent residence. This prohibition includes assisting an alien to appeal INS decisions or representation of an alien before any administrative or judicial body.

(j) Funds under this part shall not be used to investigate or prosecute discrimination complaints beyond initial intake and referral, to pay legal fees or other expenses incurred to provide legal counsel to a party alleging discrimination, or to represent such parties before any administrative or judicial body.

(k) A State may use funds to make payments for Phase II outreach activities, including related program administration, from allotments made to it under this part for FY 1989 and succeeding fiscal years. The maximum amount that a State may use for this purpose from a fiscal year's allotment is the greater of 1% of its allotment for that fiscal year or $100,000.

(l) A State may use funds to make payments for employment discrimination education and outreach activities, including related program administration, from allotments made to it under this part for FY 1989 and succeeding fiscal years. The maximum amount that a State may use from a fiscal year's allotment for this purpose is the greater of 1% of the State's allotment for that fiscal year or $100,000.

(m) [Reserved]

(n)(1) Except as provided for in paragraph (n)(2) of this section, a State may use SLIAG funds allotted to it for a fiscal year to reimburse or pay only those SLIAG-related costs for employment discrimination education and outreach activities which occurred after approval by the Department of an application or amendment describing those activities, as required by § 402.41(d).

(2) Costs incurred in FY 1990 prior to approval by the Department of an application or amendment containing the information required by § 402.41(d), but after December 18, 1989, for reproduction and dissemination of public information material certified by the Office of the Special Counsel for Immigration-Related Unfair Employment Practices, Department of Justice (hereafter, "Office of the Special Counsel"), pursuant to paragraph (o) of this section may be reimbursed with funds allotted under this part.

(o)(1) With respect to employment discrimination education and outreach, a State shall not use SLIAG funds to pay for the cost of producing or distributing materials prepared for public dissemination unless the Office of the Special Counsel has certified that those materials meet the criteria in paragraph (o)(2) of this section.

(2) Certification of materials described in paragraph (o)(1) of this section shall consist of a finding by the Office of the Special Counsel that information contained in such materials relating to the discrimination provision of the Act is legally accurate and that those materials include reference to the Office of the Special Counsel as a source of information and referral for complaints of discrimination based on citizenship status or national origin. Information regarding the Office of the Special Counsel shall include its address and telephone number, including the toll-free number and toll-free TDD number for the hearing impaired.

6. Section 402.12 is amended by revising paragraph (c) to read as follows:

§ 402.12 Use of SLIAG funds for costs incurred prior to October 1, 1987.

* * * * *

(c) A State may use funds provided under this part for costs incurred prior to October 1, 1987, but after November 6, 1986, in providing public health assistance to eligible legalized aliens and to applicants for lawful temporary residence under sections 210, 210A and 245A of the INA, in conformity with the provisions of § 402.10(a).

7. Section 402.21 is amended by revising the third sentence of paragraph (b), revising paragraph (c)(2), adding paragraphs (c) (4) and (5), revising § 402.22(b) and redesignating it as paragraph (c)(6)(i), and redesignating § 402.22(c) as paragraph (c)(6)(ii), to read as follows:

§ 402.21 Fiscal control.

* * * * *

(b) * * * States must demonstrate that SLIAG-related costs, as defined in this part, incurred in SLIAG-reimbursable activities, equal or exceed the amount of SLIAG funds expended with respect to costs incurred in those activities. * * *

(c) * * *

(2) For public health assistance, States may establish allowability by accounting for actual expenditures made to or on behalf of identificable eligible legalized aliens, or applicants for lawful temporary resident status under sections 210, 210A, or 245A of the INA, who qualify for and receive such assistance and/or services, by use of statistically valid sampling of clients in the public health system of the State or local government, or by using the ratio of eligible legalized aliens in a service population to all members of the relevant service population.

* * * * *

(4) With respect to Phase II outreach, as defined in this part, a State must demonstrate that the costs of activities that provide information directly to specific individuals are attributable only to lawful temporary residents under sections 210, 210A, or 245A of the INA, and applicants for such status whose applications were pending with the Immigration and Naturalization Service at the time information is provided. For Phase II outreach activities that do not involve the provision of information directly to specific individuals, States must demonstrate that such activities are targeted predominantly to or intended primarily for lawful temporary residents under sections 210, 210A, or 245A of the INA or applicants for such status whose applications are pending with the Immigration and Naturalization Service at the time information is provided. The State must demonstrate that the amount of any fiscal year's allotment used for this purpose did not exceed the amount described in § 402.11(k) and was consistent with the limitations of § 402.11(i).

(5) With respect to employment discrimination education and outreach, as defined in this part, the State must demonstrate that funds were expended only for activities described in the State's approved application pursuant to § 402.41(d) and the limitations of

§ 402.11(i), (n), and (o) and that the amount of any fiscal year's allotment used for this purpose did not exceed the amount described in § 402.11(l).

(6)(i) For program administrative costs, as defined in this part, a State may establish allowability by use of the proportion of eligible legalized aliens provided assistance and/or services allowable under this part by a recipient, as defined in this part, relative to all persons provided such assistance and/or services; by use of the proportion of program or service costs actually incurred in providing assistance and/or services allowable under this part by a recipient, relative to all costs of providing the same assistance and/or services allowable under this part by the recipient; or, by use of such other basis as will document that administrative costs incurred in providing such assistance and/or services and reimbursed under this part are allowable, allocable to SLIAG, and reasonable.

(ii) Consistent with section 604 of the Emergency Immigrant Education Act, of the amount paid to a State educational agency for educational services, only 1.5 percent may be used for administrative costs incurred by the State educational agency in carrying out its function under this part.

§ 402.22 [Removed and Reserved]

8. Section 402.22 is removed and reserved.

9. Section 402.31 is amended by revising the introductory text of paragraph (b) and removing paragraphs (b)(1) through (6,) to read as follows:

§ 402.31 Determination of allocations.

* * * * *

(b) *Calculation of allocations.* Each time the Department calculates State allocations, it will use the best data then available to the Secretary on the distribution of eligible legalized aliens by State. The Department will determine each State's SLIAG-related costs to be included in the computation of its allocation for a fiscal year by adding to the sum of SLIAG-related costs reported for all previous fiscal years by that State, pursuant to §§ 402.51(e)(1) and (2), the total amount of estimated SLIAG-related costs included in the State's approved application for that fiscal year, pursuant to § 402.41(c)(1) and (2). In the event that a State has not submitted an approved report for a fiscal year, the Department will include no costs for that fiscal year in its calculation.

10. Section 402.32 is revised to read as follows:

§ 402.32 Determination of State allocations.

Except as noted below, a State's allotment is the difference between the amount determined under § 402.31(b) of this regulation and the cumulative amount previously allotted to the State. In the event that the amount determined under § 402.31(b) is less than the cumulative amount previously allotted to a State, that State's allotment will be zero. The allotments of the remaining States would be calculated by multiplying the difference between the amount determined under § 402.31(b) of this regulation and the cumulative amount previously allotted to the State by the ratio of the amount of funds available for grants to States to the sum of the differences between the amounts determined under § 402.31(b) and the amounts previously awarded to those States.

11. Section 402.41 is amended by redesignated paragraph (c)(1) as paragraph (c) and revising the second sentence of newly redesignated paragraph (c), removing paragraph (c)(2), revising paragraph (d)(1) and redesignating it as paragraph (d)(1)(i), adding new paragraph (d)(1)(ii), adding a sentence at the end of paragraph (d)(2), and adding a sentence at the end of paragraph (f), to read as follows:

§ 402.41 Application content.

* * * * *

(c) * * * Programs and activities must be identified by the purposes listed in § 402.10(a). * * *

(d) * * *

(1)(i) Descriptions of the programs and activities for which SLIAG-related costs will be incurred; and,

(ii) If a State elects to use its allotment for employment discrimination education and outreach, a description of the State's planned education and outreach activities, including: descriptions of the kinds of government or private agencies or other entities, if any, through which these activities will be conducted; brief descriptions of the targeted audience(s) for these activities; and, preproduction copies or the text of any material intended for distribution to the public to be produced or disseminated with SLIAG funds, if available at the time the application is submitted.

(2) * * * For SLIAG administrative costs, Phase II outreach, and employment discrimination education and outreach, the descriptions must instead include the basis for the estimates of SLIAG-related costs, as defined in this part.

(f) * * * If the State elects to use SLIAG funds for employment discrimination education and outreach, it must also designate in its application a contact person for this activity, if different from the single point of contact.

* * * * *

12. Section 402.43 is amended by revising paragraph (a) and removing the first sentence and revising the second sentence of paragraph (b) to read as follows:

§ 402.43 Application deadline.

(a) An application from a State for SLIAG funds for any Federal fiscal year must be received by the Department by October 1 of that fiscal year. If a State fails to submit an application by this date, funds which it may otherwise have been eligible to receive shall be distributed among States submitting timely approved applications in accordance with § 402.33 of this part.

(b) In order to receive funds under this part, a State's application for a fiscal year must be approvable by the Secretary by December 15 of that fiscal year. * * *

13. Section 402.44 is amended by adding paragraphs (d)(1) and (2) to read as follows:

§ 402.44 Basis for approval.

* * * * *

(d)(1) The Department will forward to the Office of Special Counsel information provided by a State pursuant to § 402.41(d).

(2) The Office of the Special Counsel will review information forwarded to it by the Department pursuant to paragraph (d)(1) of this section to determine whether the activities described therein conflict with or unnecessarily duplicate other employment discrimination education and outreach efforts. Certification to the Department by the Office of the Special Counsel that the State's submission meets this criterion is a prerequisite for approval by the Department.

14. Section 402.45 is amended by revising paragraph (a) and redesignating it as paragraph (a)(1), adding paragraph (a)(2), and revising the first sentence of paragraph (b), to read as follows:

§ 402.45 Amendments to applications.

(a)(1) If, during the course of a fiscal year, a State adds a program or activity for which it intends to claim reimbursement or make payment in that fiscal year, it must submit an amendment (containing appropriate information pursuant to § 402.41(c)) to its approved application for that fiscal year prior to the due date for reports required by § 402.51 of this part.

(2) If, during the course of a fiscal year, a State plans to initiate employment discrimination education and outreach activities not described in its application pursuant to § 402.41(d), it must submit an application amendment, which shall be reviewed in accordance with procedures described in § 402.44(d) of this part. The Department's approval of such an amendment is a prerequisite for the initiation of such new activities, except as provided for in § 402.11(n)(2).

(b) Except as provided for in §§ 402.11(k) and (n), a State may use SLIAG funds received for a fiscal year to reimburse or pay SLIAG related costs for programs or activities described in paragraph (a) of this section retroactive to the date the activity began, but no earlier than the first day of the fiscal year and only to the extent described in § 402.10(d). * * *

15. Section 402.51 is amended by redesignating the first two sentences of paragraph (e) as paragraph (e)(1) and revising the second sentence of newly redesignated paragraph (e)(1), redesignating the third sentence of paragraph (e) as paragraph (e)(2), and redesignating the last sentence of paragraph (e) as paragraph (e)(3) to read as follows:

§ 402.51 Reporting.

* * * * *

(e)(1) * * * The report must provide, for each program or activity identified in the State's application, the amount of SLIAG-related costs, as defined in this part, incurred in that program or activity, identified as public assistance, public health assistance, educational services, Phase II outreach, employment discrimination education and outreach, and SLIAG administrative costs, as defined in this part, the amount of SLIAG funds obligated for that program or activity, and the time period for which the funds were obligated. * * *

(2) The report must contain a description of the methodology used to determine actual SLIAG-related costs, if different from the description provided in the State's application pursuant to § 402.41(d)(2) of this part.

(3) Federal and State costs of providing assistance under a State plan approved under title XIX of the Social Security Act to aliens whose status has been adjusted under sections 245A and 210A of the INA by virtue of the exceptions to the bar to Medicaid eligibility (sections 245A (h)(2) and (3) of the INA) must be shown separately in State's reports.

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federal register

Tuesday
December 11, 1990

Part VII

The President

Proclamation 6236—National Poison Prevention Week, 1991

Proclamation 6237—Wright Brothers Day, 1990

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 6236 of December 6, 1990

National Poison Prevention Week, 1991

By the President of the United States of America

A Proclamation

As we mark the 30th observance of National Poison Prevention Week, we can take pride in the success of this important annual public awareness campaign. Since our first observance of National Poison Prevention Week in 1962, the number of deaths by poisoning among children under the age of five has declined significantly. The U.S. Consumer Product Safety Commission reports that in 1961, poisoning claimed the lives of 450 youngsters. By 1987, that number had dropped to 31. Nevertheless, because the death of even one child by accidental poisoning is intolerable, we must continue efforts aimed at education and prevention.

The Poison Prevention Week Council, a coalition of 36 national organizations that are determined to stop accidental poisonings, coordinates National Poison Prevention Week activities. In addition to distributing valuable information, the Council encourages local poison control centers, pharmacies, public health departments, and other concerned parties to conduct poison prevention programs in their communities. The Consumer Product Safety Commission, which each year provides a member to serve as Secretary of the Poison Prevention Week Council, helps to lead this important public health campaign. Thus, it is a truly national campaign, enlisting the combined energy and resources of government officials, health care professionals, educators, business and industry leaders, media representatives, and members of private voluntary organizations.

Poison prevention activities such as those highlighted this week have helped to save lives, but there is more to do. Each year more than half a million children are exposed to potentially poisonous medicines or household chemicals. It is therefore vital that we continue to remind parents, grandparents, and other adults about the risks of childhood poisoning and the ways tragic accidents can be prevented. Simple safety measures—such as using child-resistant closures and keeping potentially harmful substances out of the reach of children—can save lives.

To encourage the American people to learn more about the dangers of accidental poisonings and to take more preventative measures, the Congress, by joint resolution approved September 26, 1961 (75 Stat. 681), has authorized and requested the President to issue a proclamation designating the third week of March of each year as "National Poison Prevention Week."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning March 17, 1991, as National Poison Prevention Week. I call upon all Americans to observe this week by participating in appropriate ceremonies and activities and by learning how to prevent accidental poisonings among children.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of December, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

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Presidential Documents

Proclamation 6237 of December 7, 1990

Wright Brothers Day, 1990

By the President of the United States of America

A Proclamation

When Orville and Wilbur Wright's hand-crafted airplane lifted off the windswept beach near Kitty Hawk, North Carolina, on December 17, 1903, only a handful of men and perhaps a few startled sea gulls witnessed the world's first controlled, manned flight in a heavier-than-air, mechanically propelled aircraft. Nevertheless, this brief bold flight changed the course of history. With the success of their daring experiment, Orville and Wilbur Wright ushered in the age of aviation.

From the time they experimented with airplane models and wind tunnels at their small workshop in Dayton, Ohio, until the end of their celebrated careers, the Wright brothers demonstrated qualities shared by all great pioneers and inventors. Eager to learn and determined to succeed, they engaged in hours of intense study and painstaking trial, calculation, and design. As individuals they were confident, methodical, and brilliantly intuitive engineers.

Shortly after the Wrights began their experiments, they found that the small amount of data previously collected by others was unreliable. Consequently, they conducted their own basic research, literally writing the book on fundamental aerodynamics. Eventually, the Wrights used their carefully acquired knowledge to build a machine so far ahead of its day that they even had to design and build their own motor, one that was both powerful and lightweight.

The Wrights' diligent and enlightened approach to their work was the key to their success. Wilbur once remarked: "If a man is in too big a hurry to give up an error, he is liable to give up some truth with it, and in accepting the arguments of the other man, he is sure to get some error with it. . . . After I get a hold of a truth I hate to lose it again, and I like to sift all the truth out before I give up an error." Such intellectual openness and tenacity—coupled with courage, creativity, and perseverance—enabled the Wright brothers to defy both the skepticism of friends and the force of gravity as they launched the age of controlled human flight.

We live in a world transformed by the work of the Wright brothers, and in this age of sophisticated air and space travel, their first flight still stands as one of the most extraordinary achievements of the 20th century. With optimism and daring, restless ingenuity and hard work, Orville and Wilbur Wright broke the tethers binding man to Earth and joined the ranks of those great pioneers and inventors who have helped to make the United States a mighty and prosperous Nation. As we recall the Wrights' seminal contributions to aviation, each of us can take inspiration from their example.

The Congress, by a joint resolution approved December 17, 1963 (77 Stat. 402; 36 U.S.C. 169), has designated the 17th day of December of each year as "Wright Brothers Day" and requested the President to issue annually a proclamation commemorating this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim December 17, 1990, as Wright Brothers Day. I call upon the people of the United States to observe that day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of December, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

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LIST OF PUBLIC LAWS

Last List December 6, 1990

Note: The list of Public Laws for the second session of the 101st Congress has been completed and will resume when bills are enacted into law during the first session of the 102nd Congress, which convenes on January 3, 1991.

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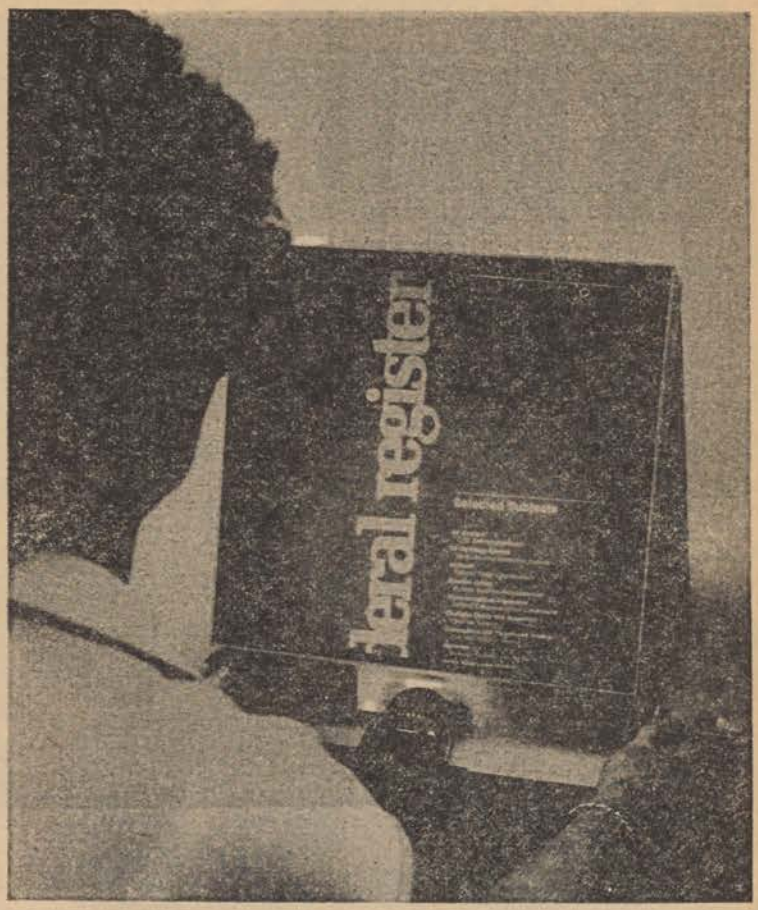

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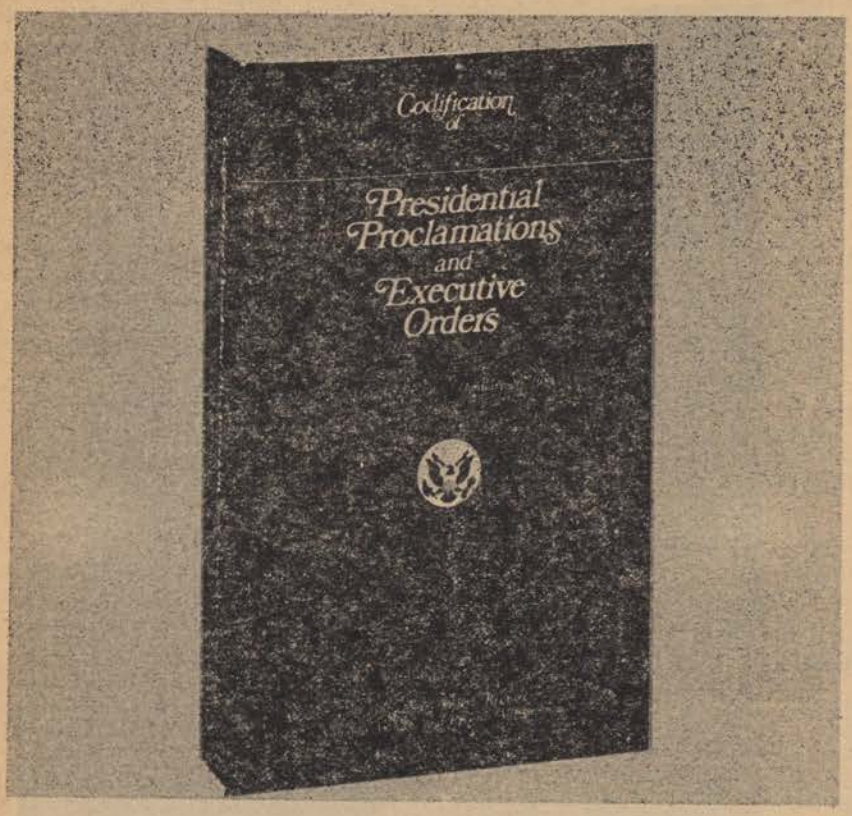

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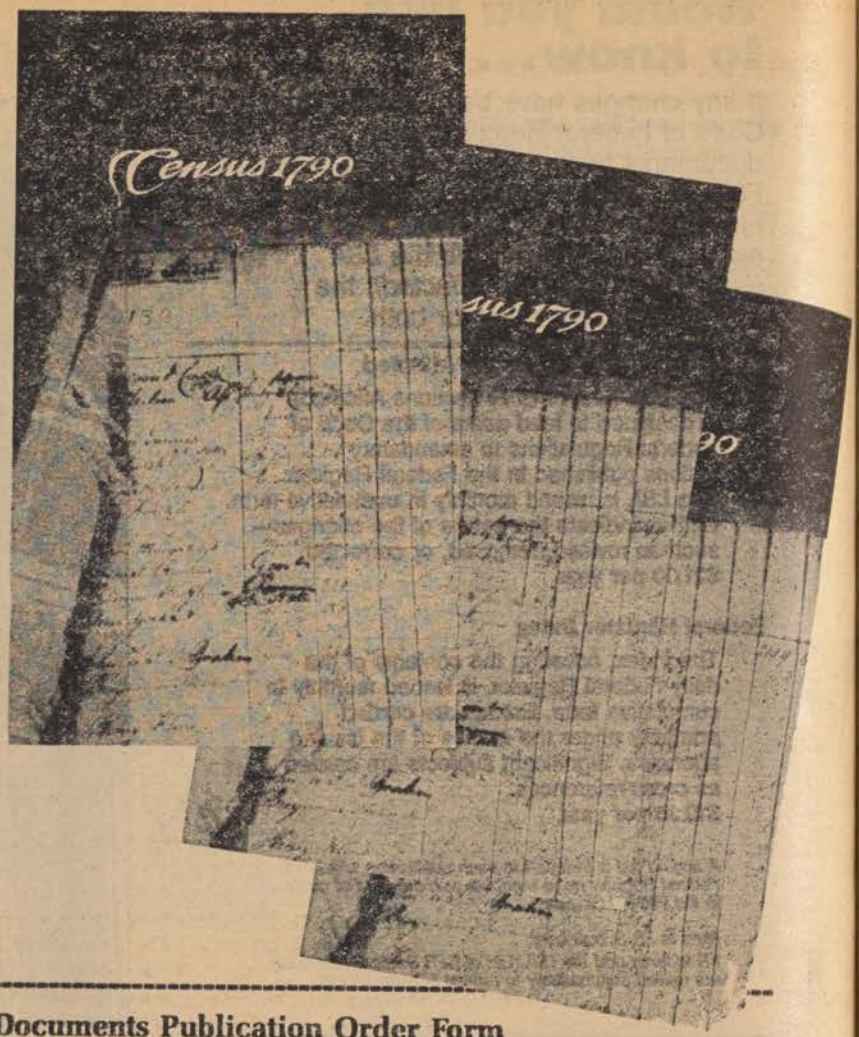

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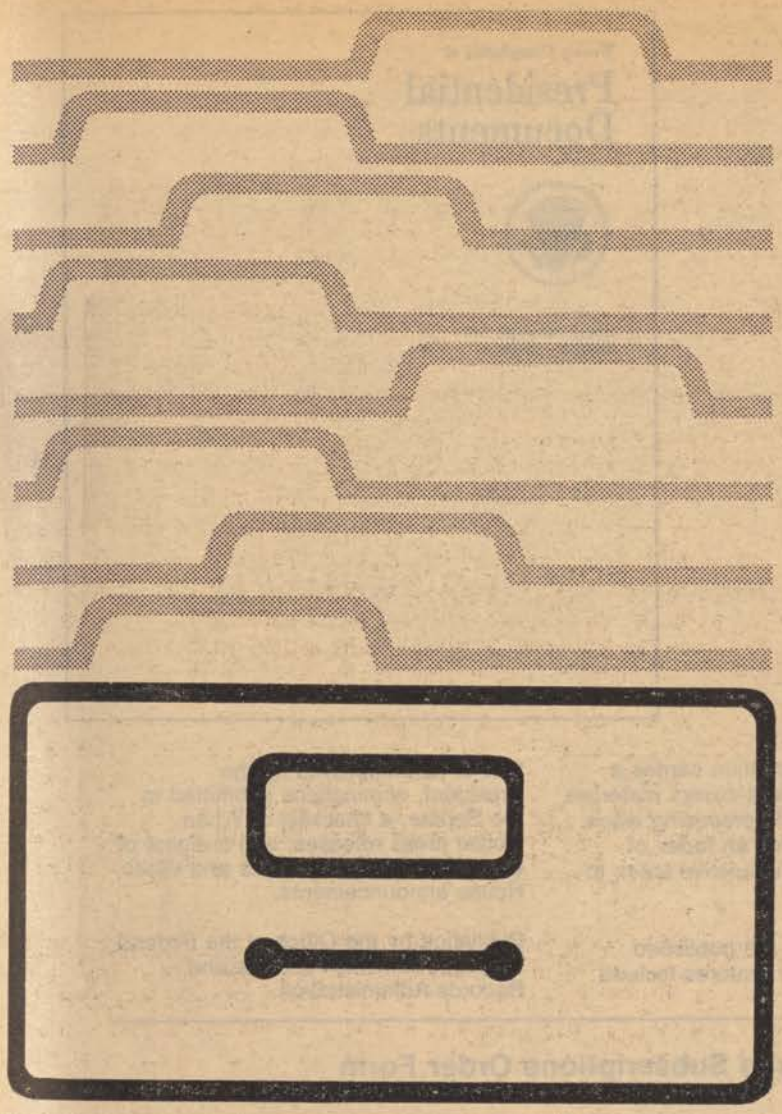

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